

BNZ BUSINESS LENDING

Master Terms and Conditions

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Application of the BNZ Business Lending Master Terms and Conditions

These Master Terms apply to:

1. all Loan Products provided by Bank of New Zealand to a Loan Party;
2. each Guarantee provided by a Loan Party to Bank of New Zealand which is expressed to be subject to these Master Terms in the relevant Guarantee Document; and
3. each Security provided by a Loan Party to Bank of New Zealand which is expressed to be subject to these Master Terms in the relevant Security Document.

In addition to these Master Terms, each Loan Product and each Loan Party will also be subject to the terms contained in the applicable Facility Document, each Guarantee will also be subject to the terms contained in the applicable Guarantee Document and each Security will also be subject to the terms contained in the applicable Security Document.

This is version 1.0 of the Master Terms.

Part 1: Definitions and Interpretation

1. Definitions

In these Master Terms and any Lending Document, unless the context otherwise requires:

Accounting Standard means either a generally accepted accounting practice (as defined in section 8 of the Financial Reporting Act 2013) or a non-GAAP standard (as defined in sections 5 and 18 of the Financial Reporting Act 2013).

Advance means, in relation to a Revolving Credit Facility, each principal amount advanced, or to be advanced, to the Borrower under that Revolving Credit Facility (to the extent it remains outstanding).

Amount Outstanding means, at any time, in relation to a Loan Product, all amounts then due and payable to the Lender under the Lending Documents relating to that Loan Product, including the aggregate principal amount of all Drawings (if any) outstanding at that time and all accrued and unpaid interest and Costs.

Annual Plan means a plan prepared and adopted by a Local Authority under section 95 of the LGA.

Annual Report means a plan prepared and adopted by a Local Authority under section 98 of the LGA.

Authorised Signatory means each person who has been authorised by a Loan Party (including by being authorised to access any secure online platform) to give notices and take other action on behalf of the applicable Loan Party under a Lending Document.

Attorney means an attorney appointed under a Lending Document.

Availability Period means, in relation to a Loan Product, the period specified as such in the applicable Facility Document.

Base Rate means, in relation to a Loan Product, the rate specified as such in the applicable Facility Document.

Borrower means each person named as such in the relevant Facility Document.

Business Day means any day on which banks are open for normal banking business in Auckland or Wellington. Saturday and Sunday are not classified as Business Days even though bank branches may be open for business.

CARL Facility means a facility described as a Customised Average Rate Loan Facility in a Facility Document.

Charitable Trust means a charitable trust incorporated under the Charitable Trusts Act 1957.

CIM Act means the Corporations (Investigation and Management) Act 1989.

Collections Account means a current account held with the Lender (or such other account specified as such by the Lender).

Commercial Terms means the commercial terms applying to a Loan Product as set out in the relevant Facility Document.

Committed Cash Advance Facility means a facility described as a Committed Cash Advance Facility in a Facility Document.

Committee means the committee of members of an Incorporated Society.

Communication has the meaning given to that term in clause 74.

Companies Act means the Companies Act 1993.

Costs includes costs, charges, fees, losses (including indirect, economic or consequential losses), liabilities, expenses and taxes (including fees and expenses incurred in connection with legal and other advisers on a full indemnity basis).

Crops means all crops grown, growing or to be grown and afterwards when cut, harvested or separated from the soil, including:

- (a) **crops** as defined in section 6 of the PPSA;
- (b) crops produced on trees, vines and bushes; and
- (c) seeds and other goods used for cultivation and propagation, and includes all natural increase, progeny and all Crop Produce.

Crop Produce means all products produced from, or goods derived from, Crops (directly or indirectly).

Default Period has the meaning given to that term in clause 5.4.

Default Rate means, in relation to a Loan Product, the rate specified as such in the applicable Facility Document or, if no such rate is specified, the rate specified by the Lender on bnz.co.nz as being the default rate for the purposes of these Master Terms and the relevant Loan Product.

Drawdown Request means a notification specifying the information required for a Drawing pursuant to clause 2 and otherwise in a form or manner acceptable to the Lender.

Drawing means a Loan, an Advance and each amount made available, or to be made available, under an Overdraft Facility, a CARL Facility or any other Loan Product (to the extent it remains outstanding).

Drawing Date means the date on which a Drawing is to be made under a Loan Product, which must be a Business Day during the Availability Period.

Early Repayment Costs has the meaning given to that term in clause 9.2.

Electronic Access Method means a method approved by the Lender which a Loan Party may use to instruct, direct, authorise or advise the Lender (directly or indirectly) with respect to a Loan Product through Electronic Equipment, and which requires the Loan Party to use one or more (but not limited to) devices, identifiers, codes or a combination of these. It does not include a method that requires a Loan Party to sign a voucher, receipt or other document.

Electronic Equipment means an electronic terminal, computer, television, telephone or similar equipment or device as approved by the Lender.

Event of Default means the occurrence of an event or the existence of circumstances described in clause 14, or any other event or circumstances specified as an Event of Default in a Lending Document.

Excluded Consumer Property means any property that may not be subject to a security interest under Part 3A subpart 6 of the Credit Contracts and Consumer Finance Act 2003.

Facility Agreement means, in relation to a Loan Product, the agreement comprising the applicable Facility Document and these Master Terms.

Facility Document means, in respect of a Loan Product, the document entered into between the Lender and one or more Loan Parties, specifying the commercial terms applicable to that Loan Product.

Governance Event means the exercise by the Minister of Local Government of his or her powers under Part 10 of the LGA in respect of a Loan Party.

Guarantee means each guarantee granted or to be granted by a Guarantor in favour of the Lender comprising the applicable Guarantee Document and, if applicable, these Master Terms (and any substitute or additional guarantee provided in connection with a Loan Product).

Guarantee Document means a document entered into by a Guarantor in favour of the Lender under which the Guarantor guarantees the indebtedness and/or obligations to the Lender of one or more persons named or identified in that document (which may, for the avoidance of doubt, be comprised in a Facility Agreement).

Guarantee Limit Amount means, in relation to a Guarantee, the limit (if any) described in the relevant Guarantee Document.

Guaranteed Amounts means, in relation to a Guarantor, all indebtedness to the Lender of each person named or identified in the applicable Guarantee Document as being a person whose indebtedness and/or obligations are guaranteed under that Guarantee Document.

Guarantor means, in relation to a Loan Product, each person named or identified as such in the applicable Guarantee Document and each person who has otherwise provided a guarantee to the Lender.

Hedge Agreement means each agreement pursuant to which a Loan Party enters into a Hedge Transaction with the Lender.

Hedge Transaction means any foreign exchange agreement, currency purchase, interest rate swap, cap or collar agreement, currency swap agreement, currency and interest rate future or option contract, commodity swap, option, cap, collar, floor or swaption or other similar agreement.

Incorporated Society means a society incorporated under the Incorporated Societies Act 1908.

Independent Trustee means each person named as an independent trustee in a Facility Document.

Insolvency includes the liquidation, dissolution, administration, winding-up or bankruptcy of a person (including committing any act of bankruptcy under the Insolvency Act 2006), the entry into a compromise, scheme or equivalent arrangement with a view to avoiding insolvency, and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property, and Insolvent has a corresponding meaning.

Interest Payment Date means, in relation to a Loan Product, each date on which interest is to be paid as specified in the applicable Facility Document or as otherwise set out in these Master Terms.

Interest Rate means, in relation to a Loan Product, the rate specified in the applicable Facility Document (as varied from time to time in accordance with the relevant Facility Document or these Master Terms).

Investigator has the meaning given to that term in clause 16.

Lender means Bank of New Zealand.

Lender's Representative means any agent or representative appointed by the Lender in connection with the exercise of its rights under a Lending Document and includes an Attorney (but excludes a Receiver).

Lending Document means, in relation to a Loan Product:

- (a) these Master Terms;
- (b) each applicable Facility Document;
- (c) each applicable Guarantee Document;
- (d) each applicable Security Document;
- (e) each applicable Mortgage;
- (f) each applicable Other Security;
- (g) each applicable Hedge Agreement;
- (h) the Foreign Currency Account Guide to Fees, Rebates, Terms and Conditions;
- (i) the International Trade & Finance Schedule of Charges;
- (j) the Standard Terms & Conditions;
- (k) the Account and service fees for your Business and Agribusiness,

and each other agreement (present or future) required or contemplated by, or relating to, the applicable Loan Product or any other Lending Document specified as such in a Facility Document.

LGA means the Local Government Act 2002.

Liability Management Policy means a liability management policy prepared and adopted by a Local Authority under section 102(1) of the LGA.

Limit means, in relation to a Loan Product, the total amount of financial accommodation to be provided by the Lender to the Borrower as specified in the applicable Facility Document minus any such amounts that have been cancelled in accordance with a Facility Agreement.

Limited Partnership means a limited partnership established pursuant to the LPA.

Livestock means all living organisms (other than plants) that are owned, raised or kept by any Loan Party, and includes all natural increase and progeny (born or unborn) and all Livestock Produce.

Livestock Produce means all:

- (a) wool that may grow on any Livestock, whether before or after it is shorn;
- (b) milk, cream, butter fat, tallow, cheese or other milk products produced from any Livestock;
- (c) fibres, pelts, skins, hides, carcasses, hooves, velvet and antlers of any Livestock; and
- (d) marketable production by way of fibres, hides, pelts, skins or otherwise of any Livestock;
- (e) all unborn young of any Livestock, including all semen and embryos resulting from any Livestock;
- (f) Markings, and all instruments used for Marking, and the right to use such Markings and instruments,

together with any other produce in the nature of the produce described above.

Loan means, in relation to a Term Loan Facility, each principal amount advanced, or to be advanced, to the Borrower under that Term Loan Facility (to the extent it remains outstanding).

Loan Party means, in relation to a Loan Product, each Borrower, each Guarantor, each Security Provider and each other person who is a party to an applicable Lending Document (other than the Lender).

Loan Product means:

- (a) a Term Loan Facility;
- (b) a Revolving Credit Facility;
- (c) a CARL Facility; or
- (d) an Overdraft Facility,

and any other credit, loan, guarantee or other product of any kind relating to the provision of financial accommodation, however described, entered into, or which may be entered into, by the Lender with a Loan Party.

Local Authority means a regional council or territorial authority named in Schedule 2 to the LGA.

Long Term Plan means a long term plan prepared and adopted by a Local Authority under section 93 of the LGA.

LPA means the Limited Partnerships Act 2008.

Margin means, in relation to a Loan Product, the percentage rate per annum set out in the applicable Facility Document, as varied from time to time pursuant to clause 7.

Mark means a brand, earmark, tag or other mark for or on Livestock and Marking has a corresponding meaning.

Market Disruption Event has the meaning given to that term in clause 11.

Master Terms means this version of the BNZ Business Lending Master Terms and Conditions.

Material Adverse Effect means something having a material adverse effect on a person by reference to it having, in the reasonable opinion of the Lender, a material adverse effect on:

- (a) that person's financial condition or operations or on the consolidated financial condition or operations of it and its subsidiaries; or
- (b) its ability to comply with its material obligations under any Lending Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of, any Security Interest created under or in connection with a Security, or the rights and remedies of the Lender under any Lending Document,

and references to Material Adverse Change have a corresponding meaning.

Maturity Date means, for a Loan Product, the date on or by which that Loan Product must be repaid or otherwise discharged as set out in the applicable Facility Document or, if no specific date is set out in the applicable Facility Document, as otherwise agreed with, or specified by, the Lender.

Mortgage means, in relation to a Loan Product, each mortgage of Real Property granted by a Loan Party in favour of the Lender.

Obligations means all obligations of any nature (whether present, future, express or implied, actual or contingent, secured or unsecured and whether incurred alone, jointly, severally, or jointly and severally, as principal, surety or otherwise) of a Loan Party to, or for the benefit of, the Lender including pursuant to, or contemplated by, any Lending Document, other than an obligation to pay money.

Other Property means, in relation to a Security Provider, its Real Property and all of its other present and after-acquired property that is not Personal Property.

Other Security means each Security Interest granted in favour of the Lender and described in a Lending Document as Other Security or otherwise expressed or intended to be security for any Secured Indebtedness and/or Secured Obligations of a Loan Party.

Outstanding Principal means, at any time, in relation to a Loan Product, the aggregate principal amount of all Drawings outstanding at that time.

Overdraft Account means, in relation to an Overdraft Facility, the account specified as such in the applicable Facility Document or such other account as designated by the Borrower and approved by the Lender.

Overdraft Facility means a facility described as such in a Facility Document.

Personal Property means, in relation to a Security Provider, its present and after-acquired personal property including Livestock and Crops, and includes all personal property in which it has rights, whether now or in the future.

PLA means the Property Law Act 2007.

Potential Event of Default means any event or circumstance that, with the giving of notice, lapse of time or fulfilment of another requirement would, or is reasonably likely to, constitute an Event of Default.

PPSA means the Personal Property Securities Act 1999.

Proceedings has the meaning given to that term in clause 81.

Rate Reset Period means, in relation to a Loan Product, each period by reference to which an Interest Rate applicable to a Drawing is determined in accordance with clause 6 and the terms of the applicable Facility Document.

Real Property means, in relation to a Security Provider, its present and after-acquired freehold and leasehold land, all estates and interests in land and all buildings, structures and fixtures (including trade fixtures) for the time being on that land.

Receiver means a person appointed as a receiver or receiver and manager under these Master Terms or any Security.

Recovery has the meaning given to that term in clause 20.1.

Registered Charity means a Charitable Trust or Incorporated Society that is registered as a charity under the Charities Act 2005.

Related Person has the meaning given to that term in clause 67.2.

Review Event means, in relation to a Loan Party:

- (a) each anniversary date of the initial Drawing Date for each Loan Product which has been provided to that Loan Party;
- (b) a Stop Notice has been received in relation to a Guarantee provided in support of a Loan Product which has been provided to that Loan Party;
- (c) a material decrease occurs in the value of any Security provided by, or relating to a Loan Product which has been provided to, that Loan Party and/or the Lender receives a request to change the Security provided in support of a Loan Product which has been provided to that Loan Party;
- (d) the Lender receives a request from a Guarantor or Security Provider to be released from their obligations under any applicable Guarantee Document or Security Document, as the case may be;
- (e) the occurrence of circumstances (which may include matters such as loss of a key supplier, the loss of a major customer, the loss of a tenant or diversification of activities) which, in the Lender's reasonable opinion, are likely to result in a material deterioration in the relevant Loan Party's financial position or profitability, or the financial position or profitability of any related Guarantor or Security Provider;
- (f) there is a change in exchange rates or interest rates which may have a material adverse effect on the relevant Loan Party's financial condition; or
- (g) the Lender reasonably believes that due to a change in the Loan Party's financial circumstances it will not be able to meet its obligations under a Lending Document.

Revolving Credit Facility means a facility (including a Committed Cash Advance Facility) described as such in a Facility Document.

Rollover Drawing has the meaning given to that term in clause 8.2.

Rules means the rules governing an Incorporated Society.

Screen Rate has the meaning given to that term in clause 11.3.

Secured Indebtedness means, in relation to a Security Provider, all indebtedness of that Security Provider to the Lender (including, for the purposes of sections 71 and 72 of the PPSA, future advances), and includes any part of it.

Secured Obligations means, in relation to a Security Provider, the performance and observance of all Obligations of that Security Provider, and includes any part of them.

Secured Property means all Personal Property and all Other Property, wherever situated, other than any Excluded Consumer Property.

Security means each Security Interest granted or to be granted by a Security Provider in favour of the Lender, comprising the applicable Security Document, these Master Terms, and any Other Security (including any substitute or additional Security Interest) given in connection with a Loan Product.

Security Document means a document entered into by a Security Provider in favour of the Lender under which the applicable Security Provider grants a Security Interest in favour of the Lender (which, for the avoidance of doubt, may be comprised in a Facility Agreement).

Security Interest means:

- (a) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase or sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (b) a **security interest** as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor, but does not include:
 - (c) a lien or other security interest arising solely by operation of law; or
 - (d) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that collateral, where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid within 60 days of supply; or
 - (e) a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances.

Security Provider means, in relation to a Loan Product, each person (other than the Lender) which is a party to, or named as such in, the applicable Security Document or any Other Security and each person who has otherwise granted a Security Interest in favour of the Lender.

Stop Notice has the meaning given to that term in clause 20.3.

Sub-Limit means, in relation to a Loan Product, any sub-limit which applies to that Loan Product for the purpose of limiting amounts which may be utilised within the overall Limit applicable to the relevant Loan Product, minus any such amounts that have been cancelled in accordance with a Facility Agreement.

Term Loan Facility means a facility described as such in a Facility Document.

Terminating Event has the meaning given to that term in section 86 of the LPA.

Trust has the meaning given to that term in clause 58.

Trust Board means the board of trustees of a Charitable Trust.

Trust Property means, in relation to a Loan Party who enters into a Lending Document in the capacity as trustee of a trust, all property held by that Loan Party in that capacity.

Variable Rate Loan Product means a Loan Product which is subject to a variable rate of interest.

1.2 Interpretation

In these Master Terms, unless the context requires otherwise:

A reference to anything includes the whole and each part of it.

A date or a time on any date means New Zealand time unless otherwise stated.

Any agreement (however described) includes that agreement as amended, modified, novated, assigned, supplemented or replaced from time to time.

An **agreement** includes any legally enforceable arrangement (in each case, whether or not in writing, present and future), and includes that arrangement as amended, assigned, novated or substituted from time to time.

A **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration.

constitutional documents include:

- (a) for a company, its constitution;
- (b) for a trust, the trust deed creating it;
- (c) for a partnership, its partnership agreement;
- (d) for a Limited Partnership, its limited partnership agreement;
- (e) for a Charitable Trust, its charitable trust deed; and

- (f) for an Incorporated Society, its governing rules.

One person being **controlled** by another means that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove the majority of the members of the governing body of that person;
- (b) otherwise controls or has the power to control the affairs and policies of that person; or
- (c) is in a position to derive the whole or a substantial part of the benefit of that person.

A **directive** includes a present and future directive, regulation and requirement (in each case, whether or not having the force of law).

disposing of property includes:

- (a) selling, assigning, novating, leasing, lending, exchanging, transferring, granting a concession, surrendering, licensing, reserving, waiving, compromising, releasing, dealing, subordinating, varying the terms of, parting with possession of, granting an option, right or interest in respect of, or otherwise dealing with that property;
- (b) the payment of money (including a distribution by way of dividend); and
- (c) an agreement for any of these,

but excludes the creation of a Security Interest.

distribution is defined in section 2 of the Companies Act, and includes any reduction of capital (including a redemption by a company of its own shares) and any acquisition by a company of any share in itself or in its holding company.

dollars and the symbol \$ means the lawful currency for the time being of New Zealand.

financial statements has the meaning given to that term in section 6 of the Financial Reporting Act 2013.

A **guarantee** includes an indemnity, letter of credit, letter of comfort, suretyship and other agreement, the economic effect of which is to create a liability, or otherwise assume responsibility, for or in respect of the indebtedness and/or obligations of another person.

A **holding company** of a person means a holding company as defined in section 5 of the Companies Act (as if the term 'company' in that section includes entities incorporated in a jurisdiction other than New Zealand).

indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money.

loss includes indirect, economic and consequential loss and includes loss of profit and loss of margin.

A **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality).

property includes anything that is capable of being owned (whether it is real or personal property, and whether it is tangible or intangible) and the whole and any part of the relevant person's business, assets (including leased assets), undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it.

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

rights includes authorities, consents, discretions, remedies, powers and causes of action.

A **subsidiary** of a person includes:

- (a) a subsidiary as defined in section 5 of the Companies Act (as if the term 'company' in that section includes entities incorporated in a jurisdiction other than New Zealand);
- (b) an **in substance** subsidiary and any other person treated as a subsidiary under applicable Accounting Standards; and
- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person.

tax(es) includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay, or any delay in paying, any of the same).

writing includes an email or other form of electronic communication and any means of reproducing words in a tangible and permanently visible form.

A reference to a **party, clause** or **schedule** is a reference to a party to, clause of or schedule to, these Master Terms or any Lending Document.

The word **including**, when introducing an example, does not limit the meaning of the words to which the example relates.

An Event of Default or Potential Event of Default is **continuing** until it has been waived in writing by, or remedied to the satisfaction of, the Lender.

An agreement, representation or undertaking given by a Loan Party in favour of two or more persons is for the benefit of them jointly and each of them severally.

The singular includes the plural and vice versa.

Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

Any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation.

A party to an agreement includes its successors and its permitted assignees, novatees and transferees.

Headings are to be ignored in construing these Master Terms.

1.3 Joint and several liability

The obligations and liability of each Loan Party under a Lending Document, unless specifically stated otherwise in that Lending Document:

- (a) are principal obligations, and not ancillary or collateral to any other right or obligation; and
- (b) are joint and several and may be enforced against the Loan Party without the Lender first being required to:
 - (i) exercise any remedy it may have against another person; or
 - (ii) enforce any other Security Interest or Guarantee it may hold relating to any obligation or indebtedness.

1.4 PPSA

The terms **attach, collateral, consumer goods, debtor, equipment, financing change statement, financing statement, future advance, goods, motor vehicle, personal property, possession, proceeds, purchase money security interest** and **secured party** have the meanings given to them in, or in the context of, the PPSA. The terms **aircraft** and **serial-numbered goods** have the meanings given to them in the Personal Property Securities Regulations 2001.

Part 2: Loan Terms

2. Procedure for Drawing

The Lender will advance a Drawing to a Borrower by crediting the account nominated by the Borrower on any Drawing Date nominated by the Borrower if:

- (a) Request: unless agreed otherwise with the Lender in relation to a Loan Product, the Lender has received a Drawdown Request (including, if applicable, via an Electronic Access Method) not later than 10.00 am on the Business Day before the proposed Drawing Date (or such other time as agreed by the Lender), which notice will be irrevocable, and must specify:
 - (i) the Loan Product under which the Drawing is to be drawn;
 - (ii) the amount of the Drawing;
 - (iii) if the Loan Product is a Variable Rate Loan Product, the proposed Rate Reset Period for the Drawing (if applicable);
 - (iv) the proposed Drawing Date; and
 - (v) such other information in relation to the Drawing or the Loan Product as the Lender may reasonably require.
- (b) Available facility: the amount of the Drawing under the applicable Loan Product, when aggregated with all other outstanding Drawings or Drawings intended to be made on the same day under that Loan Product, would not cause the Limit (or any applicable Sub-Limit) to be exceeded on the Drawing Date.
- (c) Conditions precedent: in respect of the first Drawing under the applicable Loan Product, the Lender has received (in a form and substance acceptable to it) each of the documents specified in Part 7 of these Master Terms and each other document specified as a condition to the initial Drawing in the applicable Facility Document.
- (d) Representations: all representations and warranties made in, or in connection with, these Master Terms and each applicable Lending Document are true, correct, complied with and not misleading on the Drawing Date.
- (e) No Default:
 - (i) in relation to a Rollover Drawing, no Event of Default; and
 - (ii) in relation to any other Drawing, no Review Event, no Potential Event of Default or Event of Default,has occurred and is continuing or, in the Lender's opinion, could result from the proposed Drawing.

3. Amounts

- (a) The amount of a proposed Drawing must be a minimum of \$1,000, or such other amounts specified in the applicable Facility Document.
- (b) The Lender may, at any time, by notice in writing to a Loan Party, specify a maximum number of Drawings which may be outstanding under a Loan Product. Following receipt of that notice, the total number of Drawings outstanding must not exceed that number.

4. Procedure for Drawing Overdraft Facility

- (a) The Borrower may make Drawings at any time under an Overdraft Facility by debiting the Overdraft Account, provided that the Amount Outstanding (including the proposed Drawing) does not exceed the Limit.
- (b) To the extent the Lender agrees that the Borrower may make Drawings under an Overdraft Facility in a currency other than dollars, the Amount Outstanding, in the currency or currencies identified in the applicable Facility Document when converted to dollars at the exchange rate selected by the Lender (acting reasonably), cannot exceed the applicable Limit and the applicable Limit cannot be netted against any in-funds foreign currency accounts for the purposes of exposure reduction.
- (c) If at any time the Lender determines that the Amount Outstanding on an Overdraft Account exceeds the applicable Limit, or any applicable Sub-Limit, the Borrower must:
 - (i) repay on demand such amount as the Lender certifies to be the excess over the applicable Limit (or such lesser sum as the Lender may require in the Lender's discretion); or
 - (ii) at the Lender's request, provide additional Security, such Security to be of a type and value and in all other respects acceptable to the Lender.
- (d) The Limit applicable to an Overdraft Facility may be reduced by the Lender at any time at the Lender's discretion.

5. Interest

5.1 Interest Rate

Interest accrues on a daily basis and is calculated by applying the Interest Rate to the principal amount of the applicable Drawing. Interest is calculated on the basis of the number of days elapsed and a 365 day year or, for Loan Products denominated in a foreign currency, a 360/365 day year or such other period which reflects market convention for that currency (or as otherwise specified in a Lending Document).

5.2 Time for payment

The Borrower must pay accrued interest on a Drawing under a CARL Facility, a Revolving Credit Facility, a Term Loan Facility or any other Loan Product other than an Overdraft Facility on each Interest Payment Date. If, in relation to a Loan Product, an Interest Payment Date is not specified in the relevant Facility Document, the Borrower will pay interest monthly on the last Business Day of each calendar month or, if the Loan Product is a Variable Rate Loan Product, on the last day of each Rate Reset Period. If the period between consecutive Interest Payment Dates is longer than 90 days (or, in the case of a CARL Facility, 180 days), interest will be payable on each date during that period that falls at 90 day intervals (or, in the case of a CARL Facility, 180 day intervals) from the first day of that period and on the last day of that period.

The interest payable on an Overdraft Facility will be debited to the Overdraft Account on the last Business Day of each calendar month, or otherwise in accordance with the Lender's usual practice.

5.3 Variation

The Interest Rate (and any Base Rate or Margin that forms part of that rate) applicable to each Lending Product is subject to variation and/or re-setting at any time, at the Lender's discretion (pursuant to a review under clause 7 or otherwise).

5.4 Default interest

- (a) If a Loan Party does not pay any amount when due, the Loan Party will pay interest on that overdue sum for the period beginning on its due date and ending on the date of its receipt by the Lender (both before and after judgment). Interest will be calculated and payable by reference to successive periods of such duration as the Lender, acting reasonably, may from time to time select (each a **Default Period**). The overdue sum will incur default interest daily during each selected period at the Default Rate. For the purposes of determining the Default Rate on the first day of any Default Period, the applicable Interest Rate shall be the rate which would have been applied on such date on the basis of a Rate Reset Period equal to the applicable Default Period.
- (b) Interest accruing under this clause will be due and payable on the last day of each period by reference to which it is calculated and if not paid, will itself bear default interest accordingly.

6. Rate Reset Periods

- (a) The Borrower may (subject to the approval of the Lender) in relation to a Variable Rate Loan Product, select a Rate Reset Period applicable to a Drawing of 30, 60, 90 or 180 days (or such other period as set out in the applicable Facility Document) in the Drawdown Request for the applicable Drawing (or, in relation to the initial Rate Reset Period, in the applicable Facility Document) provided that:
 - (i) a Rate Reset Period that commences on a day for which there is no numerically corresponding day in the month in which that Rate Reset Period expires will end on the last Business Day of that month;
 - (ii) if a Rate Reset Period would otherwise end on a day that is not a Business Day, that Rate Reset Period will be extended to end on the next succeeding Business Day, unless the result of that extension would be to carry the Rate Reset Period over into the next calendar month, in which case the applicable Rate Reset Period will expire on the previous Business Day;
 - (iii) if a Rate Reset Period will extend beyond the Maturity Date for the applicable Loan Product the Rate Reset Period will expire on that Maturity Date; and
 - (iv) if the Borrower fails to nominate the length of a Rate Reset Period, the Lender will determine its length and such determination will be binding on the Borrower,and if (a) or (b) apply, the next Rate Reset Period will end on the day it would have ended if the previous Rate Reset Period had not been extended or shortened.
- (b) Each Rate Reset Period in relation to a CARL Facility will be determined in accordance with the relevant Facility Document.
- (c) In relation to a Term Loan Facility, a Borrower may, by prior notice to the Lender not more than two Business Days prior to the end of the then current Rate Reset Period, nominate the term of the following Rate Reset Period in accordance with this clause.

7. Review Events

- (a) The Lender may, when a Review Event occurs, undertake a review of:
 - (i) any Loan Party, any Loan Party's business and financial condition, and the Lending Documents applicable to that Loan Party; or
 - (ii) any Lending Document and the Loan Parties party to that Lending Document.
- (b) As part of the review process, each Loan Party will provide the Lender with all information and certifications requested by the Lender.
- (c) Following a review under sub-clause (a) above, the Lender may, in its sole discretion, vary any terms and conditions of a Lending Document, including:
 - (i) the Interest Rate (and any Base Rate or Margin that forms part of that rate);
 - (ii) any charges or Costs;
 - (iii) any Security Documents or Guarantee Documents (including requesting additional Security or Guarantees); or
 - (iv) any Limit, Maturity Date or repayment dates or frequencies set out in any applicable Lending Document,applicable to a Loan Party or a Lending Document.

8. Repayment

8.1 Term Loan Facility

The Borrower must repay the Amount Outstanding under a Term Loan Facility in accordance with the 'Repayment' section of the applicable Facility Document.

8.2 Revolving Credit Facilities

The Borrower must repay to the Lender each Advance under a Revolving Credit Facility on the last day of the Rate Reset Period for that Advance, provided that the Borrower may utilise a Rollover Drawing.

So long as no Event of Default has occurred and is continuing, all or part of a Drawing shall, if the Borrower requests in the relevant Drawdown Request, be applied by the Lender towards repayment of a Drawing which is due to be repaid on the Drawing Date so that only the net amount is payable (a **Rollover Drawing**).

8.3 Overdraft Facility

The Borrower must repay to the Lender the Amount Outstanding under an Overdraft Facility on the earlier of:

- (a) the Lender making written demand; and
- (b) the applicable Maturity Date (if any).

8.4 Other Loan Products

The Borrower must repay to the Lender the Amount Outstanding under a Loan Product (other than as expressly contemplated in clauses 8.1, 8.2 and 8.3 above) in accordance with the relevant Facility Document.

8.5 Final repayment - all Loan Products

In relation to each Loan Product, the Borrower must pay to the Lender the Amount Outstanding on the Maturity Date.

9. Prepayment

9.1 Permitted prepayments

- (a) The Borrower may prepay a Drawing under a Revolving Credit Facility or a Term Loan Facility in full (or any part of it in the amounts specified in the applicable Facility Document) on the Borrower giving the Lender not less than two Business Days' written notice of its intention to do so.

- (b) Each notice delivered under sub-clause (a) above will be irrevocable and will bind the Borrower to make the prepayment specified in it.
- (c) On the date of prepayment, the Borrower will prepay the applicable Drawing (or the specified part of it) together with accrued interest on that Drawing (or part of it) and any Early Repayment Costs.

9.2 Early Repayment Costs

- (a) If a Loan Party prepays in full (or in part) any Drawing or any Loan Product, including when the prepayment is made with the Lender's consent or in the event of early termination, the Loan Party agrees to reimburse the Lender for the amount of any resulting Costs incurred by the Lender (**Early Repayment Costs**).
- (b) In calculating the amount of any Early Repayment Costs the Lender, acting reasonably, may take into account:
 - (i) the term of the Drawing or Loan Product and the period over which principal is amortised as at the date of prepayment;
 - (ii) the unexpired period of any fixed rate period applicable to the Drawing or the Loan Product;
 - (iii) the rate of interest applicable to the Drawing or the Loan Product as at the date of prepayment;
 - (iv) the Costs the Lender has 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 Hedge Transaction; and
 - (v) the complexity of the Loan Product and the likelihood that the amount of the prepayment can be re-lent or reinvested, with reference to prevailing market conditions.
- (c) The Borrower agrees to pay to the Lender the amount of those Early Repayment Costs on the date on which it makes the relevant prepayment, or on such other date the Lender specifies.

9.3 Prepayment fee

Simultaneously with any prepayment, and in addition to any Early Repayment Costs, the Borrower will pay to the Lender a prepayment fee in an amount specified in the applicable Facility Document, or, if not specified, in an amount determined by the Lender, acting reasonably.

9.4 Application

After the Lender has deducted Early Repayment Costs and any other applicable amounts due from a prepayment, it may apply the prepayment in reduction of remaining scheduled payments pro-rata, in inverse order of maturity, or in order of maturity, as the Lender determines in its discretion.

9.5 Re-drawing

Amounts prepaid under a Revolving Credit Facility may be re-drawn. Amounts prepaid under a Term Loan Facility may not be re-drawn and the applicable Limit, or any applicable Sub-Limit, will be automatically and permanently cancelled in an amount equal to the principal amount prepaid, unless in either case the Lender agrees otherwise in its sole discretion.

9.6 Other Loan Products

The Borrower may prepay a Drawing under a Loan Product (other than as expressly contemplated above) in accordance with the relevant Lending Document. Such amounts may only be redrawn if permitted under the relevant Lending Document.

10. Fees and charges

10.1 Payment

- (a) The Borrower must pay the Lender the fees specified in each Facility Document on the dates specified in that Facility Document and in relation to:
 - (i) any Overdraft Facility available in currencies other than dollars, the terms, fees and charges set out in the Foreign Currency Account Guide to Fees, Rebates, Terms and Conditions also apply; and
 - (ii) any Loan Product used for trade finance purposes, the terms, fees and charges set out in the International Trade & Finance Schedule of Charges also apply.
- (b) No fee payable by the Borrower is refundable in any circumstance, even where payable in advance.

10.2 Changes

The Lender may increase or decrease any fee payable in connection with a Loan Product by giving the relevant Loan Party at least 14 days' notice of any such increase or decrease. The Lender may notify the relevant Loan Party of such changes either by electronic communication to Electronic Equipment or an email address nominated by the relevant Loan Party or by making the particulars of such changes available at the Lender's website: bnz.co.nz.

10.3 Direct debit

The Lender may debit all Costs payable by a Loan Party in connection with a Loan Product from any account the relevant Loan Party may have with the Lender.

11. Increased costs and illegality

11.1 Increased costs

If, in respect of any Loan Product, as a direct or indirect result of any law or directive or any change to, or in the interpretation or application of, any law or directive by any relevant governmental or other agency charged with the administration of it:

- (a) the cost to the Lender of having agreed to make the Loan Product available to the relevant Loan Party or funding or maintaining the Loan Product or performing any of the Lender's obligations or exercising any of its rights under the applicable Loan Product is increased;
- (b) any sum received or receivable by the Lender under the Loan Product or the effective return to the Lender under the Loan Product is reduced (except on account of taxation on the Lender's overall income); or
- (c) the Lender is required to make any payment (except on account of taxation on the Lender's overall income) or forgo any return on, or calculated by reference to the amount of, any sum received or receivable by the Lender under or in connection with the Loan Product,

(including, in each such case, diminished yield to the Lender arising from any imposition of, or increase in, any capital adequacy requirement or a reserve asset ratio or similar requirement), then the relevant Loan Party will indemnify the Lender against that increased cost, reduction, payment or forgone return and, accordingly, will from time to time on demand pay to the Lender the amount certified by the Lender to be necessary to so indemnify the Lender.

11.2 Change of law

If, in respect of any Loan Product, it becomes unlawful at any time for the Lender to fund or maintain a Drawing or that Loan Product (or any part of it), the Lender will not be obliged to continue making the Drawing or that Loan Product available, and such Drawing or Loan Product, as the case may be, will be cancelled and the relevant Loan Party will on such date as the Lender specifies, repay to the Lender that Drawing or the Amount Outstanding under the applicable Loan Product or, as the case may be, the relevant part of it.

11.3 Market disruption

If a Market Disruption Event occurs in relation to a Loan Product for any period for which the Base Rate was to have been selected by reference to a screen rate (the **Screen Rate**), then the rate of interest for the applicable period will be the rate per annum that is the sum of:

- (a) the Margin; and
- (b) the rate notified by the Lender to the relevant Loan Party as soon as practicable, to be that which expresses as a percentage rate per annum the cost to the Lender of funding the applicable Drawing or other amount from whatever source it may reasonably select.

A **Market Disruption Event** occurs if, before close of business on the first day of the relevant period, the Lender notifies the relevant Loan Party that the cost to the Lender of funding the applicable Drawing or other amount exceeds the Screen Rate.

11.4 Impossibility

The Lender will not be liable for any failure to perform or comply with its obligations under any Lending Document resulting directly or indirectly from the action or inaction of a governmental or local authority, strike, labour disturbance (whether of its employees, officers or otherwise) or any other cause that is beyond its control.

12. Representations and warranties

12.1 Representations and warranties

Each person who enters into a Lending Document as a Loan Party represents and warrants to the Lender on the date of the applicable Lending Document that:

- (a) **Status**

If it is a body corporate, it is a legal entity validly existing under the laws of New Zealand, capable of suing and being sued and has the power and authority to own its property and to carry on its business as it is now being conducted.
- (b) **Power and authority**

It has the power to enter into, exercise its rights and perform its obligations under each applicable Lending Document and all necessary action required by applicable law to authorise the entry into, delivery and performance of each applicable Lending Document has been taken.
- (c) **Valid obligations**

The obligations expressed to be assumed by it in each applicable Lending Document constitute, or will constitute when executed, its legal, valid and binding obligations, enforceable against it in accordance with their respective terms.
- (d) **No laws violated**

The execution, delivery and performance of each applicable Lending Document do not and will not:

 - (i) violate any law applicable to it;

- (ii) result in a breach of, or constitute a default under, any provision of any agreement to which it is a party or which is binding upon its property; or
- (iii) violate any of the provisions of its constitutional documents.

(e) Consents obtained

All necessary consents required for, or in connection with, the execution of, and performance of its obligations under, each applicable Lending Document and to carry on its business, have been obtained, and such consents remain in full force and effect.

(f) No default under other agreement

It is not in breach of, or in default under, any agreement to which it is a party or which is binding on it or any of its property to an extent or in a manner that might have a Material Adverse Effect.

(g) No dissolution or bankruptcy

- (i) It is solvent and able to pay its indebtedness as it falls due.
- (ii) It has not taken any action nor have any other steps been taken for its Insolvency or for the appointment of a receiver, receiver and manager, inspector, trustee, statutory manager, administrator, official manager or similar officer of it or any or all of its property.

(h) No Default event

No Review Event, Potential Event of Default or Event of Default has occurred and is continuing.

(i) No litigation

No litigation, arbitration, investigation or administrative proceedings before any court, arbitration tribunal or governmental authority is current, pending or threatened against it or any of its property which, in each case, might have a Material Adverse Effect.

(j) Information true

- (i) All the information provided by it, or any other person on its behalf, to the Lender was true, complete and accurate in all material respects and has, in the case of financial information, been prepared in accordance with applicable Accounting Standards and gives a true and fair view of the results of its operations for the period to which it relates.
- (ii) There are no facts or circumstances that have not been disclosed to the Lender that would make the information provided untrue or misleading in any material respect or which could affect the Lender's decision to provide financial accommodation to it or any other Loan Party.

12.2 Repetition

Each of the representations and warranties set out in clause 12.1 will be repeated by each applicable Loan Party on the date of each applicable Lending Document, on each Drawing Date in relation to each applicable Loan Product and on each Interest Payment Date in relation to each applicable Loan Product.

13. Undertakings

13.1 Undertakings

Each person who enters into a Lending Document as a Loan Party undertakes to the Lender that it will:

- (a) **Notify adverse events**
Immediately notify the Lender in writing of the occurrence of any Review Event, Potential Event of Default or Event of Default, giving full details of it and of any action taken (or to be taken) as a result.
- (b) **Carry on business**
Carry on its business in a proper and efficient manner and pay all its indebtedness when due.
- (c) **Comply with all laws**
Comply with all laws applicable to it and obtain, comply with and maintain in full effect all consents required to operate its business and comply with its obligations under the Lending Documents.
- (d) **Deliver information**
 - (i) As soon as available and in any event within 180 days of the end of each financial year, deliver to the Lender its annual financial statements prepared in accordance with applicable Accounting Standards.
 - (ii) From time to time, at the Lender's request, deliver (as soon as practicable and, in any event, within 10 Business Days of such request) such other information about its business and financial condition as the Lender may reasonably require including half-yearly financial statements, management accounts and other financial reports or analyses, and information relating to matters provided for under any statutory or regulatory regime applicable to it.
 - (iii) From time to time, at the Lender's request, such other information reasonably requested by the Lender.
 - (iv) If requested by the Lender, all information delivered under this sub-clause (d) must be provided on an audited and, if applicable, consolidated basis.
- (e) **Notifications**
Immediately after receiving notice of, or otherwise becoming aware of the same, notify the Lender of the lapse or cancellation of any consent or authorisation or the issue of any other notice, direction, order or other enforcement or review document by any governmental or other authority and promptly comply with such notices.
- (f) **Not create Security Interests**
Not, without the Lender's prior written consent, create or allow to exist any Security Interest over all or any part of its property.
- (g) **No disposals**
Not, without the Lender's prior written consent, either by a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary, dispose of any property, other than in the ordinary course of business for fair value, provided that all proceeds of a disposal are deposited in the Collections Account.
- (h) **Constitutional documents**
Within 14 days of their taking effect, provide the Lender with copies of any documents amending or replacing its constitutional documents, in each case certified as true and up-to-date by an Authorised Signatory.

- (i) **Corporate form**
Do all things necessary to maintain its corporate existence and will not, without the Lender's prior written consent, which consent may be given subject to such conditions as the Lender sees fit:
 - (i) amalgamate with any other company or companies;
 - (ii) change the effective control of a Loan Party; or
 - (iii) transfer its jurisdiction of incorporation.
- (j) **Form subsidiaries**
Not, without the Lender's prior written consent, which consent may not be unreasonably withheld, form, create or acquire any subsidiary.
- (k) **Accounts receivable**
Ensure that the proceeds of all accounts receivable received by it are deposited in the Collections Account.
- (l) **Other undertakings**
Not, without the Lender's prior written consent, which consent may not be unreasonably withheld:
 - (i) materially alter the nature of its business;
 - (ii) purchase property, accept services, lend or provide financial accommodation to, or give any guarantee in respect of, another person (other than in the ordinary course of business on ordinary arms-length commercial terms for proper value); or
 - (iii) act or transact in any way that may be likely to prejudice its ability to carry on its business in a proper and efficient manner.
- (m) **Lending Documents**
Comply, and procure that each other Loan Party complies, with its obligations under each Lending Document to which it is a party.
- (n) **Pay taxes**
File all tax returns as required by law, and pay and discharge all taxes, assessments and governmental charges payable by it or on its property prior to the date that penalties become payable, except only to the extent that those taxes, assessments or governmental charges are being contested in good faith by appropriate proceedings and adequate reserves are set aside for their payment, where failure to do so would have a Material Adverse Effect.

The Lender acknowledges that sub-clauses (d)(i), (d)(ii) and (h)-(l) will not apply to a Loan Party who is an individual contracting in his or her personal capacity and is not carrying on a business, whether as a sole trader or otherwise.

14. Events of Default

14.1 Events of Default

An Event of Default occurs in relation to a Loan Party or a Loan Product if any of the following events occur:

- (a) **Default in payment**
Any amount due under any Lending Document is not paid on its due date.
- (b) **Other indebtedness**
Any indebtedness owed by any applicable Loan Party to any person (including the Lender) for an amount exceeding \$25,000 is not paid when due, or becomes capable of being rendered due and payable prior to its stated maturity by reason of a default, or steps are taken to enforce any applicable Security Interest for any indebtedness for any amount.

- (c) **Breach of undertaking**
There is a breach of any of the undertakings or other obligations contained in the applicable Facility Agreement or any other applicable Lending Document and, in the case of a breach that is capable of remedy, that breach is not remedied to the satisfaction of the Lender within 10 Business Days after the relevant Loan Party becomes aware of the breach.
- (d) **Misrepresentation**
Any representation, warranty or statement made by or on behalf of a Loan Party under the applicable Facility Agreement or any other applicable Lending Document (including when deemed to be repeated) is not true, accurate and complied with in any respect and, in any case where the underlying failure causing the breach of representation is capable of remedy, that failure is not remedied to the satisfaction of the Lender within 10 Business Days after the relevant Loan Party becomes aware of the breach.
- (e) **Insolvency**
A Loan Party:
(i) is Insolvent or unable to pay its indebtedness as it falls due, or is deemed to be so under any law; or
(ii) stops or suspends payment of any of its indebtedness or threatens to do so; or
(iii) makes, or proposes to make, a compromise with, or for the benefit of, its creditors; or
(iv) any other step is taken with a view to avoiding, or in expectation of, Insolvency.
- (f) **Statutory management**
A Loan Party:
(i) is declared at risk pursuant to the CIM Act; or
(ii) becomes subject to a recommendation made by the Financial Markets Authority to the Minister of Justice or, as the case may be, the Minister of Finance supporting the appointment of a statutory manager pursuant to the CIM Act; or
(iii) is subject to the appointment of a statutory manager, or any step is taken with a view to any such appointment, under the CIM Act.
- (g) **Bankruptcy**
A Loan Party is adjudicated bankrupt, or any other action is taken with a view to obtaining that result.
- (h) **Liquidation**
An order is made or a resolution is passed for a Loan Party's dissolution or liquidation or any other action is taken with a view to obtaining that result.
- (i) **Receiver**
A distress, attachment or execution or other legal process is levied against or enforced upon, all or any part of a Loan Party's property and is not discharged or stayed within 5 days or a receiver, manager, receiver and manager, inspector, trustee, administrator, official manager or similar officer is appointed (or any step is taken with a view to obtaining that result) in respect of all or any part of a Loan Party's property.
- (j) **Judgment obtained**
Any judgment for an amount exceeding \$25,000 is obtained against a Loan Party and remains unsatisfied for a period of 10 days except where the judgment is being contested in good faith by proper proceedings.
- (k) **Change in control**
There is a change in the effective control of a Loan Party without the Lender's prior written consent.
- (l) **Not applied for purposes**
Any Drawing is applied for a purpose other than those specified in the applicable Facility Document.
- (m) **Material Adverse Change**
A Material Adverse Change occurs in relation to a Loan Party.
- (n) **Lending Documents**
An event of default or termination event (however described) occurs under any applicable Lending Document.
- (o) **Security Interests**
A Loan Party creates or allows to exist any Security Interest over all or any part of its property other than with the Lender's prior written consent.
- (p) **Local Authority Governance Event**
A Governance Event occurs where a Loan Party is a Local Authority.
- (q) **Illegality**
It is or will become unlawful for a Loan Party to comply with any of its obligations under a Lending Document in any material respect.
- (r) **Individuals**
With respect to any Loan Party that is a natural person, that Loan Party dies.

15. Consequences of an Event of Default

On and after the occurrence of an Event of Default in relation to a Loan Product, each applicable Security will become immediately enforceable and the Lender may, while the Event of Default is continuing:

- (a) declare any or all of the Amount Outstanding to be, and that Amount Outstanding will be, due and payable either immediately or on demand or at such later date as the Lender may specify;
- (b) immediately cancel the applicable Loan Product and any other rights of the Loan Party, or obligations of the Lender, in connection with the applicable Loan Product;
- (c) make demand on any Guarantor or Security Provider and exercise any rights under Part 3 (Guarantee Terms), Part 4 (Security Terms) or under any Other Security or any Guarantee; and
- (d) declare any other indebtedness owing to the Lender by any relevant Loan Party to be, and that indebtedness will be, due and payable either immediately or on demand or at such later date as the Lender may specify in accordance with the terms applicable to that indebtedness.

16. Investigator

16.1 Power to appoint Investigator

Where the Lender considers that a Review Event or Potential Event of Default is subsisting or an Event of Default has occurred and is continuing, the Lender may appoint a person or persons (whether jointly, severally or jointly and severally) to act as an investigator (the **Investigator**) of one or more Loan Parties. The Lender may remove an Investigator or may appoint a new Investigator in addition to, or in place of, an Investigator.

16.2 Investigator remuneration

The Lender may fix the remuneration of an Investigator at an amount or on a basis agreed with the Investigator or, failing agreement, as determined by the Lender. All remuneration payable to an Investigator will be payable by the applicable Loan Party on demand.

16.3 Investigator agent of Loan Party

An Investigator is the agent of the applicable Loan Party. The Lender is not responsible for an Investigator's actions, including any misconduct, negligence or default of an Investigator.

16.4 Powers of Investigator

An Investigator has a right to investigate the affairs of a Loan Party in such manner as the Investigator thinks fit, including the right to:

- (a) enter, without notice, any Real Property of the Loan Party;
- (b) make enquiries of any person (including any director, officer, employee, professional advisor or business associate of the Loan Party) regarding the financial condition, business, operations or other affairs of the Loan Party; and
- (c) inspect and take copies of, or extracts from, any records or agreements relating to the Loan Party's financial condition, business, operations or other affairs, whether those documents are held by the Loan Party, any professional advisor or another person.

16.5 Loan Party to assist Investigator

A Loan Party will do everything reasonably requested by the Investigator to enable the Investigator to properly exercise its rights and perform its duties.

17. Power of attorney

17.1 Appointment of attorneys

A Loan Party irrevocably appoints the Lender and each Lender's Representative and, as an independent appointment, appoints any Receiver, severally its attorney, at the Loan Party's cost, to:

- (a) do anything necessary or desirable in the opinion of the Lender, that Lender's Representative or the Receiver to:
 - (i) give full effect to the Lending Documents to which that Loan Party is a party; and
 - (ii) assist in the execution or exercise of any right under the Lending Documents to which that Loan Party is a party, including execute any transfer (including any transfer in blank) or other agreement;
- (b) demand, sue for, recover and give a discharge for any property;
- (c) commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of any property;
- (d) take proceedings to procure the bankruptcy or the winding up of any debtor of that Loan Party, and attend and vote at meetings of creditors, receive dividends in any bankruptcy or winding up, or appoint a proxy for any of these things;
- (e) exercise any or all rights available to that Loan Party in connection with any property (including rights available under the Companies Act or any other statute); and
- (f) do anything else that that Loan Party must or may do, or that the Lender may do, under the Lending Documents to which that Loan Party is party or by law.

17.2 General

- (a) Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.
- (b) An Attorney may do anything contemplated by this clause 17:
 - (i) even if there is an actual or potential conflict of interest or duty, or the Attorney might benefit from doing it; and
 - (ii) in its name, or in the name of the Loan Party.
- (c) The applicable Loan Party ratifies anything done by an Attorney under this clause 17.
- (d) The Loan Party gives the power of attorney in this clause 17 for valuable consideration, receipt of which is acknowledged by the Loan Party.

Part 3: Guarantee Terms

This Part 3 applies to each person who enters into a Lending Document as a Guarantor.

Warning

Each individual entering into a Lending Document as a Guarantor is advised to receive independent legal advice in relation to their obligations under the Guarantee without the Borrower being present. The independent legal advice must be given by a solicitor who does not act for the Borrower, another Loan Party or any third party receiving a direct benefit from any Lending Document.

18. Guarantee

18.1 Unconditional guarantee

Each Guarantor unconditionally and irrevocably guarantees to the Lender due payment of the Guaranteed Amounts.

18.2 Payment obligations

- (a) A Guarantor must pay to the Lender all or any part of the Guaranteed Amounts that are due for payment at any time and from time to time.
- (b) A Guarantor must pay the Guaranteed Amounts at the time or times the Lender makes a demand on that Guarantor, whether or not any other person is or may also be required to make that payment to the Lender in relation to the Guaranteed Amounts.
- (c) The Lender may make one or more demands on a Guarantor. Those demands may be in relation to all or any part of the Guaranteed Amounts that are due for payment at that time.
- (d) The Lender will charge a Guarantor interest on all amounts that the Lender demands from that Guarantor. The interest on each amount demanded will be calculated:
 - (i) from the date those amounts are demanded from that Guarantor to (but excluding) the date those amounts are paid to the Lender;
 - (ii) on the daily balance of the amount unpaid; and
 - (iii) at the highest rate the Lender would charge the applicable Loan Party if it failed to pay any amount to the Lender.
- (e) If a Guarantor does not pay any interest due to the Lender under sub-clause (d), the Lender can also charge the Guarantor additional interest on the amount of any unpaid interest at the highest rate the Lender would charge the applicable Loan Party if it failed to pay any amount to the Lender.

18.3 Guaranteed Amounts

The Guarantee applies to all indebtedness owed by the applicable Loan Parties to the Lender at any time and the Guaranteed Amounts include any amounts:

- (a) advanced or paid by the Lender to, on behalf of, or at the request of, any applicable Loan Party at any time, including under any existing or future Lending Document;
- (b) currently owing by a Loan Party under any applicable Lending Document;
- (c) owing by a Loan Party in the future under any applicable Lending Document;
- (d) owing by any applicable Loan Party alone or together with another person; and

- (e) interest, fees and other amounts (however described) payable in relation to the amounts in (a) to (d) above.

18.4 Limited Guarantee

- (a) If a Guarantee Limit Amount is set out in the applicable Guarantee Document, the maximum amount the Lender can demand from the Guarantor is limited to the aggregate of that Guarantee Limit Amount plus:
 - (i) interest at the highest rate payable by the Guarantor on the Guaranteed Amounts demanded by the Lender, which shall accrue on a daily basis and be compounded monthly and shall be calculated to the date the Lender receives payment of the Guaranteed Amounts; and
 - (ii) payment of any Costs in connection with the exercising of rights under, or enforcement of, the applicable Guarantee Document.Any amount payable under this clause 18.4 must be paid by the Guarantor on demand being made by the Lender.
- (b) If a Guarantee Limit Amount is expressed as a Guarantor's right, title and interest in specific property, to the extent the relevant Guarantor is a joint owner of such property, the Guarantor's liability under that Guarantee Document will be limited to the extent of that Guarantor's right, title and interest in that property.

18.5 Unlimited Guarantee

If no Guarantee Limit Amount is specified in the applicable Guarantee Document, the Guarantor's liability to the Lender is unlimited.

18.6 Liability as principal debtor

As between the Guarantor and the Lender (but without affecting the obligations of any other Loan Party) the Guarantor is liable in relation to the Guaranteed Amounts as a sole and principal debtor and not as a surety.

18.7 Joint and several liability

Where a Guarantee Document is entered into by more than one Guarantor, each Guarantor which is party to that Guarantee Document is jointly and severally liable with each other Guarantor that is party to that Guarantee Document. The Lender may request one Guarantor to pay all of the Guaranteed Amounts that are then due for payment and does not have to ask any other Guarantor to pay or contribute.

18.8 Rights under security

If a Guarantor has provided any Security to the Lender, the Lender can exercise its rights under that Security (including rights to sell the property over which the Security has been granted to assist with recovery of the Guaranteed Amounts). Subject to the terms of that Security, the Lender will apply any amounts received from the sale of property towards payment of the Guaranteed Amounts.

19. Acknowledgements and undertakings

19.1 Acknowledgements

A Guarantor acknowledges and agrees that:

- (a) all of the terms and conditions of its Guarantee are set out in the applicable Guarantee Document and these Master Terms;
- (b) it has not relied on any statements, documents or promises made by the Lender (or on the Lender's behalf) or by any other person;

- (c) it is responsible for undertaking its own checks of each applicable Loan Party and of their ability to make payments to the Lender when they are required to;
- (d) the Lender does not have to satisfy any condition before making a demand on it;
- (e) it is not entitled to terminate or cancel its obligations to the Lender other than as expressly set out in these Master Terms;
- (f) if requested at any time, the Lender may provide details of all actual or contingent Guaranteed Amounts at that time but is under no obligation or duty to provide any details about any other Loan Party, any relationship with another Loan Party, any other Guarantee or Security held by the Lender (or the provider thereof) or any other matter or thing; and
- (g) the Lender is not obligated (but may elect, at its sole discretion) to communicate to the Guarantor any amendments made to the terms and conditions applicable to a Loan Product that is the subject of the applicable Guarantee (however fundamental and including any oral amendments as contemplated by clause 76).

19.2 Unenforceability of obligations

As a separate and continuing undertaking, each Guarantor unconditionally and irrevocably undertakes to the Lender that, should any Guaranteed Amounts not be recoverable from it or any applicable Loan Party for any reason, including a provision of any applicable Guarantee Document or these Master Terms or an obligation (or purported obligation) of any applicable Loan Party to pay any Guaranteed Amounts being or becoming void, voidable, unenforceable or otherwise invalid, and whether or not that reason is or was known to the Lender, and whether or not that reason is:

- (a) a defect in or lack of powers of that Loan Party or any other person, or the irregular exercise of those powers; or
- (b) a defect in or lack of authority by a person purporting to act on behalf of that Loan Party or any other person; or
- (c) a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of that Loan Party; or
- (d) the liquidation, administration, amalgamation, change in status, constitution or control, reconstruction or reorganisation of that Loan Party (or the commencement of steps to effect the same); or
- (e) any other matter whatever, that Guarantor will, as a sole and independent obligation, pay to the Lender on demand the amount that the Lender would otherwise have been able to recover (on a full indemnity basis). The expression 'Guaranteed Amounts' includes any indebtedness that would have been included in that expression but for anything referred to in this clause.

19.3 No discharge

A Guarantor will not be discharged, nor are its obligations affected, by:

- (a) any time, indulgence, waiver, consent or other concession at any time given to any applicable Loan Party or another person; or
- (b) an amendment (however fundamental and including any oral amendment as contemplated by clause 76) to, or replacement of, any applicable Lending Document or to another Security Interest, Guarantee or other agreement (whether or not that amendment increases the liability of the applicable Guarantor); or

- (c) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from, or any variation of, replacement, abandonment or transfer of, any applicable Lending Document or other Security Interest, Guarantee or agreement; or
- (d) the Insolvency, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any applicable Loan Party or another person (or the commencement of steps to effect any of these); or
- (e) a person named as a Loan Party in any applicable Lending Document, or who was intended to enter into any applicable Lending Document or otherwise provide a guarantee, not having done so or not having done so effectively; or
- (f) anything else whatever.

The Lender is not liable to a Guarantor in respect of any of these matters, even though that Guarantor's rights in subrogation or otherwise may be prejudiced as a result.

20. Survival of obligations

20.1 Continuation of rights

If any amount received or recovered by the Lender (a **Recovery**) is or may be taken from, or required to be repaid by, the Lender in an Insolvency process or otherwise:

- (a) the Recovery will be considered to have been ineffective to discharge the applicable Guaranteed Amounts and any Security provided by the applicable Guarantor to the Lender;
- (b) the Lender's rights will be restored to those it had under the applicable Guarantee and any applicable Security the applicable Guarantor provided to the Lender as if there had been no Recovery; and
- (c) the Lender can exercise all of its rights under the applicable Guarantee and any applicable Security the applicable Guarantor provided to the Lender as if there had never been a Recovery and even if the Lender provided a notice of final discharge to the applicable Guarantor.

20.2 Continuation of obligations

Each Guarantee provided by a Guarantor is a continuing guarantee for all the Guaranteed Amounts until the Lender delivers a notice of final discharge to the applicable Guarantor. The applicable Guarantor's obligations to the Lender will not be satisfied by, or released as a result of:

- (a) any payments the applicable Guarantor (or any other applicable Loan Party) makes to the Lender; or
- (b) the applicable Guarantor's (or any other applicable Loan Party's) accounts with the Lender being in credit at any time; or
- (c) any settlement of account with the applicable Guarantor (or any other applicable Loan Party); or
- (d) the cancellation, termination or repayment in full of one or more Loan Products that are the subject, or receive the benefit, of the Guarantee; or
- (e) any other matter that might impact the applicable Guarantor's obligations to the Lender.

20.3 Limit further liability

- (a) A Guarantor may stop a Guarantee from extending to further Drawings by a Borrower by giving the Lender a written stop notice (a **Stop Notice**).

- (b) A Stop Notice will operate only in relation to any increase in the Guaranteed Amounts as a result of a Drawing made after the date the Lender actually receives the Stop Notice. To the extent the Lender has agreed to provide funding to, or at the request of, the Borrower before the date the Lender receives the Stop Notice, the Guarantee will continue to operate in relation to that amount of liability.
- (c) If the Lender receives any payment of the Guaranteed Amounts after it has received the relevant Stop Notice, the Lender may apply the amount paid to reduce the new liabilities of the Borrower rather than the amount which the Guarantor has agreed to guarantee.
- (d) A Stop Notice relates solely to Drawings made after the date of the Lender's receipt of the Stop Notice and does not in any way limit the Guarantor's liability in relation to any other amounts that may become payable under the Guarantee, whether those amounts arise before or after the delivery of the Stop Notice.

20.4 Release of guarantees

Each Guarantee provided by a Guarantor may be released in accordance with clause 66.

21. No competition

Until the Lender receives all the applicable Guaranteed Amounts and a Guarantor is no longer liable to the Lender under the applicable Guarantee, that Guarantor must not (unless the Lender asks that Guarantor to):

- (a) make any claim against any applicable Loan Party for any reason, whether or not that Loan Party is Insolvent;
- (b) take steps to:
 - (i) recover (whether directly or by set-off, counterclaim or for any other reason); or
 - (ii) accept money or other property, or exercise, enforce or receive the benefit of any rights (including by way of set-off), in respect of, any debt owed to the Guarantor by any applicable Loan Party;
- (c) make any claim or enforce any right, or prove or recover any amount, against any applicable Loan Party (whether under any security, in an Insolvency or for any other reason) in competition with the Lender;
- (d) claim the benefit of any security, guarantee or indemnity from any applicable Loan Party;
- (e) take over any of the Lender's rights against any applicable Loan Party;
- (f) require the Lender to resort to any other Security or right the Lender holds for any Guaranteed Amounts before making demand on that Guarantor, or enforcing any Security the Lender holds from that Guarantor; or
- (g) claim or enforce any right of contribution or indemnity against any other applicable Loan Party.

Part 4: Security Terms

This Part 4 applies to each person who enters into a Lending Document as a Security Provider.

22. Payment obligations

A Security Provider will pay or procure payment of its Secured Indebtedness:

- (a) at the times and on the terms set out in the applicable Lending Document; or
- (b) if there is no applicable Lending Document, on demand and otherwise in accordance with these Master Terms, or as the Lender otherwise directs.

23. Performance of obligations

A Security Provider will perform and comply with, or procure compliance with, its Secured Obligations.

24. Security

- (a) To secure due payment of its Secured Indebtedness and performance of its Secured Obligations, a Security Provider grants to the Lender:
 - (i) a Security Interest in its Personal Property; and
 - (ii) a fixed charge over its Other Property.
- (b) The Security Interest created under clause 24.1 above takes effect as:
 - (i) a transfer to the Lender, in respect of present and future accounts receivable and chattel paper, and present and future rights in connection with any accounts receivable and chattel paper; and
 - (ii) an assignment by way of security, in respect of present and future rights or choses in action to which sub-clause (a) above does not apply.
- (c) If a charge referred to in sub-clause 24.1(b) above is not legally effective as a fixed charge it will be a floating charge until it becomes a fixed charge pursuant to clause 24.4 below.
- (d) Any floating charge created by a Security will automatically and immediately crystallise and become a fixed charge (without the need for notice or any other action by the Lender):
 - (i) immediately prior to or (if that would result in the fixed charge being legally and fully effective) contemporaneous with, the occurrence of an Event of Default; or
 - (ii) on the giving of notice by the Lender to the applicable Security Provider.
- (e) In addition to the security given in sub-clause (a) above, the applicable Security Provider agrees to mortgage to the Lender its present and future interest in any Real Property.

25. PPSR

- (a) The Lender may, at a Security Provider's cost, register a financing statement on the Personal Property Securities Register in respect of the applicable Security Provider's obligations and do all such other acts and things as may be reasonably required for the purpose of ensuring that at all times the Lender holds a perfected Security Interest under the PPSA in the property covered by the applicable Security.
- (b) A Security Provider waives its rights 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 the Lender or on its behalf in respect of any of its Secured Property.

26. No postponement or subordination

Nothing in a Lending Document will be construed as:

- (a) an agreement that a Security Interest attaches at a later time than the time specified in section 40(1) of the PPSA; or
- (b) an agreement to subordinate a Security Interest in favour of any person.

27. Value and future advances

- (a) A Security Provider acknowledges that it enters into the applicable Security Document for value provided by the Lender.
- (b) For the purposes of sections 71 and 72 of the PPSA, each Security Document secures future advances.

28. Mortgage

Without limiting anything in clause 24, a Security Provider will, if required by the Lender at any time, immediately:

- (a) grant in favour of the Lender an all obligations mortgage in the form required by the Lender over such of the Security Provider's interests in any Real Property as the Lender may require; and
- (b) deliver to the Lender any agreement, and do any other thing the Lender reasonably requires, in order to register any such mortgage.

A Security Provider acknowledges and agrees that any such mortgage will be in substitution for the agreement to mortgage given in clause 28.1, and will not in any way affect, or limit, the Security Interest granted under clause 24.

29. Continuing security

Each Security Interest created under a Security:

- (a) is a continuing security, notwithstanding intermediate payments, settlement of accounts or anything else;
- (b) remains in full force until a final irrevocable discharge is given to the applicable Security Provider under clause 33 despite any transaction or other thing (including a settlement of accounts or intervening payment);

- (c) applies to the present and future balance of the applicable Security Provider's Secured Indebtedness and to all its present and future Secured Obligations;
- (d) remains in full force and effect notwithstanding the cancellation, termination or repayment in full of one or more Loan Products which receive the benefit of the Security; and
- (e) is in addition to, and not to be merged in, any other Security.

30. Unconditionality of security

A Security Provider's obligations under a Security Document are absolute, unconditional and irrevocable. A Security Provider's liability under a Security Document extends to, and is not affected by, any circumstance, act or omission that, but for this clause, might otherwise affect it at law or in equity, including:

- (a) any time, indulgence, waiver, consent or other concession at any time given to any applicable Loan Party or another person; or
- (b) any amendment (however fundamental and including any oral amendment as contemplated by clause 76) to, or replacement of, any applicable Lending Document or to another Security Interest, Guarantee or other agreement (whether or not that amendment increases the liability of the applicable Security Provider); or
- (c) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from, or any variation of, replacement, abandonment or transfer of any applicable Lending Document or other Security Interest, Guarantee or agreement; or
- (d) the Insolvency, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any applicable Loan Party or other person (or the commencement of steps to effect any of these); or
- (e) a person named as a Loan Party in any applicable Lending Document, or who was intended to enter into any applicable Lending Document or otherwise give security for the Secured Indebtedness or the Secured Obligations, not having done so or not having done so effectively; or
- (f) anything else whatever.

The Lender is not liable to a Security Provider in relation to any of these matters, even though that Security Provider's rights in subrogation or otherwise may be prejudiced as a result.

31. Third party interests in Secured Property

- (a) If the Lender receives notice of another interest in any Secured Property, it may open a new account in the Security Provider's name. However, if the Lender does not open a new account under this clause, it is taken to have done so at the time it received notice of the other interest.
- (b) From the time the new account is opened (or taken to be opened), the following amounts will be, (or will be taken to be), debited or credited (as applicable) to the new account:

- (i) all financial accommodation made by the Lender to the Security Provider; and
 - (ii) all payments and repayments made by the Security Provider to the Lender.
- (c) Payment and repayments into, and other amounts in, the new account will only be applied in reduction of Secured Indebtedness if there is no, and if doing so does not cause any, debit balance in that account.
 - (d) On request by the Lender, the Security Provider will ensure that any other holder of a Security Interest in Secured Property (a **holder**) enters into an agreement with the Lender:
 - (i) providing that the holder agrees that the Lender's Security Interests rank ahead of the holder's Security Interest; and
 - (ii) that is otherwise satisfactory in form and substance to the Lender.
 - (e) The Lender may notify the Security Provider that the Lender's obligation to provide further financial accommodation under a Lending Document is terminated immediately, if:
 - (i) the Lender receives notice of another Security Interest that affects any Secured Property; and
 - (ii) it reasonably forms the opinion that any further financial accommodation provided to the Security Provider will not rank ahead of that other Security Interest.

If this clause 31 is inconsistent with the provisions of any other Lending Document, the Lender may determine at its discretion which will prevail.

32. Further assurance

If requested by the Lender, a Security Provider must, at its own cost, promptly execute and deliver to the Lender any transfer, assignment, Security or other agreement, and do anything else that the Lender deems appropriate, to:

- (a) obtain the priority required by the Lender; or
- (b) perfect a Security Interest intended to be created under any applicable Security including, without limitation:
 - (i) providing serial numbers and other details of any applicable Secured Property or of the applicable Security Provider required by the Lender; or
 - (ii) delivering possession of any applicable Secured Property to the Lender; or
 - (iii) registering, or allowing the registration of, a financing statement or a financing change statement in respect of a Security Interest created under any applicable Security; or
 - (iv) granting a registrable mortgage to the Lender over any applicable Real Property; or
- (c) transfer or assign absolutely to, or vest any applicable Secured Property in, the Lender (or its nominee) or in a purchaser (including in terms of section 50 of the PLA); or
- (d) secure to the Lender the full benefit of its rights under any applicable Security whether on enforcement or otherwise; or
- (e) allow the Lender, a Lender's Representative or a Receiver to exercise all or any of the rights conferred on it under any applicable Security or by law.

33. Release of security

Any Security provided by a Security Provider may be released in accordance with clause 66.

34. Reinstatement

If any payment received or recovered by the Lender, a Receiver or a Lender's Representative is, or may reasonably be expected to be, avoided by law or otherwise set aside on the Insolvency of the Security Provider or otherwise:

- (a) that payment will be deemed not to have affected or discharged the liability of the applicable Security Provider and the Lender and that Security Provider will, to the maximum extent permitted by law, be restored to the position each would have been in if such payment had not been received or recovered; and
- (b) the Lender is entitled to exercise all rights it would have been entitled to exercise if such payment had not been received or recovered,

notwithstanding that the Lender may have signed a release pursuant to clause 66.

35. Representations and warranties relating to existing Secured Property

In relation to each Lending Document entered into by a Security Provider, that Security Provider makes the representations and warranties in clause 12, and also represents and warrants that (other than as notified to, and accepted in writing by, the Lender):

- (a) **No foreign property**
All of its material Secured Property is in its possession and is situated in New Zealand.
- (b) **Sole owner**
It is the sole legal and beneficial owner of, and has rights, in its Secured Property.
- (c) **No security interests**
No Security Interest exists over or affects, nor is there any agreement to give or permit to exist any Security Interest or other interest or right over or affecting any of its Secured Property, except as created under a Security.
- (d) **No other interest**
No other person has any interest in, or other right over, its Secured Property.
- (e) **Right to grant security interest**
In respect of any of its Secured Property that is subject to a purchase money security interest, it is able to grant a valid and enforceable Security Interest in that property to the Lender.

36. Representations and warranties continuing

36.1 Repetition

Each of the representations in clause 35 will be deemed to be repeated continuously so long as any Security remains in effect by reference to the facts and circumstances then existing.

36.2 Representations and warranties relating to future Secured Property

Whenever any Secured Property is acquired by a Security Provider, or comes into existence after the date of the applicable Security, the applicable Security Provider will be deemed to give the representations in clause 35 in respect of such Secured Property.

37. Undertakings relating to Secured Property

In relation to each Lending Document entered into by a Security Provider, that Security Provider gives the undertakings in clause 13, and also undertakes that it will:

- (a) **Serial-numbered goods**
If requested, provide the Lender with details of all motor vehicles and aircraft that are consumer goods or equipment.
- (b) **No accessions or fixtures**
Not allow any of its Secured Property to become an accession or fixture to any property that is not Secured Property (other than property which is subject to a Security Interest in favour of the Lender).
- (c) **No rights of set-off**
Not allow any of its accounts receivable to be subject to any right of set-off or combination of accounts or another defence or claim (other than rights that arise in the ordinary course of business or by operation of law).
- (d) **Maintain and repair Secured Property**
Maintain in good working order all of its Secured Property and, on the reasonable request of the Lender, remedy every defect in the condition of any of its Secured Property.
- (e) **Notice of location and status of Secured Property**
Promptly notify the Lender in writing:
 - (i) of any change in location of all or substantially all of its Secured Property or any material items of Secured Property;
 - (ii) of any of its material Secured Property that is located abroad;
 - (iii) of any of its Secured Property that is to be moved from the jurisdiction where it was situated at the time the Security Interest under the applicable Security attached to it; and
 - (iv) on the Lender's request, of the present location of any of its Secured Property.
- (f) **Documents of title**
Upon request, deposit with the Lender all documents of title constituting or evidencing its Secured Property.
- (g) **Not alter agreements**
Ensure that no material variation, waiver, release, rescission, repudiation or termination is made to, or in connection with, any agreement included in or relating to the Secured Property, where that would have a Material Adverse Effect.
- (h) **Preserve and protect security**
Promptly do everything reasonably requested by the Lender to:
 - (i) preserve and protect the value of its Secured Property; and
 - (ii) protect and enforce its title and rights to its Secured Property and the Lender's interest in the Secured Property.

- (i) **Access**
Provide to the Lender, and ensure that each person in possession of any of its Secured Property provides to the Lender, full access at all reasonable times to its Secured Property.
- (j) **Registration of security**
Promptly register each Security Interest created under a Security in each jurisdiction (other than New Zealand) in which registration may be required or advisable in order to ensure its enforceability, validity and priority.
- (k) **No prejudicial actions or omissions**
Not do, omit to do, or allow to occur, anything that might:
 - (i) render any of its Secured Property or a Security Interest created under any applicable Security unenforceable or liable to forfeiture or cancellation; or
 - (ii) cause or contribute to a material deterioration in the value of any of its Secured Property; or
 - (iii) otherwise adversely affect the rights of the Lender under any applicable Security.
- (l) **Change name**
Not, without giving the Lender at least 10 Business Days prior written notice:
 - (i) change its name (such notice to provide details of the proposed new name); or
 - (ii) allow anything to happen in respect of it or any Secured Property that would cause any information in a financing statement to be different if it were re-registered.
- (m) **Registration details**
Provide to the Lender all information requested to ensure that registration of each Security Interest granted by it is and remains fully effective or perfected (or both), and has the priority contemplated by the Lender.
- (n) **Security Provider as secured party**
If the Security Provider is or could be a secured party in respect of any Security Interest or any deemed security interest as described in section 17(1)(b) of the PPSA, implement, maintain and comply with procedures (that the Lender reasonably requires and that are prudent for a person conducting a similar business) to identify and perfect those Security Interests or deemed security interests, including all steps necessary:
 - (i) for the Security Provider to obtain the highest priority possible, except to the extent the Lender has agreed it is reasonable not to do so; and
 - (ii) to minimise the risk of a third party acquiring an interest free of the Security Provider's Security Interest or deemed security interest.

- (c) **Location**
Other than as agreed in writing by the Lender, all of the Livestock is located on land which is owned by the Security Provider.

38.2 Repetition

Each of the representations in clause 37 will be deemed to be repeated continuously so long as any Security remains in effect by reference to the facts and circumstances then existing.

38.3 Undertakings relating to Livestock

Each Security Provider which provides a Security over Livestock undertakes that it will:

- (a) **Marking**
 - (i) Mark the Livestock with the Markings of the Security Provider; and
 - (ii) not Mark any Livestock, or permit any Livestock to be Marked, with any Mark that is not the Marking of the Security Provider, without the Lender's prior written consent.
- (b) **Care for Livestock**
Properly and skilfully manage, tend and care for the Livestock in accordance with accepted methods of animal husbandry, and maintain the Livestock in prime health and condition, taking all necessary precautions to prevent injury, sickness, disease and infection.
- (c) **Provide veterinary attention**
Provide all attention, medicines and treatments for the Livestock, in each case which are necessary or desirable on the advice of a registered veterinarian.
- (d) **Maintain health records**
Maintain accurate records in respect of the numbers, ages, sexes, health, condition and other particulars of the Livestock, and provide copies to the Lender on request.
- (e) **Replace Livestock**
Replace any Livestock that dies, becomes lost or is destroyed, with Livestock of like nature and comparable quality and value.
- (f) **Compliance with laws**
Comply with all laws, directions, regulations and requirements of any governmental or other authority in relation to the maintenance, health and condition of the Livestock.
- (g) **Location of Livestock**
 - (i) Keep all Livestock securely fenced or otherwise contained;
 - (ii) not allow the Livestock to be located on any land where it may become liable to seizure for any reason; and
 - (iii) not permit any other Livestock to be kept on any land except where such Livestock is clearly distinguishable from the Livestock that is Secured Property.
- (h) **Consent of land owners**
Where any Livestock is located on land that is not owned by the Security Provider:
 - (i) give written notice of the Lender's Security Interest to the owner of any such land in a form and manner the Lender requires, acting reasonably; and
 - (ii) obtain the acknowledgment of the owner of any such land to the notice delivered under paragraph (h)(i) above and provide a copy to the Lender.

38. Livestock

38.1 Representations and warranties relating to Livestock

Each Security Provider which provides a Security over Livestock represents that:

- (a) **Record of Livestock**
It has provided the Lender with an accurate record detailing all such Livestock, including its location.
- (b) **Health of Livestock**
All or substantially all of the Livestock is in prime health and condition.

- (i) **Seizure of Livestock**
Promptly give written notice to the Lender if any Livestock is seized or otherwise taken by another person from any location, and advise the Lender of the address to where the Livestock has been moved.
- (j) **Valuation and inspection**
Promptly following request by the Lender but at the Security Provider's cost:
 - (i) assemble Livestock in a convenient place for it to be viewed and inspected; and/or
 - (ii) provide an inventory of all Livestock, detailing by species the number, age and sex of the Livestock, as well as the location where the Livestock is being kept and details of all Marks.

38.4 Dealings with Livestock Produce

For the purposes of meeting its obligations under clause 32, each Security Provider will, if required to do so by the Lender, deliver all Livestock Produce to such person or persons as the Lender may approve or direct from time to time, and will:

- (a) assign to the Lender the moneys payable by such person or persons; and
- (b) execute any agreements considered by the Lender to be necessary or desirable to secure its interest in any Livestock Produce.

39. Crops

39.1 Representations and warranties relating to Crops

Each Security Provider which provides a Security over Crops represents that:

- (a) **Record of Crops**
It has provided the Lender with an accurate record detailing existing Crops, including location.
- (b) **Health of Crops**
All or substantially all of the Crops are in prime health and condition.
- (c) **Location**
Other than as agreed in writing by the Lender, all Crops are located on land which is owned by the Security Provider.

39.2 Repetition

Each of the representations in clause 38 will be deemed to be repeated continuously so long as any Security remains in effect by reference to the facts and circumstances then existing.

39.3 Undertakings relating to Crops

Each Security Provider which provides a Security over Crops undertakes that it will:

- (a) **Identification**
Mark or otherwise identify those Crops and any Crop Produce as required from time to time by the Lender.
- (b) **Cultivation**
Properly and skilfully sow, cultivate and pick or harvest those Crops, and properly prepare them and any Crop Produce for sale and only employ properly skilled and qualified persons to assist in doing so.
- (c) **Good condition**
Take all steps and use and adopt all due and proper means for keeping and maintaining those Crops and any Crop Produce free from pests, disease and otherwise in good condition.

- (d) **Reproduce and rotate**
Reproduce those same Crops every year, or with such frequency as is usual for Crops of that kind, or, for Crops that it is usual to rotate with other Crops, such other Crops as are usually rotated with those Crops, and not otherwise change the kind of Crops it produces except as agreed in writing with the Lender from time to time.
- (e) **Location of Crops**
Not allow the Crops to be located on any land where they may become liable to seizure for any reason.
- (f) **Consent of land owners**
Where any Crops are located on land that is not owned by the Security Provider:
 - (i) give written notice of the Lender's Security Interest to the owner of any such land in a form and manner the Lender requires; and
 - (ii) obtain the acknowledgment of the owner of any such land to the notice delivered under paragraph (f)(i) above and provide a copy to the Lender.

(g) Harvest

Except where those Crops are to be used for feeding off, pick or harvest those Crops and prepare them for sale as soon as they are ripe and ready to be picked or harvested, or when it would be most advantageous to do so.

(h) Feeding

If any of those Crops are sold by the Security Provider for feeding off, permit, or procure that permission is obtained for, the purchaser of those Crops to enter, place any Livestock on, and occupy the land on which those Crops are then growing.

(i) Enforcement

For the purposes of the exercise of the enforcement rights of a Receiver, the Lender or any Lender's Representative, any Receiver, the Lender or any Lender's Representative may use any of the Security Provider's machinery or equipment, at the Security Provider's cost and expense, to harvest any such Crops.

39.4 Dealings with Crop Produce

For the purposes of meeting its obligations under clause 32 each Security Provider will, if required to do so by the Lender, deliver all Crop Produce to such person or persons as the Lender may approve or direct from time to time, and will:

- (a) assign to the Lender the moneys payable by such person or persons; and
- (b) execute any agreements considered by the Lender to be necessary or desirable to secure its interest in any Crop Produce.

40. Insurance

Each Security Provider undertakes to the Lender that it will, and will procure that each other applicable Loan Party will:

- (a) insure and keep insured:
 - (i) its business and all its insurable Secured Property against loss or damage by fire, earthquake, theft, burglary, weather damage, marine risks, business interruption and all other risks that should prudently be insured against in accordance with best commercial practice, in each case for the full replacement value or such lesser amount as the Lender agrees in writing; and

- (ii) all its Real Property for full replacement value against natural disaster damage (as defined in the Earthquake Commission Act 1993);
 - (iii) against third party liability that it is prudent to insure against in accordance with best commercial practice, and
- in each case, with reputable insurers and, on request by the Lender, provide evidence of such insurance, and where required, copies of the insurance policies;
- (b) use its best endeavours to ensure that each insurance policy (other than policies related to third party liability) provides that:
 - (i) the Lender is named as an interested party;
 - (ii) the insurer will give to the Lender copies of all notices given by the insurer that affect the insurance cover or its terms; and
 - (iii) no cancellation or change of insurance is effective until at least 14 days after receipt by the Lender of written notice to that effect;
 - (c) promptly pay all premiums and do whatever else is necessary to ensure the insurances required by this clause 40 are maintained; and
 - (d) not do, or permit to be done or occur, anything that may prejudice any insurance over its Secured Property.

41. Application of insurance proceeds

- (a) Money recoverable under any insurance policy is to be applied, at the option of the Lender, either:
 - (i) in or towards rebuilding, repairing or replacing the applicable Secured Property or meeting the liability insured against; or
 - (ii) in reduction of the applicable Security Provider's Secured Indebtedness.
- (b) Any such money released to, or received by, a Security Provider is to be held by the Security Provider on trust for the Lender until applied in the manner required by this clause 41.

42. Waiver of rights under PPSA

A Security Provider:

- (a) has no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) waives its rights to:
 - (i) not have goods damaged if the Lender removes an accession under section 125 of the PPSA;
 - (ii) receive notice of the removal of an accession under section 129 of the PPSA;
 - (iii) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;
 - (iv) receive a statement of account under section 116 of the PPSA;
 - (v) receive notice of any proposal of the Lender to retain collateral under section 120(2) of the PPSA; and
 - (vi) object to any proposal of the Lender to retain collateral under section 121 of the PPSA.

43. Rights on enforcement

In addition to the rights and powers the Lender has under clause 15, at any time after an Event of Default has occurred and is continuing:

- (a) each Security will become immediately enforceable; and
- (b) the Lender may (without prejudice to any other rights it may have under any Lending Document or at law), at its option:
 - (i) in the name of the relevant Loan Party or otherwise, at any time, do anything that Loan Party could do in relation to the Secured Property and each Loan Party's business and its operations; and
 - (ii) at any time, do anything that a Receiver could do under a Lending Document in relation to the Secured Property and each Loan Party's business and its operations (including pursuant to clauses 47 and 48), whether or not a Receiver has been appointed.

44. Appointment of Receiver

- (a) The Lender may (in addition to any of its other rights), at any time, appoint in writing (and remove, replace and fix the terms of appointment of) one or more Receivers (jointly and severally) in respect of any Secured Property on terms considered necessary or expedient by the Lender if:
 - (i) an Event of Default occurs in relation to the applicable Loan Product and is continuing; or
 - (ii) the applicable Security Provider so requests; or
 - (iii) the Lender, in its sole discretion, believes that any such Secured Property is at risk of being seized, becoming subject to a Security Interest or otherwise being dealt with in contravention of the applicable Lending Documents.
- (b) The power to appoint a Receiver under this clause 44 may be exercised notwithstanding:
 - (i) at the time the applicable Security Document becomes enforceable, or an appointment is made, an order may have been made, or a resolution may have been passed, to wind up the applicable Security Provider; or
 - (ii) a Receiver appointed in the circumstances specified in sub-clause (b)(i) above may not, or may not in some respects, act as the applicable Security Provider's agent.

45. Remuneration of Receiver

The Lender may fix the remuneration of a Receiver at an amount or on a basis agreed with the Receiver or, failing agreement, as determined by the Lender. All remuneration payable to any Receiver is payable by the applicable Security Provider on demand, and forms part of its Secured Indebtedness.

46. Receiver agent of Security Provider

A Receiver is the agent of the applicable Security Provider. The applicable Security Provider is solely responsible for the acts and defaults of a Receiver.

47. Receiver's rights - general

Subject to any restriction imposed by the Lender, a Receiver has:

- (a) all the rights conferred on receivers and managers by law (including under the Receiverships Act 1993);
- (b) all the rights of the Lender under clause 48 (whether or not those rights are yet enforceable by the Lender);
- (c) all the rights of a natural person in relation to the applicable Security Provider's Secured Property and the applicable Security Provider's businesses and operations; and
- (d) all other rights conferred by law (including under Part 9 of the PPSA) in relation to the applicable Security Provider's Secured Property,

and in each case, may exercise any or all of these rights without being responsible for any loss.

48. Receiver's rights - specific

Without limiting clause 47, a Receiver may, at its option and in the manner and on terms it considers appropriate (in the name of the applicable Security Provider or otherwise):

- (a) manage, take possession or control of, collect in and sell or otherwise dispose of the applicable Secured Property;
- (b) do anything that the applicable Security Provider could do in relation to its Secured Property and its business and its operations, including:
 - (i) carry on or agree to carry on the business of the applicable Security Provider in and with its Secured Property, and to stop doing so at any time; and
 - (ii) effect all repairs and purchases, and anything else considered necessary or desirable to protect or improve the applicable Secured Property or obtain income or returns from the applicable Secured Property;
- (c) borrow any amount that may be required for the purposes specified in this clause 48 and grant security over all or any part of the applicable Secured Property, so that the Security Interest may rank in priority to, equally with, or after the Security Interests granted in the applicable Security;
- (d) insure, hire out, lease or license the applicable Secured Property (with or without a purchase option and whether or not the Receiver has taken possession);
- (e) sever fixtures belonging to the applicable Security Provider and sell them apart from any other part of the applicable Secured Property;

- (f) make the applicable Security Provider bankrupt and liquidate companies or other applicable entities and do everything in connection with any bankruptcy or liquidation that the Receiver considers appropriate to recover or protect the applicable Secured Property;
- (g) do everything necessary to perform an undertaking of the applicable Security Provider in any Lending Document;
- (h) settle, arrange and compromise accounts, claims, questions or disputes that may arise in connection with the applicable Security Provider's business or the applicable Secured Property or in any way relating to the applicable Lending Documents, and execute releases or other discharges in relation to a settlement, arrangement or compromise;
- (i) make calls on members of the applicable Security Provider in relation to the applicable Security Provider's uncalled capital and sue to recover amounts due in relation to calls, for which purpose the provisions on calls in the constitution of the applicable Security Provider or otherwise provided by law will (with necessary modifications) continue to subsist notwithstanding any change in directors of the applicable Security Provider, and shall be exercisable to the exclusion of the powers of the directors;
- (j) do anything incidental to the exercise of any other power given to it under an applicable Lending Document; and
- (k) delegate any of the powers given to it by this clause to any person, and engage employees, agents, lawyers, advisers and contractors for any purpose of this clause,

and in each case, may exercise any or all of these rights without being responsible for any loss.

49. Exercise of power of sale

In connection with any sale contemplated by this clause 49, a Receiver has the right to:

- (a) sell all or any part of the applicable Secured Property, with or without any other property:
 - (i) subject to any security having priority over the Security Interest created by the applicable Security;
 - (ii) together, or in separate lots, by public auction, by private sale, or tender for cash or on credit, or a combination of any of these methods and whether or not a reserve price for a sale by auction or tender is set or disclosed;
 - (iii) subject to such conditions as to title or evidence of title, time or mode of payment of purchase proceeds, or otherwise as the Receiver considers appropriate, including by allowing the purchase price to remain:
 - (A) outstanding on any security over the property sold or over any other property; or
 - (B) owing without security;
 - (iv) whether or not the applicable Security Provider has carried out any work on the applicable Secured Property or otherwise prepared the applicable Secured Property for sale; and
 - (v) on any other terms the Receiver considers appropriate;

- (b) cancel an agreement for sale over the applicable Secured Property, and in that event has the right to:
 - (i) re-sell the relevant property without being answerable for any reduction in price;
 - (ii) allow or refund to the purchaser any sum the purchaser may be entitled to on such cancellation; and
 - (iii) reverse any application of sale proceeds previously made;
- (c) execute assurances, transfers and assignments of the applicable Secured Property (including in the name of the applicable Security Provider), give receipts for the purchase proceeds and do all other acts necessary or desirable to complete the sale; and
- (d) exercise any other incidental rights in connection with the sale as are conferred on the Receiver (whether under the applicable Lending Documents or by law, agreement or otherwise),

and is not responsible for any loss, or for any act or thing done or omitted by any purchaser, and is not obliged to enforce any right under any agreement for sale.

50. Co-operation in exercise of power of sale

If a Receiver intends to exercise a right to sell Secured Property, the applicable Security Provider may not do, or cause to be done, anything to delay, adversely affect or otherwise prevent an expeditious sale and transfer to the purchaser.

51. Proceeds of enforcement

All money arising from or in connection with the exercise of the enforcement rights of a Receiver or the Lender is to be applied in the order determined by the Lender.

52. Order of application in absence of determination

In the absence of a determination under clause 51, all money arising from or in connection with the exercise of the enforcement rights of a Receiver or the Lender is to be applied in payment:

- (a) first, of all Costs incurred by the Lender, any Receiver and any Attorney in the exercise, or attempted exercise, of rights under or in connection with any applicable Lending Document;
- (b) second, of any Receiver's remuneration;
- (c) third, of all other Secured Indebtedness of the applicable Security Provider;
- (d) fourth, to each holder of a subsequent Security Interest; and
- (e) fifth, of any surplus to the applicable Security Provider.

53. Contingent amounts

If, at the time of distribution of any money under clause 51 or clause 52, any Secured Indebtedness is contingently owing to the Lender, the Lender or an Attorney or Receiver:

- (a) may retain an amount equal to all or part of that contingent indebtedness;

- (b) may place such amount in an interest-bearing deposit account until that contingent indebtedness becomes actually due and payable or otherwise ceases to be contingently owing;
- (c) will pay to the Lender from the amount retained, all amounts that become actually due and payable after that time; and
- (d) will apply the balance of the amount retained, together with interest earned whilst on deposit, in accordance with clause 52.

54. Liability for the Secured Property

54.1 Liabilities and obligations

The Lender does not (and will not be deemed to) undertake any obligation of any Security Provider in respect of its Secured Property.

54.2 Performance of Security Provider's obligations by Lender

Notwithstanding clause 54.1, and following failure by a Security Provider to do so (and whether or not any applicable grace period has expired), the Lender may perform any obligation of a Security Provider in respect of, or in connection with, its Secured Property. Each amount spent for that purpose (including Costs) must be reimbursed by the applicable Security Provider on demand by the Lender.

55. Protection provisions

55.1 Exercise of powers

Subject to any mandatory law, neither the Lender, a Lender's Representative nor any Receiver will be liable:

- (a) in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the Lender or a Receiver of its rights under a Security Document or conferred by law; or
- (b) to account as a mortgagee in possession in respect of any Secured Property if it, any person on its behalf or any Receiver takes possession of any Secured Property.

55.2 Protection of third parties

In relation to the exercise or purported exercise of the rights of the Lender, a Receiver or a Lender's Representative under a Security or conferred by law, no person:

- (a) need enquire:
 - (i) whether the Security created by the applicable Security has become enforceable;
 - (ii) whether a Receiver or a Lender's Representative has been properly appointed;
 - (iii) whether the relevant rights were exercised or are exercisable;
 - (iv) about the necessity for, or the expediency of, any conditions of any transaction or dealing;
 - (v) about the application of any amount paid to the Lender, a Receiver or a Lender's Representative; or
 - (vi) about the propriety or regularity of any transaction or dealing; or
- (b) will be affected by notice that any such transaction or dealing is unnecessary or improper.

56. No obligation to marshal

The Lender is not required to marshal, enforce or apply under:

- (a) any Security Interest, Guarantee or other entitlement held at any time by it; or
- (b) any money or property that it at any time holds or is entitled to receive.

57. PLA

57.1 Personal Property

The covenants set out in clauses 3(2), 6(2) and 12 of Part 2 of Schedule 2 to the PLA are excluded from a Security.

57.2 Real Property

To the extent that a Mortgage forms part of any Security, the covenants set out in clauses 3(2), 8(2), 16(2) and 18 of Part 1 of Schedule 2 to the PLA are excluded from that Security.

57.3 PLA

In the event of any conflict between the provisions of a Security and the provisions of Part 1 or Part 2 of Schedule 2 to the PLA, the provisions of the applicable Security will apply.

Part 5: Provisions specific to certain entity types

Provisions relating to Trusts, Charitable Trusts, Partnerships, Limited Partnerships, Incorporated Societies, Local Authorities and Individuals

58. Trusts

58.1 Trustee representations and warranties

In relation to each Lending Document entered into by a Loan Party in the capacity as a trustee of a trust (**Trust**), that Loan Party makes the representations and warranties in clause 12, and also represents and warrants that:

- (a) the full name of the Trust is specified in the Facility Document;
- (b) the Trust is validly formed and existing under the laws of New Zealand;
- (c) that Loan Party has disclosed to the Lender details of all trustees of the Trust and the trustees are the legal owners of the Trust Property;
- (d) it has provided to the Lender a copy of the constitutional documents, together with all amendments and all other documents, relating to the applicable Trust;
- (e) that Loan Party was appointed as trustee of the Trust in accordance with the terms and conditions set out in the applicable constitutional documents;
- (f) that Loan Party has not resigned or received any notice or information of the revocation by any means of its appointment as trustee, nor have any of its powers been delegated;
- (g) that Loan Party has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it in connection with the applicable Loan Product and each applicable Lending Document;
- (h) the Trust Property is sufficient to satisfy the right of indemnity and all other obligations in respect of which that Loan Party has a right to be indemnified out of the Trust Property;
- (i) no Trust Property has been:
 - (i) re-settled, set aside or transferred to any other trust or person; or
 - (ii) mixed with, or acceded to, any property that is not Trust Property; and
- (j) no action has been taken or proposed to terminate the Trust.

58.2 Repetition

Each of the representations and warranties set out in clause 58.1 will be repeated by each applicable Loan Party on the date of each applicable Lending Document, on each Drawing Date in relation to each applicable Loan Product and on each Interest Payment Date in relation to the applicable Loan Product.

58.3 Trustee undertakings

In relation to each Lending Document entered into by a Loan Party in the capacity as a trustee of a Trust, that Loan Party gives the undertakings in clause 13, and also undertakes that it will not:

- (a) resign as a trustee of the Trust; or

- (b) appoint or allow or agree to any new trustee of the Trust being appointed; or
- (c) amend the applicable constitutional documents in any material respect; or
- (d) allow the release or prejudice of the trustee's rights of indemnity against the Trust Property or the beneficiaries or the Lender's rights of subrogation to such indemnities,

other than with the Lender's prior written consent (such consent not to be unreasonably withheld or delayed).

58.4 Independent trustee limitation of liability

- (a) A Loan Party that is party to a Lending Document as an Independent Trustee and who has no interest in the Trust Property (other than an interest as trustee) will only be personally liable under the applicable Lending Documents to the extent of the Trust Property that is available from time to time to meet its liability, plus:
 - (i) any amount by which the value of the Trust Property has been reduced by any breach of trust caused by that Loan Party's wilful default or dishonesty; and
 - (ii) any amount the Lender cannot recover due to that Loan Party having acted in breach of trust or having lost its right of reimbursement out of the Trust Property.
- (b) A Loan Party will not be treated as an Independent Trustee if, at any time, it is a beneficiary, discretionary beneficiary or appointer under the relevant constitutional document.

58.5 Application of recoveries

The Lender may determine the order in which it recovers any amounts from a Loan Party in its capacity as a trustee of a Trust. In its sole discretion, the Lender may recover out of Trust Property or (if available to the Lender) a Trustee's personal assets.

59. Partnerships

59.1 Partnership representations and warranties

In relation to each Lending Document entered into by a Loan Party in the capacity as a member of a partnership, that Loan Party makes the representations and warranties in clause 12, and also represents and warrants that:

- (a) the full name of the applicable partnership is specified in the applicable Lending Documents;
- (b) the applicable partnership is validly formed and existing under the laws of New Zealand;
- (c) all partners of the applicable partnership are Loan Parties for the purposes of the applicable Loan Products even if the applicable Lending Documents have been signed only by one or some of them on behalf of the partnership;
- (d) no partner has given notice of their retirement from the applicable partnership, nor have any of their powers been delegated except as disclosed to and accepted in writing by the Lender;
- (e) all property of the applicable partnership is legally owned by the partners;
- (f) it has provided to the Lender a copy of the applicable constitutional documents, if any, together with all amendments and all other documents relating to the applicable partnership; and
- (g) all of the property of the applicable partnership is under its management and control.

59.2 Repetition

Each of the representations and warranties set out in clause 59.1 will be repeated by each applicable Loan Party on the date of the applicable Lending Documents, on each Drawing Date in relation to the applicable Loan Product and on each Interest Payment Date in relation to the applicable Loan Product.

59.3 Partnership undertakings

In relation to each Lending Document entered into by a Loan Party in the capacity as a member of a partnership, that Loan Party gives the undertakings in clause 13, and also undertakes to ensure that:

- (a) the applicable partnership is not terminated or dissolved and that no event for the vesting or final distribution of the property of the applicable partnership occurs;
- (b) no partner will retire, or transfer their partnership interest other than to an existing partner;
- (c) the applicable constitutional documents will not be amended in any material respect;
- (d) it will not delegate any of its powers and authority under the applicable Lending Documents to any person; and
- (e) the property of the applicable partnership will continue to be available to meet that Loan Party's obligations under the applicable Lending Documents even if the applicable partnership ceases business, or the members of the applicable partnership change,

other than in relation to sub-clauses (a)-(d) above, with the Lender's prior written consent (such consent not to be unreasonably withheld or delayed).

59.4 Partner acknowledgements

In relation to each Lending Document entered into by a Loan Party in the capacity as a member of a partnership, that Loan Party also acknowledges that (other than as agreed in writing with the Lender):

- (a) it is jointly and severally liable for all the obligations of the applicable partnership and that, in recovering an amount owed to the Lender, the Lender may have recourse to a partner's personal estate on an equal ranking basis with their other personal creditors;
- (b) it will be liable under the applicable Lending Documents for those amounts which are payable to the Lender by the members of that partnership in their capacity as members of that partnership;
- (c) except as agreed with the Lender from time to time, any partner may give the Lender instructions and the Lender may act on those instructions;
- (d) the applicable Lending Documents will continue to bind that Loan Party despite any changes which may from time to time take place in the partnership, whether by death, incapacity, retirement of any partner, the admission of any new partner or otherwise; and
- (e) each of the applicable Lending Documents will continue to bind it despite the fact that the partnership may cease to carry on business.

- (b) the applicable Limited Partnership is validly formed and existing under the laws of New Zealand;
- (c) it has provided to the Lender a copy of the applicable constitutional documents together with all amendments and all other documents relating to the applicable Limited Partnership;
- (d) unless otherwise accepted in writing by the Lender, it is the sole general partner and it has disclosed to the Lender the name of each limited partner of the applicable Limited Partnership;
- (e) no step has been taken to remove it as general partner of the applicable Limited Partnership or to delegate its powers; and
- (f) all of the property of the applicable Limited Partnership is under its management and control.

60.2 Repetition

Each of the representations and warranties set out in clause 60.1 will be repeated by each applicable Loan Party on the date of the applicable Lending Documents, on each Drawing Date in relation to the applicable Loan Product and on each Interest Payment Date in relation to the applicable Loan Product.

60.3 Limited Partnership undertakings

In relation to each Lending Document entered into by a Loan Party in the capacity of a general partner of a Limited Partnership, that Loan Party gives the undertakings in clause 13, and also undertakes to ensure that:

- (a) no partner will retire, or transfer their partnership interest other than to an existing partner;
- (b) the applicable constitutional documents will not be amended in any material respect;
- (c) the property of the applicable Limited Partnership will continue to be available to meet that Loan Party's obligations under the applicable Lending Documents even if the applicable Limited Partnership ceases business, or the members of the applicable Limited Partnership change;
- (d) it remains as the general partner of the applicable partnership during the term of each applicable Lending Document and will not delegate any of its powers and authority under the applicable Lending Documents to any person;
- (e) promptly after the occurrence of any event giving rise to a change in particulars of the applicable Limited Partnership required to be recorded on the register for limited partnerships maintained under the LPA, provide all information required to the registrar of that register and to the Lender;
- (f) promptly advise the Lender in writing of any circumstances that may constitute, or give rise to, a Terminating Event in respect of the applicable Limited Partnership after the general partner first becomes aware of such circumstances;
- (g) no actions are taken to terminate the applicable Limited Partnership or make any requests under section 97 of the LPA to deregister the Limited Partnership; and
- (h) all property of the Limited Partnership which is in the possession of or under the control of the general partner, is kept separate and clearly identified as the property of the Limited Partnership,

other than with the Lender's prior written consent (such consent not to be unreasonably withheld or delayed).

60. Limited Partnerships

60.1 Limited partnership representations and warranties

In relation to each Lending Document entered into by a Loan Party in the capacity as a general partner in a Limited Partnership, that Loan Party makes the representations and warranties in clause 12, and also represents and warrants that:

- (a) the full name of the applicable Limited Partnership is specified in the applicable Lending Documents;

61. Charitable Trusts

61.1 Charitable Trust representations and warranties

In relation to each Lending Document entered into by a Loan Party in the capacity as a Charitable Trust, that Loan Party makes the representations and warranties in clause 12, and also represents and warrants that:

- (a) the full name of the Charitable Trust is specified in each applicable Lending Document;
- (b) that Loan Party is the only trustee of the Charitable Trust and the sole legal owner of the Charitable Trust's property;
- (c) it has provided to the Lender a copy of its constitutional documents together with all amendments and all other documents relating to the applicable Charitable Trust;
- (d) its Trust Board is validly appointed;
- (e) it is a Registered Charity;
- (f) no member of the Trust Board has resigned or received any notice or information of the revocation by any means of its appointment, nor have any of their or the Trust Board's powers been delegated;
- (g) none of the Charitable Trust's property has been:
 - (i) re-settled, set aside or transferred to any other trust or person; or
 - (ii) mixed with, or acceded to, any property that is not the Charitable Trust's property; and
- (h) no action has been taken or proposed to terminate the Charitable Trust.

61.2 Repetition

Each of the representations and warranties set out in clause 61.1 will be repeated by each applicable Loan Party on the date of each applicable Lending Document, on each Drawing Date in relation to each applicable Loan Product and on each Interest Payment Date in relation to each applicable Loan Product.

61.3 Charitable Trust undertakings

In relation to each Lending Document entered into by a Loan Party in the capacity of a Charitable Trust, that Loan Party gives the undertakings in clause 13, and also undertakes that:

- (a) it will do all things necessary to maintain its status as a Registered Charity, including filing annual returns when due;
- (b) it will not do anything that would cause or enable a change to its Trust Board as constituted on the date of each applicable Lending Document;
- (c) the applicable constitutional documents will not be amended in any material respect; and
- (d) it will not allow the Charitable Trust to be wound up or otherwise determined,

other than with the Lender's prior written consent (such consent not to be unreasonably withheld or delayed).

62. Incorporated Societies

62.1 Incorporated Society representations and warranties

In relation to each Lending Document entered into by a Loan Party in the capacity of an Incorporated Society, that Loan Party makes the representations and warranties in clause 12, and also represents and warrants that:

- (a) the full name of the Incorporated Society is specified in each applicable Lending Document;
- (b) that Loan Party is the sole legal owner of the Incorporated Society's property;

- (c) it has provided to the Lender a copy of its constitutional documents together with all amendments and all other documents relating to the applicable Incorporated Society;
- (d) its Committee is validly appointed;
- (e) it is a registered Incorporated Society;
- (f) no member of its Committee has resigned or received any notice or information of the revocation by any means of its appointment, nor have any of their or the Committee's powers been delegated;
- (g) none of the Incorporated Society's property has been:
 - (i) re-settled, set aside or transferred to any trust or person; or
 - (ii) mixed with, or acceded to, any property that is not the Incorporated Society's property; and
- (h) no action has been taken or proposed to terminate the Incorporated Society.

62.2 Repetition

Each of the representations and warranties set out in clause 62.1 will be repeated by each applicable Loan Party on the date of each applicable Lending Document, on each Drawing Date in relation to each applicable Loan Product and on each Interest Payment Date in relation to each applicable Loan Product.

62.3 Incorporated Society undertakings

In relation to each Lending Document entered into by a Loan Party in the capacity of an Incorporated Society, that Loan Party gives the undertakings in clause 13, and also undertakes that:

- (a) it will do all things necessary to maintain its status as an Incorporated Society, including filing annual returns when due;
- (b) it will not do anything that would cause or enable a change to its Committee as constituted on the date of each applicable Lending Document;
- (c) the applicable constitutional documents will not be amended in any material respect; and
- (d) it will not allow the Incorporated Society to be wound up or otherwise determined,

other than with the Lender's prior written consent (such consent not to be unreasonably withheld or delayed).

63. Local Authorities

63.1 Local Authority representations and warranties

In relation to each Lending Document entered into by a Loan Party in the capacity of a Local Authority, that Loan Party makes the representations and warranties in clause 12, and also represents and warrants that:

- (a) it is a local authority named in Schedule 2 to the LGA;
- (b) the full name of the Local Authority is specified in the applicable Lending Documents;
- (c) that Loan Party is the sole legal owner of all of the Local Authority's property;
- (d) no action has been taken or proposed to terminate the Local Authority; and
- (e) for the purposes of section 117 of the LGA, the entry into, and the performance by, the Loan Party of each Lending Document to which it is a party:
 - (i) is in compliance with the LGA;
 - (ii) is not contrary to any provision of the LGA;
 - (iii) is within the capacity, rights and powers of the Loan Party; and
 - (iv) is for a purpose authorised by either the LGA or another Act.

63.2 Repetition

Each of the representations and warranties set out in clause 63.1 will be repeated by each applicable Loan Party on the date of each applicable Lending Document, on each Drawing Date in relation to each applicable Loan Product and on each Interest Payment Date in relation to each applicable Loan Product.

63.3 Local Authority undertakings

In relation to each Lending Document entered into by a Loan Party in the capacity of a Local Authority, that Loan Party gives the undertakings in clause 13, and also undertakes that it will:

- (a) At the time it enters into a relevant Lending Document, provide to the Lender on request a copy of its:
 - (i) then current Annual Plan and a copy of the Annual Plan for each following financial year promptly following adoption of the Annual Plan by the Local Authority in that financial year;
 - (ii) most recent Long Term Plan and its Liability Management Policy and, as soon as any material amendment to its Long Term Plan or Liability Management Policy has been approved and adopted, provide details of the amendments; and
 - (iii) most recent Annual Report and a copy of the Annual Report for each following financial year promptly following adoption of the Annual Report by the Local Authority in that financial year;
- (b) ensure that any Security encompasses any rates that may be levied in accordance with the LGA and the Local Government (Rating) Act 2002; and
- (c) not allow the Local Authority to be wound up or otherwise determined,

other than, in relation to sub-clauses (b) and (c) above only, with the Lender's prior written consent (such consent not to be unreasonably withheld or delayed).

63.4 Acknowledgement

Each of the Borrower and the Lender acknowledge that the obligations of the Borrower under each Lending Document are not guaranteed by the Crown.

64. Individuals

64.1 Individual representations and warranties

In relation to each Lending Document entered into by a Loan Party in the capacity of a natural person (and not as a trustee of a trust), that Loan Party makes the applicable representations and warranties in clause 12, and also represents and warrants that:

- (a) it enters into the Lending Documents in its personal capacity; and
- (b) it has full mental capacity for the purposes of entering into, and performing its obligations under, each applicable Lending Document.

64.2 Repetition

Each of the representations and warranties set out in clause 64.1 will be repeated by each applicable Loan Party on the date of each applicable Lending Document, on each Drawing Date in relation to each applicable Loan Product and on each Interest Payment Date in relation to each applicable Loan Product.

64.3 Joint and several liability for individuals

In relation to each Lending Document entered into by more than one individual, references to the relevant Loan Party or Loan Parties are to each individual and the liability of each individual is joint and several with each other such individual. The Lender may request one individual to pay all of the Amount Outstanding that is then due for payment and does not have to ask any other individual to pay or contribute.

Part 6: General Terms

65. Provisions in relation to payments

65.1 Application of payments

Other than as set out in clauses 51 and 52, the Lender may use any payment it receives in connection with a Loan Product to reduce the Amount Outstanding under that Loan Product in the following order:

- (a) Costs;
- (b) interest; and
- (c) principal,

outstanding or otherwise as the Lender determines in its sole discretion.

65.2 Payments on a business day

If an amount is due on a day which is not a Business Day, it must be paid to the Lender on the next Business Day unless that day falls in the next calendar month, in which case the payment shall fall due on the preceding Business Day.

65.3 Place for payment

Payments in relation to a Loan Product must be made by each applicable Loan Party to the Lender in the manner specified in the applicable Lending Document or such other manner notified by the Lender from time to time. If a Loan Party arranges to make payments by direct debit or if it has not made a payment on a due date, then without limiting clause 65.5, the Lender may debit any account held by the applicable Loan Party with the Lender with the relevant amounts.

65.4 No deduction

- (a) If a Loan Party is required to make a deduction, withholding or payment for or on account of tax or on another account, it will account to the appropriate tax or other authority for the relevant amount within the time allowed, without incurring a penalty for late payment.
- (b) Each payment by a Loan Party to the Lender shall be made free and clear of any restriction, whether by way of set-off, counterclaim or otherwise (and each Loan Party expressly waives any right to set-off amounts payable to it by the Lender against amounts due by that Loan Party to the Lender).
- (c) Without limiting sub-clause (a) above, a Loan Party must make all payments due by it to the Lender in full without deduction or withholding for or on account of any taxes, except to the extent required by law. If a Loan Party or the Lender is required by law to make any deduction, withholding or payment from or in relation to any sum payable by that Loan Party, then the sum payable by that Loan Party in respect of which such deduction, withholding or payment is required to be made will be increased to the extent necessary to ensure that after such deduction, withholding or payment, the Lender receives and retains (free from any liability) a net sum equal to the sum the Lender would have received and retained had no such deduction, withholding or payment been made.

65.5 Set-off

The Lender is entitled at any time to set-off any amounts at any time due and payable under any Lending Document against amounts owed by it, regardless of the terms on which such amounts are owing or the nature of any instrument evidencing the debt or the currency of such amounts, and may debit any account a Loan Party has with the Lender in order to effect such set-off. The Lender is authorised to break any term deposit a Loan Party has with the Lender, effect any currency exchanges that the Lender considers necessary to effect such set-off at the Lender's prevailing rate of exchange and, in the applicable Loan Party's name, to do all such acts and to execute all such documents as may be required to effect such set-off.

65.6 General indemnity

A Loan Party will indemnify the Lender against each Cost incurred by the Lender as a result of:

- (a) the occurrence or continuance of a Review Event, Potential Event of Default or an Event of Default; or
- (b) any amount payable by that Loan Party under a Lending Document not being paid when due; or
- (c) the actual or attempted preservation, protection or enforcement of a right under a Lending Document; or
- (d) an amount being paid or becoming due, otherwise than on the last day of a Rate Reset Period relating to it; or
- (e) a Drawing not being drawn on a Drawing Date or on such other date as agreed with the Lender; or
- (f) reliance by the Lender on any communication made to it via email or other electronic communication; or
- (g) the amendment, consent, waiver or general administration of a Lending Document (including preparation, negotiation or seeking advice in relation thereto) that the Lender determines at its discretion is outside the usual day-to-day management of the relevant Lending Document; or
- (h) any failure by that Loan Party to pay all registration or other fees and taxes to which any applicable Lending Document is, or at any time may be, subject to,

by payment on demand to the Lender, of the amount that the Lender certifies is required to compensate the Lender for that Cost, including each Cost incurred in liquidating or re-employing:

- (i) deposits or other funds acquired or arranged to fund or maintain a Drawing or other amount payable under a Lending Document or any part of it; and
- (j) any transaction entered into in anticipation of drawdown and/or disbursement of a Drawing or other amount under a Lending Document.

65.7 Currency indemnity

- (a) If, for whatever reason, any Amount Outstanding (either in full or in part) or any other payment is received by the Lender in a currency (the first currency) other than the currency (the second currency) in which it is payable (whether as a result of obtaining or enforcing an order or judgment, the dissolution of any person or otherwise), the amount received shall only satisfy the relevant Loan Party's obligation to pay the Amount Outstanding to the extent of the amount of the second currency which the Lender is able, in accordance with its usual practice, to purchase with the amount received in the first currency on the date of that receipt (or, if it is not practicable to make that purchase on that date, on the first day upon which it is practicable to do so).

- (b) Each relevant Loan Party indemnifies the Lender against:
 - (i) any loss sustained by the Lender as a result of the amount purchased by it in the second currency pursuant to sub-clause 65.7(a) being less than the amount due; and
 - (ii) all Costs incurred by the Lender in purchasing the second currency.

65.8 Funding risk and non-availability

- (a) The Lender will endeavour to notify a Borrower as soon as possible if the making, denomination or continuation of a Loan Product in a foreign currency is or may be impracticable or impossible as a result of:
 - (i) any change in national and international financial, political or economic conditions, currency exchange rates, currency availability or exchange control; or
 - (ii) any event or contingency which materially and adversely affects the interbank markets generally; or
 - (iii) any change in applicable law.
- (b) During the 30 days after that notice is given by the Lender, the Lender will negotiate with the applicable Borrower with a view to agreeing a mutually acceptable alternative basis on which it will continue to make available the affected Loan Product. If no agreement is reached within that 30 day period, the Lender's obligation to provide the affected Loan Product will terminate. The Borrower must then, if requested by the Lender, repay the Amount Outstanding under that Loan Product to the Lender.

65.9 Foreign currency acknowledgements

A Loan Party which incurs indebtedness to the Lender in a foreign currency:

- (a) acknowledges that incurring indebtedness in a foreign currency rather than dollars, and the basis for determining interest payable under the applicable Loan Product (which is dependent on economic and other factors prevailing in the country of the foreign currency), carries additional risks which would not apply to a Loan Product denominated in dollars and which reflected interest rates prevailing in New Zealand during the term of the applicable Loan Product;
- (b) acknowledges that the decision to incur indebtedness in a foreign currency and to accept the consequent associated risks, including currency fluctuations and interest determination risks, has been made solely by that Loan Party without any influence, encouragement or advice from the Lender (other than advice as to the availability of any such Loan Product for use by that Loan Party) and in reliance on that Loan Party's judgment and professional advisors (other than the Lender and its personnel);
- (c) warrants that it has fully considered the risks associated with the applicable Loan Product and that it is satisfied that the applicable Loan Product is suitable for it in the light of its circumstances;
- (d) confirms that it is solely responsible for, and fully acknowledges consequent risks associated with risk management and decision making pertaining to the applicable Loan Product;
- (e) confirms that it will be solely responsible for managing ongoing risks associated with the applicable Loan Product and decisions made to limit, manage or minimise risks; and

- (f) acknowledges that any information or financial service provided by the Lender that is intended to assist that Loan Party in managing the inherent additional risks does not and will not represent an attempt by the Lender to act in any form of advisory or managerial capacity to that Loan Party.

65.10 Suspense account

- (a) If, in breach of its obligations hereunder, a Loan Party:
 - (i) takes, accepts or continues to hold any security, money or other property from another Loan Party or receives the benefit of a set-off in relation to indebtedness owed to another Loan Party; or
 - (ii) makes any claim or enforces any right, or proves or recovers any amount, against any other applicable Loan Party for all or any part of any amount due (whether actually or contingently) from that Loan Party,

it must immediately pay or transfer to the Lender all such security, money, other property or the benefit of set-off, or all amounts received by it and all interest accruing on those amounts until all indebtedness to the Lender is discharged in full. Until that time, that Loan Party must hold such security, money or other property or benefit on trust for the Lender.

- (b) The Lender may set aside any payments or other amounts received from a Loan Party or any other person and keep such amounts in a suspense account for so long as the Lender determines necessary. The Lender will not be required to apply those payments or other amounts toward the indebtedness owed to the Lender by a Loan Party until all indebtedness owed to the Lender by that Loan Party is received by the Lender.
- (c) Until all indebtedness owed to the Lender by a Loan Party is discharged in full, the applicable Loan Party gives up in the Lender's favour any right that Loan Party has against the Lender and against any other person, estate or property which would reduce that Loan Party's liability to the Lender, or would reduce the Lender's claims against any applicable Loan Party or any other person for the relevant amount.
- (d) If a Loan Party becomes Insolvent, each other applicable Loan Party authorises the Lender to prove for, and recover against the Insolvent Loan Party, all amounts which the each other Loan Party has paid under any Guarantee, Security or other arrangement, place any amounts the Lender receives in the Insolvency of the Insolvent Loan Party in a suspense account and use them at the Lender's discretion. Each applicable Loan Party agrees to pay the Lender any amounts which it receives in the Insolvency of the Insolvent Loan Party, whether in breach of this clause or otherwise, until all indebtedness owed to the Lender by the applicable Loan Party has been discharged in full.

65.11 Prior debts

- (a) The Lender may pay any indebtedness of a Loan Party that ranks, or is capable of ranking, ahead of any indebtedness owed by that Loan Party to the Lender or, at the relevant Loan Party's expense, take a transfer of any such indebtedness for the Lender's benefit. The Lender is not bound to enquire whether the amounts claimed to be owing in respect of any prior ranking indebtedness are actually owing.
- (b) Any amounts expended by the Lender under this sub-clause 65.11 (including any Costs incurred by the Lender) will form part of the Secured Indebtedness and bear interest as provided in clause 5.5.

66. Releases

- (a) The Lender may at any time, in its absolute discretion, release any Guarantee or Security (in whole or in part).
- (b) If, in the reasonable opinion of the Lender:
 - (i) in relation to a Security or Guarantee, all Secured Indebtedness of the relevant Security Provider or all Guaranteed Amounts of the relevant Guarantor have been paid (as the case may be); and
 - (ii) in relation to a Security, the Security Provider has performed all of its Secured Obligations; and
 - (iii) in relation to a Security or Guarantee, there is no reasonable possibility that any such Secured Indebtedness or Guaranteed Amounts (as the case may be) received by the Lender will have to be repaid under any applicable law,the Lender will provide a release of the applicable Security or Guarantee.
- (c) The Lender is entitled to retain the benefit of its rights under any Guarantee it holds from the applicable Guarantor for two years (or any longer period reasonably determined by the Lender) after the payment in full or other discharge of the Guaranteed Amounts.
- (d) All documents that are necessary in connection with a release under this clause 66 are to be in the form the Lender reasonably requires.
- (e) Each Guarantee and Security provided by a Loan Party will survive repayment of any Loan Product and will remain in full force and effect until a formal release of the applicable Guarantee or Security is delivered by the Lender to the applicable Guarantor or Security Provider in accordance with these Master Terms.

67. Personal information

In this section each Loan Party consents to the way the Lender collects, uses and shares personal information. In this clause, "Lender" is a reference to Bank of New Zealand and its related companies.

67.1 Using personal information

The Lender takes privacy seriously and complies with all relevant privacy laws. This clause explains how it uses personal information (and that of a Loan Party's Related Persons, as defined below). By using any Loan Products or services each Loan Party permits the Lender to collect, hold, use and share that Loan Party's personal information in accordance with this clause.

67.2 Using Related Persons' personal information

When a Loan Party, or someone else on their behalf, provides the Lender with personal information that relates to other people or organisations ('**Related Persons**'), and that personal information is relevant to a Loan Party's relationship with the Lender, each Loan Party confirms that the Related Person consents to the Lender collecting, holding, using and sharing that personal information for the purposes set out in this clause 67.5 and 67.7, and any additional purposes for which the Loan Party, or they, provided the personal information. If the Lender intends to collect, hold, use or share their personal information for other purposes it will obtain their consent first.

67.3 Contact

The Lender can contact a Loan Party and any Related Persons via email, text message, an online facility (without an online unsubscribe facility) or by telephone or post for the purposes described in this clause 67 (and more specifically clauses 67.5 and 67.7 for Related Persons).

67.4 Accuracy of information, requesting or correcting personal information

The Lender will try to make sure that any personal information held by it is accurate. To help the Lender do this, each Loan Party will advise as soon as it can about any changes in its personal details (including physical or email address, or telephone or facsimile numbers). The Privacy Act 1993 gives individuals a right to access and correct information. As such, a Loan Party or any Related Persons can ask to correct information (provided they are individuals). Calls should be made on 0800 275 269 or +64 4 924 2424 (or such other number notified from time to time by the Lender on its website) to access or correct information.

67.5 Purposes for collecting, using and sharing personal information

(a) Managing and administering relationship

Each Loan Party's, and its Related Persons', personal information can be used by the Lender to establish and maintain its relationship with the Loan Party, including identifying it or Related Persons, approving a Loan Party's applications for any of the Lender's products or services and managing and administering any product or service the Lender provides to it. For example, the Lender can use such personal information to:

- (i) meet internal operational requirements, such as for credit, risk or prudential management or assessment, system or product development and planning, insurance, audit and administrative purposes (for example, providing credit cards and statements or conducting credit checks on Loan Parties);
- (ii) collect any money owed by a Loan Party (for example, providing credit agencies with information about a default by a Loan Party);
- (iii) enforce or defend the Lender's rights;
- (iv) as part of the Lender's investment services, provide a Loan Party with custodial services or register investments in its own name with either a registry or fund manager should it choose to transfer its investments out of custody; or
- (v) for any other purpose the Lender reasonably requires in relation to a Lending Document.

(b) Complying with laws and regulations

Each Loan Party agrees to provide the Lender with information it asks for to help it comply with laws, rules or regulations in New Zealand or overseas. The Lender can use a Loan Party's personal information to:

- (i) help it comply with laws, rules or regulations in New Zealand or overseas, or any New Zealand or overseas legislative or regulatory requests; or
- (ii) monitor a Loan Party's accounts and any product or service offered by the Lender which a Loan Party uses for the purpose of preventing misuse or unauthorised use of any such product or service, detecting any fraud or crime, or for money laundering and counter financing of terrorism purposes in connection with any laws, rules or regulations in New Zealand or overseas.

(c) **Market research**

The Lender can:

- (i) collect, hold, use and share a Loan Party's personal information, where it is combined with other information and in a form that does not identify the Loan Party, to conduct market research;
- (ii) use and share a Loan Party's contact information to obtain its views of any product or service offered by the Lender and to help the Lender to identify how it might better address customers' needs, both while a Loan Party is a customer and for a reasonable time afterwards; and
- (iii) use third party information and link it to a Loan Party's personal information to identify how the Lender might better address its customers' needs.

(d) **Marketing and promotion**

The Lender can use a Loan Party's personal information to contact the Loan Party about, and offer it, any product or service that might be of interest to it, both while the Loan Party is a customer and for a reasonable time afterwards. The Lender can also use and share a Loan Party's personal information to enable information to be provided to the Loan Party, which the Lender reasonably believes might be of interest to it, about:

- (i) events, fundraising or organisations that the Lender supports; or
- (ii) third party offers, products and services from persons or organisations that the Lender has partnered with (the Lender only partners with organisations that meet its high standards).

(e) **Right to ask for personal information not to be used for marketing, promotion or market research**

Each Loan Party has the right to ask the Lender not to use its personal information to conduct market research under sub-clause (c) above or contact it with marketing or promotional messages (whether related to any product or service or otherwise) under sub-clause (d) above. Calls should be made on 0800 275 269 or +64 4 924 2424. The Lender will still need to contact a Loan Party with messages relating to the management and maintenance of the Loan Party's relationship with the Lender and any mandatory messages (for example, those required to be sent by law).

(f) **Credit records and credit reporting agencies**

In respect of opening accounts, loan applications and reviews, each Loan Party authorises the Lender to make credit reference checks and other enquiries within its normal procedures. For this purpose, the Lender can seek from any such source information concerning a Loan Party. Each Loan Party also authorises the Lender to share all information relevant to its accounts and any credit facilities with any credit reporting agency. Credit reporting agencies may use information disclosed by the Lender to update their credit reporting database, and disclose any information that they hold about a Loan Party to their own customers, as permitted under the Credit Reporting Privacy Code 2004. In addition, the Lender may use any service provided by credit reporting agencies to receive updates of the information they hold about a Loan Party. In the event that a Loan Party is in default under any Lending Document or Loan Product provided by the Lender, the Lender can disclose that Loan Party's personal information to, and for the use by, credit reporting agencies, debt collection agencies and law firms.

(g) **Third parties**

Each Loan Party authorises the Lender to make credit and other inquiries about the relevant Loan Party within its normal procedures and to obtain information about the relevant Loan Party from:

- (i) any holder of a Security Interest over any property of the relevant Loan Party that is also secured, or to be secured, to the Lender;
- (ii) any insurer of property;
- (iii) any person performing services in connection with any property;
- (iv) any government, local or other authority having jurisdiction in respect of any property, provided that the information obtained is confined to that reasonably required by the Lender.

(h) **Assignees**

If the Lender assigns or transfers any Lending Document or all or any part of its rights, title and interest under that document to any person, each Loan Party:

- (i) authorises such assignee or transferee to use information about the relevant Loan Party, disclose information about that Loan Party and make credit and other enquiries about that Loan Party to the same extent provided herein as if such assignee or transferee was the Lender; and
- (ii) authorises the Lender (in addition to any assignee or transferee) to continue to use information about that Loan Party at any time held with the Lender for the purpose of continuing to maintain the relationship between the Lender and that Loan Party, notwithstanding the assignment or transfer.

67.6 Recording telephone calls

The Lender can monitor and retain recordings of any telephone calls with a Loan Party, including to make sure the Lender has carried out the Loan Party's instructions correctly, to help improve the Lender's service, make sure the Lender complies with its regulatory obligations and to help detect or prevent fraud or other crimes.

67.7 Sharing personal information

For the purposes described above, the Lender can share a Loan Party's, and its Related Persons' personal information with:

- (i) any other related company(ies), its employees, agents and contractors;
- (ii) any agents or third parties that provide services to or for the Lender (whether in New Zealand or otherwise), including but not limited to, banks, law firms, auditors, professional advisors, custodians, fund managers, debt collection agencies, credit reporting agencies or credit providers, credit card providers, loyalty schemes, market research firms and insurers, who have agreed with the Lender to only collect, hold, use and share personal information for the purposes for which it has been given to them;
- (iii) any holder of a Security Interest over any property of the relevant Loan Party that is also secured, or to be secured, to the Lender;
- (iv) any insurer of property;
- (v) any person performing services in connection with property;
- (vi) any assignee or successor, or prospective assignee or successor, of the Lender;
- (vii) any person who is or may become liable alone or jointly for payment of any Amount Outstanding, whether as principal or as surety;

- (viii) the police, any governmental body or agency, authority or regulator in New Zealand or overseas (including any tax authorities);
- (ix) other banks (including overseas banks), agents, registrars, contractors or other entities assisting with transactions;
- (x) any previous or current employer (to verify a Loan Party's identity, employment status or income (as applicable));
- (xi) any other person or organisation as required or permitted by law; and
- (xii) any other person or organisation authorised by a Loan Party.

Each Loan Party accepts, and confirms that its 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 a Loan Party's, or a Related Person's, personal information for the purposes of complying with such laws.

67.8 Failure to disclose

Subject to clause 67.5(e) if a Loan Party does not provide the Lender with information the Lender requests from the Loan Party or the Loan Party does not consent (or withdraws consent) to the Lender collecting, holding, using or sharing its personal information, the Lender may:

- (a) be unable to provide a new, or continue to provide all or part of, an existing Loan Product or service to a Loan Party, and can end its relationship with the Loan Party;
- (b) take any actions the Lender needs to meet its legal or regulatory obligations; or
- (c) suspend (or otherwise restrict), transfer or close the Loan Party's accounts.

67.9 Storing personal information

A Loan Party's personal information can be held physically or electronically, including in an offshore facility, by the Lender or by any third party contracted to store it. In accordance with the Privacy Act 1993, the Lender will use reasonable security safeguards to protect personal information against loss, access, modification, disclosure and other misuse.

68. Assignment by Lender

The Lender may assign, transfer or novate any of its rights and obligations under any Lending Document to another person and each Loan Party consents to any such assignment, transfer or novation.

69. Assignment by Loan Party

A Loan Party may not assign, transfer or novate any of its rights or obligations under a Lending Document without the prior written consent of the Lender.

70. No waiver

No failure to exercise or delay in exercising any right or remedy available to the Lender under any Lending Document or at law will waive that right or remedy nor will a partial exercise of any right or remedy preclude any further exercise of that right or remedy or any other right or remedy. The rights and remedies conferred by each Lending Document are additional to any of the rights and remedies available to the Lender at law or under any other agreement with a Loan Party.

71. Certificate conclusive

The Lender's certificate as to any amount or fact relating to a Lending Document will, in the absence of manifest error, be conclusive evidence of such amount or fact.

72. Partial invalidity

The illegality, invalidity or unenforceability of any provision of any Lending Document will not affect the legality, validity or enforceability of any other provision of that Lending Document.

73. Survival of undertakings

The undertakings in clauses 13, 37, 38.2, 39.2, 58.3, 59.3, 60.3, 61.3, 62.3 and 63.3 will, in respect of each Loan Product, survive repayment of the Loan Product and termination of the applicable Loan Product for any reason whatever and will continue in full force and effect notwithstanding such repayment or termination.

74. Notices

- (a) Each notice, demand, agreement and other communication to be given, delivered or made in connection with a Lending Document (each a **Communication**) that is required to be in writing may be sent by personal delivery, post, email or via any electronic terminal, computer, telephone or similar equipment or device.
- (b) Each Communication is to be sent to the contact details of the parties as set out in the applicable Lending Document or as updated from time to time. Communications will be effective only when received. Communications will, however, be deemed to be received:
 - (i) if delivered personally, when left at the designated address; or
 - (ii) if sent by post, three Business Days after being deposited in the post, first-class or fast post postage prepaid; or
 - (iii) if sent by email, when sent; or
 - (iv) if via any other method, when submitted or sent (as the case may be),

provided that any Communication received after 5.00pm on any Business Day, or on a day which is not a Business Day, will be deemed to have been received at the opening of business on the following Business Day.

75. Demand

Without prejudice to any other lawful mode of demand, any demand by the Lender under a Lending Document is sufficient if in writing, signed by any officer, manager or authorised signatory of the Lender and sent in accordance with clause 74.

76. Amendments

76.1 Lending Documents

If, at any time, a Loan Party and the Lender agree to amend a Lending Document as it relates to a particular Loan Product (including to add a new Loan Product) either:

- (a) subject to sub-clause (b) below, the applicable Loan Party and Lender can agree to amendments orally and the agreed amendments will be effective from the time of such oral agreement (unless otherwise agreed by the parties) and the Lender will send written confirmation of the amended Lending Document and such confirmation, in the absence of manifest error, will be conclusive evidence of the amended Lending Document (and, at the Lender's sole discretion, with a copy of such confirmation provided to each other applicable Loan Party); or
- (b) to the extent a Loan Party and the Lender agree to either extend the applicable Maturity Date of a Loan Product beyond 90 days from the initial Maturity Date or increase a Limit applicable to a Loan Product, the relevant Loan Party, the Lender and each other applicable Loan Party will execute an amendment document (in a form required by the Lender acting reasonably).

76.2 Master Terms

The provisions of the Master Terms may be amended by the Lender without the consent of any Loan Parties where, in the opinion of the Lender the amendment:

- (a) is of a minor, formal, administrative or technical nature;
- (b) is to correct a manifest error;
- (c) is to comply with the requirements (or a modification of the requirements) of any applicable law;
- (d) is to provide service enhancements, including in connection with new technology and electronic capacities; or
- (e) will not have, and will not be likely to have, a Material Adverse Effect with respect to the interests of the relevant Loan Parties.

The Lender will notify the Loan Parties of any amendments to the Master Terms either by electronic communication to a device or electronic address nominated by the Loan Parties or by making the updated Master Terms available on the Lender's website: bnz.co.nz. Failure to notify one or more Loan Parties will not affect the validity or enforceability of the amendments.

77. Consumer Guarantees Act

Each Loan Party acknowledges that it has obtained each Loan Product for business purposes. Accordingly, nothing in the Consumer Guarantees Act 1993 or Part 2 of the Credit Contracts and Consumer Finance Act 2003 shall apply to the provision by the Lender of any Loan Product.

78. Electronic execution

At the Lender's sole discretion, a Lending Document entered into with a Loan Party may be executed by each party electronically in any form which satisfies the requirements of the Electronic Transactions Act 2002.

79. Counterparts

Any Lending Document may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.

80. Contracts (Privity) Act 1982

For the purposes of the Contracts (Privity) Act 1982 or the Contract and Commercial Law Act 2017 (as the case may be), the Lender, each Lender's Representative, each Receiver and each Attorney is entitled to enforce against each Loan Party each provision of a Lending Document that confers a benefit on the Lender, a Lender's Representative, a Receiver or an Attorney. However, no Lender's Representative, Receiver or Attorney needs to consent to any amendments made to any Lending Document.

81. Submission to jurisdiction

Each Loan Party and the Lender agrees that any legal action or proceeding arising out of or in connection with any Lending Document (a Proceeding) may be brought in the courts of New Zealand or such other court in any jurisdiction which the Lender may select and the parties irrevocably submit to the jurisdiction of each such court. Each Loan Party waives any objection to Proceedings in any such court on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum. Nothing will affect the right of the Lender to serve process in any other manner permitted by law. The taking of Proceedings in any jurisdiction does not preclude the Lender from taking Proceedings in any other jurisdiction.

82. Service of process

Without prejudice to any other mode of service allowed under any relevant law, for the purposes of service of process in relation to a Proceeding:

- (a) the Lender may notify a Loan Party through any of the methods available under the Companies Act, by sending an email to the usual email address of that Loan Party or to the usual email address of one or more of its directors, trustees, partners or general partner (as the case may be); and
- (b) each Loan Party (other than a Loan Party incorporated or resident in New Zealand):
 - (i) irrevocably appoints the Borrower as its agent for service of process in relation to any Proceedings in connection with any Lending Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Loan Party of the process will not invalidate the Proceedings concerned.

83. Delivery

For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, each Lending Document that is a deed will be delivered by each of the Loan Parties immediately on the earlier of:

- (a) physical delivery of an original of the relevant Lending Document, executed by the relevant Loan Party, into the custody of the Lender or the Lender's solicitors; or
- (b) transmission by the relevant Loan Party or its solicitors (or any other person authorised in writing by the relevant Loan Party) of a facsimile, photocopied or scanned copy of an original of the relevant Lending Document, executed by the relevant Loan Party, to the Lender or the Lender's solicitors.

84. Conflict

In the event of conflict between a provision of these Master Terms and a provision of any other Lending Document or any other agreement between the Lender and a Loan Party, the Lender may determine at its discretion which will prevail.

85. Law

These Master Terms and each Lending Document will be governed by and construed in accordance with New Zealand law.

Part 7: Conditions Precedent

Prior to delivering the first Drawdown Request under a Facility Document, a Loan Party must provide to the Lender:

- (a) copies of all applicable Lending Documents duly executed by all Loan Parties;
- (b) a certificate from each applicable Loan Party in the form required by the Lender;
- (c) evidence that all the relevant Secured Property has been insured and all other relevant insurance policies have been established by the applicable Loan Parties in accordance with the Lender's requirements;
- (d) evidence that the Lender holds (or will hold on or before the first Drawing) a perfected Security Interest in the applicable Secured Property with the priority contemplated by the applicable Facility Agreement;
- (e) in relation to each Guarantor that is an individual, either:
 - (i) a certificate from an independent solicitor in the form required by the Lender confirming that the Guarantor has received independent legal advice in connection with entry into the applicable Guarantee Document; or
 - (ii) a waiver of independent legal advice in the form required by the Lender executed by the Guarantor;
- (f) evidence that all fees and Costs payable by the Borrower have been paid or will be paid contemporaneously with the first Drawing; and
- (g) each other condition precedent specified in the applicable Facility Document, or requested by the Lender.