



BNZ Business Lending

Master Terms

Version 2.3
Effective 27 May 2023

How do these Master Terms work?

These Master Terms set out the general terms of our agreement with you. They apply to both:

- all Loan Products you have with us
- securities and guarantees given to us which relate to those Loan Products.

When you use a Loan Product you agree to comply with these Master Terms

Other terms that apply to a particular Loan Product, security or guarantee are in separate documents. You will find details like the amount of a loan, the interest rate, and the term of a loan in one of those documents.

Together, those other terms and these Master Terms set out all the terms of the agreement between us. This means that earlier discussions we've had with you do not form part of our agreement with you.

Finding your way around the Master Terms

These Master Terms are divided into eight parts:

Part 1	deals with how your Loan Product works	Page 3
Part 2	sets out the things you need to tell us and what you agree to do or not do when you use a Loan Product, and what happens if you don't meet these obligations	Page 7
Part 3	contains general terms about how we manage the Loan Products and communicate with you	Page 11
Part 4	sets out some terms that only apply to trusts, partnerships, incorporated societies, local authorities and individuals. If you are not one of those, Part 4 doesn't apply to you	Page 16
Part 5	sets out terms that apply to guarantees	Page 21
Part 6	sets out terms that apply to securities	Page 25
Part 7	sets out terms that apply to your CashFlow Plus Facility. If you do not have this Loan Product, Part 7 does not apply to you.	Page 35
Part 8	explains the meaning of some of the words used in the Master Terms and in Lending Documents.	Page 47

For a detailed table of contents refer to [page 51](#).

Our commitment to you

We will act reasonably and fairly towards you, taking into account your and our respective business interests. That includes whenever we are:

- considering any request you make
- deciding whether to exercise any of our rights
- setting any conditions for any of those things.

We can always agree to do things differently

These Master Terms and each Lending Document contain terms that require you to do or not do certain things. We can always agree to do things differently to the way they are set out in these Master Terms and each Lending Document.

You will not be in breach of any term in these Master Terms or any Lending Document if you have our prior written consent to act differently.

When we talk about ‘You’ and ‘Us’ in these Master Terms

When we talk about ‘you’ or ‘your’, we mean each borrower, security provider, guarantor and each other person who uses one of our Loan Products, provides us with a security or a guarantee, or is party to a Lending Document.

Where there is more than one person involved:

- (a) ‘you’ means each person individually and any combination of those people
- (b) each person must comply with these Master Terms
- (c) each person must pay any amounts we’re owed, either by themselves or with anyone else responsible for those amounts.

When we refer to a ‘person’, this means an individual and legal entities like companies, partnerships, trusts and statutory bodies.

When we talk about ‘we’, ‘us’ and ‘our’, we mean Bank of New Zealand.

Part 1: How your Loan Product works

1. Sending us information before using your Loan Product

Before you can use a Loan Product, we need all of the following:

- (a) signed copies of all Lending Documents
- (b) an entity certificate from you, each guarantor, each security provider and each other party to a Lending Document, in the form we provide to you
- (c) evidence that all secured property has been insured on terms acceptable to us
- (d) evidence that we hold a first ranking security interest in the secured property
- (e) if you are an individual guarantor, either:
 - (i) a certificate, in the form we provide to you, confirming that you have received independent legal advice; or
 - (ii) a signed waiver of independent legal advice in the form we provide to you
- (f) evidence that all fees and Costs payable by you have been paid or will be paid, and
- (g) everything else listed in any relevant Lending Document or requested by us.

Each document must be in a form which is acceptable to us.

2. Using your Loan Product

2.1 Requirements for each use of a Loan Product

Once we've received everything we need under clause 1 above, the following basic requirements apply to each use of a Loan Product:

- (a) give us a written notice with the information we need to process your request: unless the Facility Document says otherwise, we will need this at least two business days before the drawing date, so we can check everything and arrange funding
- (b) the requested drawing date must be a business day during the availability period
- (c) when we make the loan, it won't cause any limit to be exceeded. If the Loan Product has separate components, it won't cause any component's limit to be exceeded
- (d) no Event of Default or Potential Event of Default has occurred and is still going
- (e) you have satisfied any other requirements set out in any relevant Lending Document.

If you have not used your Loan Product within 3 months from the date of the relevant Lending Document, we can cancel the Loan Product.

2.2 Limits for the use of each Loan Product

Each Facility Document contains limits for use of the relevant Loan Product, and says whether any limit can change. If a Loan Product has separate components, the Facility Document may also specify each component's limit.

If you exceed any limit without our agreement, you must pay us the excess immediately. Until you do, we may charge you the excess rate on that excess amount.

If you ask us in advance, we may let you temporarily exceed a limit. There may be a fee for exceeding a limit, which we will tell you about first. You must repay us the excess when we ask you, or on the date we've agreed.

3. Understanding the interest you'll pay

3.1 How we calculate your daily interest

The interest rate that applies to your loan will be set out in your Facility Document. Interest accrues on a daily basis. We calculate interest by multiplying the relevant Amount Outstanding by the daily interest rate. The daily interest rate is the annual interest rate divided by 365 or, for some foreign currency amounts, 360, or as otherwise stated in a Lending Document.

3.2 How we manage Rate Reset Periods

The following rules apply to Rate Reset Periods:

- (a) the length of the available Rate Reset Period is as set out in your Facility Document or, if it is not set out in your Facility Document or you don't request one, will be the period notified by us
- (b) if a Rate Reset Period starts on a day with no numerically corresponding day in the month when that Rate Reset Period ends, the Rate Reset Period will end on the last business day of that month
- (c) if a Rate Reset Period would end on a day that is not a business day, that Rate Reset Period will extend to end on:
 - (i) the next business day, if the next business day is in the same month
 - (ii) the previous business day, if that extension would carry the Rate Reset Period over into the next month
- (d) if a Rate Reset Period would extend beyond the Maturity Date, the Rate Reset Period will end on the Maturity Date
- (e) once you select your first Rate Reset Period, your loan will remain on that Rate Reset Period unless you advise us otherwise under (f)
- (f) you may request the length of the following Rate Reset Period before the current Rate Reset Period ends.

3.3 When you must make each interest payment

You must pay accrued interest on each interest payment date. Those dates are set out in your Facility Document. If not, they are as follows:

- (a) On the day after each bank month ends, for overdraft, project, and invoice finance Loan Products, or
- (b) On the last business day of each month, for all other Loan Products.

Unpaid interest will be debited to an account you have with us or added to the Amount Outstanding. This could mean you end up paying interest on interest.

3.4 We can change the base rate and margin

We can change the interest rate for a loan at any time, except during a fixed rate period. The change may be to the base rate, the margin, or both.

When making a change, we will act reasonably and to the extent reasonably necessary to protect our legitimate business interests. For example, we may make changes in response to increased costs or a law change (see Clause 7), or following a Review Event (see Clause 10).

Clause 22.3 describes how we tell you about any changes. You can repay the loan if you do not agree with a change (see Clause 5). In repaying the loan, you may need to pay any Early Repayment Costs, fees, or other Costs that would ordinarily apply.

3.5 We use the default rate to calculate interest on overdue amounts

You must pay all amounts on time and not exceed your limits.

You will pay interest at the default rate calculated at the end of each day on any overdue portion of any Amount Outstanding and any amount which exceeds a limit (unless your Facility Document states otherwise). The rate applied each day is the default rate divided by 365 or, for some foreign currency amounts 360, or as otherwise stated in a Lending Document.

Interest will accrue at the default rate until you pay it. This interest will be debited to an account you have with us, or it will be added to the Amount Outstanding, on dates we select. This could mean you end up paying interest on interest.

3.6 How we calculate variable rates

If your Facility Document contains a variable rate for your Loan Product (or any component of your Loan Product), it may be specified in a Facility Document as being either an 'all-up' effective interest rate or a base rate plus a margin. In either case, it can be reset as set out in the relevant Facility Document.

Variable rates vary because of changes to the underlying rates or margins used to determine them.

Your variable rate at any time will be the rate we advise you at that time.

4. Making repayments

4.1 Making your regular repayments

You must repay the Amount Outstanding under any Loan Product you have with us as set out in the 'Repayment' section of your Facility Document. If the Facility Document does not contain provisions regarding repayment, you must repay the Amount Outstanding on demand.

4.2 Making your final repayment

For each Loan Product you have with us, you must pay us the Amount Outstanding on the Maturity Date.

5. Repaying early

5.1 You can repay a loan early

You can repay a loan before it becomes due. Unless we tell you otherwise, you must give us two business days' written notice if you intend to do this.

Once you give us notice, you must make the early repayment stated in that notice.

5.2 We may recover Early Repayment Costs

If you repay or terminate any Loan Product early, you must reimburse us for any Early Repayment Costs and any other Costs we incur as a result.

We have a different calculation for Early Repayment Costs for each product, but we apply those calculations consistently between customers. You can ask us to calculate your Early Repayment Costs at any time, without charge. In calculating the amount of any Early Repayment Costs, we may take into account:

- (a) the original term of the Loan Product
- (b) the unexpired portion of any fixed rate period which applies to the Loan Product
- (c) the interest rate that applies to the Loan Product at the date of repayment
- (d) the Costs we may incur if we have to re-lend or re-invest the amount of the repayment
- (e) the complexity of the Loan Product and the likelihood that the amount of the repayment can be re-lent or reinvested, with reference to market rates and conditions at the time you repay.

You must pay the Early Repayment Costs on the date you make the repayment.

5.3 You cannot redraw what you've repaid unless we agree

Unless we agree otherwise, you cannot re-draw any amounts you repay early, and the limit will be reduced by the principal amount repaid.

6. Paying fees and charges

6.1 You pay the fees we specify

You must pay us the fees specified in each Facility Document and any fees payable in any fee guide that applies to your Loan Product.

None of the fees you pay us are refundable, even where payable in advance.

6.2 We can change the fees payable

We can change any fee payable in connection with a Loan Product if:

- (a) costs increase or the law changes (as described in clause 7)
- (b) a Review Event happens (see clause 10), or
- (c) it is reasonably necessary to protect our legitimate business interests.

We will tell you at least 14 days before the change takes effect, including by electronic means or by updates on our website: [bnz.co.nz](https://www.bnz.co.nz).

7. What happens if costs increase or the law changes

7.1 How we deal with increased costs or reduced amounts received

We will let you know as soon as we can if any laws, prudential standards, policies or other requirements that apply to us change, and we reasonably believe there will be:

- (a) a material increase in the cost to us of providing or maintaining a Loan Product, or
- (b) a material reduction in the effective return (including return on our capital) or amount we are able to receive from a Loan Product.

To the extent that we cannot eliminate or reduce the resulting adverse impact on us, we may require you to compensate us for the relevant amount. In this case, we will act reasonably and to the extent reasonably necessary to protect our legitimate business interests. This compensation could be by an increase in base rate, margin, or fees, by a recovery of Cost, or in some other manner. We'll advise you if this happens in accordance with clause 22.3.

7.2 How we deal with regulatory events and law changes

From time to time, our ability to provide a Loan Product to you may be prevented, delayed or otherwise adversely affected by regulatory events. These could include changes in law, prudential standards, policies or other requirements applying to us as a bank, or the actions of a regulatory authority.

If a regulatory event affects you or causes you to suffer a loss, we are not required to challenge or mitigate the effect of the regulatory event and our liability is limited to supplying an alternative Loan Product.

If the law changes and we reasonably believe that it will be against the law for us to provide a Loan Product to you, we will:

- (a) let you know as soon as we can, and
- (b) work with you to ensure the law is being complied with.

If the law requires us to cancel your Loan Product, you will have to repay us the Amount Outstanding (which may include Early Repayment Costs). If this happens, we will give you as much notice as the law allows.

7.3 Changes to accounting standards

If at any time there is a change to accounting standards, we will review whether that affects the way we calculate financial covenants or other provisions in a Lending Document. If it does, we will discuss with you any changes we need to make to the Lending Document. If we can't agree on changes, then the accounting standards that applied when you signed the Lending Document will continue to apply.

Part 2: Your obligations to us and what happens if you don't meet them

8. You tell us that certain things are true

8.1 You make the following representations

When we enter into a Lending Document with you, we rely on what you tell us so please make sure it is correct. You represent that all of the statements set out below are true.

- (a) **Status**
You have the power and authority to carry on your business as it is now being conducted.
- (b) **Authorisation**
You have the power to enter into and perform your obligations under each Lending Document and you have taken all action required by law to authorise your entry into and performance of each Lending Document.
- (c) **Obligations valid**
Your obligations under each Lending Document will be legally enforceable against you.
- (d) **No laws violated**
When you enter into and perform your obligations under each Lending Document, you will not:
 - (i) breach any law which applies to you
 - (ii) breach any agreement you are bound by
 - (iii) breach anything in your constitutional documents.
- (e) **Sanctions**
Neither you nor any Affiliate are subject to Sanctions.
- (f) **Consents obtained**
You have all the necessary consents that you need to enter into and perform your obligations under each Lending Document, and to carry on your business.
- (g) **No default under other agreement**
You are not in default under any agreement in a way that might have a material adverse effect.
- (h) **No insolvency**
 - (i) You are solvent and you can pay your debts as they fall due.
 - (ii) Neither you nor anyone else has taken any steps to bring about your insolvency.
- (i) **No default**
No Review Event, Potential Event of Default or Event of Default has happened and is still going.
- (j) **Information true**
All information given by you, or by any other person on your behalf, was true and complete in all material respects at the time it was given, and you have told us everything that could affect our decision to provide a Loan Product to you.

8.2 You are held to repeat these representations

You repeat each representation in clause 8.1 on each day when an amount of money is payable under a Lending Document and when we lend you money.

9. We rely on you to do, or not do, certain things

At all times while you are party to a Lending Document, we are relying on you to do, or not to do, certain things. You must do (or not do) these things at all times.

- (a) **Notify us of adverse events**
You will immediately tell us if a Review Event, Potential Event of Default or Event of Default occurs.
- (b) **Carry on business**
You will carry on your business in a proper and efficient manner and pay all your debts when due.

(c) Comply with all laws

- (i) You will comply with all laws and keep all consents needed to operate your business up to date. You will also comply with all your obligations under the Lending Documents.
- (ii) You will not use, and will ensure that no Affiliate uses, any Loan Product or its proceeds in a manner that causes any person to breach Sanctions.

(d) Keep us informed

You will give us all information about you, your business, and your financial condition, that we may reasonably request.

(e) Not create security interests

You will not give or allow to exist any security interest over any part of your property other than security interests you grant to us or that arise in the ordinary course of your day-to-day business and that do not secure borrowings.

(f) Not make Disposals

You will not Dispose of any property other than in the ordinary course of business and for fair value.

(g) Pay taxes

You will file all tax returns as required by law, and pay your taxes when due.

(h) Other undertakings

You will not:

- (i) materially alter the nature of your business
- (ii) if you are a company, amalgamate with any other company
- (iii) do anything that stops you being able to carry on your business in a proper and efficient manner
- (iv) commingle any retention money (as defined in the Construction Contracts Act 2002) with other moneys and will ensure that it is paid into a separate account.

10. How we handle Review Events

If a Review Event happens, we will need to talk to you about your business and its financial condition, and discuss how it may affect your ability to meet your obligations under any Lending Document. As part of the review, we may need some more information and you agree to give us any documents or financial statements or other information we reasonably request.

As part of the review process, we may find (after acting reasonably and after talking with you) that a Review Event materially increases the risk to us. In this case, we can mitigate any risk by:

- (a) making changes to the terms of any Lending Document, including the interest rate and any fees or Costs
- (b) asking for additional security or guarantees
- (c) resetting any limit, Maturity Date or repayment dates.

11. How we handle Events of Default**11.1 Fundamental defaults and consequences**

A fundamental default occurs if any of the following happens:

- (a) you, a guarantor or a security provider is in insolvency or any of you are unable to meet your debts as they fall due from your own money, or it is clear that any of you will be unable to meet your debts as they fall due from your own money
- (b) we believe on reasonable grounds that:
 - (i) you, a guarantor, or a security provider has committed fraud, or
 - (ii) we need to take immediate action to protect or take control of any property or assets secured under a security or to otherwise protect our position.
- (c) you don't, or a guarantor or a security provider doesn't, pay any amount due under a Lending Document on time.

This is the most serious type of Event of Default. If a fundamental default occurs, we can immediately take any of the actions listed in clause 11.3. We don't need to give you notice before taking any action after a fundamental default, but we will tell you afterwards.

11.2 Other Events of Default

As well as fundamental defaults, the other events listed below can become Events of Default. This applies whether or not the event is within your control. Each of these events will be an Event of Default if the event happens and it can't be fixed or, if it can be fixed, it is not fixed to our satisfaction within 20 business days of us asking you to fix it.

- (a) You materially breach any of the obligations in any Lending Document. This will happen if:
 - (i) you, a guarantor or a security provider, or another person on your behalf, gives us material information that we reasonably think is incorrect or misleading, or a material representation under clause 8 becomes untrue for any reason
 - (ii) a Loan Product (or any other product or service we provide you) is used for a purpose not approved by us
 - (iii) you, a guarantor, or a security provider, fail to comply with any of your material obligations under a Lending Document, or any of you breach a material provision in a Lending Document.
- (b) Other creditors have rights against you. This will happen if:
 - (i) any event happens that allows any person to seize or take control of some or all of your assets or some or all of the assets of any guarantor or security provider
 - (ii) any event happens that allows anyone holding a security interest over your assets or the assets of a guarantor or a security provider to enforce that interest
 - (iii) a court order or judgment for payment is made against you or any guarantor or security provider, and isn't satisfied within five business days.
- (c) The legal situation changes in a way which we reasonably believe materially increases the risk to us. This will happen if:
 - (i) you, or any guarantor or security provider, are convicted of a crime
 - (ii) you, or any guarantor or security provider that is an individual, no longer have legal capacity to act on your own
 - (iii) it becomes illegal for you, any guarantor or security provider, or for us, to do what we've agreed to do under a Lending Document.
- (d) Your business changes in a way which we reasonably believe materially increases the risk to us. This will happen if:
 - (i) whoever controls you, or controls a guarantor or security provider, changes compared to immediately before your first use of a Loan Product. 'Control' refers to owning or controlling (directly or indirectly) more than 25% of shares (if a company), units (if a unit trust), partnership interests, or membership or voting of a board of directors, partnership or other governing body
 - (ii) any licence, permit or other similar authorisation that you need to run your business lapses
 - (iii) any insurance we require in relation to a Loan Product is not continued or renewed
 - (iv) any insurance you are required to have under a Lending Document cannot be fully relied on.
- (e) You, a guarantor, or a security provider have a material adverse change and we reasonably believe, following discussion with you, that the risk to us is materially increased.
- (f) Any other event described in a Lending Document as an Event of Default occurs.

11.3 Consequences of an Event of Default

When there is an Event of Default, we can do any of the following:

- (a) make any Amount Outstanding and any Indebtedness to us immediately due and payable without any further notice other than as required by law. This means we can bring forward any amounts that are payable in the future
- (b) immediately cancel any Loan Products you have with us and immediately cancel or reduce all or any part of a limit (or a component's limit)
- (c) close out any markets transactions you have with us (such as hedging, money market or currency transactions) and set off any amounts we may owe you under them against any Amount Outstanding
- (d) charge or continue to charge interest at the default rate on any overdue amounts (including interest)
- (e) at our discretion, use amounts we receive for the Amount Outstanding to repay any part of the Amount Outstanding. We may do so even if you ask us not to, but we will act reasonably in the circumstances and in accordance with the law
- (f) sue you for the Amount Outstanding
- (g) claim under any guarantee and enforce any security according to its terms and as required by law.

11.4 Farm Debt Mediation Act 2019

If anything in a Lending Document conflicts with something in the Farm Debt Mediation Act 2019, the provision in this Act will apply.

12. We can appoint an investigator

12.1 We have the power to appoint an investigator

If a Review Event, Potential Event of Default or Event of Default has happened, we can appoint a person to act as an investigator.

You must pay all reasonable Costs associated with the investigator.

12.2 What an investigator can do

An investigator can look into your affairs. When this happens, the following apply:

- (a) You will give the investigator reasonable access to enter your premises, without notice, if requested.
- (b) The investigator can ask anyone about your financial condition, business, operations or other affairs.
- (c) The investigator may inspect and take copies of your records, whether they are held by you or someone else.

12.3 You must assist them

You must do everything reasonably asked by an investigator to enable them to do their job.

13. You give us a power of attorney

13.1 Who you appoint as attorneys and what they can do

You appoint us, each lender's representative, and any receiver as your attorney. This only occurs if a Review Event, Potential Event of Default, or Event of Default has happened, or where we tell you that we consider it reasonably necessary to protect or perfect security. In those circumstances, the attorney can:

- (a) do anything which the attorney thinks is necessary under any Lending Document
- (b) recover under and discharge a security interest
- (c) start, carry on, or settle any lawsuits
- (d) exercise any rights available to you in connection with any property or generally, and
- (e) do anything else that you must or may do under any Lending Document or by law.

You will pay for anything the attorney does.

13.2 Other agreements about attorneys

- (a) Each attorney may pass its powers on to someone else (including this power of delegation).
- (b) You agree to be bound by anything done by an attorney.

Part 3: How we manage your Loan Products and communicate with you

14. How payments work

14.1 The order in which we use payments

We can use any payment we receive for a Loan Product to reduce the Amount Outstanding. We can apply the payment in any order but will usually apply the amounts in the following order:

- (a) Costs
- (b) interest
- (c) principal.

We can also hold any money you pay us in a separate account until we are satisfied that you have repaid the Amount Outstanding in full.

14.2 Payments must be made on a business day

Amounts that are due on non-business days must be paid to us on the next business day. This has two exceptions:

- (a) If the next business day falls in the calendar month after the due date. The amount must then be paid on the previous business day instead.
- (b) Overdraft, project, and invoice finance Loan Products work differently. For those products, principal and interest payments can fall due 7 days a week. This also applies to some fees, as set out in your Facility Document and any fee guide.

14.3 Where and how to make payments

You must make all payments in the way set out in the relevant Lending Document, or in such other way as we may tell you.

14.4 You must not deduct any amounts from your payments

You must make each payment to us without any deduction or withholding for any reason (whether by set-off, counterclaim or otherwise), except to the extent required by law.

If the law requires any deduction or withholding to be made, then you must increase your payment so that, after the deduction or withholding, we receive the amount we should have received in the first place.

14.5 We can use amounts we owe you to satisfy amounts due to us (this is called 'set-off')

We can set off any amounts we owe you at any time against amounts due to us. For example, we can use a deposit you have with us to repay any amount due to us. We can do this regardless of the terms on which those amounts are owing, and we can break any term deposit, and switch amounts into a different currency, if we think it necessary to do so.

14.6 You give us a general indemnity

You indemnify us for each Cost we incur when you do not comply with your obligations under a Lending Document, including as a result of:

- (a) your not making a payment under a Lending Document when due
- (b) our exercising a right under a Lending Document, including recovering any amounts due to us
- (c) our having to do something under a Lending Document that is not something we usually do
- (d) your not paying any registration or other fees and taxes you should pay, or
- (e) any amount being paid in a different currency from the one in which it was due.

In each case, your indemnity takes the form of paying us, on demand, the amount that we tell you we need to compensate us for that Cost, except when that Cost arises as a result of our fraud, negligence or wilful misconduct. This compensation includes each Cost incurred in re-arranging:

- (f) any amounts we arranged to fund a loan or other amount payable under a Lending Document, and
- (g) any transaction we arranged in anticipation of funding a loan or any other amount payable under a Lending Document.

14.7 Exclusive of GST

Unless otherwise specified, all amounts referred to in the Lending Documents are exclusive of GST. If we have to pay GST or a similar tax on a supply connected with a Lending Document, you must pay us what you owe us for the supply plus an additional amount. This additional amount is equal to the amount for the supply multiplied by the prevailing GST rate.

14.8 We can debit your account

If you owe us money at any time, we can debit the amount due to any account you have with us. If making a debit causes any limit for the account to be exceeded, this will not cure any Event of Default that exists.

15. Releasing a guarantee or security

We can release all or part of any guarantee or security at any time.

You may request a formal release of a guarantee or security at any time. We will promptly consider that request.

We will grant it if, in our reasonable opinion:

- (a) a guarantor or security provider has met its obligations under the relevant guarantee document or security document, and
- (b) no further obligations will arise under that guarantee or security document or in relation to any amounts recovered under them.

Each guarantee and security will stay in place after repayment of any Loan Product until we give a formal release of the guarantee or security to the guarantor or security provider.

Any release may be worded in such a way as to protect us if you subsequently become insolvent.

16. How we manage your personal information

16.1 We may collect your information

We may collect, use and disclose your personal information according to the following:

- (a) the Privacy Act 2020
- (b) the provisions of our Standard Terms and Conditions that relate to personal information (**Privacy Statement**), and
- (c) this clause 16.

16.2 We may accept information from you about another person

If you give us, or authorise us to collect, personal information about another person (for example, a guarantor or security provider), you confirm that:

- (a) you have their authority to provide us with, or they have authorised us to collect, their personal information in accordance with our Privacy Statement
- (b) you have informed them of their rights to access and request correction of their personal information.

16.3 We may use your information

Without limiting our Privacy Statement, we may:

- (a) disclose your personal information to:
 - (i) any person to whom we transfer any of our rights or obligations under any Lending Document or any other agreement with you
 - (ii) any guarantor or security provider (and, if necessary, we may disclose personal information about any guarantor or security provider to you)
 - (iii) any regulatory authority.
- (b) use your personal information to the extent necessary to exercise our rights or satisfy our obligations under these Master Terms, any Lending Document or any other agreement with you.

16.4 We can use your information to send you information about our products and services

We may contact you (including by email and other electronic means) about, and offer you, any of our products or services that we reasonably believe might interest you. We can do this both while you are a Loan Party and for a reasonable time afterwards. We can also use and share your personal information so you can be sent information that we reasonably believe might interest you about:

- (a) events, fundraising or organisations that we support
- (b) third-party offers, products and services from persons or organisations we have partnered with (we only partner with organisations that meet our high standards).

You have the right to ask us not to use your personal information to conduct market research or contact you with marketing or promotional messages, as covered in our Standard Terms and Conditions.

17. We can transfer rights and obligations

We can transfer any of our rights and obligations under any Lending Document to another person, provided that person is reasonably capable of performing our obligations under the relevant Lending Document. We'll promptly tell you once we make the transfer.

You may not transfer any of your rights or obligations under a Lending Document without our prior written consent.

18. We do not waive our rights

If we don't do, or we delay doing, something we are allowed to do under any Lending Document or by law, that doesn't mean we have waived our right to do it, and it will not stop us being able to do it later if we wish.

Our rights under each Lending Document are additional to any rights we have under the law.

19. Any certificate is conclusive

Any certificate we give you about an amount or fact relating to a Lending Document will be evidence of that amount or fact. For example, a bank statement could be a certificate. It shows the amount owing under a Lending Document, but is not itself a Lending Document.

20. If one provision is invalid, that won't affect the others

If any part of a Lending Document is illegal or can't be used, that doesn't affect the rest of that Lending Document.

21. How we manage communications

21.1 How we will communicate with you

Notices, demands, statements, certificates and other communications from us can be delivered in any of the following ways:

- (a) given to you personally
- (b) left at or posted to the address you last gave us
- (c) published in the press or on our website: [bnz.co.nz](https://www.bnz.co.nz)
- (d) given to you electronically by:
 - (i) short message service ('SMS') or 'txt' to your mobile telephone number
 - (ii) email or any other electronic means
 - (iii) referring you to information on our website.

You agree that we may use your last nominated mobile number, email address or other electronic address for an electronic notice. You may notify us in writing of a change to any of these contact details at any time. If you ask us to, we will give you paper copies of anything we send you electronically.

We might send notices at any time, so make sure you check your email, mobile phone and other electronic addresses regularly, and tell us if these details change.

A Lending Document may list other ways in which we will communicate with you.

21.2 Your receipt of our communications

You are taken to have received:

- (a) a document or communication sent to you by ordinary post, five days after it was posted
- (b) a document or communication sent by another form of electronic communication (such as SMS or email), when sent
- (c) a document or communication published in the press or on our website, when it is first published.

21.3 Written communications from you

Any written communications you send us must be signed by you (or, in the case of a company or another entity, by a director or another person we have approved).

21.4 Telephone recording

We may record and retain some conversations with you, including to:

- (a) make sure we have carried out your instructions correctly
- (b) help improve our products
- (c) make sure we comply with our regulatory obligations
- (d) help detect or prevent fraud or other crimes.

22. How we make amendments

22.1 Changes to Master Terms and Lending Documents that we can make without your consent

We can amend the Master Terms or any Lending Document without your consent if we think the amendment:

- (a) is minor
- (b) is to correct an error
- (c) is required to comply with any law or regulatory directive
- (d) is to provide service enhancements, including for new technology and electronic capabilities, or
- (e) will not have a material adverse effect on you.

We will notify you of any amendments we make under this clause 22.1 to the Master Terms by making the updated Master Terms available on our website: [bnz.co.nz](https://www.bnz.co.nz). We will notify you of any changes to a Lending Document in one of the ways described in clause 21.1. Failure to notify you will not affect the validity of the amendments.

22.2 Other changes

All other changes to these Master Terms will need your written or verbal agreement. If we agree a change verbally, we will send you confirmation of what has been agreed.

22.3 Changes to interest and fees

At any time, as long as we act reasonably and where reasonably necessary to protect our legitimate business interests, we can change:

- (a) the base rate that applies to your variable interest rate
- (b) the margin that forms part of an interest rate, or
- (c) the fees that apply to a Loan Product.

We will give you at least 14 days' notice of any changes to your margin or fees. Base rates may change at any time.

22.4 Changes to the Loan Products we offer

If you are no longer eligible for a type of Loan Product, or that type of Loan Product is no longer available, we can choose to transfer you to another type of Loan Product. We will tell you of our intention to transfer you, and will give you information about the nature and cost of the new Loan Product. You will be given the opportunity to select a different type of Loan Product or you can choose to repay the Amount Outstanding under your current Loan Product.

If we do not hear from you within the time set out in the notice we send you, you agree to us transferring you to the type of Loan Product we have selected. If you choose to repay the Amount Outstanding under your current Loan Product, you may have to pay us Early Repayment Costs (see clause 5).

23. Consumer legislation does not apply

You confirm that you have obtained each Loan Product for business purposes, and therefore neither the Consumer Guarantees Act 1993 nor Part 2 of the Credit Contracts and Consumer Finance Act 2003 will apply.

24. Signing documents

24.1 Multiple copies of documents can be signed

Any Lending Document may be signed in multiple separate copies, with all copies taken to constitute the one document.

24.2 Borrower can sign on behalf of guarantors and security providers

Each guarantor and security provider that is part of a group of companies with the borrower agrees that the borrower under the relevant Loan Product may act on its behalf under the relevant Lending Documents and can:

- (a) sign any amendments to those Lending Documents
- (b) give and receive notices and other communications under those Lending Documents.

Each guarantor and security provider referred to above agrees that anything the borrower does under this clause will be binding on them.

25. Electronic signing

At our discretion, a Lending Document may be signed by each party electronically in any form that satisfies the requirements of the Contract and Commercial Law Act 2017.

26. Third parties can rely on a Lending Document

The Contract and Commercial Law Act 2017 allows us, each lender's representative, a receiver and an attorney to use every provision of a Lending Document that confers a benefit, even if we, or they, are not party to the document. The consent of a lender's representative, receiver or attorney who receives a benefit under a Lending Document is not needed for any amendments made to any Lending Document.

27. Any legal proceedings will normally occur in New Zealand

You and we agree that any lawsuits connected to any Lending Document may be brought in the courts of New Zealand. Neither of us will object to those proceedings being taken there. You also agree that we may bring a lawsuit in any other jurisdiction if you, a guarantor or a security provider are located overseas.

28. Serving legal notices

We can serve legal notices as follows:

- (a) if you are a company or other legal entity, through any of the methods available under the Companies Act 1993, or by sending an email to your usual email address or to the usual email address of one or more of your directors, trustees, partners or governing officers,
- (b) if you are not resident in New Zealand, you:
 - (i) permanently appoint the borrower as your agent for receiving legal notices concerning any lawsuits under any Lending Document, and
 - (ii) agree that failure to notify you will not invalidate the lawsuit.

29. Resolving a conflict between documents

If anything in these Master Terms conflicts with something in another Lending Document, the provision in the Lending Document will apply.

30. The terms are subject to New Zealand law

These Master Terms and each Lending Document are subject to New Zealand law.

Part 4: Terms for trusts, charitable trusts, partnerships, limited partnerships, incorporated societies, local authorities and individuals

If this Part 4 applies to you, then each representation you make under clause 31.1, 32.1, 33.1, 34.1, 35.1, 36.1 or 37 will be repeated on each day when an amount of money is payable under a Lending Document or we lend you money.

The representations and covenants in this Part 4 are in addition to the representations and covenants in any other Part of these Master Terms or in any Lending Document. Each representation applies when an amount of money is payable under a Lending Document and when we lend you money. Each covenant applies at all times while you are party to a Lending Document.

If at any time you think you may not be able to comply with anything in this Part 4, please let us know. We can always agree to things like a change in trustee or a change in partner, as long as it doesn't adversely affect our position.

31. Particular terms for trusts

31.1 Things trustees state are true

If you sign a Lending Document as a trustee of a trust, you make each of the representations in clause 8 and also represent that each of the following is true:

- (a) the full name of the trust is as set out in the Lending Document
- (b) the trust exists in compliance with the laws of New Zealand
- (c) you have given us details of all trustees of the trust and the trustees are the legal owners of all trust property
- (d) you have given us a complete copy of the constitutional documents for the trust
- (e) you have a right to be reimbursed from the trust property for any amounts you have to pay under a Loan Product
- (f) no action has been taken or proposed to wind up the trust.

31.2 Things trustees will and won't do

If you sign a Lending Document as a trustee of a trust, you agree to do, or not do, each of the things in clause 9 and also agree that you will not:

- (a) resign
- (b) agree to any new trustee being appointed
- (c) change your constitutional documents in any material respect
- (d) in any way prejudice the rights of each trustee to be reimbursed from the trust property or the beneficiaries.

31.3 Your liability if you are an independent trustee

If you are named as an independent trustee in a Facility Document, your liability under each Lending Document is limited to the trust property available to meet your liability. However, this limitation does not apply if you lose your right to be indemnified out of the trust property, or diminish the value of the trust property through your fraud or willful breach of trust. If either of these apply, we can claim against you personally to the extent we are unable to recover amounts due to us from the trust property.

31.4 The order in which we recover amounts

We can decide the order in which we recover any amounts due from you in your capacity as a trustee of a trust. We have the sole right to decide whether we recover out of trust property or your personal assets.

32. Particular terms for partnerships

32.1 Things partners state are true

If you sign a Lending Document as a partner, you make each of the representations in clause 8 and also represent that each of the following is true:

- (a) the full name of the partnership is as set out in the Lending Document
- (b) the partnership exists in compliance with the laws of New Zealand
- (c) you have given us details of all partners of the partnership and the partners are the legal owners of all partnership property
- (d) you have given us a complete copy of the constitutional documents for the partnership
- (e) no partner has given notice that they are retiring from the partnership, nor have any of their powers been passed on to someone else.

32.2 Things partners will and won't do

If you sign a Lending Document as a partner, you agree to do, or not do, each of the things in clause 9 and also agree each of the following:

- (a) you'll make sure the partnership is not ended
- (b) you'll make sure no partner retires
- (c) you'll make sure no partner transfers their partnership interest to anyone other than another partner
- (d) you'll make sure the partnership's constitutional documents are not changed in any material respect.

32.3 Things a partner acknowledges

If you sign a Lending Document as a partner, you acknowledge that:

- (a) as well as being liable with the other partners, you are individually liable for all the obligations of the partnership and we may be able to claim against your personal assets
- (b) any partner may give us instructions that bind all of the partners and we may act on those instructions, and
- (c) you're all still bound by that Lending Document despite any changes to the partnership, whether by death, incapacity, or retirement of any partner, the admission of any new partner, or in any other way.

32.4 The order in which we recover amounts

We can decide the order in which we recover any amounts due from you in your capacity as a partner of a partnership. We have the sole right to decide whether we recover out of partnership property or your personal assets.

33. Particular terms for limited partnerships

33.1 Things a general partner states are true

If you sign a Lending Document as a general partner in a limited partnership, you make each of the representations in clause 8 and also represent that each of the following is true:

- (a) the full name of the limited partnership is set out in the Lending Document
- (b) the limited partnership exists in compliance with the laws of New Zealand
- (c) you have given us details of each general partner and each limited partner
- (d) all of the property of the limited partnership is legally owned by you and each other general partner, if any, and is under the control of the general partner or general partners
- (e) you have given us a complete copy of the constitutional documents for the limited partnership
- (f) no step has been taken to remove you as a general partner.

33.2 Things a general partner will and won't do

If you sign a Lending Document as a general partner of a limited partnership, you agree to do, or not do, each of the things in clause 9 and also agree each of the following:

- (a) you'll make sure that no partner retires
- (b) you'll make sure that no partner transfers their partnership interest to anyone other than another partner
- (c) you'll make sure the limited partnership's constitutional documents are not changed in any material respect
- (d) you'll make sure the property of the limited partnership will continue to be available to meet your obligations under the Lending Documents even if the limited partnership ends, or the members of the limited partnership change
- (e) you'll remain as a general partner of the limited partnership and will not pass any of your powers and authority to anyone else
- (f) you'll tell us about any change to the limited partnership and make sure these are recorded on the register for limited partnerships under the Limited Partnerships Act 2008
- (g) you'll tell us about any circumstances that may give rise to a 'terminating event' (as defined in the Limited Partnerships Act 2008) regarding the limited partnership
- (h) you'll make sure that no actions are taken to end the limited partnership and will not make any request to deregister it
- (i) you'll make sure that all property of the limited partnership is kept separate from your other property, and it is clearly identified as the property of the limited partnership.

34. Particular terms for charitable trusts

34.1 Things a charitable trust states are true

If you sign a Lending Document as a charitable trust, you make each of the representations in clause 8 and also represent that each of the following is true:

- (a) you have given us details of all trustees of the trust and the trustees are the legal owners of the trust property
- (b) you have given us a complete copy of the constitutional documents for the charitable trust
- (c) your trust board was correctly appointed under your constitutional documents and the laws of New Zealand
- (d) you are a registered charity
- (e) no member of the trust board has resigned or had its appointment cancelled, nor have any of their or the trust board's powers been given to anyone else
- (f) none of the charitable trust's property has been:
 - (i) given or transferred to any other trust or person, or
 - (ii) mixed with any property that is not the charitable trust's property
- (g) no action has been taken or proposed to wind up the charitable trust.

34.2 Things a charitable trust will and won't do

If you sign a Lending Document as a charitable trust, you agree to do, or not do, each of the things in clause 9 and also agree to:

- (a) do all things you need to do to maintain your status as a registered charity, including filing annual returns when due
- (b) not do anything that would result in a change to your trust board
- (c) not change your constitutional documents in any material respect
- (d) not allow the charitable trust to be wound up.

35. Particular terms for incorporated societies

35.1 Things an incorporated society states are true

If you sign a Lending Document as an incorporated society, you make each of the representations in clause 8 and also represent that each of the following is true:

- (a) you are the only legal owner of the incorporated society's property
- (b) you have given us a complete copy of the constitutional documents for the incorporated society
- (c) your committee was correctly appointed in accordance with the laws of New Zealand
- (d) you are a registered incorporated society
- (e) no member of your committee has resigned or had their appointment cancelled, nor have any of their or the committee's powers been passed on to anyone else
- (f) none of the incorporated society's property has been:
 - (i) given or transferred to any trust or person, or
 - (ii) mixed with any property that is not the incorporated society's property
- (g) no action has been taken or proposed to wind up the incorporated society.

35.2 Things an incorporated society will and won't do

If you sign a Lending Document as an incorporated society, you agree to do, or not do, each of the things in clause 9 and also agree to:

- (a) do all things you need to do to keep being an incorporated society
- (b) not do anything that would cause a change to your committee
- (c) not change your constitutional documents in any material respect
- (d) not allow the incorporated society to be wound up.

36. Particular terms for local authorities

36.1 Things a local authority states are true

If you sign a Lending Document as a local authority, you make each of the representations in clause 8 and also represent that each of the following is true:

- (a) you are a local authority named in Schedule 2 to the Local Government Act 2002
- (b) you are the only legal owner of all of the local authority's property
- (c) no action has been taken to wind up the local authority
- (d) for the purposes of section 117 of the Local Government Act 2002, your involvement with each Lending Document:
 - (i) complies with the Local Government Act 2002
 - (ii) is something you're allowed to do, and
 - (iii) is for a purpose authorised by either the Local Government Act 2002 or another Act.

36.2 Things a local authority will and won't do

If you sign a Lending Document as a local authority, you agree to do, or not do, each of the things in clause 9 and also agree that you will:

- (a) give us, when we ask, a copy of your:
 - (i) current annual plan and a copy of the annual plan for each following year as soon as you have adopted it
 - (ii) latest long-term plan and liability management policy and, as soon as there are any material changes to either, details of those changes
 - (iii) latest annual report and your annual report for each following year as soon as you have adopted it, and
- (b) make sure that any security you give us includes security over any rates that may be charged under the Local Government Act 2002 and the Local Government (Rating) Act 2002.

36.3 We acknowledge the Crown gives no guarantee

We acknowledge that your obligations as a local authority under each Lending Document are not guaranteed by the Crown.

37. Particular terms for individuals

If you sign a Lending Document as an individual (and not as a trustee of a trust), you:

- (a) agree to do, or not do, each of the things in clause 9
- (b) make all of the representations in clause 8, and

you also represent that each of the following is true:

- (c) you are doing so in your personal capacity
- (d) you have full mental capacity to do everything required under each Lending Document.

Part 5: Terms for guarantors

This Part 5 applies to each person who is party to a Lending Document as a guarantor.

Warning. We advise each person entering into a Lending Document as a guarantor to receive independent legal advice about 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.

The things you tell us are true and the things you agree to do or not do in this Part 5 are in addition to the obligations you agree to in any other Part of these Master Terms or in any Lending Document.

38. You give us your guarantee

38.1 Your guarantee of payment is unconditional

You guarantee to us payment of the guaranteed amounts when they are due. This is an unconditional obligation. It can only be cancelled with our agreement.

38.2 Your payment obligations

At any time, we can demand you pay the guaranteed amounts that are due for payment, and you must pay them without deduction (whether by set-off, counterclaim or otherwise). We can make multiple demands and can demand all or part of the guaranteed amounts. You must pay, whether or not another person may also be required to pay, all or part of the guaranteed amounts.

We will charge you interest on all amounts that we demand. We will calculate the interest:

- (a) from the date those amounts are demanded to the date we receive them
- (b) on the daily balance of the amount unpaid, and
- (c) at the highest rate we would charge the relevant Loan Party if it failed to pay any amount.

This interest will be payable monthly and, if not paid, will be added to and then become part of the guaranteed amounts.

If you do not pay any interest due to us under this clause, we can also charge you additional interest on the unpaid interest at the highest rate we would charge the relevant Loan Party if it failed to pay any amount.

38.3 The amounts that you guarantee

The guarantee applies to all Indebtedness the relevant Loan Parties owe us at any time. Guaranteed amounts include any amounts:

- (a) we advance or pay to, on behalf of, or at the request of, any Loan Party at any time
- (b) currently owing by a Loan Party under any Lending Document
- (c) owing by a Loan Party in the future under any Lending Document
- (d) owing by any Loan Party alone or together with another person
- (e) making up any interest, fees and other amounts payable in relation to the amounts in (a) to (d) above.

38.4 Amounts payable if a guarantee limit amount is set

- (a) If a guarantee limit amount is set out in a guarantee document, the maximum amount we can demand from you is limited to:
 - (i) that guarantee limit amount, plus
 - (ii) interest calculated in the way we have described in clause 38.2, plus
 - (iii) any Costs we incur when we exercise our rights under, or enforce the guarantee document.
- (b) If a guarantee limit amount is calculated by reference to your interest in specific property and you are a joint owner of that property, your liability under that guarantee document will be limited to your share of that property.

38.5 Amounts payable if a guarantee limit amount is not set

If no guarantee limit amount is set out in your guarantee document, the maximum amount we can demand from you is unlimited.

38.6 You are liable as if you borrowed the loan

As between you and us (but without affecting the obligations of any other Loan Party), you are liable under this guarantee as a sole and principal debtor and not as a surety.

38.7 You are liable to repay the guaranteed amounts jointly together with other guarantors and on your own

Where a guarantee document is provided by more than one guarantor, each guarantor providing that guarantee is jointly and severally liable with each other guarantor providing that guarantee. This means each guarantor is liable on its own to pay the guaranteed amounts as well as being jointly liable with the other guarantors. We may ask any of the guarantors to pay all of the guaranteed amounts. We don't have to ask any other guarantor to pay.

38.8 We can exercise our rights under any security separately

If you have provided any security to us, we can exercise our rights under that security independently of this guarantee. We will apply any amounts received from the Disposal of secured property towards payment of the guaranteed amounts.

38.9 Costs of recovery

You indemnify us against all Costs we incur in enforcing your obligations under a Loan Document, including recovering any amounts due.

39. Your obligations as guarantor**39.1 Things you acknowledge and agree**

You acknowledge and agree that:

- (a) all terms and conditions of your guarantee are set out in your guarantee document and these Master Terms. This means that earlier discussions do not form part of our agreement with you
- (b) you have not relied on any documents, promises or statements made by us or on our behalf, or made by any other person. This means that earlier discussions do not form part of our agreement with you
- (c) you are responsible for carrying out your own checks of each Loan Party and their ability to make payments to us when they are required to
- (d) we do not have to satisfy any condition before making a demand on you
- (e) you may not terminate or cancel your obligations to us unless we agree in writing
- (f) if you ask us, we may provide you with details of the guaranteed amounts but we don't have to do so, and we don't have to provide any details about any other Loan Party, any other guarantee or security we hold, or anything else
- (g) we don't have to tell you about any changes made to a Loan Product that you have guaranteed. This applies no matter how fundamental the change is, including if it increases your liability under your guarantee.

39.2 You are still liable even if we can't claim against another Loan Party

As a separate obligation to the guarantee in clause 38.1, you unconditionally and irrevocably agree to pay to us on demand the equivalent amount to any guaranteed amounts we have been unable to recover from you or any other Loan Party. You accept this as a separate obligation whatever the reason for our failure to make the recovery:

- (a) whether or not we know that reason
- (b) whether or not that reason is:
 - (i) a Loan Party or any other person didn't have the power to do something or didn't exercise its power properly, or
 - (ii) a person who tried to act on behalf of a Loan Party or any other person wasn't authorised to do so, or
 - (iii) a Loan Party didn't have the legal right to do something it tried to do, or
 - (iv) a Loan Party is in liquidation or put under administration; changes status, constitution or control or is reconstructed, amalgamated or reorganised (or steps are taken to do any of these things), or
 - (v) a provision of any Lending Document or these Master Terms or an obligation of any Loan Party to pay any guaranteed amounts is or becomes void or unenforceable, or
 - (vi) any other matter whatsoever.

Your obligation is an independent obligation to pay us on demand that amount we could have recovered if the things described above had not occurred. You must pay us on a full indemnity basis as if you had incurred the Indebtedness yourself.

The words 'guaranteed amounts' include any amount that would have been included in the guaranteed amounts if the things described in this clause hadn't happened.

39.3 Things that happen to other parties do not release you from your obligations

You will not be released from this guarantee, nor are your obligations affected, because:

- (a) we give a waiver, consent or other concession to any Loan Party or another person, or give them longer to pay
- (b) we agree to any amendment (however fundamental and even if it increases your liability under this guarantee) to any Lending Document or another security interest, guarantee or other agreement
- (c) we agree to a replacement or release of any Lending Document or another security interest, guarantee or other agreement
- (d) any Lending Document or other security interest, guarantee or agreement ceases to exist or be enforceable, or we enforce or don't enforce any such document
- (e) a Loan Party is in liquidation or put under administration; changes status, constitution or control; or is reconstructed, amalgamated or reorganised (or steps are taken to do any of these things)
- (f) a person named as a Loan Party in any Lending Document, or who was intended to enter into any Lending Document or otherwise provide security or a guarantee, hasn't done so or hasn't done so effectively, or
- (g) anything else happens that could affect your obligations under the guarantee were it not for this clause.

We are not liable to you regarding any of these matters, even though your right to claim against the borrower or another Loan Party may be affected as a result.

40. Your obligations continue and survive recovery

40.1 If we lose a recovery, your obligations continue

If any amount we receive (a 'recovery') is or may be taken from, or required to be repaid by, us in an insolvency process or for some other reason:

- (a) the recovery will not count towards reducing the guaranteed amounts
- (b) our rights will be restored to those we had under the guarantee and any security as if there had been no recovery
- (c) we can exercise all of our rights under the guarantee and any security as if there had never been a recovery (even if we provided a notice of final discharge to you).

40.2 Your obligations continue until we release them

Your guarantee is a continuing guarantee for all the guaranteed amounts until we send you a written release in accordance with clause 15. Until we send you that release, your obligations to us will not be satisfied by, or released, as a result of any of the following:

- (a) any payments you (or any other Loan Party) make to us
- (b) your (or any other Loan Party's) accounts with us being in credit at any time
- (c) any settlement of accounts we have with you (or any other Loan Party)
- (d) the cancellation or repayment in full of any Loan Products that are the subject of the guarantee
- (e) any other matter that might affect your obligations to us.

40.3 You can limit further liability

- (a) You may stop a guarantee from extending to further loans made to a borrower by giving us a written stop notice (a 'Stop Notice').
- (b) A Stop Notice will only apply to any guaranteed amounts that arise from a loan made after the date we actually receive the Stop Notice. If we have already agreed to provide a loan before the date we receive the Stop Notice, the guarantee will also apply to that loan.
- (c) If we receive any payment of the guaranteed amounts after we have received a Stop Notice, we may apply the amount received to reduce any new liabilities of the borrower rather than the amount you have agreed to guarantee.
- (d) A Stop Notice relates solely to loans we agree to make after the date we receive it and does not in any way limit your liability for any other amounts that may become payable under the guarantee, whether those amounts arise before or after the delivery of the Stop Notice.

40.4 Release of guarantees

Each guarantee may only be released in accordance with clause 15.

41. You can't try to recover money from anyone who owes us money

Until we receive all the guaranteed amounts and you are no longer liable to us under a guarantee, you must not do any of the following (unless we ask you to):

- (a) make any claim against any Loan Party for any reason, whether or not that Loan Party is in insolvency
- (b) take steps regarding any debt any Loan Party owes you to:
 - (i) recover that debt (whether directly or by set-off, counterclaim or by any other means), or
 - (ii) accept money or other property, or exercise any rights
- (c) make any claim or enforce any right, or try to recover any amount, against any Loan Party if we are owed money by that Loan Party
- (d) claim the benefit of any security, guarantee or indemnity from any Loan Party
- (e) take over any of our rights against any Loan Party
- (f) require us to resort to any other security or right we hold in support for any guaranteed amounts before making demand on you.

If you don't comply with this clause, you will hold any money or property you receive on trust for us. You must give it to us if we are still owed any guaranteed amounts.

Part 6: Terms for security providers

This Part 6 applies to each person who is party to a Lending Document as a security provider but:

- (a) if you have given us a mortgage, clauses 43.1–43.6, 44.1, 45.4, 45.5 and 46 don't apply to you in relation to that mortgage, and
- (b) if you have given us a specific security interest, clauses 43.1 and 43.6 don't apply to you in relation to that specific security interest.

The things you tell us are true and the things you agree to do or not do in this Part 6 are in addition to the obligations you agree to in any other Part of these Master Terms or in any Lending Document.

42. Things you need to do

42.1 You must make payments

You must pay your secured indebtedness, or make sure it's paid:

- (a) when it's due under the relevant Lending Document, or
- (b) if there is no relevant Lending Document, on demand, or when required under these Master Terms, or as we instruct.

42.2 You must meet your other obligations

You must perform all of your secured obligations.

42.3 You must maintain insurance

You agree that you will do all of the following:

- (a) maintain insurance over your business and all your property for all risks that should prudently be insured against according to best commercial practice and with a level of cover that reflects best commercial practice
- (b) insure your property with reputable insurers and, if asked, give us evidence of insurance or copies of the policies
- (c) make sure that each insurance policy (other than those for third party liability):
 - (i) names us as an interested party
 - (ii) requires the insurer to give us copies of all notices given by the insurer that affect the insurance, and
 - (iii) can't be cancelled unless at least 14 days' notice has been given to us
- (d) pay all premiums on time and do anything else required to ensure your insurances are kept in force
- (e) not do anything, or allow anything to happen, that could be detrimental to any of your insurances.

43. How you secure your obligations

43.1 You grant us rights to secure your obligations

To support the payment of your secured indebtedness and the performance of your secured obligations, you grant us:

- (a) a security interest in your personal property
- (b) a fixed charge over your other property.

As well as the security given in this clause, you agree to mortgage to us your present and future interest in any real property. You acknowledge that you will get a benefit from us in exchange for providing this security.

43.2 How your security interest takes effect in relation to contractual rights

The security interest created under clause 43.1 takes effect as:

- (a) a transfer to us of any present and future accounts receivable and chattel paper (and your rights regarding them)
- (b) an assignment by way of security of any of your other present and future rights (including any that arise out of lawsuits).

43.3 When a floating charge becomes a fixed charge

If the fixed charge referred to in clause 43.1 above is not legally effective as a fixed charge, it will be a floating charge until it becomes a fixed charge under this clause.

Any floating charge will automatically become a fixed charge without us having to do anything:

- (a) either on or immediately before (at our option) an Event of Default, or
- (b) when we advise you.

43.4 The security interest cannot be postponed or subordinated

Nothing in a Lending Document will be taken to mean:

- (a) that a security interest is intended to attach (or take effect) at a later time than the time specified in section 40(1) of the PPSA
- (b) that a security interest held by any other person ranks ahead of our security interest.

43.5 Your security interest secures future advances

For the purposes of sections 71 and 72 of the PPSA, each security document secures future advances.

43.6 You will give us a mortgage if asked

Without limiting anything in clause 44.4, you will, if we ask you to do so, immediately:

- (a) give us an all obligations mortgage in the form we require over any of your real property
- (b) sign any agreement, and do any other thing that we reasonably ask in order to register a mortgage.

You agree that any mortgage given under this clause will be in substitution for the agreement to mortgage given in clause 43.1, and will not in any way affect the security interest given under clause 43.1.

43.7 You grant us continuing security

Each security interest you grant in our favour:

- (a) is a continuing security and remains in place regardless of any payments made, or anything else
- (b) remains fully effective until a final discharge is given to you under clause 15, regardless of anything else including any settlement or payment
- (c) applies to both the present and future amount of your secured indebtedness and to all your present and future secured obligations
- (d) remains fully effective regardless of any cancellation or repayment of any Loan Product which it secures
- (e) is in addition to, and remains separate from, every other security.

43.8 You cannot revoke your obligations

Your obligations under a security document are not subject to any conditions and you cannot revoke them. Your liability under a security document will not be affected by any of the following:

- (a) we grant a waiver, consent or other concession to any Loan Party or another person or give them longer to pay
- (b) we agree to any amendment (however fundamental and even if it increases your liability under this security) to any Lending Document or another security interest, guarantee or other agreement
- (c) we agree to a replacement or release of any Lending Document or another security interest, guarantee or other agreement
- (d) any Lending Document or other security interest, guarantee or agreement ceases to exist or be enforceable or we enforce or don't enforce them

- (e) any Loan Party (or another person) becomes insolvent or is amalgamated; changes status, constitution or control; or is reconstructed (or takes any steps to do any of these things)
- (f) a person named as a Loan Party in any Lending Document, or who was intended to enter into any Lending Document or otherwise provide a security or guarantee, hasn't done so or hasn't done so effectively
- (g) anything else happens that could affect your obligations under this security.

We are not liable to you for any of these matters, even though your right to claim against the borrower or another Loan Party may be prejudiced as a result.

43.9 Release of security

Any security may only be released in accordance with clause 15.

43.10 Reinstatement

If any amount received by us, a receiver, or a lender's representative (a 'recovery'), is or may be taken from, or required to be repaid by, us in an insolvency process or for some other reason:

- (a) the recovery will not count towards reducing the secured indebtedness
- (b) our rights will be restored to those we had under the security document and any security as if there had been no recovery
- (c) we can exercise all of our rights under the security document as if there had never been a recovery (even if we provided a notice of final discharge to you).

44. How our security interest is protected

44.1 We may register under PPSR

We may, at your cost, register a financing statement on the PPSR for the security interest you have granted us, and do anything else we think is reasonable to make sure the security interest is perfected and fully effective under the PPSA. You agree that you don't need to be given copies of any of the statements referred to under section 148 of the PPSA.

44.2 We can open a new account to counter third party interests in secured property

If we are told that someone else has an interest in any secured property, we may open a new account in your name. However, even if we don't do that, we will be taken to have done so at the time we were told about the other interest.

From the time the new account is opened (or is taken to be opened), the following amounts will be, or will be treated as, debited or credited to the new account:

- (a) all amounts we pay or make available to you, and
- (b) all payments you make to us.

Amounts received into (or deemed to be received into) the new account will be applied only to reduce secured indebtedness, unless the account is overdrawn.

44.3 You must help us to hold a first ranking security interest

If we ask you to do so, you must ensure that any other holder of a security interest in the secured property (a holder) enters into an agreement with us:

- (a) that confirms that our security interests rank ahead of the other holder's security interest
- (b) that is in a form which is satisfactory to us.

44.4 You will do things we ask to protect our position

If we ask you to do so, you must, at your own cost, sign any document or do anything else to:

- (a) give us the priority we want under a security
- (b) perfect any security interest, including any of the following:
 - (i) providing serial numbers and other details relating to you or any secured property
 - (ii) giving possession of, or transferring, any secured property to us
 - (iii) registering, or allowing the registration of, a financing statement or a financing change statement in respect of any security interest
 - (iv) giving us a mortgage over any real property
- (c) transfer any secured property to us (or our nominee) or a purchaser
- (d) secure to us the full benefit of our rights under any security whether on enforcement or otherwise (including granting us a power of attorney)
- (e) allow us, a lender's representative or a receiver to exercise our, or their, rights under any security.

44.5 How insurance proceeds may be used

Money paid out under any insurance is to be used, at our option, to either:

- (a) fix or replace whatever was lost or damaged, or put towards whatever was insured against
- (b) reduce your secured indebtedness.

You must hold any insurance proceeds you are given on our behalf until used as set out above.

44.6 We are not liable for the secured property

- (a) We are not responsible for any obligation you have regarding your secured property.
- (b) Even though we are not responsible, we can do something you should have done (but didn't do) connected with your secured property, and you must reimburse us, on demand, for any amount we pay in connection with your secured property and all Costs we incur as a result.

44.7 Limits to our liability

We will not, and neither will a lender's representative nor any receiver, be liable:

- (a) for any loss or damage that results from anything we or they do or don't do under a security document or any law
- (b) to account as a mortgagee in possession if we, they or any other person on behalf of any of us takes possession of any secured property.

This clause does not apply if the law makes us liable, or to the extent that it limits liability due to our fraud, negligence or wilful misconduct.

44.8 Limits on our liability to third parties

When we or a lender's representative or receiver are doing things under a security or as permitted by the law, nobody:

- (a) need enquire:
 - (i) whether the security created by the relevant security document has become enforceable
 - (ii) whether a receiver or a lender's representative has been properly appointed
 - (iii) whether the relevant rights were properly exercised or exercisable
 - (iv) about the need for any conditions of any transaction or dealing
 - (v) about how amounts paid to us, a receiver or a lender's representative were or are used
 - (vi) about the correctness of any transaction or dealing
- (b) will be affected by knowing that any such transaction or dealing was unnecessary or out of order.

44.9 We are not obliged to do things in any set order

We are not required to do anything in any set order, either:

- (a) under any security interest, guarantee or other rights we hold, or
- (b) in respect of any money or property that we hold at any time or are entitled to receive.

If we hold more than one security or guarantee, we can exercise our rights under them in whatever order we think will help us maximise our recovery.

44.10 Our rights under the Property Law Act 2007**(a) Personal property**

Clauses 3(2), 6(2) and 12 of Part 2 of Schedule 2 to the Property Law Act 2007 don't apply to a security.

(b) Real property

If a mortgage forms part of any security, clauses 3(2), 8(2), 16(2) and 18 of Part 1 of Schedule 2 to the Property Law Act 2007 don't apply to that security.

(c) Conflicts with the Property Law Act 2007

If there is any conflict between a security and Part 1 or Part 2 of Schedule 2 to the Property Law Act 2007, the security will apply.

45. The things you state as true and the things you agree to do or not do**45.1 Things you state to be true about the secured property**

You make all the representations set out in clause 8, and those set out below.

(a) No foreign property

All of your secured property is in your possession, and is in New Zealand unless you have notified us under clause 45.3(e).

(b) Sole owner

You are the sole legal and, except if you are a trustee, beneficial owner of your secured property or, if you don't own it, you have rights in it.

(c) No security interests

There are no other security interests in any of your secured property, and none are contemplated other than a security in our favour or a security interest which is allowed under clause 9(e).

(d) No other interest

No one else has any interest in, or other rights over, your secured property which could adversely affect our security.

(e) Right to grant security interest

You are able to grant an effective security interest in any of your secured property that is also subject to a purchase money security interest (as that term is defined in the PPSA).

45.2 These statements continue to be true**(a) Repetition**

Each representation in clause 45.1 is repeated continuously, so long as any security remains in force.

(b) Statements relating to future secured property

Whenever you acquire any secured property in the future, you must give the same representations in clause 45.1 regarding that property.

45.3 The things you promise to do and not do regarding secured property

You will do the things set out in clause 9 (and Part 4 if applicable) and those set out below.

(a) Serial-numbered goods

Give us, if we ask, details of all motor vehicles and aircraft that are consumer goods or equipment.

- (b) **Do not allow accessions or fixtures**
Not allow any of your secured property to become an accession or fixture to any property (unless that property belongs to you and is subject to a security interest in favour of us).
- (c) **Do not allow rights of set-off**
Not allow any of your accounts receivable to be subject to any right of set-off or combination of accounts, or another claim (other than rights that arise in the ordinary course of business or by operation of law).
- (d) **Maintain and repair secured property**
Maintain all of your secured property in good working order and, if asked by us, fix anything that's damaged or broken.
- (e) **Whereabouts of secured property**
Notify us in writing and, in the case of (i) and (ii) below, obtain our prior consent:
 - (i) if the location of your secured property changes, other than any property which moves in the ordinary course of business (for example, vehicles)
 - (ii) if any secured property is outside New Zealand, or moves from one country to another
 - (iii) if we ask, of the present location of any of your secured property.
- (f) **Ownership papers**
Give us all ownership or registration papers for your secured property if we ask for them.
- (g) **No altered agreements**
Make sure that there is no change to any agreement relating to the secured property which would have a material adverse effect.
- (h) **Preserve and protect security**
Promptly do everything we reasonably ask to:
 - (i) preserve and protect the value of your secured property, and
 - (ii) maintain your ownership of, and rights in, and our interest in, the secured property.
- (i) **Access**
Make sure we have full access at all reasonable times to the secured property.
- (j) **Registration of security**
Promptly register each security interest created under a security in each country (other than New Zealand) in which registration may be necessary or recommended.
- (k) **Accounts receivable**
Make sure the proceeds of all accounts receivable are deposited into your account with us when they are paid to you.
- (l) **No harmful actions or omissions**
Do not do, forget to do, or allow to happen, anything that might:
 - (i) make any secured property or a security interest created under any security unenforceable or liable to be cancelled
 - (ii) cause or contribute to a material drop in value of any of your secured property
 - (iii) otherwise adversely affect our rights under any security.
- (m) **Name changes**
Give us at least 10 business days' notice before you:
 - (i) change your name (the notice must include the proposed new name)
 - (ii) allow anything to happen that would cause any information in a PPSA financing statement to be different if it were re-registered.
- (n) **Registration details**
Give us all information we ask for to ensure that registration of each security interest remains fully effective and has the priority we want.

(o) Security provider as secured party

If you are, or could be, a secured party regarding any security interest (or any deemed security interest as set out in section 17(1)(b) of the PPSA), you must identify and perfect those security interests (or deemed security interests) by doing:

- (i) anything a person conducting a similar business would prudently do
- (ii) anything else we request.

This includes everything necessary:

- (iii) for you to obtain the highest priority possible, unless we have agreed otherwise
- (iv) to minimise the risk of a third party acquiring an interest in your secured property free of your security interest or deemed security interest.

45.4 Things you agree to do, or not do, relating to specific security

If you have given us a specific security interest in any secured property, you agree to do (or not do) all of the things set out below.

(a) Use of the property

Make sure that the secured property is used solely:

- (i) in accordance with the manufacturer's instructions
- (ii) for the purposes of your business.

(b) Ownership papers

If we ask for them, you must give us:

- (i) copies of any certificates of registration and licences to operate the secured property
- (ii) proof that all taxes, licence fees and other fees payable for the secured property have been paid.

(c) Notice of change

Tell us immediately if:

- (i) the secured property is taken out of your possession for any reason or is lost or damaged
- (ii) you become aware of any claim against you relating to your use of the secured property or use by anyone on your behalf.

(d) Keep with insurance terms

Do not use the secured property in any way that would allow an insurer to disclaim liability under any insurance policy.

(e) Not lease or hire

Do not lease or hire the secured property without our prior written consent. If we do consent, make sure that, at all times during the term of the lease, you:

- (i) ensure the lessee complies with each of the requirements set out in this Part 6 as if they were expressed to be binding on the lessee
- (ii) make sure the lessee identifies the secured property in its records as being your property
- (iii) register your interest on the PPSR.

(f) Motor vehicles

If the secured property is a motor vehicle, you will:

- (i) not permit the motor vehicle to be driven by a person without a driver licence
- (ii) not permit the motor vehicle to be driven by a person who is unfit to drive it
- (iii) comply with all laws and regulations affecting the use of motor vehicles
- (iv) not modify the vehicle in any way
- (v) keep the motor vehicle registered and not change its registration number
- (vi) if a vehicle identification number has not been allocated to that motor vehicle when we take security over it, immediately notify us of any vehicle identification number that is allocated.

(g) Certification

Make sure a current warrant of fitness and any other certification required by law is always correctly displayed on the secured property.

45.5 Waiver of rights under PPSA

You:

- (a) agree that you have no rights under sections 114(1)(a), 133 or 134 of the PPSA, and
- (b) waive your rights to:
 - (i) not have goods damaged if we remove something from them 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 under section 131 of the PPSA
 - (iv) receive a statement of account under section 116 of the PPSA
 - (v) receive notice of any proposal by us to keep something under section 120(2) of the PPSA
 - (vi) object to any proposal by us to keep something under section 121 of the PPSA.

46. What happens if we enforce our rights**46.1 Rights on enforcement**

In addition to the things we can do under clause 11.3, whenever an Event of Default has happened and is still going:

- (a) each security will become immediately enforceable
- (b) we may:
 - (i) do anything, either in our own name or in the name of a Loan Party, that the Loan Party could do, regarding both the secured property and each Loan Party's business
 - (ii) do anything that a receiver could do, regarding both the secured property and each Loan Party's business, including under clauses 46.5 and 46.6, and whether or not a receiver has been appointed.

46.2 Appointment of receiver

In addition to exercising our other rights, we may appoint, remove, replace and fix the terms of appointment of one or more receivers (acting solely or together) regarding any secured property on terms we consider necessary if:

- (a) an Event of Default happens and is still going
- (b) you ask us to, or
- (c) we believe that any of the secured property risks being taken, becoming subject to another security interest, or being dealt with in a way that breaches any Lending Document.

46.3 Receiver's fees

We may set the fees of a receiver either as agreed with the receiver or, failing agreement, as we decide. You must pay all the receiver's fees on demand, and those fees form part of your secured indebtedness.

46.4 Receiver is your agent

A receiver is your agent, and we will not be responsible for anything the receiver does or doesn't do.

46.5 Receiver's general rights

A receiver has:

- (a) all the rights given to it by law, including under the Receiverships Act 1993
- (b) all the rights we have under clause 46.1 (whether or not we are currently entitled to enforce those rights)
- (c) all the rights an individual would have if that individual owned your secured property and businesses
- (d) all other rights conferred by law (including under Part 9 of the PPSA) in relation to your secured property.

In each case, the receiver may exercise any or all of these rights without being responsible for any loss.

46.6 Receiver's specific rights

Without limiting clause 46.5, a receiver may, either in its own name or your name, do any or all of the following:

- (a) manage, take possession or control of, collect, and sell or otherwise Dispose of, the secured property
- (b) do anything that you could do regarding your secured property and your business, including:
 - (i) carry on your business and deal with your secured property, and stop doing so at any time, and
 - (ii) repair, purchase additional property, and do anything else it considers necessary or desirable to protect or improve the secured property, or obtain income or produce from it
- (c) borrow any amount that it may need for the purposes listed in this clause 46.6, and grant security over the secured property. The receiver can decide the priority of this security and it may rank ahead of our security
- (d) insure, hire out, lease or license the secured property, with or without a purchase option, and whether or not the receiver has taken possession
- (e) remove fixtures belonging to you and deal with them separately
- (f) take any steps to make you bankrupt, and liquidate companies or other entities. Do everything in connection with any bankruptcy or liquidation that the receiver considers appropriate
- (g) do everything necessary to honour any of the things you agreed to do in any Lending Document
- (h) settle, negotiate or compromise accounts, claims or disputes connected to your business or the secured property or in any way relating to the Lending Documents. Arrange any necessary releases or other discharges
- (i) make demand on your shareholders regarding any uncalled capital, and sue to recover amounts due under those demands. For this purpose, the relevant clauses in your constitution, or arising under law, will, with any necessary modifications, continue to apply regardless of any change in directors, and the receiver can exercise the rights given under those clauses in place of those directors
- (j) do anything incidental to the exercise of any other power given to it under any Lending Document
- (k) take legal proceedings, or continue any legal proceedings currently underway
- (l) delegate any of the powers given to it by this clause 46 to any person, and engage employees, agents, lawyers, advisors and contractors for any purpose of this clause.

In each case, the receiver may do all these things without being responsible for any loss.

46.7 Receiver's rights of sale

A receiver may do any or all of the following:

- (a) sell all or any part of the secured property, with or without any other property:
 - (i) subject to any prior ranking security interest that exists
 - (ii) together, or in separate lots, in any manner and subject to any conditions it sees fit
 - (iii) on whatever sale terms it considers suitable, including by allowing the purchase price to remain owing without security or outstanding on any security over the property sold, or over any other property
 - (iv) whether or not you have prepared the secured property for sale
 - (v) on any terms the receiver considers suitable
- (b) cancel an agreement for sale over the secured property, in which case it may:
 - (i) re-sell the secured property without being responsible for any reduction in price
 - (ii) refund to the potential purchaser any amounts to which the potential purchaser may be entitled from the cancellation
 - (iii) reverse any application of sale proceeds it previously made
- (c) sign any transfer documents for the secured property (including in your name), receipts for the purchase proceeds, and do anything else to complete the sale
- (d) do anything else in connection with the sale that a receiver can do, whether under the Lending Documents, or by law, agreement or otherwise.

The receiver is not responsible for any loss, or for anything done or not done by any purchaser, and is not obliged to enforce any agreement for sale.

46.8 You will cooperate in a sale

If a receiver intends to sell secured property, you must not do or cause anything to delay, adversely affect, or otherwise prevent a timely sale and transfer of ownership to the purchaser.

46.9 Proceeds of enforcement

We can set the order in which we use all money we or a receiver recover or have following enforcement of our rights over the secured property or against you.

46.10 Use of proceeds (if we don't set the order)

If we don't set the order under clause 46.9, all money we receive on enforcement is to be used:

- (a) first, to pay all Costs we incur or incurred by any lender's representative or any receiver
- (b) second, to pay any receiver's fees
- (c) third, towards payment of all your secured indebtedness
- (d) fourth, to pay anyone with a subsequent security interest
- (e) fifth, any surplus goes to you.

46.11 Amounts that may be payable in the future or after some other event happens

If, at the time of allocation of any money under clause 46.9 or clause 46.10, any secured indebtedness or guaranteed amounts are or might become contingently owing to us, we, any lender's representative or any receiver:

- (a) may keep an amount equal to all or part of that contingent Indebtedness
- (b) may put that amount on deposit until that contingent Indebtedness either becomes definitely owing, or ceases to be contingently owing
- (c) will apply the amount kept back in payment of your secured indebtedness or guaranteed amounts when those amounts become definitely owing
- (d) will apply the balance of the amount kept back, together with any interest earned on it, in the order set in clause 46.10.

Part 7: Terms for CashFlow Plus Facilities

If you have taken out a CashFlow Plus Facility, this Part 7 explains the terms for this Facility. If you don't have this Facility, this Part 7 doesn't apply to you. If something in this Part 7 conflicts with anything that applies to your other Loan Products, then this Part 7 only applies to the CashFlow Plus Facility.

This Part 7 applies to each entity who is named in your Facility Document.

Your agreement for using the CashFlow Plus Facility is made up of:

- (a) these Master Terms
- (b) your Facility Document
- (c) the CashFlow Plus Platform Terms and Conditions.

You must use the CashFlow Plus Platform to access this Facility.

The things you tell us are true, and the things you agree to do or not do in this Part 7 are in addition to the obligations you agree to in any other Part of these Master Terms, or in any Lending Document.

We explain additional words with special meanings that apply to your CashFlow Plus Facility at the end of this Part 7.

47. What happens when you sell us your Debts

You offer to sell us your Debts when you upload or sync an Invoice Batch.

When you upload or sync each Invoice Batch, you offer to sell us all of your rights, equitable and legal title, benefits and interests in the Debts listed in that Invoice Batch. You cannot take back this offer. Once uploaded or synced, we automatically accept your offer and purchase your Debts.

- (a) You offer to sell us all Debts in that Invoice Batch, including any Excluded Debts.
- (b) We will automatically accept your offer and purchase those Debts and all your rights, equitable and legal title, benefits and interests. You assign the Debts to us absolutely, and not just by way of charge.
- (c) You may ask us to reassess repurchasing Debts that we deemed earlier to be Excluded Debts or Recourse Debts.
- (d) Any security interest(s) we hold over any Debts are automatically released to the extent necessary so those Debts can be offered and purchased under your CashFlow Plus Facility.

47.1 You give us your rights to the Debts and will act as our agent

When you sell us a Debt, you assign us your rights to that Debt and become our agent for that Debt.

- (a) You assign us your rights under all current and future Debt Documents relating to that Debt, including the right to receive any money and the right to damages for any breach. Those Debt Documents become our property and you no longer have any rights to them.
- (b) You will act as our agent and hold for us all Debt Documents you have received and are entitled to receive, including additional or replacement documents.
- (c) As our agent, you hold and retain the Debt Documents on our behalf. You have no other rights to these Debt Documents. If we ask, you must give us copies of all relevant Debt Documents.

48. What you do as our agent to manage Debts

You agree to perform the tasks in this clause as our agent at your own cost for each Debt until we tell you otherwise. You must perform these tasks with the same level of skill and diligence as you would for yourself.

48.1 Seek and collect payments from your Customers for the Debts

You must collect payments your Customers owe towards the Debts, and keep accurate records.

- (a) **Take necessary steps to collect amounts your Customers owe towards the Debts**
You need to:
 - (i) send statements and any necessary payment reminders to your Customers.
 - (ii) perform reconciliations for all debtors at least once a month.
 - (iii) take all actions that we reasonably require to enforce payment of the Debts, and ensure you and the Customer meet all obligations in the Debt Documents.
- (b) **Keep accurate records of your Customers and payments**
 - (i) You must maintain an up-to-date schedule or electronic file of your Customers showing their full names, addresses, email addresses and telephone numbers.
 - (ii) You need to record details of all payments you receive from each Customer in a form we accept. These details include remittance advices, and details of any Credit Amount, trade discount, allowance, or other credit you give or a Customer claims. You must give us these when we ask.
 - (iii) You must keep proper accounting, sales, and customer management records that we consider reasonably necessary.

49. How you must manage payments

49.1 Receive all Debt payments in your CashFlow Plus Account

All Debt payments must be made to your CashFlow Plus Account until they are reconciled.

- (a) **Hold all Debt payments for us**
You hold all the money you receive for a Debt on our behalf. You agree to apply all payments in the way we set out in clause 50.
We're entitled to all payments you receive from your Customers for any Debt.
- (b) **Tell Customers to pay any Debt to your CashFlow Plus Account**
 - (i) You must tell your Customers to pay any Debt directly to your CashFlow Plus Account, including Excluded Debts or Recourse Debts.
 - (ii) You must state your CashFlow Plus Account details on all invoices to your Customers.
 - (iii) If payments are received in foreign currency, they can be made to a BNZ foreign currency account with our prior agreement.
- (c) **Tell us immediately if a payment goes to a different account**
You must tell us immediately if a Customer makes a Debt payment to a different account. You must ensure the payment is transferred to your CashFlow Plus Account no later than the following business day.

49.2 Reimburse us immediately if you give a discount or credit that wasn't included in the Net Debt Amount

You agree to reimburse us immediately if you give a Customer any trade discount, rebate, allowance, Credit Amount or other credit that you didn't include when calculating the original Net Debt Amount. You must pay the amount of the discount, allowance or credit to your CashFlow Plus Account to reimburse us, or undertake appropriate accounting procedures to accurately reflect the true Net Debt Amount of the invoice.

Reconcile your Debts at least once a month using the CashFlow Plus Platform.

- (a) You must upload or sync to the CashFlow Plus Platform in a way that we deem acceptable at least once a month to ensure we can efficiently process your Customer payments.
- (b) If you or other parties don't regularly and adequately maintain your CashFlow Plus Platform, you may experience reduced or delayed access to funds.

- (c) You may need to perform other actions (such as reconciliations) to release funds when you upload or sync an Invoice Batch.
- (d) We may send you alerts or other communications within the CashFlow Plus Platform that need your attention or prompt action to help us process customer payments or address risks with your CashFlow Plus Facility.
- (e) We may change your requirements for using the CashFlow Plus Platform in line with accounting, legal, system changes or other changes we require.

50. How we manage Customer payments into your CashFlow Plus Account

We hold all amounts paid into your CashFlow Plus Account as unreconciled until they have been processed satisfactorily. For some transactions, we may need you to give us information or help us process them.

50.1 When we've applied a Retention to a Qualifying Debt and you receive more than the amount owed

We will release any funds for a Qualifying Debt that we've applied a Retention to if we or you receive any payment for that Debt that is more than the amount owing. The funds we release include Retentions and any surplus amounts. For these funds to be released, the payment needs to be reconciled satisfactorily in the CashFlow Plus Platform by applying the funds according to the terms of clause 49.2.

50.2 When a Debt is cancelled or must be repaid to someone else

- (a) We won't consider any amount towards a Debt to be actually paid if that payment is cancelled, paid to someone else, or paid to an account other than the CashFlow Plus Account. This includes when repaying someone because of any law relating to preferential payments in the event of a bankruptcy or insolvency.
- (b) If this event happens, we'll increase the Amount Outstanding to include the amount that was cancelled or repaid, and the Debt will be reinstated.

51. How we calculate your Available Funds

51.1 Prioritising payments from Customers to pay amounts you owe

When you receive payment from a Customer into your Cashflow Plus Account, the payment is applied in the following sequence.

- (a) When a Customer pays you for a Debt, you must apply their payment towards paying that Debt.
- (b) When a Customer pays you for anything other than a specific Debt, we can decide to apply that payment towards any Qualifying Debts.
- (c) We will apply any amounts left over towards any Amount Outstanding first, and the rest becomes Available Funds.

51.2 Calculating your Available Funds

To determine your Available Funds, we calculate your Current Limit, then subtract the Amount Outstanding or add the credit balance (if any) of your CashFlow Plus Account.

Available Funds = Current Limit - Amount Outstanding + credit balance

51.3 Calculating the Current Limit for your CashFlow Plus Account

To determine your Current Limit, we take the Net Debt Amount for each Qualifying Debt and subtract any Retentions, then multiply this result by the applicable Advance Rate.

We may make a final adjustment if your Current Limit exceeds your Limit, or if we apply any additional Retentions.

Current Limit = (Net Debt Amount for Qualifying Debts - Retentions) × applicable Advance Rate
- any final adjustment

51.4 Calculating the Retention amount for a Debt

We calculate the Retention amount to account for risks such as debt aging, Concentration Limits, unreconciled payments or Recourse Debts. This amount may be the same as the full Net Debt Amount.

52. How you can access your Available Funds

You can access the Available Funds by requesting a payment through the CashFlow Plus Platform to your Nominated Account.

53. How we recover amounts you owe us

53.1 We debit payments you owe us

- (a) We will debit interest and fees on your CashFlow Plus Facility from your CashFlow Plus Account on the day after each bank month ends, unless we agree otherwise.
- (b) We may debit any amounts you owe under your CashFlow Plus Facility from your CashFlow Plus Account, or we may set off any amounts you owe from the purchase price of any Qualifying Debt advanced under clause 51. This is in addition to clause 14.5.

53.2 You need to reimburse us for certain expenses

When we ask, you agree to pay us the amount of any taxes, costs and expenses we incur regarding your CashFlow Plus Facility (including legal costs on a full indemnity basis). These costs include:

- (a) negotiating, preparing, executing, registering or administering your CashFlow Plus Facility and its Lending Documents, or any given notice under this Facility
- (b) issuing you any documents or notices, or making transactions that occur from time to time under your CashFlow Plus Facility.

54. What happens when a Recourse Event occurs

54.1 You must tell us when a Recourse Event occurs

You must tell us as soon as you become aware of a Recourse Event.

54.2 Different kinds of Recourse Events

A Qualifying Debt becomes a Recourse Debt when a Recourse Event occurs. The following clauses explain different kinds of Recourse Events.

- (a) **You think your Customer is unlikely to fully pay or won't pay**
Your Customer doesn't fully pay a Debt, or you think them unlikely to fully pay a Debt, within the Recourse Period.
- (b) **Your Customer returns or disputes any goods or services in the Debt Documents**
Your Customer refuses to accept some or all of the goods or services in the Debt Documents, or they return or dispute them. This condition applies whether the Customer is entitled to do so or not.
- (c) **Your Customer seeks legal action regarding the Debt**
Your Customer makes or attempts to make a counterclaim, set-off, cross-action or defence to the Debt.
- (d) **You modify the Debt Documents without our written consent**
Without our written consent, you waive or modify the Debt Documents in a way that:
 - (i) varies the Debt
 - (ii) releases a party from any obligation or claim under it
 - (iii) waives any breach.
 This condition excludes the everyday running of your business, when you would normally approve a Credit Amount, or settle your Customer's claim regarding a Debt.
- (e) **Terms are breached, or allegedly breached**
 - (i) You breach, or your Customer alleges that you have breached, any term in the Debt Documents.
 - (ii) Your Customer claims damages for an alleged breach of any Debt Document, or tries to cancel any Debt Document.
- (f) **The Debt is invalid or unenforceable**
 - (i) Your Customer disputes the validity or enforceability of the Debt (or any part of it).
 - (ii) The Debt is invalid or unenforceable for its Net Debt Amount for any reason. This condition excludes any Credit Amount, trade discount, or allowance you have already told us about.

- (g) **Any warranty or representation is incorrect or misleading**
Any warranty or representation regarding the Debt is found to be incorrect, untrue or misleading in any material respect when made or repeated.
- (h) **You go over the maximum amount we agree to fund a Customer**
You go over the maximum amount we allow you to fund against any Customer without our agreement (Concentration Limit).
- (i) **You give someone else priority rights to the Debt**
You allow someone else to have priority over our rights to the Debt through creating or allowing:
 - (i) a legal or equitable assignment
 - (ii) an encumbrance
 - (iii) a purchase money security interest
 - (iv) any other security interest.
- (j) **An event occurs that reduces the quality or recoverability of the debt**
 - (i) The value of the Debt materially decreases.
 - (ii) Your Customer is or becomes insolvent.
 - (iii) Any other event or circumstance occurs which we decide alters the quality or recoverability of the Debt.

54.3 In some circumstances, all Qualifying Debts become Recourse Debts

All Qualifying Debts become Recourse Debts if either of the following things happen.

- (a) You give us a misrepresentation under clause 8, or you breach an undertaking you made under clause 9.
- (b) The Maturity Date occurs, or you cancel this CashFlow Plus Facility with us, or we cancel this Facility.

54.4 What happens when a Qualifying Debt becomes a Recourse Debt

- (a) If a Qualifying Debt becomes a Recourse Debt, we may deduct the amount the Customer still owes from the Available Funds. Or, we may reduce the Current Limit by the amount the Customer owes.
- (b) Our right, title and interest in that Debt will remain and it is not re-vested in you except in the circumstances under clause 62.
- (c) If a Recourse Event is remedied, you can ask us if we can repurchase that Debt as a Qualifying Debt.

55. Events of Default specific to the CashFlow Plus Facility

As well as the Events of Default listed in Part 2, the events listed below can also become Events of Default. This applies whether or not the event is within your control. We'll consider each of these events to be an Event of Default if the event happens and it can't be fixed. Or if it can be fixed, and is not fixed to our satisfaction within five business days of us asking you to fix it.

- (a) The amount we will debit for interest or fees, or both, from your BNZ CashFlow Plus Account would cause the balance of that account to exceed the Limit.
- (b) You create a security interest in, charge, sell, assign or otherwise give the whole Debt, or a part of the Debt, to someone else.
- (c) You breach any of your obligations under clauses 49.1(b) and (c), 58.1(h) and (i), and 58.2(a) and (c).

56. How we protect the Debts and secure them

This clause adds to the terms set out in Part 6 above relating to secured property. You acknowledge that we may perform the following actions as purchaser of the Debts.

- (a) Register a financing statement on the PPSR relating to your CashFlow Plus Facility and our purchase of all present and future Debts as transfers of account receivables against you.
- (b) You agree that we may do anything else we think is reasonable to make sure that our security interest is perfected and fully effective under the PPSA.
- (c) Dispose of any Debt and its relevant Debt Documents in a way we consider appropriate.

- (d) Give your Customer a receipt for discharging each debt. Or agree with your Customer to discount any Debt on your behalf.

56.1 We may need to communicate directly with your Customers if we think it's necessary to protect our rights to a Debt

Where we reasonably deem it necessary to protect our rights to a Debt, you agree that we or our lender's representative may contact your Customers. We may also request you to contact your Customers in a way we approve. We will do this if we need to verify:

- (a) Debts and Debt Documents
- (b) that the goods or services have been provided according to the terms of the Debt Documents
- (c) the balance of your Customer's account with you.

56.2 You agree nothing in these Lending Documents allows for the following

You agree that nothing in your Lending Documents means:

- (a) an agreement that a security interest under your CashFlow Plus Facility attaches at a later time than that provided in section 40(1) of the PPSA
- (b) an agreement to subordinate our security interest under your CashFlow Plus Facility in favour of anyone else.

57. You confirm that certain things for each Debt are true

You confirm that the statements below are true for each Qualifying Debt, and remain true for as long as each Debt is outstanding.

You must tell us if any Debt doesn't meet all the conditions in this clause. Any Debt that doesn't meet these conditions becomes an Excluded Debt.

- (a) **Your Customer**
Your Customer is:
 - (i) domiciled in New Zealand
 - (ii) a business (not a person)
 - (iii) not a related party to you.
- (b) **The Debt**
 - (i) The Debt is a genuine enforceable Debt a Customer owes to you.
 - (ii) The Customer owes you that Debt, and you have the right to assign it to us without telling or asking the consent of your Customer or any other person.
 - (iii) The Debt is in New Zealand dollars.
 - (iv) The Debt is not subject to any counterclaim, set-off or defence by your Customer.
- (c) **The Debt Documents**
 - (i) The Debt Documents are governed by New Zealand law.
 - (ii) The Debt Documents are valid and legally bind you and your Customer. You have complied with, and will comply with, the relevant Debt Documents.
 - (iii) The Debt Documents have no conditions (prohibitive, restrictive or specific) that could affect collecting the Debt in the normal course of trade.
 - (iv) No Debt Document is a consumer credit contract governed by the Credit Contracts and Consumer Finance Act 2003.
- (d) **Security interest**
 - (i) The Debt is not subject to any purchase money security interest or other security interest which has priority ahead of our security interest in the Debt. You have not assigned or created any form of security interest in the Debt except when you sold the Debt to us. We will own the Debt and it will not be considered your asset if you go into receivership, liquidation or other insolvency proceedings.
 - (ii) You have told us about any retentions of title or other security interests in your favour over that Debt, and any goods and services it relates to. You have registered a financing statement on the PPSR relating to the retention of title or other security interest within the time the PPSA requires.

- (e) **The relevant goods and services**
- (i) When the relevant goods were sold, they were of acceptable quality and fit for the purpose that you reasonably believe they were purchased for.
 - (ii) The relevant goods or services were delivered or provided to the satisfaction of the Customer and according to the terms of the relevant Debt Documents.
 - (iii) The relevant goods or services in the Debt Documents comply with the Fair Trading Act 1987 and all guarantees that apply to the supply of the goods or services under the Consumer Guarantees Act 1993. You have not received any claim for redress from your Customer regarding any guarantee, or under either the Fair Trading Act 1987 or the Consumer Guarantee Act 1993.
- (f) **Paying the Debt**
- (i) You believe that the Customer can pay the Debt on or before its due date. You are not aware of anything that might affect our judgement when considering whether to purchase the Debt, such as something which may cause the Debt not to be paid on time.
 - (ii) You have not agreed with the Customer to extend the due date for paying the Debt and you have not agreed to waive or alter the terms of the Debt Documents.
 - (iii) The law doesn't require you to deduct anything, pay any levy or duty, or withhold any tax, including GST or a similar tax, from any amount payable towards the Debt.

58. Certain things we rely on you to do, or not do

58.1 You agree to do the following

- (a) Tell us immediately if any of the statements set out in clause 57 above are or become untrue, or if a Recourse Event occurs.
- (b) Promptly forward to us any information you receive or obtain about disputes or possible disputes concerning any Debts.
- (c) Tell us about any claim for redress made under the Consumer Guarantees Act 1993 or Fair Trading Act 1987 about any goods or services relating to a Debt Document, or the return of those goods.
- (d) Tell us about any other claims for credit, excluding the Credit Amounts you've told us about.
- (e) Give us copies of all credit notes showing a Credit Amount you issue to your Customers for any Debt.
- (f) Keep copies of all documents, accounts and records (including electronic records) you and your Customer send to each other regarding the Debts. This includes keeping proper books and records according to accounting standards, principles and practices that are required by law (such as the Financial Reporting Act 2013), or are generally accepted and used consistently in New Zealand.
- (g) Give us and our lender's representative (at our expense) access to your premises so we may conduct a field examination at any time we reasonably ask you. You need to make sure we can access your premises in a manner that complies with all appropriate health and safety regulations. During our field examination, you will let us and our lender's representative:
 - (i) inspect your stock, raw materials, work in progress, books, delivery and dispatch dockets, accounts (including bank accounts at any financial institution), financial documents, records, returns (including income tax, group tax and GST returns) and all papers or electronic records of every kind
 - (ii) take and keep copies of these documents and records.
- (h) Immediately pay us the Credit Amount relating to any Qualifying Debt that has not yet been paid by crediting your CashFlow Plus Account.
- (i) Only use your CashFlow Plus Account for:
 - (i) drawing Available Funds
 - (ii) receiving business revenue
 - (iii) paying interest, fees and other charges to us relating to your CashFlow Plus Facility.
- (j) Follow the CashFlow Plus Platform Terms and Conditions and use the CashFlow Plus Platform as we intend it to be used.

58.2 You agree to not do the following

- (a) You won't open or maintain any bank accounts with any other financial institution for receiving and managing business revenue. All revenue must be banked with BNZ through your CashFlow Plus Account.
- (b) You won't repossess any goods described in a Debt Document without already having our written consent.
- (c) You won't do or allow anything to happen or not happen that might prejudice or affect the right to recover a Qualifying Debt.

59. We may make changes to your CashFlow Plus Facility**59.1 Corrections, adjustments and recalculation of amounts**

- (a) At any time, we can calculate, recalculate, and adjust any of the following without your agreement. We may decide to tell you about any of the following changes in one of the ways described in clause 21 or through the CashFlow Plus Platform. If we don't tell you, the calculations and adjustments still remain valid.
 - (i) The approval or disapproval status of Customers whose Debts we accept or don't accept.
 - (ii) The approval, pending or disapproval status of any Debts.
 - (iii) Any Recourse Period.
 - (iv) Any Recourse Event described in clause 54.
 - (v) Any Advance Rate.
 - (vi) Any Concentration Limit.
 - (vii) Any decrease of the Limit.
 - (viii) Any amount, trigger or threshold relating to any Retention.
 - (ix) Any function, status or settings of the CashFlow Plus Platform.
 - (x) Any other criteria we follow to accept a Debt for purchase under your CashFlow Plus Facility. This includes specifying additional Debts or classes of Debts as Excluded Debts or Recourse Debts.
- (b) We can do what we consider reasonable to ensure the arrangements in your CashFlow Plus Facility accurately reflect or take into account:
 - (i) circumstances which could affect the payment of any Debt
 - (ii) other changed arrangements between you and your Customer.
- (c) Alongside this, we may make other changes, including changing the fees or charges, for which we will give you notice. These changes are in addition to those we may make to the terms of your CashFlow Plus Facility in any other Part of these Master Terms (including clauses 6.2 and 22) or in any Lending Document.

59.2 You need to agree to any other changes we might make

- (a) Before we can make any other changes to your CashFlow Plus Facility, you need to agree verbally or in writing. If we agree a change verbally, we will send you written confirmation of what has been agreed.
- (b) When we make an agreement it will take effect from the date in the written confirmation, even if we deliver the confirmation later.

59.3 We may need to suspend your CashFlow Plus Facility to protect you or us

- (a) Circumstances may occur where we need to immediately suspend your access to the CashFlow Plus Facility and the Available Funds to protect our and your legitimate business interests. These circumstances include when we suspect fraudulent activity, or where you're not following the terms of your CashFlow Plus Facility.
- (b) We will normally tell you in a reasonable timeframe and give you the relevant details before suspending or cancelling your access to the CashFlow Plus Facility and the Available Funds. However, in some circumstances we may need to suspend or end your access without telling you beforehand.

60. We may make changes to the CashFlow Plus Platform or require you to transfer to a new platform

- (a) We can repurpose or redesign the CashFlow Plus Platform or require you to transfer to an alternative platform at any time, without your agreement, to continue making the CashFlow Plus Facility available to you.

- (b) Alongside this, we may also make consequential changes, including changing the CashFlow Plus Platform Terms and Conditions or this Part 7, or both, without your consent.
- (c) We will tell you directly when we intend to:
 - (i) repurpose or significantly redesign the CashFlow Plus Platform
 - (ii) require you to transfer to a new platform.
- (d) If you do not wish to continue the CashFlow Plus Facility with the modified CashFlow Plus Platform or an alternative platform, you can choose to repay the Amount Outstanding under your CashFlow Plus Facility in full to cancel your Facility.
- (e) If you don't contact us within the time set out in the notice we send you, you agree to the following.
 - (i) We can modify the CashFlow Plus Platform.
 - (ii) If required, you will transfer to an alternative platform.
 - (iii) We can make consequential changes to the CashFlow Plus Platform Terms and Conditions or this Part 7, or both.

61. What happens when we no longer want you to act as our agent

- (a) You agree that we may decide to terminate your agency under your CashFlow Plus Facility. Then we can collect amounts your Customers owe towards the Debts without your involvement. We can also appoint a new agent to perform any tasks relating to this collection.
- (b) Any notification we give under this clause is effective immediately.
- (c) You agree that we may tell your Customers in writing of the assignment of a Debt under your CashFlow Plus Facility. In some instances we may require you to tell your Customers this in writing. You agree that we can use the power of attorney you grant us to contact your customers.

61.1 Collecting the Debts without your involvement

- (a) If we tell your Customers that the Debts have legally transferred to us, we may collect those Debts without your involvement. You agree to the following.
 - (i) We can take appropriate legal action to obtain payment of the Debts. We can take this action in our name, or in your name as your attorney.
 - (ii) We can give Customers payment instructions so they can pay us the Debts.
 - (iii) We can do anything else reasonably required to recover the Debts, including taking legal proceedings in your name.
- (b) Unless we ask you to or you're required to do under clause 48, you agree to the following.
 - (i) You won't attempt to collect the Debts.
 - (ii) You won't take legal proceedings regarding the Debts.
- (c) You agree we may give formal receipt for discharge, or compromise any Debt in any way we think reasonable.

62. What happens when your CashFlow Plus Facility ends

When your CashFlow Plus Facility ends, your payment and indemnity obligations under the Lending Documents will remain for a time. These obligations include our rights to set off amounts against moneys owing to you from Customers.

- (a) Your CashFlow Plus Facility ends when you reach the Maturity Date, you cancel this Facility, or we cancel your CashFlow Plus Facility.
- (b) When your Cashflow Plus Facility ends, the Limit will reduce to zero. You will need to immediately pay us:
 - (i) the Amount Outstanding in full
 - (ii) if applicable, the amount each Customer still owes under each Qualifying Debt
 - (iii) the debit balance (if any) of your CashFlow Plus Account.
- (c) Once you have paid all amounts you need to pay under clause 62(b) above, we'll tell you if you owe us any other amounts under your Lending Documents. Once you have paid all amounts, you'll be able to complete the following, if relevant.
 - (i) If your CashFlow Plus Account has a credit balance, you may ask us to transfer that amount to another account.
 - (ii) You can ask us to re-assign any remaining Debts and Debt Documents to you.

(d) When the Facility is paid in full and ended, our obligations under this Facility also end.

Any extinguishment, reassignment or repurchase of our right, title and interest in, any Debt or Debt Document is without any recourse to us or warranty or representation of any kind by us relating to the Debt, Debt Document or the relevant Customer.

63. The limits of our liability to you

- (a) We're not liable for, and exclude all liability for, any kind of indirect or consequential loss or damage that you may suffer or incur for any reason relating to using your CashFlow Plus Facility. This includes any direct or indirect loss of profit, revenue or goodwill.
- (b) We're not liable for any events listed below unless our own wilful or negligent acts or omissions cause you loss or damage.
 - (i) Your access to the CashFlow Plus Facility and Available Funds is suspended or ends under clause 59.3, or any other Lending Document.
 - (ii) An error in any communication.
 - (iii) Delays, including delays we've made in acting on a communication or processing a transaction.
 - (iv) We or you don't receive a communication, or a file or part of a file.

63.1 We're authorised to act on information that appears to come from you

- (a) We're authorised to act on any information or other communication we receive that you appear to have sent.
- (b) When we act on information or other communication you appear to send, we're not liable to you for using that information or other communication if it's forged, fraudulent or incorrect.
- (c) We're not required to check that information or other communication you appear to send us has in fact come from you or has your authority.

63.2 We're not liable for your use of the CashFlow Plus Platform

We're not liable for the events listed below unless our own wilful or negligent acts or omissions cause you loss or damage.

- (a) How you use the CashFlow Plus Platform, whether or not your loss or damage is because of us, or our agents, contractors or employees. This includes any act or omission we make, or that our agents, contractors or employees make.
- (b) Any costs you incur to customise your financial accounting software so that it's compatible with the CashFlow Plus Platform.
- (c) If your use of financial accounting software connected to the CashFlow Plus Platform creates an error, misrepresentation or omission within the CashFlow Plus Platform or within your accounting software.

64. You indemnify us for certain things

As well as any indemnity you give us under these Master Terms, you also agree to indemnify us when we ask, against any expense, liability, loss (including loss of margin) or damage we or our lender's representatives incur as a result of the following.

- (a) **We don't receive the full Net Debt Amount**
 - (i) We don't receive payments equal to the full Net Invoice Amount of any Qualifying Debt, including where a payment towards a Debt is dishonoured.
 - (ii) You agree to forgive or reduce all or part of the Net Invoice Value of a Debt without our written consent.
- (b) **Your use of the CashFlow Plus Platform**
How you use the Platform, including what happens if you fail to comply with your obligations under your Lending Documents. This indemnity excludes where our own wilful acts, gross negligence, or omissions causes liability, loss or damage.
- (c) **Following relevant laws and regulations**
 - (i) You fail to follow any law, rule or regulation relevant to a Debt or Debt Document. Or if a Debt or Debt Document doesn't conform with a relevant law, rule or regulation.
 - (ii) Any demand given under section 162 of the PPSA relating to a Debt.

- (iii) Maintaining any financing statement on the PPSR relating to a Debt.
- (d) **Keeping the Debt free of any security interest**
You fail to vest and maintain vested our legal and beneficial ownership of the Debt and keep the Debt free of any security interest. This applies to a security interest existing when we purchased the Debt or any time after that. This condition still applies whether or not we knew the security interest existed when we purchased it.
- (e) **A Customer makes a dispute, claim, offset or defence against paying a Debt**
 - (i) The Customer makes a claim about the goods or services related to the Debt, or about you providing, or failing to provide, those goods or services.
 - (ii) Any consumer credit claim regarding any Debt or your non-compliance with any legislation.
- (f) **Any tax-related cost that we may need to pay**
Any tax obligations, including GST, duty or levy, that relates to a Debt.

64.1 You also indemnify us against actions in two other clauses

- (a) Proceedings we institute or actions we take or do not take in clause 61.
- (b) Powers we properly exercise under the power of attorney explained in clause 65.

65. You give us a power of attorney under your CashFlow Plus Facility

- (a) You appoint us or our lender's representative to act as your attorney under these Master Terms. You also appoint us, each lender's representative, and any receiver as your attorney to do the following things the attorney thinks is necessary under your CashFlow Plus Facility:
 - (i) take any action to protect our interests as assignee and purchaser of the Debts
 - (ii) deal with any Customer regarding the outstanding Debts that we have purchased, including those actions set out in clause 56.1
 - (iii) give a Customer a valid discharge for Debts paid to us.
- (b) You formally consent to anything done by an attorney within the powers set out in this clause.
- (c) You cannot revoke this power of attorney.

66. You confirm you've made your own judgement

- (a) You confirm that you entered into your CashFlow Plus Facility and its Lending Documents, based on your independent judgment. You also confirm you have not relied on any representation, warranty, assurance, advice or other statement we made, or that was made on our behalf.
- (b) You agree to continue making decisions based on your independent judgment on the:
 - (i) value of all Debts you sell us under your CashFlow Plus Facility
 - (ii) accounting and legal treatment of any transaction you enter into under your CashFlow Plus Facility.

67. Meanings of specific words for the CashFlow Plus Facility

In this Part 7 and in the CashFlow Plus Lending Documents, some words have special meanings which we have set out below. We have used capital letters for some terms where the meaning may be different from the ordinary meaning of the word used.

Advance Rate means the percentage specified in your Facility Document which we will advance against Debts after deducting any Retentions.

Available Funds means, at any time, the Current Limit less the Amount Outstanding under the CashFlow Plus Facility, or plus that credit balance (if any).

Cashflow Plus Account means the BNZ bank account that you deposit your business revenue into and use to draw from the CashFlow Plus Facility.

CashFlow Plus Platform means the software-as-a-service application that is available on the CashFlow Plus Website that you use to operate your CashFlow Plus Facility.

Concentration Limit means the maximum we may allow you to fund against any single Customer based on the total value of all Debts.

Credit Amount applies to a Debt, and means any allowance, discount or other amount you have allowed your Customer to deduct from the face value of the invoice (including GST and other taxes or charges).

Current Limit is the maximum amount you can draw up to at any time. This amount varies based on your Qualifying Debts and is less than or equal to your Limit.

Customer means the entity person(s) responsible for paying the Debt amount(s) of the invoice(s) or other relevant Debt Documents.

Debt means the amount that your Customer owes you for any contract for goods you've supplied, work you've done or services you've performed. This includes amounts payable at a future date for works already done.

Debt Documents includes the following items for each Debt where they apply.

- (a) All invoices, credit notes, delivery dockets, purchase orders, supply contracts, time sheets or similar documentation
- (b) All offer letters, purchase agreements and other instruments relating to the Debt (including any bills of exchange and promissory notes, present and future)
- (c) All security interests that you hold against the Debt, and any agreement you have entered relating to the priority or sharing of these security interests
- (d) Each insurance policy, document proving ownership, and any other document relating to the property that is the subject of any security interest you hold
- (e) All other documents and records in any form relating to the Debt

Excluded Debt means any Debt offered for purchase that does not fulfil all statements in clause 57.

Invoice Batch means the invoice information identifying the Debts from your Accounting Software that are transferred to the CashFlow Plus Application.

Net Debt Amount means the amount of an invoice (the face value), including GST and other taxes or charges, less any Credit Amount that relates to the Debt.

Nominated Account means the BNZ transaction account specified in the Facility Document, or as we otherwise agree to, in the Borrower's name that the Available Funds from your CashFlow Plus Account are transferred to when a drawdown is approved.

Qualifying Debt means any Debt that is not an Excluded Debt or a Recourse Debt.

Recourse Debt means any Debt that has become subject to a Recourse Event.

Recourse Event means when any of the events described in clause 54.2 occurs and materially alters our assessed risk or value of a Qualifying Debt. That Qualifying Debt will become a Recourse Debt, and we may reduce the amount of funding for that Debt or it may become an Excluded Debt or both.

Recourse Period means the maximum period for which we will advance funds against an individual Debt, as set out in your Facility Document

Retention means one or both of:

- (a) any deductions or adjustments we make to the Net Debt Amount (including reducing it to \$0)
- (b) holding back a reserve amount, Concentration Limit, or Limit adjustments.

Part 8: Meanings

68. Meanings

In these Master Terms and any Lending Document, some words have special meanings which we have set out below. We have used capital letters for some terms where the meaning is different to the ordinary meaning of the words we have used. Some other words are also defined in Part 5, Part 6 and Part 7 of these Master Terms and in some of the clauses.

Affiliate means each Loan Party (other than you), together with each of your and their respective directors, officers, employees, agents, subsidiaries, owners and controllers.

Amount Outstanding means, regarding a Loan Product (or a component of a Loan Product), all amounts you are, or at any time may be, liable to pay under the Lending Documents for that Loan Product (or that component) including interest and Costs.

attorney means an attorney appointed under a Lending Document.

availability period means the period during which you can use a Loan Product. It will be in your Facility Document.

bank month means a month ending on the second to last business day of a calendar month, with the next bank month starting the following calendar day.

base rate means, for a Loan Product, the base rate set out in your Facility Document.

borrower means each person named as a borrower in your Facility Document.

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

constitutional documents means:

- (a) for a company, its constitution
- (b) for a trust, its trust deed
- (c) for a partnership, its partnership agreement
- (d) for a limited partnership, its limited partnership agreement
- (e) for a charitable trust, its trust deed
- (f) for an incorporated society, its governing rules.

Costs include Early Repayment Costs, general costs, solicitor-client costs, fees, losses, liabilities and taxes.

default rate means, in relation to a Loan Product, the rate set out in your Facility Document. If no rate is set out, the default rate is the one we specify on our website [bnz.co.nz](https://www.bnz.co.nz) as being the default rate for the purposes of these Master Terms and the relevant Loan Product.

Dispose means sell, lease, transfer, release or give an interest in property and an agreement to do any of those things and Disposal has an equivalent meaning.

drawing date means each date on which a loan is to be made under a Loan Product.

Early Repayment Costs are described in clause 5.2.

Event of Default means any of the events described in clauses 11.1 and 11.2.

excess rate means, in relation to a Loan Product, the rate set out in your Facility Document. If no rate is set out, the excess rate is the one we specify on our website [bnz.co.nz](https://www.bnz.co.nz) as being the excess rate for the purposes of these Master Terms and the relevant Loan Product.

Facility Document means, in respect of a Loan Product, the document setting out the commercial terms of that Loan Product.

fundamental default means an event of the kind described in clause 11.1.

general security interest means a security interest given over all assets of the relevant security provider.

guarantee means each guarantee given by a guarantor in our favour in the guarantee document and, if relevant, these Master Terms.

guarantee document means a document under which a guarantor guarantees to us the Indebtedness and obligations of one or more persons named or identified in that document. A guarantee may be contained in a Facility Document.

guarantee limit amount means the limit (if any) on the amount we can claim under a guarantee. The limit amount is described in your guarantee document.

guaranteed amounts means, in relation to a guarantor, all Indebtedness owed to us by each person named or identified in the relevant guarantee document as being a person whose Indebtedness, obligations or both are guaranteed under that guarantee document.

guarantor means each person named or identified as guarantor in a guarantee document, and each person who has otherwise given us a guarantee concerning a Loan Product.

Indebtedness means any obligation relating to the payment of money. It includes any obligation now or in the future, any obligation that is contingent, both secured and unsecured obligations, and any obligation owed by a person alone or owed jointly with others.

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

insolvency includes:

- (a) the liquidation, dissolution, administration, receivership or bankruptcy of a person (including committing any act of bankruptcy under the Insolvency Act 2006)
- (b) the entry into a compromise, scheme or equivalent arrangement with a view to avoiding insolvency
- (c) any equivalent procedure, and

insolvent has a corresponding meaning.

interest payment date means each date on which you are due to pay interest for a Loan Product as set out in your Facility Document or as otherwise set out in these Master Terms.

interest rate means the rate set for interest on a Loan Product in your Facility Document, as varied from time to time in accordance with that Facility Document or these Master Terms.

lender's representative means anyone we appoint to act for us under a Lending Document. It includes an attorney, but excludes a receiver.

Lending Document means every agreement relating to a Loan Product, including:

- (a) these Master Terms
- (b) each Facility Document
- (c) each guarantee document
- (d) each security document
- (e) each mortgage
- (f) each agreement under which a party to a Lending Document enters into a markets transaction with us, and
- (g) any terms and conditions that apply to the relevant Loan Product.

limit means the maximum amount that may be outstanding for a Loan Product, as set out in your Facility Document. If a Loan Product has separate components, 'limit' also means the maximum amount that may be outstanding under each of those components.

loan means each amount borrowed, or to be borrowed, under a Loan Product.

Loan Party means each borrower, each guarantor, each security provider and each other person (other than us) who is a party to a Lending Document for a Loan Product.

Loan Product means any credit, loan, guarantee or other financial product of any kind that we may give you.

margin means, in relation to a Loan Product, the rate set out in your Facility Document, as varied from time to time under clause 3.4.

Master Terms means, at a particular time, the version of the BNZ Business Lending Master Terms in effect at that time.

material adverse effect means something that, in our reasonable opinion, materially and adversely affects:

- (a) a person's:
 - (i) financial condition or operations
 - (ii) ability to comply with its obligations under any Lending Document
- (b) the enforceability, or the ranking, of any security interest given to us by that person, or our rights under any Lending Document entered into by that person.

References to **material adverse change** have an equivalent meaning.

Maturity Date means the earliest of:

- (a) the date when a Loan Product must be repaid as set out in your Facility Document or, if no date is set out, the date we say is the Maturity Date, and
- (b) the date on which we cancel the Loan Product.

mortgage means each mortgage given in our favour to support repayment of secured indebtedness.

obligations means all obligations of any kind that a Loan Party has to us under or in connection with any Lending Document, other than an obligation to pay money. This applies whether the obligation is now or in the future, express or implied, actual or contingent, secured or unsecured, and whether incurred alone or together with others as principal, guarantor or otherwise.

other property means a security provider's real property and all of its property that is not personal property.

personal information means your personal information (information that identifies you), confidential information, tax-related information, transaction information and any related information. It also means any such personal information that you, or someone else on your behalf, provides to us about other people, such as a guarantor, security provider or your representatives.

personal property means a security provider's present and after-acquired personal property, including livestock and crops, and all personal property in which it has rights now or in the future.

Potential Event of Default means anything that we think is likely to become an Event of Default.

PPSA means the Personal Property Securities Act 1999.

PPSR means the Personal Property Securities Register.

Rate Reset Period means each period we use to determine a variable interest rate. These periods are set out in the terms of your Facility Document or notified by us.

real property means a security provider's freehold, stratum and leasehold land, all interests in land and all buildings, structures and fixtures on that land.

receiver means a person appointed as a receiver or receiver and manager under these Master Terms or any security document.

Review Event means any of the following.

- (a) A guarantor or security provider has sent us a notice terminating, or requesting a release of, any guarantee or security given in support of a Loan Product.
- (b) We reasonably believe that the value of any security undergoes a material decrease, or we receive a request to change a security.
- (c) An event happens that, in our reasonable opinion, is likely to result in a material deterioration in your financial position, or the financial position of any guarantor or security provider. This could be:

- (i) the loss of a key supplier, major customer or tenant
 - (ii) a change in the nature of your activities
 - (iii) any other event.
- (d) Exchange rates or interest rates change in a way that may adversely affect you, any guarantor or any security provider.
- (e) We reasonably believe that a change in your financial position, or the financial position of any guarantor or security provider, means you, or they, will not be able to meet obligations under a Lending Document.

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

secured indebtedness means all Indebtedness of a security provider to us (including, for the purposes of sections 71 and 72 of the PPSA, future advances), and includes any part of that Indebtedness.

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 those obligations.

secured property means all personal property and all other property, wherever situated, other than 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.

security means each security interest given, or to be given, in our favour, and which secures, or is intended to secure, secured indebtedness.

security document means any document under which a security provider gives a security interest in our favour. A security interest may be given to us in a Facility Document.

security interest means an interest in property created by a transaction that, in substance, secures payment or performance of an obligation without regard to the form of the transaction or the identity of the person who owns the property.

security provider means, in relation to a Loan Product, each person who has given a security interest in our favour to secure repayment of that Loan Product.

specific security interest means a security interest given over one or more specific assets described in the relevant security document.

Standard Terms and Conditions are our transaction and savings account terms and conditions which are subject to change from time to time and available on our website bnz.co.nz.

sub-limit means the maximum amount that may be outstanding under each separate component of a Loan Product.

trust property means all property held by you as trustee of a trust.

The terms 'attach', '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.

Any reference to legislation includes any update of and re-enactment of that legislation and any other legislation enacted in substitution for that legislation. Reference to legislation also includes any regulation, order-in-council and other instrument issued or made under that legislation.

Contents

How do these Master Terms work?	1
Part 1: How your Loan Product works	3
1. Sending us information before using your Loan Product.....	3
2. Using your Loan Product.....	3
3. Understanding the interest you'll pay.....	3
4. Making repayments	5
5. Repaying early	5
6. Paying fees and charges.....	5
7. What happens if costs increase or the law changes.....	6
Part 2: Your obligations to us and what happens if you don't meet them	7
8. You tell us that certain things are true	7
9. We rely on you to do, or not do, certain things	7
10. How we handle Review Events	8
11. How we handle Events of Default	8
12. We can appoint an investigator	10
13. You give us a power of attorney	10
Part 3: How we manage your Loan Products and communicate with you	11
14. How payments work.....	11
15. Releasing a guarantee or security	12
16. How we manage your personal information	12
17. We can transfer rights and obligations.....	13
18. We do not waive our rights.....	13
19. Any certificate is conclusive.....	13
20. If one provision is invalid, that won't affect the others	13
21. How we manage communications.....	13
22. How we make amendments	14
23. Consumer legislation does not apply.....	15
24. Signing documents	15
25. Electronic signing	15
26. Third parties can rely on a Lending Document.....	15
27. Any legal proceedings will normally occur in New Zealand	15
28. Serving legal notices	15
29. Resolving a conflict between documents.....	15
30. The terms are subject to New Zealand law	15
Part 4: Terms for trusts, charitable trusts, partnerships, limited partnerships, incorporated societies, local authorities and individuals	16
31. Particular terms for trusts.....	16
32. Particular terms for partnerships.....	17

33.	Particular terms for limited partnerships.....	17
34.	Particular terms for charitable trusts	18
35.	Particular terms for incorporated societies.....	19
36.	Particular terms for local authorities.....	19
37.	Particular terms for individuals.....	20
Part 5: Terms for guarantors.....		21
38.	You give us your guarantee	21
39.	Your obligations as guarantor	22
40.	Your obligations continue and survive recovery	23
41.	You can't try to recover money from anyone who owes us money	24
Part 6: Terms for security providers		25
42.	Things you need to do	25
43.	How you secure your obligations	25
44.	How our security interest is protected	27
45.	The things you state as true and the things you agree to do or not do	29
46.	What happens if we enforce our rights	32
Part 7: Terms for CashFlow Plus Facilities.....		35
47.	What happens when you sell us your Debts.....	35
48.	What you do as our agent to manage Debts	36
49.	How you must manage payments	36
50.	How we manage Customer payments into your CashFlow Plus Account.....	37
51.	How we calculate your Available Funds	37
52.	How you can access your Available Funds	38
53.	How we recover amounts you owe us.....	38
54.	What happens when a Recourse Event occurs	38
55.	Events of Default specific to the CashFlow Plus Facility	39
56.	How we protect the Debts and secure them	39
57.	You confirm that certain things for each Debt are true	40
58.	Certain things we rely on you to do, or not do.....	41
59.	We may make changes to your CashFlow Plus Facility	42
60.	We may make changes to your CashFlow Plus Platform or require you to transfer to a new platform.....	42
61.	What happens when we no longer want you to act as our agent.....	43
62.	What happens when your CashFlow Plus Facility ends.....	43
63.	The limits of our liability to you	44
64.	You indemnify us for certain things	44
65.	You give us a power of attorney under your CashFlow Plus Facility.....	45
66.	You confirm you've made your own judgement	45
67.	Meanings of specific words for the CashFlow Plus Facility	45
Part 8: Meanings.....		47
68.	Meanings	47

