

Loan Agreement

General Terms

- These General Terms, together with the Specific Terms and Collateral Documents, contain the terms and conditions on which you have agreed to borrow the Loan from the Lender.
- The Specific Terms describe the commercial terms of your Loan and the security to be provided in support of the Loan.
- These General Terms describe your obligations under the Loan and what the Lender can do if you do not fulfil those obligations.

GENERAL TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

“**Additional Security Schedule**” means each schedule entitled “Additional Security Schedule” which is entered into by an Obligor in favour of the Lender;

“**Address for Service**” means the address for service for each party as set out in the Specific Terms, or as otherwise notified by one party to the others in writing;

“**Agreement**” means in relation to a Loan the agreement comprised of the Specific Terms, these General Terms and each Additional Security Schedule (if any) and includes any schedules to those documents;

“**Amount Outstanding**” means, at any time, the aggregate principal amount of the Loan outstanding at that time together with all unpaid interest, costs, fees and other amounts payable by any Obligor to the Lender under this Agreement and any Collateral Document;

“**Borrower**” means each person named as a borrower in the Specific Terms. Where there is more than one person named as a Borrower in the Specific Terms, the term “Borrower” refers to each of them separately and all of them together;

“**CCFA**” means the Credit Contracts and Consumer Finance Act;

There is a “**Change in Circumstance**” if any of the events described in clause 18 occur;

“**Collateral Document**” means each document held by the Lender as security for the repayment of the Secured Money or the performance of the Secured Obligations;

“**Date of Advance**” means the date on which the Loan is first advanced to the Borrower;

“**Date of Final Payment**” means the date on which the final Payment is due under this Agreement, as set out in the Specific Terms or as otherwise determined in accordance with this Agreement;

“**Date of First Payment**” means the date on which the first Payment is due under this Agreement, as set out in the Specific Terms;

“**Date for Payment**” means each date on which any Payment is due under this Agreement as set out in the Specific Terms, other than the Date of First Payment and Date of Final Payment;

“**Default Rate**” means the default interest rate set out in the Specific Terms;

“**Deferred Payment Loan**” means a loan repayable in accordance with clause 6.6(d);

“**Demand**” means a written demand made by the Lender to an Obligor following the occurrence of an Event of Default or a Change in Circumstance;

“**Due Date**” means the date on which any Payment is due to be paid in accordance with this Agreement;

“**Event of Default**” means each of the events set out in clause 11.2;

“**Fees**” means the fees described in the Specific Terms;

“**Fixed Interest Rate Period**” means any period set out in the Specific Terms as a fixed interest rate period, or any other period which the Borrower and the Lender agree in writing shall be a fixed interest rate period;

“**General Terms**” means the general terms and conditions as set out in this document;

“**Guarantor**” means each person named as a guarantor in the Specific Terms. Where there is more than one person named as a Guarantor in the Specific Terms, the term “Guarantor” refers to each of them separately and all of them together;

“**Instalments**” means the instalments (if any) set out in the Specific Terms;

“**Interest Only Loan**” means a Loan repayable in accordance with clause 6.6(a);

“**Interest Only Period**” means any period of time during which only interest is payable on the Loan, as described in the Specific Terms;

“**Interest Rate**” means the interest rate set out in the Specific Terms;

“Interest” means interest charged on the Loan in accordance with this Agreement;

“Land” means any part of the Secured Property which consists of an interest in land;

“Lender” means the Lender named in the Specific Terms;

“Loan” means the loan described in the Specific Terms;

“Material Adverse Effect” means in relation to a person something which, in the opinion of the Lender, is likely to have a material adverse effect:

- (a) on that person's financial condition or operations; or
- (b) on that person's ability to comply with his or her obligations under this Agreement or any Collateral Document; or
- (c) on the rights of the Lender against that person under this Agreement or a Collateral Document,

and references to **“Material Adverse Change”** are to be construed accordingly;

“Maximum Amount” means the maximum amount of the Loan as specified in the Specific Terms;

“Maximum Credit Limit” means, in relation to a Revolving Credit Loan, the maximum credit limit set out in the Specific Terms, as reduced in accordance with this Agreement;

“Obligors” means, together, the Borrower, the Guarantor and each other party to a Collateral Document or an Additional Security Schedule;

“Payments” means the payments described in the Specific Terms, together with any other payments due in accordance with this Agreement;

“Personal Property” means in relation to an Obligor, all of that Obligor's property other than Land;

“PPSA” means the Personal Property Securities Act 1999;

“Principal and Interest Loan” means a Loan repayable in accordance with clause 6.6(b);

“Principal” means that part of the Loan made available on the Date of Advance, and any amounts added to the Loan in accordance with this Agreement;

“Principal Payments” means the principal payments set out in the Specific Terms and all other Payments that are, or are to be, applied in reduction of the Principal;

“Receiver” means a receiver or receiver and manager appointed under this Agreement or a Collateral Document;

“Revolving Credit Loan” means a Loan which may be borrowed, repaid and borrowed again during the Term, in accordance with this Agreement;

“Schedule” means any schedule referred to in this Agreement;

“Secured Money” means all money which any Obligor owes to the Lender whether under this Agreement or any other arrangement (including amounts that may be advanced after the date of this Agreement);

“Secured Obligations” means all obligations of each Obligor to the Lender under this Agreement or any Collateral Document;

“Secured Property” means in relation to an Obligor:

- (a) all of the Obligor's rights in the relevant property set out in the Specific Terms or an Additional Security Schedule, as the case may be; and
- (b) any property obtained in replacement of that Secured Property or which is joined to and becomes part of that Secured Property;

“Security Interest” means an interest in personal property that in substance secures payment or performance of an obligation, and includes a mortgage, charge, lien and any other arrangement of any kind, the economic effect of which is to secure a creditor;

“Specific Terms” in relation to a Loan means the specific terms applicable to that Loan as set out in the document entitled 'Specific Terms' related to that Loan;

“Term Loan” means a Loan which may be advanced in one or more instalments;

“Term” means the term of the Loan as set out in the Specific Terms; and

“Working Day” means a day other than a Saturday or Sunday or nationally observed holiday or the regional anniversary for the region which includes the Lender's Address for Service.

1.2 Construction of Certain References: Unless the context otherwise requires, any reference to:

- (a) **Gender:** a gender includes the masculine gender, feminine and the neuter gender as the case may be;
- (b) **Personal Pronouns:** personal pronouns shall include an individual, body corporate, an association of persons (whether corporate or not), a trust and a state or agency of state;
- (c) **Plural and Singular:** the singular includes the plural and vice versa;
- (d) **Parties:** a party to this Agreement includes its successors and, in the case of the Lender someone who assumes the Lender's rights or obligations and in the case of an Obligor, anyone the Lender allows to assume the rights or obligations of that Obligor;
- (e) **Legislation:** any legislation includes the legislation as amended, re-enacted or substituted and any regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (f) **Construction of certain terms:** in this Agreement, the term:
 - (i) **indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, and whether as borrower, guarantor or otherwise) relating to the payment of money; and
 - (iii) **rights** includes all powers, remedies, authorities and discretions.

1.3 Guidance: The headings to the clauses in this Agreement are by way of guidance only and do not affect the interpretation of this Agreement. Some wording has been included in *italics* to explain some of the legal terms in this Agreement. These explanatory sentences are also by way of guidance only and do not affect the interpretation of this Agreement.

2 AVAILABILITY OF LOAN FACILITY

2.1 Drawdown: The Lender is only required to make the Loan and each Instalment available to the Borrower if all requirements of the Lender in relation to the Loan have been met, including:

- (a) **Documents:** the Borrower providing to the Lender, in a form acceptable to the Lender, signed copies of this Agreement and each Collateral Document, confirmation that all required insurance cover is in place and any other documentation reasonably required by the Lender;
- (b) **Conditions Precedent:** the Lender having received, in a form acceptable to the Lender, the documents specified in the Specific Terms, any Collateral Document or any letter of offer in respect of the Loan, or as otherwise separately notified to the Borrower by the Lender;
- (c) **Event of Default:** the Lender being satisfied that no Event of Default has occurred or is likely to occur following the advance of the Loan or the Instalment; and
- (d) **Drawdown Notice:** the Borrower sends a written request to the Lender before 9:30 a.m. on the Date of Advance, provided such date is a Working Day.

2.2 Availability: If the Borrower has met the requirements set out in clause 2.1 the Lender shall make the Loan available to the Borrower on the Date of Advance and each Instalment available to the Borrower at the times set out in the Specific Terms.

2.3 Failure to Drawdown: If the Loan is not advanced within thirty (30) days of the Date of Advance then the Lender may, by written notice to the Borrower, cancel this Agreement.

3 ADVANCES

3.1 Instalments: If the Loan is to be advanced by way of Instalments, all Instalments will be advanced in the manner set out in the Specific Terms.

3.2 Re-advances: If the Loan is a Revolving Credit Loan, the Borrower may throughout the Term, provided no Event of Default has occurred, borrow an amount equal to the Maximum Credit Limit less any amounts borrowed at that time.

4 TERM

The Amount Outstanding must be repaid upon Demand. The Lender agrees that it may only make Demand following the occurrence of an Event of Default or a Change in Circumstance. If no Demand is made, the Loan is available to the Borrower for the Term.

5 FEES

5.1 Fees Payable: All fees and charges (other than interest charges) that are, or may become payable in connection with the

Loan are set out in the Specific Terms.

- 5.2 Fees not Paid:** If any Fee is not paid when due, that Fee will be added to the Loan on the next Working Day. Interest will be payable on the amount of the unpaid fee from (and including) that day in accordance with clause 6.
- 5.3 Alteration of Fees:** The Lender shall be entitled at any time to alter any Fee and introduce new Fees if its costs of providing the Loan increase, or its expected returns on the Loan decrease, in a material respect. The Lender will give the Borrower and, if required by law, each other Obligor at least 30 days' notice of any change to the Fees in the manner required by the CCCFA.

6 PAYMENTS

- 6.1 Payment of the Loan:** The Borrower agrees to pay the Amount Outstanding in accordance with the terms set out in this Agreement and the Collateral Documents.
- 6.2 Interest:** Interest will accrue on the Loan at the Interest Rate. If a Fixed Interest Rate Period applies the Interest Rate will be fixed for that period. At the end of the Fixed Interest Rate Period, the Interest Rate will change to the floating rate set out in the Specific Terms.
- 6.3 Default Interest:** If an Event of Default occurs under clause 11.2(a) of this Agreement or if, at any time, the Maximum Amount or Maximum Credit Limit is exceeded, Interest shall be calculated on the unpaid amount or excess, as the case may be, at the Default Rate from the date on which such event occurs until the event is remedied.
- 6.4 Alteration of Rates:** The Lender agrees not to alter the Interest Rate applicable to a Loan during any Fixed Interest Rate Period. Where the Interest Rate is a floating rate, the Lender may alter the Interest Rate from time to time to reflect changes to market interest rates. The Lender will notify the Borrower and, if required by law, each other Obligor of any alteration to the Interest Rate in the manner required by the CCCFA.
- 6.5 Calculation of Interest:**
- (a) **Calculation:** Interest will be calculated at the Interest Rate on a daily basis from (and including) the Date of Advance. Interest on an Interest Only Loan or a Principal and Interest Loan will be added to the Loan on each Date for Payment (or on such other date as the Lender shall elect). Interest on a Revolving Credit Loan will be added to the Loan on the last day of each month (or on such other date as the Lender shall elect).
 - (b) **Calculation of Default Interest:** Default Interest will be calculated at the Default Rate on a daily basis from (and including) the date the relevant Event of Default occurs or the date on which the Maximum Amount or Maximum Credit Limit is exceeded (as applicable). Default Interest on an Interest Only Loan or a Principal and Interest Loan will be added to the Loan on each Date for Payment (or on such other date as the Lender shall elect). Default Interest on a Revolving Credit Loan will be added to the Loan on the last day of each month (or on such other date as the Lender shall elect).
- 6.6 Facility Types:** If the Loan is:
- (a) an Interest Only Loan, the Borrower will pay all Interest charged on the Loan, on the Date of First Payment and after that on each Date for Payment during the Term and will pay the Amount Outstanding on the Date of Final Payment;
 - (b) a Principal and Interest Loan, the Borrower will pay the consecutive Principal and Interest Payments on the Date of First Payment and thereafter on each Date for Payment during the Term and will pay the Amount Outstanding on the Date of Final Payment;
 - (c) a Revolving Credit Loan, unless otherwise stated in the Specific Terms, the Borrower will make sufficient payments of Principal and Interest during the Term to ensure that the Loan does not exceed the Maximum Credit Limit and will pay the Amount Outstanding on the Date of Final Payment; or
 - (d) a Deferred Payment Loan, the Borrower will pay the Amount Outstanding on the Date of Final Payment.
- 6.7 Date of Repayment:** The Amount Outstanding must be paid on the earlier of:
- (a) **Expiry of Term:** the Date of Final Payment; or
 - (b) **Demand:** the date on which Demand is made.
- 6.8 Mode of Payment:** All Payments must be made:
- (a) in person, on the Due Date not later than 30 minutes before the advertised closing time of the relevant branch of the Lender at which payment is made; or
 - (b) electronically, not later than 4pm on the Due Date in the manner the Lender may specify.
- If any Payment is made on the Due Date but after the time specified above the Payment will be treated as being received

on the next Working Day.

- 6.9 Payments:** Each Payment to the Lender under this Agreement or the Collateral Documents is to be made free of any restriction and without any deduction in respect of any taxes. If a deduction is required by law, the Obligor will pay to the Lender an additional amount equal to the amount deducted.
- 6.10 Early Repayments:** An Obligor may at any time prior to the end of the Term repay all or part of the Loan. The Obligor must give the Lender [thirty] day's prior written notice of such payment. Once a notice is given it cannot be withdrawn by the Obligor.
- 6.11 Loss on Early Repayment:** Where an Obligor repays all or part of the Loan at any time prior to the end of the Term, the Lender shall be entitled to recover its estimated losses arising from such early payment, which shall be an amount calculated by reference to the statutory procedure set out in the Credit Contracts and Consumer Finance Regulations 2004.

7 SECURITY

- 7.1 Charging Provision:** Each Obligor named in the Specific Terms or an Additional Security Schedule as a "Security Provider" grants a Security Interest in favour of the Lender over the Secured Property as security for the payment of the Secured Money and for the performance of the Secured Obligations.
- 7.2 Charge over Secured Property:** The Security Interest created by this Agreement shall constitute:
- (a) **Security Interest:** a Security Interest over all Secured Property of the Obligor which is Personal Property of the Obligor; and
 - (b) **Fixed Charge:** a fixed charge over all Secured Property of the Obligor which is not Personal Property.
- 7.3 Collateral Security:** This Agreement gives the Lender rights which are in addition to its rights under each Collateral Document. The Lender may exercise any of its rights under this Agreement or any Collateral Document, either separately or at the same time, and in whichever order it may determine.
- 7.4 Further Assurances:** On the request of the Lender, each Obligor will deliver to the Lender all documents, and do all things, the Lender, acting reasonably, may request to:
- (a) **Perfect Security Interest:** ensure the Lender receives the full benefit of the Security Interest created under this Agreement or the Collateral Documents (including granting a registered mortgage over any Land); or
 - (b) **Rights and Powers:** protect the Lender's interest in the Secured Property or otherwise allow the Lender to exercise its rights under this Agreement or the Collateral Documents.
- 7.5 Continuing Security:** Each Security Interest under this Agreement and any Collateral Document continues to apply even if payments are made during the Term.
- 7.6 No Discharge:** No Security Interest created, or guarantee given, under this Agreement or a Collateral Document will be released unless the Lender signs a formal release.

8 GUARANTEE AND INDEMNITY

- 8.1 Guarantee:** The Guarantor guarantees to the Lender the due payment by the Borrower and each other Obligor of the Secured Money and the due performance by the Borrower and each other Obligor of the Secured Obligations.
- 8.2 Payment:** The Guarantor agrees that if, for any reason, any Obligor does not pay when due any of the Secured Money, it will pay the relevant amount immediately upon demand.
- 8.3 Unenforceability of Obligations:** As a separate undertaking, the Guarantor agrees that, if the Lender can't recover the Secured Money from the Guarantor under this Agreement or a Collateral Document for any reason, including if a provision of this Agreement or a Collateral Document becomes void or invalid, whether or not that reason is:
- (a) **Defect in Authority:** a lack of authority by a person acting on behalf of an Obligor;
 - (b) **Legal Limitation:** a legal or other limitation (whether under the Limitation Act 1950 or otherwise), disability or incapacity of an Obligor; or
 - (c) **Death, Bankruptcy or Insolvency:** the death, bankruptcy or insolvency of an Obligor,
- the Guarantor will, as an independent obligation, pay to the Lender on demand the amount which the Lender would otherwise have been able to recover (on a full indemnity basis). *This means the Guarantor agrees to be personally liable for repayment of the Loan even if the Lender is prevented, for some technical reason, from enforcing its rights under this Agreement.*
- 8.4 Suspense Account:** All moneys received by the Lender in respect of the Secured Money from a Guarantor may be placed in a separate account which will not reduce the amount of the Loan so that the Lender can maximise its claim in the event of the insolvency of an Obligor.

- 8.5 Liability as Sole Principal Debtor:** The Guarantor is liable under this Agreement as sole and principal debtor. *This means each Guarantor is personally liable for repayment of the Amount Outstanding (even if the Borrower is not liable for some technical reason).*
- 8.6 Continuing Guarantee:** The Guarantor's obligations under this Agreement:
- (a) **Continuing Security:** continue to apply even if payments are made during the Term;
 - (b) **Additional:** are in addition to any Security Interest, guarantee, indemnity or other agreement held by the Lender, whether from the Guarantor or otherwise; and
 - (c) **Remain in Force:** are to remain in effect until the execution by the Lender of an unconditional release.
- 8.7 No competition:** At law, Guarantors have rights against the person they have guaranteed and any co-guarantors. To ensure the Lender's rights against those same people are not affected the Guarantor agrees that it will not, without the written consent of the Lender:
- (a) **Security Interest:** accept a Security Interest from another Obligor;
 - (b) **Recover:** take steps to recover money or other property of another Obligor; or
 - (c) **Payment:** claim, in any insolvency proceeding of another Obligor.

Until the Secured Money has been fully paid and the Secured Obligations have been fully satisfied, the Guarantor agrees not to exercise any rights of subrogation (being rights to seek reimbursement from the Borrower) to which it would otherwise be entitled. If the Guarantor holds or receives any Security Interest, money or property, in breach of this clause, the Guarantor is to transfer it to the Lender immediately and, until transferred, will hold it on trust for the Lender.

9 REPRESENTATIONS AND WARRANTIES

9.1 General: Each Obligor confirms that:

- (a) **Nature and Enforceability:** this Agreement and each Collateral Document is a binding obligation of each Obligor;
- (b) **Solvency:** it is solvent and able to pay its debts as they fall due;
- (c) **No Security Interest:** no Security Interest affects any property of an Obligor except as permitted by this Agreement;
- (d) **No Default:** no Obligor is in default under:
 - (i) any agreement relating to money; or
 - (ii) any guarantee; or
 - (iii) any other agreement, to an extent which could have a Material Adverse Effect on any Obligor;
- (e) **Information:** all information provided by each Obligor to the Lender in connection with this Agreement and the Collateral Documents was true when that information was provided and remains so; and
- (f) **Documents:** each Obligor has received a copy of this Agreement and each Collateral Document and each Obligor (other than the Borrower) has been advised by the Lender to seek independent legal advice in relation to the Agreement and each Collateral Document.

9.2 Repetition: Each Obligor shall be deemed to repeat these confirmations on each day during the life of this Agreement, by reference to the circumstances existing on that day.

9.3 Reliance: Each Obligor acknowledges that the Lender has relied on the confirmations in this clause.

10 GENERAL COVENANTS

10.1 General Covenants: Each Obligor agrees that it will:

- (a) **Performance of Obligations:** punctually perform the Secured Obligations;
- (b) **Secured Property:** maintain the Secured Property in good order and condition and protect the Secured Property from theft, loss or damage;
- (c) **Access:** provide to the Lender, and ensure that each person in possession of any Secured Property will provide to the Lender, access at all reasonable times to the Secured Property;
- (d) **Notify:** promptly notify the Lender in writing of any:
 - (i) event which might be an Event of Default;

- (ii) matter which might adversely affect the Secured Property, or the ability of any Obligor to perform the Secured Obligations;
 - (iii) change to its name or Address for Service;
 - (iv) material change in the location of the Secured Property; and
- (e) **Insurance:** ensure that throughout the life of this Agreement full replacement insurance cover is maintained in respect of the Secured Property. Any such insurance cover is to note the interest of the Lender and otherwise be on terms acceptable in all respects to the Lender.

10.2 Information Covenant: Each Obligor agrees that it will provide to the Lender any information reasonably requested by the Lender. For this purpose, each Obligor authorises the Lender to approach its financial, legal, banking or other advisors for the purposes of obtaining all information the Lender may reasonably require.

10.3 Negative Covenants: Each Obligor agrees that it will not without the prior written consent of the Lender:

- (a) **Security Interest:** allow any Security Interest to exist over all or any part of the Secured Property;
- (b) **Disposal of Secured Property:** sell or dispose of, or agree to sell or dispose of, or grant any lease or licence in respect of all or any part of its interest in the Secured Property; or
- (c) **Prejudice:** do or permit or allow to be done anything which might adversely affect the rights of the Lender under this Agreement or the Collateral Documents.

11 ENFORCEMENT

11.1 Acceleration: If, at any time and for any reason, an Event of Default occurs, then:

- (a) **Payment:** the Amount Outstanding is due and payable immediately;
- (b) **Charges:** each Security Interest created by this Agreement and each Collateral Document will become immediately enforceable (without the need for notice to or the consent of any Obligor);
- (c) **Exercise of Powers of Enforcement:** the Lender can exercise any of the powers described in clause 11.4; and
- (d) **Cancellation:** the Lender may cancel the Agreement.

11.2 Event of Default: An Event of Default occurs if:

- (a) **Payment:** any Obligor fails to pay any part of the Loan, any Fees, any Interest or any other part of the Secured Money on its Due Date;
- (b) **Breach:** any Obligor fails to perform the Secured Obligations in any material respect;
- (c) **Purpose:** any part of the Loan is applied to any purpose other than the purpose agreed between the Borrower and the Lender;
- (d) **Maximum Amount of Loan:** the Amount Outstanding exceeds the Maximum Amount or the Maximum Credit Limit;
- (e) **Insolvency:** an Obligor:
 - (i) is insolvent or unable to pay its debts as they fall due or is deemed to be so under any law;
 - (ii) stops payment of any of its debts or threatens to do so; or
 - (iii) makes any arrangements with its creditors with a view to avoiding insolvency;
- (f) **Death or Incapacity:** an Obligor that is an individual dies or otherwise becomes physically or mentally incapacitated;
- (g) **Representations or Warranties:** any statement made by an Obligor in or in connection with this Agreement or any Collateral Document, is found to be incorrect in any material respect;
- (h) **Material Adverse Change:** a Material Adverse Change occurs in relation to an Obligor;
- (i) **Illegality, Invalidity etc:** a material provision of this Agreement or any Collateral Document becomes unenforceable or it becomes unlawful or impractical for an Obligor or the Lender to perform any of its obligations under this Agreement or any Collateral Document; or
- (j) **Receiver, Enforcement etc:** a Receiver, trustee, manager, administrator or similar officer is appointed in respect of an Obligor or any of its property or a Security Interest in property of an Obligor becomes enforceable.

11.4 Powers of Enforcement: If an Event of Default occurs the Lender may in the name of the relevant Obligor or otherwise:

- (a) take possession of and sell the Secured Property (and for this purpose the Lender or its agents may enter any premises where the Secured Property is held and repossess the Secured Property);
- (b) at any time, do anything that the Obligor could do in relation to the Secured Property and the Obligor's business and its operations generally;
- (c) exercise all the rights of a natural person in relation to the Secured Property and the Obligor's business and its operations generally; and
- (d) exercise all of its other legal rights in relation to the Secured Property.

12 RECEIVER

12.1 Appointment: On:

- (i) the occurrence of an Event of Default; or
- (ii) the request of an Obligor; or
- (iii) the Lender believing that any of the Secured Property is at risk of being dealt with in breach of this Agreement or a Collateral Document,

the Lender may appoint in writing (and remove, replace and fix the terms of appointment of) one or more receivers or receivers and managers (either jointly or jointly and severally) in respect of the Secured Property.

12.2 Powers of Receiver: Subject to any restriction imposed by the Lender, every Receiver shall (in addition to any powers vested in them at law) have all the rights conferred on the Lender under clause 11.4.

12.3 Conform Regulations etc: Every Receiver will, to the maximum extent permitted by law, exercise all powers conferred under this Agreement in strict compliance with all directions given by the Lender.

12.4 Agency: Every Receiver will be the agent of the relevant Obligor. The relevant Obligor will be solely responsible for all acts or defaults (including as a result of misconduct or negligence) of every Receiver.

12.5 Remuneration: The Lender may from time to time fix the remuneration of any Receiver and pay that remuneration out of moneys recovered by the Lender or the Receiver in the exercise of their powers under this Agreement. Each Obligor will be solely liable for the payment of any such remuneration.

13 PROCEEDS OF ENFORCEMENT

13.1 Application: All money received by the Lender or any Receiver as the result of the exercise of an enforcement right under this Agreement is to be applied, subject to any restriction imposed by law, in or towards payment of:

First all costs and expenses (including legal expenses (on a solicitor and own client basis)) incurred by the Lender, any Receiver or any Attorney in exercising their respective powers, under this Agreement;

Secondly any other part of the Secured Money outstanding, in the order determined by the Lender at its absolute discretion; and

Thirdly subject to clause 13.2, anyone who is legally entitled to any surplus.

13.2 Contingent Amounts: If at the time of distribution of any money under clause 13.1, any part of the Secured Money is contingently owing to the Lender, the Lender or any Receiver may retain any surplus money until the amount of the Secured Money which is contingently due has been finally determined.

14 SERVICE OF DEMAND AND NOTICES

14.1 Addresses and References: Each notice, Demand or other communication under this Agreement is to be made in writing and may be sent by email, facsimile, personal delivery or by post to the addressee at the Address for Service, and marked for the attention of the person (if any), from time to time designated for that purpose in this Agreement or any Collateral Document.

14.2 Deemed Delivery: No communication shall be effective until it is received. Communication to an Obligor, however, will be treated as having been received:

- (a) **Delivery:** in the case of physical delivery, on the day of delivery;
- (c) **Post:** in the case of a letter, on the third Working Day after posting; and
- (d) **Facsimile or Email:** in the case of a facsimile or email, on the Working Day on which the facsimile or email is sent or, if sent after 5.00 p.m. or on any day other than a Working Day, on the next Working Day after the date it is sent.

14.3 Validity of Service: Delivery or service in accordance with clause 14.2 will be valid even though the addressee may not actually receive the notice, demand or communication and even though the addressee may be in receivership or liquidation.

15 SET OFF

15.1 General Right: Each Obligor authorises the Lender to:

- (a) **Application:** apply (without prior notice or Demand) all or part of any money owing by the Lender to an Obligor in repayment of the Secured Money; and
- (b) **Contingent Liability:** retain any such money pending any part of the Secured Money which are contingently due being quantified.

15.2 Rights on Default: Each Obligor authorises the Lender to, following the occurrence of any Event of Default (and without prior notice or Demand), transfer any money held in any account of an Obligor with the Lender, or any money owing by the Lender to an Obligor, to an account in the Lender's name by way of security for the performance of the Secured Obligations.

15.3 Authority: For the purposes set out in sub-clauses 15.1 and 15.2, the Lender is authorised to break a term deposit.

15.4 Contractual Rights: The Lender's rights under this clause are contractual rights affecting the terms upon which a credit balance is held and the creation of those rights does not constitute the creation of a Security Interest in that credit balance.

16 POWER OF ATTORNEY

16.1 General Appointment: Each Obligor irrevocably appoints the Lender and each Receiver and each of their duly appointed officers, agents, employees or representatives (jointly and severally) to be its attorney to:

- (a) **Covenants:** do all things which each Obligor agrees to do under this Agreement or the Collateral Documents;
- (b) **Performance:** sign any document and do any other act, that the attorney thinks is necessary for the purposes of:
 - (i) giving effect to the rights of the Lender and every Receiver under this Agreement or the Collateral Documents; or
 - (ii) ensuring the Lender gets the full benefit of each Security Interest created under this Agreement or a Collateral Document; and
- (c) **Land related obligations:** execute and perform any deed, instrument, application, transfer, mortgage or other document under the Land Transfer Act 1952 that the attorney believes is necessary for the purposes of:
 - (i) securing or otherwise giving effect to the rights, powers, remedies, authority and discretions of the Lender and every Receiver under this Agreement or the Collateral Documents;
 - (ii) perfecting each Security Interest created under this Agreement or a Collateral Document including (without limiting in any way the complete generality of this power) to execute and register any mortgage referred to in clause 7.4; or
 - (iii) further securing the payment of the Loan, any Fees and or Interest (whether accrued or compounded), and the performance of, and compliance with, the Secured Obligations,

and without limiting the rights above, in circumstances where an Obligor has agreed to mortgage an interest in land to the Lender and the Lender has registered a caveat in relation to such agreement to mortgage, the Obligor authorises an attorney to execute and register a mortgage under the Land Transfer Act 1952 in relation to the caveated interest.

An attorney may delegate its powers (including this right of delegation) to any person for any period.

The Lender cannot use its rights under this clause to take a security interest in property acquired by an Obligor after the date of this Agreement (other than as contemplated under sub-paragraph (c) above).

16.2 Ratification: Each Obligor confirms that anyone dealing with the Lender and every Receiver may rely on the authorisation referred to in this clause 16.

17 PROTECTION PROVISIONS

17.1 Performance of Secured Obligations: If any Obligor fails to perform and comply with the Secured Obligations, then the Lender may, but shall not be obliged to, pay any money, or perform any Secured Obligation on behalf of that Obligor.

17.2 Protection of Third Parties: Any person dealing with the Lender or any Receiver under this Agreement or the Collateral Documents can assume the Lender or such Receiver is acting properly and will not be affected by notice that any such transaction or dealing is unnecessary or improper.

17.3 Indemnity: Each Obligor agrees to indemnify the Lender, each Attorney and each Receiver and any of their respective agents, against all costs, losses and any other liability incurred as a result of:

- (a) **Variation, Waiver etc:** any variation, waiver or discharge provided in respect of this Agreement or any Collateral Document;
- (b) **Default:** the occurrence of any Event of Default; and
- (c) **Review and Exercise:** any exercise or attempted exercise of any right under this Agreement or any Collateral Document,

in each case on demand and on a full indemnity basis. *This means that each Obligor agrees to personally meet any of these costs and expenses and reimburse the Lender for any of these losses. The Lender will only exercise its rights under this clause in relation to costs and losses which it must reasonably incur to protect its interest and for which it is not compensated by any fees payable under this Agreement.*

17.4 Indemnity Irrevocable: The indemnity provided in clause 17.3 is unconditional and cannot be revoked and will continue to apply following the termination and release of this Agreement and the payment of the Amount Outstanding.

17.5 More than One Borrower: Where more than one person is named as Borrower, or any part of the Loan has been made available to two or more persons (including the Borrower), each person shall be jointly and severally liable for the repayment of the Amount Outstanding and for the performance of the Secured Obligations. *This means that all of them are liable together, and each of them is liable separately, for repayment of the Amount Outstanding and for the performance of the Secured Obligations.*

17.6 Obligors: Each Obligor hereby acknowledges and agrees that:

- (a) **Advance:** the Loan has been advanced to the Borrower at the Obligor's request;
- (b) **Demand:** the Lender may demand payment from any Obligor without first making demand on the Borrower;
- (c) **The Lender's Discretion to Release:** the Lender may release any Obligor from its obligations under this Agreement or the Collateral Documents and that release shall not affect the obligations of any other Obligor;
- (e) **Capacity:** no Obligor shall be released from its obligations under this Agreement or the Collateral Documents by any lack of legal capacity or other reason which would result in this Agreement or any of the Collateral Documents not being enforceable against the Borrower or any other Obligor; and
- (f) **Subrogation and Indemnity:** the Obligor cannot be reimbursed by the Borrower or any other Obligor until the Lender has received payment in full of the Amount Outstanding and each Obligor has performed and complied with the Secured Obligations.

17.7 Assignment

- (a) **Benefit and burden of this Agreement and the Collateral Documents:** This Agreement and the Collateral Documents are binding upon and continue for the benefit of the parties and their successors and, in the case of the Lender, someone who assumes the Lender's rights and obligations and, in the case of each Obligor, anyone who the Lender allows to assume the rights or obligations of that Obligor.
- (b) **The Lender:** Each Obligor agrees that the Lender may transfer all or any of its rights or obligations under this Agreement and the Collateral Documents to any person who the Lender reasonably believes can perform all of its obligations under this Agreement without the need for any further consent from any Obligor. Each such transferee is to have the same rights and obligations against each Obligor under this Agreement and the Collateral Documents (or a proportion of those rights and obligations if it is the transferee of part only) as if it was a party to this Agreement and the Collateral Documents in place of the Lender.
- (c) **Disclosure of Information:** The Lender may disclose, on a confidential basis, to a potential transferee any information about an Obligor.
- (d) **Obligors:** No Obligor may transfer any of his or her rights or obligations under this Agreement or the Collateral Documents without the prior written consent of the Lender.

18 CHANGE OF CIRCUMSTANCES

If as a result of any action taken by any government body:

- (a) **Lawful Nature:** it becomes unlawful for the Lender to make the Loan available, or to charge or receive interest at any applicable rate or otherwise give effect to its rights and obligations in the manner contemplated under this

Agreement or the Collateral Documents; or

- (b) **Imposition of Levy etc:** the cost to the Lender of making the Loan available, is significantly increased, or the net return to the Lender on the Loan is significantly reduced,

the Lender may by written notice to the Borrower terminate its agreement to make the Loan, and may require that the Amount Outstanding be repaid immediately or at such other time as may be set out in any such notice.

19 DISCLOSURE AND USE OF INFORMATION

19.1 Use and Disclosure: Each Obligor authorises the Lender to:

- (a) **Use:** use any information received about an Obligor for any purpose in relation to the business functions and activities of the Lender which include, without limitation, assessing that Obligor's credit risk and ability to repay their debts, registering any Security Interest granted to the Lender, assisting in the recovery of the Amount Outstanding and for marketing and promotional purposes; and
- (b) **Disclosure:** share information about any Obligor with:
- (i) any other party to this Agreement;
 - (ii) any insurer of the Secured Property;
 - (iii) any person providing credit support to the Lender;
 - (iv) any association established under the Friendly Societies and Credit Unions Act 1982 to which the Lender belongs and any entity which belongs to the same association;
 - (v) any holder of any Security Interest over the Secured Property;
 - (vi) any person performing services in connection with the Secured Property;
 - (vii) any potential transferee or any other person with whom the Lender may wish to enter into contractual relations in connection with this Agreement or a Collateral Document;
 - (viii) credit reporting agencies (such as Baycorp (NZ) Limited, Private Bag 92063, Auckland and Veda Advantage, Private Bag 92156 Auckland Mail Centre) and debt collection agencies;
 - (ix) such individual agencies and public registers (as defined in the Privacy Act 1993) which the Lender in its absolute discretion deems necessary;
 - (x) any government agency, regulator or law enforcement agency (in New Zealand or overseas) which satisfies the Lender that disclosure is necessary for law enforcement, compliance or regulatory purposes; and
 - (xi) any third party for the purpose of enforcing its rights under this Agreement or a Collateral Document.

Any such disclosure must be limited to information that is reasonably required by any such person. Information disclosed to credit reporting agencies (including default information) will be held by each agency on its system, accessed by the customers of the credit reporting database and used by that agency to provide its credit reporting services (including the maintenance of credit information files and supplying the information to other customers of the relevant credit reporting agency).

19.2 Acknowledgement: Each Obligor agrees that the Lender may collect information regarding that Obligor from third parties such as credit reporting agencies and searches of public registers.

19.3 Correction of Information: An Obligor can ask to see information received by the Lender about that Obligor. An Obligor can ask for any information held by the Lender to be corrected.

19.4 Electronic Communications: Each Obligor agrees to the Lender providing notices or other communications under this Agreement to that Obligor online, via email or by other electronic means.

20 PERSONAL PROPERTY SECURITIES ACT 1999

Each Obligor waives its right to receive a copy of a verification statement confirming registration of a financing statement or a financing change statement under the PPSA and agrees, to the extent permitted by law, that:

- (a) **Rights:** the Obligor shall have no rights under section 114(1), of the PPSA (*this means the Lender does not need to notify the Obligor if it intends to sell Secured Property*);
- (b) **Part 9 Provisions:** the provisions of Part 9 of the PPSA regarding enforcement of Security Interests which are for the benefit of the Obligor, or place obligations on the Lender, shall apply only if they have to by law or the Lender agrees to their application;

- (c) **Additional Rights:** where the Lender has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply; and
- (d) **Change Demands:** where the Obligor registers a change demand under section 162 of the PPSA, the Lender may charge a fee for complying with the change demand.

21 MISCELLANEOUS

- 21.1 **No Waiver:** Each Obligor must meet its obligations in a timely manner, but no failure or delay by the Lender to exercise any right under this Agreement or any Collateral Document shall operate as a waiver of that right and the partial exercise by the Lender of any right, shall not prevent any further exercise of that right.
- 21.2 **Remedies Cumulative:** The rights of the Lender under this Agreement and the Collateral Documents are in addition to any rights conferred or implied by law.
- 21.3 **Determination:** A decision by the Lender as to the amount of the Loan, an applicable Interest Rate or any amounts owing under the Agreement or any Collateral Document or as to whether an Event of Default has occurred and is continuing under this Agreement or any Collateral Document, shall, in the absence of an obvious error, be conclusive for all purposes including any proceedings.
- 21.4 **Amendments:** Other than as specified in clause 5.3 and clause 6.4, no amendment to this Agreement will be effective unless it is in writing and signed by all the parties to this Agreement.
- 21.5 **No Obligation to Marshal:** The Lender is not required to exercise its rights under the Security Interests it holds from the Obligors in any particular order.
- 21.6 **Impossibility:** The Lender will not be liable for any failure to perform or comply with its obligations under this Agreement resulting directly or indirectly from the action or inaction of a governmental or local authority, strike, labour disturbance (whether of its employees, officers or otherwise) or any other cause that is beyond its control.
- 21.7 **Anti money laundering:** The Borrower agrees that the Lender may refuse to process any transaction without incurring any liability if it is suspected that:
 - (a) the transaction may breach any laws or regulations in New Zealand or any other country;
 - (b) the transaction involves any person (natural, corporate or governmental) that is sanctioned or is connected, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the United Nations, the European Union or any country; or
 - (c) the transaction may directly or indirectly involve conduct that is unlawful in New Zealand or any other country.

The Borrower must (and must ensure that each other Obligor will) provide all information to the Lender that the Lender reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Borrower agrees that the Lender may share any information concerning the Obligors with any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or elsewhere.

- 21.8 **Delivery:** The Agreement will be treated as having been "delivered" by the Obligors immediately on physical or electronic delivery of an original or copy of the Agreement, executed by the Obligors, into the custody of the Lender or the Lender's solicitors.
- 21.9 **Version Identification:** For the purpose of identifying these General Terms, they will be known as "General Terms – Version 2015-1"

22 Governing Law

The Agreement is to be governed by and construed in accordance with New Zealand law.