

# Goods Loan and Mortgage (including Guarantee) Terms and Conditions

These Terms and Conditions must be read together with the Goods Loan and Mortgage (including Guarantee) Details.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

**Agreement** means the Details and these Goods Loan and Mortgage (including Guarantee) Terms and Conditions.

**Attorney** means an attorney appointed under clause 12.1.

**Business Day** means a day banks are open for business in Auckland (not being a Saturday, Sunday or public holiday in Auckland).

**Casualty Event** means the Property being:

- (a) lost, stolen or destroyed;
- (b) damaged to such an extent as reasonably determined by us to be beyond economic or financially prudent repair or reinstatement; or
- (c) seized, forfeited, confiscated or otherwise unavailable for use and employment by you permanently or for such continuous period as we determine is unacceptable to us.

**CFNZL** has the meaning given to it in the Details.

**Companies Act** means the *Companies Act 1993*.

**Cost** includes costs, charges and expenses, including those incurred in connection with advisers, and includes legal costs.

**Customer** means the person named in the Details as "CUSTOMER". If there is more than one, it means each of them jointly and severally.

**Debt** means the Loan outstanding and all other moneys and amounts you owe us, or will or may owe us in the future:

- (a) for any reason or circumstance in connection with any agreement, transaction, instrument, document, event, act, omission, matter or thing whatsoever;
- (b) whether at law or otherwise;
- (c) in any capacity whatsoever, whether alone or jointly and / or severally with any other person and whether as principal debtor, surety or otherwise;
- (d) whether such indebtedness or liability is present or future, actual or contingent, fixed or fluctuating and whether or not in the contemplation of the parties at the date of this Agreement; and
- (e) whether in the nature of principal, interest, damages or otherwise.

**Default Rate** means our then standard interest rate per annum for similar transactions plus 2% per annum.

**Details** means the part of this document titled "Goods Loan and Mortgage (including Guarantee) Details".

**Drawdown Date** means the date of payment of the Loan by us.

**Early Termination Fee** means the amount notified by us to you which is calculated as 1% of the Loan outstanding at the time of repayment or termination, for each year and part-year of the Term remaining at the time of repayment or termination.

**Event of Default** means each of the events listed in clause 8.1.

**Guarantee** means the guarantee and indemnity contained in clause 15.

**Guaranteed Money** means all amounts that at any time, for any reason or circumstance in connection with any agreement, transaction, instrument (whether or not negotiable), document, event, act, omission, matter or thing whatsoever, whether at law or otherwise, and whether or not of a type within the contemplation of the parties at the date of the Guarantee:

- (a) are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by you to us;
- (b) we have advanced or paid on your behalf or at your express or implied request;
- (c) we are liable to pay by reason of any act or omission on your part; or
- (d) are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs.

This definition applies:

- (e) irrespective of the capacity in which we, the Guarantor or you became entitled to, or liable in respect of, the amount concerned;
- (f) whether we, the Guarantor or you are liable as principal debtor, surety or otherwise; and
- (g) whether the Guarantor or you are liable alone, or together with another person.

**Guaranteed Obligations** means your obligations under or in connection with every agreement or arrangement between you and us.

**Guarantor** means the person named in the Details as "GUARANTOR". If there is more than one Guarantor, it means each of them severally and jointly.

**Insolvent** means:

- (a) a person is bankrupt, insolvent, unable to pay its debts as they fall due, stops or suspends

payment of any of its debts or threatens to do so, is under administration, is in liquidation, in interim liquidation, makes any compromise or assignment for the benefit of its creditors, is under administration or voluntary administration or wound up or has had a statutory manager or receiver appointed to any part of its property, is subject to any arrangement, assignment, moratorium or composition, is protected from creditors under any statute or is dissolved, is declared at risk under the Corporations (Investigation and Management) Act 1989 (or something having a substantially similar effect to any of the preceding events happens under the law of any jurisdiction); or

- (b) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the events listed in paragraph (a) of this definition.

**Insurance Rights** means your present and future right, title and interest in connection with each insurance policy taken out by you under clause 5.1.

**Interest Period** means each period specified in the Details, with the first Interest Period starting on the Drawdown Date and subsequent Interest Periods starting on the day on which the preceding Interest Period ends. If an Interest Period would otherwise end: (a) on a day which is not a Business Day, it ends on the next Business Day (unless that day falls in the following month, in which case the Interest Period ends on the previous Business Day); and (b) after the last day of the Term, it ends on the last day of the Term.

**Interest Rate** has the meaning set out in the Details.

**Loan** has the meaning set out in the Details.

**Monitoring System** means the monitoring system that may be attached to the Property to monitor and collect information on that Property, and includes any remote shut off function.

**Potential Event of Default** means an event that would, with the lapse of time or giving of notice or both, become an Event of Default.

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

**Property** means the equipment specified in the Details as "PROPERTY" and includes all parts, attachments (including anything installed or affixed for the purposes of the PPSA), accessories, replacements, tools and optional features which may from time to time be supplied with, incorporated or installed in, or attached to that equipment.

**Receiver** includes a receiver or receiver and manager.

**Related Company** has the meaning given to that term in the Companies Act.

**Repayment** means, in respect of a Repayment Date, the "Repayment" for that Repayment Date specified in the Details under the heading "Repayments", being an instalment of the Loan and the interest payable for that Repayment Date.

**Repayment Date** means:

- (a) if the Details specify that "REPAYMENTS WILL BE MADE" in advance, the first day of each Interest Period; and
- (b) if the Details specify that "REPAYMENTS WILL BE MADE" in arrears, the last day of each Interest Period.

**Review Event** means the occurrence of any of the events identified in clause 9.

**Secured Property** means the Insurance Rights and the Property.

**Security** means any Security Interest granted or to be granted in favour of us as security for the Debt.

**Security Interest** has the meaning given to that term in the PPSA.

**Standard Costs** means our standard costs and charges in relation to the Transaction Documents (if any).

**Taxes** means any taxes, levies, stamp and other duties, governmental fees and charges including any interest, penalties, fines or expenses in connection with them.

**Term** means the period of the Loan set out in the Details, commencing on the Drawdown Date.

**Transaction Document** means this Agreement, any Security, any other document made under or in connection with them and any document to which you and/or the Guarantor are a party and we agree is a Transaction Document.

**Trust** means a Trust established under a Trust Deed of which you and/or the Guarantor are a trustee.

**Trust Deed** means the deed of trust by which a Trust is established, full particulars of which are provided by you and/or the Guarantor to us prior to the date of this Agreement.

**Trustee** has the meaning given to that term in clause 16.1.

## 1.2 Interpretation

In this Agreement:

- (a) an agreement, representation or undertaking by two or more persons binds them jointly and each of them individually;
- (b) reference to singular includes plural and vice versa;
- (c) references to the Property include all or any part of the Property;
- (d) time is of the essence;
- (e) no variations or modification are valid unless in writing and executed by us;
- (f) a reference to dollars is to New Zealand dollars (unless otherwise indicated);

- (g) a reference to time is to the time in New Zealand;
- (h) a reference to a month means a calendar month;
- (i) mentioning anything after including does not limit what else might be included;
- (j) reference to a person includes a firm, a body corporate, an unincorporated association, a government body or an authority;
- (k) a reference to "you" or "your" is a reference to the Customer;
- (l) a reference to "we", "us" or "our" is a reference to CFNZL; and
- (m) a reference to a party includes its successors and assigns and its executors and administrators (as applicable).

## **2 LOAN**

### **2.1 Loan and payments by us**

- (a) We agree to lend, and you agree to borrow, the Loan on the terms of this Agreement.
- (b) You agree that we will pay the Loan at your direction to the person named in the "WE WILL PAY" section of the Details.

### **2.2 Before the Loan is made**

We do not need to provide the Loan to you unless we are satisfied that each of the following conditions have been fulfilled:

- (a) execution and delivery to us of this Agreement and each Security;
- (b) no Event of Default or Potential Event of Default has occurred or is continuing;
- (c) the representations and warranties in clause 6.1 are correct and not misleading at the Drawdown Date; and
- (d) satisfaction of any additional conditions we notify you about.

### **2.3 Repayment of Loan and payment of interest**

You agree to repay the Loan and pay interest on the Loan at the Interest Rate by payment of the Repayments on the Repayment Dates. Interest accrues daily from and including the first day of an Interest Period to, but excluding, the last day of the Interest Period and is calculated on the basis of a month of 30 days and a year of 360 days.

### **2.4 Voluntary Prepayment**

You may prepay the whole of the outstanding Loan on any Repayment Date by giving us at least 30 days prior written notice of your intention to do so and by repaying the outstanding amount of the Loan on the specified Repayment Date. An Early Termination Fee will be payable (see clause 2.7).

### **2.5 Payments**

You must, unless otherwise directed by us, make all payments due to us under this Agreement free from all deductions and without set-off in immediately available funds by 12.00 p.m. on the due date for payment.

### **2.6 Interest on overdue amounts**

You must pay to us, on demand, interest at the Default Rate on any amount you fail to pay us by the due date for payment. Interest under this clause accrues on a daily basis and is calculated from and excluding the due date for payment until and including the date of payment.

Any interest accrued but not paid under this clause will be added to the amount outstanding at the end of each month, and interest will be charged on the aggregate amount.

### **2.7 Early Termination Fee**

You agree to pay us the Early Termination Fee upon:

- (a) prepayment of the Loan before the scheduled end of the Term; or
- (b) termination of this Agreement following an Event of Default,

immediately upon demand from us. The parties agree that the Early Termination Fee is fair and reasonable.

## **3 MORTGAGE**

In consideration for us agreeing to provide the Loan to you, you as legal owner of the Secured Property grant us a Security Interest in the Secured Property. If you:

- (a) are a trustee of a Trust, you do this as trustee of the Trust; and
- (b) are not a trustee, you do this as beneficial owner.

You acknowledge that the Security Interest in this clause 3 is given in relation to, and secures, the Loan and all other Debt and that the Loan is to be used wholly or in part for purchasing the Property.

You must pay the Debt under the terms of any agreement in writing to do so. However, if there is no agreement, or an Event of Default is continuing, we may declare at any time by notice to you that the Debt is either payable on demand or immediately due for payment.

## **4 MAINTAINING THE PROPERTY**

### **4.1 Your maintenance obligations**

You must:

- (a) keep the Property in good working order and condition and correct any defects;
- (b) notify us of any Casualty Event or damage to the Property and, if we determine that the damage is repairable, restore the Property to good working order and condition;
- (c) ensure the Property is operated, maintained, serviced and repaired:
  - (i) by qualified persons;
  - (ii) using recognised and approved methods; and
  - (iii) following the manufacturer's instructions and recommendations;

- (d) keep comprehensive, accurate log books and service records for the Property;
- (e) if we supply you with plates or labels stating our interest in the Property:
  - (i) affix and keep affixed each plate or label in a prominent place on the Property; and
  - (ii) not change or remove any plate or label;
- (f) allow us to fix identifying plates or marks on or to the Property for any purpose (including advising of our Security Interest in the Property and prohibiting any dealing in the Property) and to provide us with access to the Property to enable us to do this;
- (g) not change or remove any identifying number, registration plates, name or mark on the Property;
- (h) not tamper, remove, modify or otherwise damage the Property's Monitoring System;
- (i) comply with all laws, requirements and obligations concerning the Property and the occupation and use of the premises upon which the Property is situated; and
- (j) upon us becoming entitled to possession of the Property under this Agreement, deliver to us all documents relating to the Property's licensing, registration, operation, maintenance or servicing.

#### 4.2 Dealing with the Property

You must not, without our written consent:

- (a) abandon, sell, assign, transfer, mortgage, charge, encumber, grant a Security Interest, lease, sub-lease, bail or part with possession of the Property. If we consent to a sub-lease or bailment of the Property, you must register your Security Interest in the Property against the sub-lessee or bailee (as applicable as required by us). If a Security Interest in connection with the Property in the form of chattel paper (as defined in the PPSA) is held by you or arises in your favour (whether or not as a result of a breach by you under this Agreement), you grant a Security Interest in the chattel paper and its proceeds (the "chattel paper") to us for the purposes of securing payment of any money you owe us under or in connection with this Agreement. The Security Interest created by this clause is a charge, and you may not transfer, dispose of or otherwise deal with the chattel paper or allow another Security Interest to exist over it. You must ensure you deposit with us all original documents of title comprising the chattel paper and any other documents we request relating to the chattel paper;
- (b) permit the Property to be moved or relocated outside New Zealand;
- (c) affix the Property to any land in such a manner that it becomes a fixture; and

- (d) allow the Property (or any part of it) to become an accession (as defined in the PPSA) to any property.

#### 4.3 Inspection and testing

You:

- (a) must produce the Property for inspection and testing as required and when requested by us;
- (b) irrevocably authorise us and our employees and agents, at any reasonable time, to:
  - (i) inspect, test and observe the use of the Property;
  - (ii) inspect maintenance records in respect of the Property; and
  - (iii) enter any premises where we believe the Property may be located to inspect, observe, protect our rights in, or exercise our right to take possession of, the Property; and
- (c) must give us reasonable help to enter those premises including but not limited to obtaining any necessary consent.

#### 4.4 You have no authority to bind us

You must not pledge our credit or involve us in any liability whatsoever in respect of the Property.

### 5 INSURANCE

#### 5.1 You must insure

You must, at your own expense, insure the Property for:

- (a) any loss, destruction or physical damage to the Property caused by fire, theft or any other risk required at law or which we reasonably require;
- (b) public liability for bodily injury or death and property and environmental damage; and
- (c) any other liability required at law or which we reasonably require,

on terms, for an amount and with an insurer we approve.

#### 5.2 Insured interests

Each insurance policy must be in both your and our name for each of our respective rights and interests.

#### 5.3 Your obligations to us

You must, for each insurance policy required under clause 5.1:

- (a) pay premiums and any Taxes on time;
- (b) produce evidence reasonably satisfactory to us of current insurance cover and, upon our request, receipts for insurance premiums;
- (c) deliver to us all insurance policies and certificates of insurance and currency; and
- (d) not, without our consent:
  - (i) do, or fail to do, anything which could result in the policy or claim being refused or reduced;
  - (ii) vary the insurance; or

- (iii) subject to clause 5.4, enforce, conduct, settle compromise a claim; and
- (e) notify, and provide evidence to us that you have notified, each insurer that its rights under that insurance policy have been mortgaged to us under this Agreement.

#### **5.4 Insurance claims**

You must follow our reasonable directions in relation to insurance claims. We may, after notifying you, take over your rights to make, pursue or settle an insurance claim in our absolute discretion.

#### **5.5 Insurance claims proceeds**

We may use the proceeds from:

- (a) an insurance claim triggered by a Casualty Event, in our absolute discretion; and
- (b) any other insurance claim, towards payment of the Debt and give any remaining proceeds to you to repair or replace the Property.

If you receive the proceeds on an insurance claim, you hold the proceeds on trust for, and must immediately pay the proceeds to, us.

### **6 YOUR WARRANTIES AND OBLIGATIONS**

#### **6.1 Representations and warranties**

You and the Guarantor represent and warrant to us at the date of this Agreement and on the Drawdown Date that:

- (a) the Loan will only be used for business or investment purposes (or both);
- (b) each have full power and authority to enter into and perform its obligations under the Transaction Documents and have taken all necessary and appropriate action to authorise the execution, delivery and performance of the Transaction Documents and obtained all consents and approvals required to enter into and perform its obligations under the Transaction Documents;
- (c) to the best of its knowledge the Transaction Documents constitute valid obligations which are enforceable against it;
- (d) if a body corporate, it is duly incorporated under the laws of its place of incorporation, are validly existing in accordance with those laws and have the power and authority to carry on its business as now being conducted;
- (e) its execution, delivery or performance of the Transaction Documents and the performance of any act contemplated in the Transaction Documents will not violate any law, regulation, determination, order or award of any court, public body or authority or conflict with or result in any breach of or require any consent or approval that has not been obtained under any security agreement, agreement, Trust Deed or other undertaking or instrument to which it is a party or which binds it;

- (f) neither it nor any of its Related Company are in default under any other financing arrangement and no event has occurred or is continuing which, if unremedied, could, with the giving of notice, lapse of time or fulfilment of any condition, constitute a default under any such arrangement; and
- (g) unless it has entered into this Agreement as trustee of a Trust, you are the beneficial owner of, and has good title to, the Property free from all Security Interests, claims and interests.

#### **6.2 Undertakings**

You and the Guarantor agree that while any part of the Debt remains unpaid:

- (a) to deliver to us within 14 days of our request, any information about you or the Guarantor that we reasonably request; and
- (b) to notify us of any significant deterioration in your or the Guarantor's business or financial condition and any Event of Default or Potential Event of Default occurring, giving full details of the event and any step taken or proposed to be taken to remedy it.

### **7 ADMINISTRATIVE MATTERS**

#### **7.1 Application of money**

Money received under this Agreement will be used to pay any part of the Debt we choose unless:

- (a) we are obliged to pay the moneys to anyone with a prior claim; or
- (b) clause 5.5 applies.

#### **7.2 Order of payment**

We may use money received under this Agreement towards paying any part of the Debt we choose, including by paying a later instalment before an earlier instalment.

#### **7.3 Remaining money**

Any money left after the Debt is paid will be paid to you or any other person we legally believe is entitled to it. We do not incur any liability if we pay the money to another person we legally believe is entitled to it and we are not required to pay interest on the remaining money.

#### **7.4 Costs of further steps and undertaking**

Everything you and the Guarantor are required to do under this Agreement is at your expense. You and the Guarantor agree to pay or reimburse on demand any Cost we incur in connection with doing anything you are required to do under this Agreement and have not done or, in our reasonable opinion, have not done properly.

#### **7.5 Changes to your details**

Neither you nor the Guarantor must change their name without first notifying us of their new name at least 21 days before the change takes effect.

#### **7.6 Right to rectify**

We may do anything which you should have done under this Agreement but which you either have

not done or, in our reasonable opinion, have not done properly.

## 8 DEFAULT

### 8.1 Events of Default

Each of the following is an Event of Default:

- (a) you or the Guarantor fail to pay any amount due under the Transaction Documents within two Business Days of the amount being due;
- (b) you or the Guarantor fail to comply with a term of the Transaction Documents. No Event of Default will occur if the failure to comply is capable of remedy and is remedied within ten Business Days of the earlier of (i) us giving you written notice; and (ii) you becoming aware of the failure to comply;
- (c) information given to us by you or the Guarantor under or about the Transaction Documents is incorrect or misleading in a material respect;
- (d) any default or event of default (however described) occurs under another agreement between:
  - (i) (A) you or the Guarantor, or any subsidiary of yours or the Guarantor's, and (B) us, or any Related Company of ours; or
  - (ii) you, or the Guarantor and any other person providing finance to you or the Guarantor;
- (e) you or the Guarantor become Insolvent;
- (f) if you or the Guarantor are a natural person, you and/or the Guarantor die or are convicted of an indictable offence or sentenced to a term of imprisonment or become incapable of managing your own affairs;
- (g) any execution or other process of any court or authority or any distress is issued against or levied upon any of your or the Guarantor's assets;
- (h) any event or circumstances or series of events or circumstances occurs which, in our reasonable opinion, has a material adverse effect on the business or financial condition of you or the Guarantor or the ability of you or the Guarantor to perform the obligations under this Agreement;
- (i) you or the Guarantor cease or threatens to cease carrying on your business or undertaking or a substantial part of it or you or the Guarantor disposes of the whole or a substantial part of your business, undertaking or assets whether by one transaction or a series of transactions (whether related or not).

### 8.2 Actions upon Event of Default

If an Event of Default occurs and is continuing, we may:

- (a) declare by notice to you that the Debt is payable on demand or immediately due for payment;
- (b) declare by notice to you that our obligations under this Agreement are terminated;
- (c) sue you for the Debt;
- (d) appoint one or more Receivers;
- (e) do anything a Receiver could do under clause 11;
- (f) initiate the use of the remote shut off feature on the Property's Monitoring System; and/or
- (g) do anything else the law allows us to do as mortgagee.

If we do not demand immediate repayment of the Debt when an Event of Default occurs, we have not waived our right to do so later.

### 8.3 Order of enforcement

If we have any rights against another person or under another document, we may enforce our rights in any order we choose.

## 9 REVIEW EVENT

Each of the following will constitute a Review Event:

- (a) there is a change in the identity of any of the persons who are able to control the composition of the board of directors or other governing body of you or the Guarantor;
- (b) there is a change in more than half of the voting rights attaching to the capital of you or the Guarantor and/or there is a change in more than half of the issued capital of you or the Guarantor (excluding any part of the capital that carries no right to participate in the distribution of either profit or capital);
- (c) the acquisition by any means by a person of a control interest (as defined under the Companies Act) in shares in you or the Guarantor that is sufficient to allow that person either alone or jointly with others to exercise control.

Upon the occurrence of a Review Event we may review our decision to provide the Loan to you under this Agreement. If we reasonably believe that the Review Event would have a material adverse impact on the ability of you or the Guarantor to fulfil your obligations under the Transaction Documents we may treat the Review Event as an Event of Default and take any actions under clause 8.2.

## 10 STATUTORY POWERS AND NOTICES

### 10.1 PPSA further steps

You and the Guarantor each agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) that we ask and consider necessary for the purposes of:

- (a) providing more effective security over the Secured Property; and

if we determine that a Transaction Document (or a transaction in connection with it) is or contains a Security Interest for the purposes of the PPSA:

- (b) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
- (c) enabling us to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by us;
- (d) enabling us to stamp, provide notices, apply for registration and renew registration of, and exercise our rights under or in connection with, this Agreement;
- (e) enabling us to exercise rights under or in connection with the Security Interest.

## **10.2 Contracting out of PPSA enforcement provisions**

We do not need to comply with and you may not exercise (or waive, as the case may be) rights under, sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA, or any other provision of the PPSA notified to you by us after the date of this Agreement, to the extent the law permits such provision to be excluded.

## **10.3 No notice required unless mandatory**

To the extent the law permits, you waive:

- (a) your right to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or Receiver exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits us or any Receiver from giving a notice under the PPSA or any other law.

## **10.4 Registration**

We may, at your expense, apply for any registration, or give any notification, in connection with a Security Interest created under this Agreement.

## **10.5 Costs of further steps and undertaking**

You agree to pay or reimburse our Costs in connection with anything you or we are required to do under this clause 10.

# **11 RECEIVER**

## **11.1 Terms of appointment**

If we appoint a Receiver:

- (a) we may appoint a Receiver over the whole or any part of the Secured Property or its income;
- (b) we may set the Receiver's remuneration at any figure we determine appropriate, remove a Receiver and appoint a new or additional Receiver; and
- (c) unless we notify you otherwise:
  - (i) the Receiver is your agent; and
  - (ii) you are responsible for anything done, or not done, by the Receiver and for the Receiver's fees and Costs.

## **11.2 Receiver's powers**

The Receiver may exercise any or all of the following powers, unless they are specifically excluded by the terms of the Receiver's appointment:

- (a) take possession of, collect, get in, and give up possession of, the Secured Property and give valid receipts for it; and
- (b) do anything the law allows an owner or a Receiver of property constituting the Secured Property to do as if you were a company incorporated under the Companies Act, even if you are not.

# **12 ATTORNEY**

## **12.1 Appointment**

You irrevocably appoint us and our successors and assigns, and each of our directors, secretaries and managers, and each Receiver, as your attorney ("**Attorney**") and agree to ratify anything an Attorney does under clause 12.2.

## **12.2 Powers**

If an Event of Default is continuing, or we reasonably believe that an Event of Default has occurred, an Attorney may, at your expense and on your behalf as necessary:

- (a) do anything, which you can lawfully authorise an attorney to do in connection with this Agreement or the Secured Property;
- (b) delegate its powers (including this power) and revoke a delegation; and
- (c) exercise its powers even if this involves a conflict of duty or it has a personal interest in doing so.

# **13 DISPOSAL OF THE PROPERTY IS FINAL**

If we or a Receiver, sell or otherwise dispose of the Property:

- (a) you must not challenge the acquirer's right to acquire the Property or attempt to reclaim the property; and
- (b) the acquirer need not check whether we or the Receiver have the right to dispose of the Property or exercises that right properly.

**14 REINSTATEMENT OF RIGHTS**

If a transaction or payment under this Agreement is void, voidable, unenforceable or refundable:

- (a) our rights are the same as if the payment or transaction was not made; and
- (b) you and the Guarantor agree to do anything (including signing any document) we ask to restore us to our former rights under this Agreement and the Security Interest.

**15 GUARANTEE AND INDEMNITY****15.1 Consideration**

The Guarantor acknowledges that we are acting in reliance on the Guarantor incurring obligations and giving rights under the Guarantee.

**15.2 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to us that you will make punctual payment to us of the Guaranteed Money and comply with the Guaranteed Obligations. If you do not pay the Guaranteed Money on time or fulfil the Guaranteed Obligations, the Guarantor agrees to pay the Guaranteed Money on demand by us at any time and/or perform the Guaranteed Obligations.

**15.3 Indemnity**

The Guarantor indemnifies us against any liability or loss arising, and any costs we suffer or incur if:

- (a) you do not pay the Guaranteed Money or perform the Guaranteed Obligations;
- (b) an obligation you, or the Guarantor, would otherwise have, is found to be void, voidable or unenforceable;
- (c) for any reason the Guarantor is held not liable to pay us under clause 15.2 or the Guarantor defaults under the Guarantee; or
- (d) we are required to pay an amount to a trustee in bankruptcy or a liquidator in connection with a payment made by you or the Guarantor to us.

The Guarantor agrees to pay amounts due under this clause on demand by us.

**15.4 Continuing indemnity**

Clause 15.3 is a continuing separate and independent obligation. It continues until all of the Guaranteed Money is paid and all Guaranteed Obligations are satisfied.

**15.5 Our discretion to exercise rights**

We may claim against the Guarantor under the Guarantee before we enforce any other rights or remedies against you or any other person. The Guarantor waives any right it may have of first requiring us to proceed against or enforce any other right, power, remedy or security against you or any other person.

**15.6 No set-off or deduction by Guarantor**

The Guarantor agrees that it will make all payments in full and not exercise any right of set-off or deduction against us.

**15.7 Guarantor's obligations unaffected**

We may do any of the following without the Guarantor's consent:

- (a) renewing, changing, replacing, or ending any arrangements (including your credit facilities) between us and you or any other Guarantor or person;
- (b) releasing or giving a concession (such as more time to pay) to you or another Guarantor;
- (c) releasing, losing the benefit of or assigning any securities, guarantees, negotiable or other instruments, judgements or rights from or against you or any other Guarantor or person held by us;
- (d) assenting to or becoming bound by any compromise or arrangement in respect of you or any other Guarantor or person;
- (e) receiving a distribution from you or another Guarantor's trustee or liquidator; or
- (f) any person's death, mental or physical disability or Insolvency, acquiescence or delay.

**15.8 Our rights protected**

Payment of the Guaranteed Money and performance of the Guaranteed Obligations are not affected by our acts or omissions or by anything else that might affect them at law or otherwise, including:

- (a) any person's death, mental or physical disability or bankruptcy or liquidation, acquiescence or delay;
- (b) any change in the name, style, capacity or constitution relating to you or the Guarantor;
- (c) any change by retirement, addition, incorporation, reconstruction, amalgamation, acquisition or otherwise relating to you or the Guarantor;
- (d) any other agreement, arrangement or transaction between us and you or the Guarantor or any other person;
- (e) any loss, release, discharge, abandonment or transfer of any security or guarantee granted by you or the Guarantor or any person to us;
- (f) us not recovering all or any portion of the Guaranteed Money by realisation or any Security held by us;
- (g) any acquiescence, delay, forbearance, act, omission or mistake on the part of us or any other person;
- (h) any Security held by us being or becoming void, defective or unenforceable; or
- (i) the Guarantee ceasing to be binding as a continuing obligation on the Guarantor, or by any other act or matter.

**15.9 Guarantor's rights are suspended**

The Guarantor must not, without our consent and



until all of the Guaranteed Money is paid and the Guaranteed Obligations are satisfied:

- (a) take any Security Interest from you (any security so taken will be held on trust for us and as security for the Guarantor's liability to us under the Guarantee);
- (b) share in or claim the benefit of any of the Security or any amount of the Debt repaid;
- (c) take any steps to enforce any right or remedy against you or any other Guarantor in respect of any money paid by the Guarantor to us under the Guarantee;
- (d) exercise any right or remedy in competition with us;
- (e) directly or indirectly claim or receive the benefit of any distribution, dividend or payment out of your estate or Insolvency or out of the estate or Insolvency of any other Guarantor; or
- (f) exercise a right of proof after an event occurs relating to your Insolvency or the Insolvency of any other Guarantor in competition with us. The receipt by us of any dividend or other payment out of such estate or in such liquidation will not prejudice or affect our right to recover from the Guarantor the Guaranteed Money or the performance of the Guaranteed Obligations.

#### 15.10 Inconsistent law

To the extent permitted by law, the Guarantee prevails to the extent it is inconsistent with any law. The Guarantor waives all its rights inconsistent with the Guarantee.

## 16 TRUST

### 16.1 If you or the Guarantor are a trustee of a trust

This clause 16 applies if you and/or the Guarantor enter into the Transaction Documents in the capacity as the trustee of a Trust and for the purposes of this clause 16, "Trustee" means you and/or the Guarantor in such capacity.

### 16.2 Representations and warranties relating to you and/or Guarantor as Trustee

The Trustee declares to us that:

- (a) it is the only trustee of the Trust;
- (b) no action has been taken or proposed to remove it as trustee of the Trust;
- (c) the copy of the Trust Deed delivered to us prior to the execution of this Agreement discloses all the terms of the Trust and there has been no other amendment deed, instrument of appointment, vesting deed or other instrument of any description whatsoever that affects the terms of the Trust;
- (d) it has power under the Trust Deed to enter into and observe its obligations under the Transaction Documents and enters into the Transaction Documents in its personal

capacity and in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;

- (e) it has a right to be fully indemnified out of the Trust assets for its obligations under the Transaction Documents;
- (f) the Trust assets are sufficient to meet its obligations under the Transaction Documents and any other obligation for which it has a right of indemnity from Trust assets;
- (g) it is not in default under the Trust Deed;
- (h) our rights under the Transaction Documents rank in priority to the interests of the beneficiaries of the Trust; and
- (i) it has the authorisations necessary to enter into the Transaction Documents, perform obligations under the Transaction Documents and allow each of them to be enforced (including, without limitation, under the Trust Deed and its constituent documents).

### 16.3 Your and/or the Guarantor's undertakings as Trustee

The Trustee agrees to observe its obligations as trustee of the Trust and must:

- (a) exercise its right of indemnity from Trust assets at our request;
- (b) not, without our written consent, do anything that:
  - (i) causes its retirement, removal or replacement as trustee of the Trust, termination of the Trust, variation of the Trust Deed or re-settlement of the Trust assets;
  - (ii) affects its right of indemnity from the Trust; or
  - (iii) affects its ability to observe the obligations under the Transaction Documents.

## 17 NOTICES

### 17.1 Where notices to be delivered

Any communication in connection with the Transaction Documents must be in writing and signed by the sender (if an individual) or an authorised officer of the sender and delivered to the address, email address or facsimile number set out in this Agreement or to any replacement of such notified by the intended recipient, such replacement is effective upon confirmation by us that our records have been updated.

### 17.2 When notices taken to be received

Communications are taken to be received:

- (a) if by personal delivery, when delivered;
- (b) if posted, three days after posting (or seven days if posted to or from outside New Zealand);

- (c) if by facsimile, at the last time shown in the transmission report; and
- (d) if electronic, when delivered.

### 17.3 Electronic communication

- (a) Any communication to be made between us and you and us and the Guarantor under or in connection with the Transaction Documents may be made by electronic mail or other electronic means.
- (b) We may still send paper communications to you and the Guarantor but communications provided by electronic means may not be provided as paper communications. You and the Guarantor must regularly check your electronic communications.
- (c) Electronic communication made by you or the Guarantor to us must be addressed in the manner we specify.

## 18 MISCELLANEOUS

### 18.1 Costs and expenses

You and the Guarantor agree to pay any reasonable Cost incurred by us in connection with:

- (a) entering into the Transaction Documents;
- (b) obtaining consents, waivers, variations, discharges and releases;
- (c) Taxes payable under the Transaction Documents; and
- (d) administering the Transaction Documents including, without limitation, providing information, recovering dishonoured payments, exercising, enforcing or preserving rights or doing anything in connection with any enquiry by an authority involving you or the Guarantor.

We may charge our Standard Costs, which we will determine and which may change at any time. We will provide details of the Standard Costs to you upon your request. We may debit any of these amounts from your Account before asking you to pay.

### 18.2 Indemnity and release

You indemnify us against, and agree to repay us on demand for, any liability or loss and any Costs of any nature (including without limitation claims based upon strict liability in tort, and claims for death, injury or damage) arising directly from:

- (a) the Debt (or any part of it) not being provided for any reason except our default;
- (b) the Debt (or any part of it) being repaid, discharged or made payable other than at its maturity or on a Repayment Date applicable to it;
- (c) the Transaction Documents;
- (d) an Event of Default;
- (e) the Property or this Agreement, including the possession, use, condition, repair,

maintenance, storage or any loss or destruction of, or damage to, the Property;

- (f) our inability to recover the Property for any reason whatsoever;
- (g) any person exercising or attempting to exercise a right or remedy in connection with this Agreement after an Event of Default;
- (h) any indemnity we give to your controller or administrator;
- (i) the use of the Monitoring System on the Property and/or the use of the remote shut off feature on the Monitoring System; and
- (j) us acting under clause 7.6.

You use, operate and possess any Property at your own risk and, to the full extent permitted by law, you release and discharge us and our agents and employees from all claims and demands on us and from any loss or damage whatsoever and whenever caused to you or your agents or employees or any third parties whether by way of death of or injury to any person, accident or damage to any property, delay, financial loss or otherwise arising directly or indirectly from or incidental to a breakdown of or defect in any Property or any accident to or involving any Property or its use, operation, repair, maintenance or storage or arising from the use of the Monitoring System on the Property and/or the use of the remote shut off feature on the Monitoring System.

### 18.3 Authority to complete

Each of you and the Guarantor authorise us to:

- (a) complete any part of this Agreement or a document connected with it (such as Companies Act forms, financing statements, financing change statements, amendment demands or transfers for the Secured Property) that have been left blank or incomplete; and
- (b) make amendments to any parts of this Agreement or a document connected with it (such as Companies Act forms, financing statements, financing change statements, amendment demands or transfers for the Secured Property) that are manifestly incorrect.

### 18.4 Commission to Brokers

You consent to us giving, or receiving from, any person who introduces you to us, or us to you, commissions, fees or other monetary or non-monetary rewards, whether or not out of money paid under the Transaction Documents. We may give any person monetary or non-monetary rewards based on the volume and value of introductions they give us.

### 18.5 Assignment

We may at any time assign or otherwise deal with any or all of our rights under this Agreement. You must not assign any of your rights under this Agreement without our prior written consent.

**18.6 Set-off**

You and the Guarantor irrevocably authorise us to apply money in or towards payment of amounts owed to us in the order that we determine and to apply any money that we owe to you in or towards payment of amounts which you owe us under the Transaction Documents or under any other agreement between you and us and/or the Guarantor and us.

**18.7 Discretion in exercising rights**

We or a Receiver may exercise a right, power or remedy in any way we consider appropriate (including by imposing conditions). If we or a Receiver do not exercise a right, power or remedy fully or at a given time, we may still exercise that right or remedy later. We or any Receiver are not liable for any loss, liability or cost caused by the exercise of, or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Agreement. Our or any Receiver's rights under this Agreement are in addition to any other rights or remedies available to us under law. Our or a Receiver's rights and remedies under this Agreement may be exercised even if this involves a conflict of interest or duty or we or the Receiver has a personal interest in their exercise.

**18.8 Mortgagee in possession**

If we exercise any right under this Agreement or under law to enter or take possession of the Property, we have complete and unfettered discretion as to how the Property is managed and are liable to account only for rents and profits actually received by us. The same applies to any Receiver when acting as our agent.

**18.9 No merger**

This Agreement does not merge with or adversely affect and is not adversely affected by:

- (a) any other Security Interest of any kind or any right or remedy held by us; or
- (b) any judgment which we have or may obtain against you in connection with the Debt.

We may still exercise our rights under this Agreement as well as under the other Security Interest, judgement or the right or remedy.

**18.10 Continuing security**

Any Security Interest, including the Guarantee created by this Agreement, remains a continuing security, despite any intervening payment or other thing, until we release the Property from that Security Interest. Rights given to us or a Receiver under this Agreement and your liabilities are not affected by anything, which might otherwise affect them at law.

**18.11 Supervening legislation**

- (a) Any present or future legislation which operates to vary your obligations in connection with this Agreement with the result that our rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the

extent that its exclusion is prohibited or rendered ineffective by law.

- (b) For the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, a Receiver or Attorney is entitled to enforce each provision of this Agreement that confers a benefit on a Receiver or Attorney (however, no Receiver or Attorney needs to consent to any amendment to this Agreement).

**18.12 Our statements**

We may give you and the Guarantor a statement about an amount payable or other matter in connection with the Transaction Documents. The statement is sufficient evidence of the facts stated, unless it is proved to be incorrect.

**18.13 Disclosure**

- (a) We may disclose information about you, the Guarantor or the Transaction Documents:
  - (i) to any person in connection with an exercise of rights under this Agreement or a transfer or other dealing with rights or obligations under this Agreement;
  - (ii) to our officers, employees, agent, contractors, legal and other advisors and auditors;
  - (iii) to any person in connection with an exercise of rights under this Agreement or a transfer or other dealing with rights or obligations under this Agreement;
  - (iv) to the extent specifically required by law;
  - (v) for the purposes of the Transaction Documents (including disclosing information in connection with any query or claim);
  - (vi) to establish or alter a direct debit arrangement;
  - (vii) to the extent we decide, where disclosure to third parties without your or the Guarantor's consent is permitted by laws relating to privacy;
  - (viii) in accordance with the terms of our privacy statement; and
  - (ix) otherwise with your or the Guarantor's consent.
- (b) You and the Guarantor consent to us giving, from time to time any information in our possession about you, the Guarantor or the Transaction Documents to:
  - (i) any of our related entities; or
  - (ii) you and the Guarantor.

The information may be given in electronic, paper or oral form. We are not liable to you or the Guarantor, and you and the Guarantor release us and our directors and employees from any liability for, the unauthorised accessing or release of any such information (except to the extent arising from our gross negligence or fraud).

**18.14 Monitoring System consent**

You acknowledge that we may collect, use and disclose information regarding the Property from the Monitoring System including, without limitation, information on the Property's usage hours, location and usage pattern. You consent to the collection, use and disclosure of any information collected from the Monitoring System for the purpose of managing your account with us and any other related purpose deemed necessary by us.

**18.15 Severability and survival**

If any part of any Transaction Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

Your and the Guarantor's obligations under this Agreement survive the expiration or termination of this Agreement to the extent required for their full observance and performance.

**18.16 Counterparts**

Each Transaction Document may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of the Transaction Document.

**18.17 Governing Law**

This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of that place.