

# Hire Purchase Agreement (including Guarantee) Terms and Conditions

These Terms and Conditions must be read together with the Hire Purchase Agreement (including Guarantee) Details.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

**Agreement** means the Details and these Hire Purchase Agreement (including Guarantee) Terms and Conditions.

**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 Unit being:

- (a) lost, stolen or destroyed; or
- (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.

**Commencement Date** means the date set out in this Agreement.

**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.

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

**Details** means the section titled Hire Purchase Agreement (including Guarantee) Details and Tax Invoice.

**Discount Rate** means the rate of interest used by us to calculate the Rent Payments.

**Early Termination Fee** means the amount notified to you by us and calculated as 1% of the sum of parts (a) and (b) of the definition of "Termination Amount" at the time of termination, for each year and part-year remaining until the scheduled Expiry Date. The parties agree that the Early Termination Fee is fair and reasonable.

**Event of Default** means each of the events listed in clause 7.1.

**Expiry Date** means the date set out in the Agreement.

**GST** means the tax imposed by the GST Act and related imposition Acts, or any similar tax.

**GST Act** means the *Goods and Services Tax Act 1985* or any predecessor or successor legislation.

**Guarantee** means the guarantee and indemnity contained in clause 10.

**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.

**Input Tax** has the same meaning as in the GST Act.

**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.

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

**Net Proceeds of Sale** means the actual gross proceeds of sale of the Unit received by us less all Costs of or incidental to the repair reinstatement, insurance, storage, sale, disposal and delivery of the Unit.

**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*.

**Present Value** means, for the date that the hire of a Unit is terminated, the value at that date of a future Rent Payment that would have been payable by you to us if not for the termination, determined by discounting that amount at the Discount Rate (as certified by us).

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

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

**Rent Payment** means each instalment of rent described in the column "Rent Payment" in the section of the Details headed "Rent Payments".

**Secured Property** means each Unit and together, the Units.

**Security** means any Security Interest granted or to be granted in favour of us as security for the obligations under this Agreement.

**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).

**Taxable Supply** has the same meaning as in the GST Act.

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

**Tax Invoice** has the same meaning as in the GST Act.

**Term** means the period of the hire set out in this Agreement, commencing on the Commencement Date and ending on the Expiry Date.

**Termination Amount** means the aggregate of the following amounts:

- (a) the sum of all Rent Payments, overdue interest and other amounts of money that have fallen due and are payable as at the date of termination of the hire of the Unit; and
- (b) the aggregate of the Present Values for each future Rent Payment in respect of that Unit that would have been payable by you to us at the time specified this Agreement, but for the termination (including the final Rent Payment); and
- (c) the Early Termination Fee; and
- (d) all Costs incurred by us in obtaining possession of the Unit and in enforcing our rights under this Agreement or otherwise suffered in connection with your breach of this Agreement.

**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 11.1.

**Unit** means the equipment described in this Agreement, and 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.

**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 Unit include all or any part of the Unit;
- (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 a party includes its successors and assigns and its executors and administrators (as applicable);
- (l) a reference to "you" or "your" is a reference to the Customer;
- (m) a reference to "we", "us" or "our" is a reference to CFNZL; and
- (n) references to the termination of this Agreement shall be construed and interpreted as including: (i) valid rescission by one party; (ii) acceptance by one party of a repudiation by or on the part of the other party; (iii) and termination by us by reason of the occurrence or happening of an Event of Default.

**2 HIRE OF UNIT****2.1 Hire of Unit**

We agree to acquire each Unit and hire it to you.

**2.2 Term**

The Term shall commence on the Commencement Date and expire on the Expiry Date.

**2.3 Rent**

You shall pay to us the total Rent Payments for each Unit in the amounts and at the times set out in the Details.

**2.4 GST**

- (a) If we make a Taxable Supply to you and the consideration payable for that supply is not expressed to be inclusive of GST, you must pay an additional amount to us equal to the value of that GST exclusive consideration, multiplied by the prevailing GST rate;
- (b) we will issue a Tax Invoice to you for any Taxable Supply made to you;
- (c) any GST amount payable by you must be paid at the earlier of;
  - (i) when the Tax Invoice is received by you; and
  - (ii) when the time of supply takes place for GST purposes;
- (d) if the amount of GST recovered by us from you differs from the amount of GST payable at law by us (or an entity grouped with us for GST purposes) in respect of the Taxable Supply, the amount of the difference must be paid by, or refunded to, you;
- (e) where you are required to pay an amount to us by way of a reimbursement of an amount paid or payable by us to a third party, the amount you are required to pay will exclude any amount included in the calculation of our Input Tax, but will be increased under Clause 2.4(a) if the amount payable is consideration for a Taxable Supply; and
- (f) if we are not entitled to claim a full credit or refund of GST in respect of our purchase of any Unit, you must pay to us on demand the amount that we determine to be the difference between the amount of GST payable in respect of the supply of the Unit to us and the amount of credit or refund of GST which we are entitled to claim in respect of the purchase of the Unit.

**2.5 Registration fees and other Taxes**

You shall pay to us or reimburse us for all registration fees and other Taxes (except our income tax) payable in connection with, or the receipt or payment of any moneys under or pursuant to, this Agreement.

**2.6 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.

**2.7 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.

**2.8 Amounts payable on early termination**

If the hire of the Unit is terminated before the Expiry Date, you must pay us the Termination Amount in full together with all other amounts due to us under or in connection with this Agreement or any other agreement between you and us. All amounts payable under this clause are secured by each Security Interest created under this Agreement.

**2.9 Security Interest**

In consideration for us agreeing to hire the Unit to you, you grant us a Security Interest in the Unit.

You acknowledge that the Security Interest in this clause 2.9 is given in relation to, and secures, all amounts outstanding under or in connection with this Agreement or any other agreement between you and us.

You must pay the amounts due to us at the times set out under the terms of any agreement. However, if there is no agreement, or an Event of Default is continuing, we may declare at any time by notice to you that all outstanding amounts are payable on demand or are immediately due for payment.

**3 YOUR WARRANTIES AND OBLIGATIONS****3.1 Representations and warranties**

You (and in relation to paragraphs (a), (b), (c) and (f), you and the Guarantor) represent and warrant to us at the date of this Agreement that:

- (a) it has full power and authority to enter into and perform its obligations under the Transaction Documents and has 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;
- (b) to the best of its knowledge the Transaction Documents constitute valid obligations which are enforceable against it;

- (c) it benefits by entering into the Transaction Documents;
- (d) you have accepted delivery of the Units or will have accepted delivery of the Units on or before the Commencement Date;
- (e) you have, or on the Commencement Date you will have, thoroughly examined the Unit and satisfied yourself as to its condition, quality, suitability and fitness for its purpose and intended use; the sufficiency and validity of manufacturer's warranties; that the Unit contains all attachments, accessories and safety features deemed necessary by you; that the Unit complies with its description in this Agreement; and that you have relied solely upon your own skill and judgement in selecting and hiring each Unit;
- (f) neither it nor any of its Related Company are in default under any other hire purchase 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) as between us and you, you bear the responsibility for all aspects of delivery of the Unit to you.

**3.2 Undertakings**

You (and in relation to paragraphs (h), (i) and (j), you and the Guarantor) agree:

- (a) to effect and maintain at all times all registrations, licences and permits which may be required under any law for or in respect of each Unit or its use or operation, at your own cost, including without limitation, where applicable, any such registrations, licences and permits prescribed by the road transport authority in the relevant province or area;

- (b) not to abandon, sell, assign, transfer, mortgage, charge, encumber, grant a Security Interest, lease or part with possession of the Unit. If we consent to the sublease or bailment of the Unit, you must register your Security Interest in the Unit against the sublessee or bailee (as required by us). If a Security Interest in connection with the Unit 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 to 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;
- (c) not to tamper, remove, modify or otherwise damage the Unit's Monitoring System;
- (d) not to permit the location of the Unit to change from that specified in this Agreement;
- (e) where the Unit is an on road vehicle, not to permit the location of registration or garaging to be changed from that specified in this Agreement;
- (f) not to affix the Unit to any land in such a manner that it becomes a fixture;
- (g) not to allow the Unit (or any part of the Unit) to become an accession (as defined in the PPSA) to any property;
- (h) not to change your name without first notifying us of your new name at least 21 days before the change takes effect;
- (i) to deliver to us within 14 days of our request, any information about you and the Guarantor that we reasonably request; and
- (j) to notify us of any significant deterioration in yours or the Guarantor's business or financial condition at any time during the Term, and any Event of Default or Potential Event of Default occurring, giving full details of the event and any step taken or proposed to remedy it.

### 3.3 Obligations not affected

Your and the Guarantor's (as applicable) obligations are absolute and unconditional and shall not be affected, restricted, excluded or modified by reason of:

- (a) any present or future claims of you against us or otherwise or against the dealer or the manufacturer of a Unit;
- (b) any Casualty Event, breakdown of a Unit or damage to or loss or destruction of a Unit;
- (c) any prohibition or interruption of or other restriction or limitation upon your use, operation or possession of a Unit, however caused; or
- (d) any defect in a Unit or in the condition, design, suitability, operation or fitness for use of a Unit.

### 3.4 Further assurances

You and the Guarantor shall at your expense do any further act and execute any further documents which we may request in order to:

- (a) protect our title to any Unit;
- (b) protect our rights, powers and remedies under the Transaction Documents;
- (c) ensure that any Security Interest under this Agreement is enforceable, perfected (including, where possible by control in addition to registration) and otherwise effective;
- (d) enable us to stamp, provide notices, apply for registration and renew registration of, and exercise its rights in connection with, this Agreement; and
- (e) enable us to exercise rights in conjunction with any Security Interest in our favour.

### 3.5 Registration

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

### 3.6 Costs

Everything that you and the Guarantor are required to do under this clause is at your expense. You agree to pay or reimburse our Costs in connection with anything you or the Guarantor are required to do under this clause.

## 4 MANUFACTURER'S WARRANTIES

### 4.1 Benefit of Manufacturer's warranties to be given to you and the Guarantor

We will use our best endeavours to extend to you and the Guarantor the benefit of any guarantee, condition or warranty which may have been given to us by the manufacturer of a Unit or otherwise implied in our favour, but on the conditions that:

- (a) you and the Guarantor fully indemnify us against all Costs incurred or suffered in connection with enforcement or attempted enforcement; and
- (b) the rights and benefits attaching to any such guarantee, condition or warranty shall revert to us upon the termination of the hire of the Unit (except where you or the Guarantor acquires title to the relevant Unit).

#### **4.2 You and the Guarantor to comply with terms of manufacturer's warranties**

You and the Guarantor must at all times comply with the terms and conditions of all guarantees or warranties given by the manufacturer of a Unit and must not engage in any conduct that renders void or unenforceable or otherwise vitiates any such guarantee or warranty.

### **5 INSURANCE**

#### **5.1 You must insure**

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

- (a) any loss, destruction or physical damage to the Unit caused by fire, theft or any other risk required at law or which we reasonably require; and
- (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 Our interests**

Each insurance policy must be in our and your names for each of the 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;
- (b) produce evidence reasonably satisfactory to us of current insurance cover and receipts for insurance premiums at our request;
- (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 a claim being refused or reduced;
  - (ii) vary the insurance; or
  - (iii) subject to clause 5.4, enforce, conduct, settle or compromise a claim.

#### **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 any amount owing under the Transaction Documents and give the balance of the proceeds to you to repair or replace the Unit.

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

### **6 MAINTAINING THE UNIT**

#### **6.1 Your maintenance obligations**

You must:

- (a) keep the Unit in good working order and condition and correct any defects;
- (b) notify us of any Casualty Event or damage to the Unit and, if we determine that the damage is repairable, restore the Unit to good working order and condition;
- (c) ensure the Unit 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 Unit;
- (e) if we supply you with plates or labels stating our interest in the Unit:
  - (i) affix and keep affixed each plate or label in a prominent place on the Unit; and
  - (ii) not change or remove any plate or label;
- (f) allow us to fix identifying plates or marks on or to the Unit for any purpose (including advising of our Security Interest in the Unit and prohibiting any dealing in the Unit) and to provide us with access to the Unit to enable us to do this;
- (g) not change or remove any identifying number, registration plates, name or mark on the Unit;
- (h) not tamper, remove, modify or otherwise damage the Unit's Monitoring System;

- (i) comply with all laws, requirements and obligations concerning the Unit and the occupation and use of the premises upon which the Unit is situated;
- (j) not permit the Unit to be moved or relocated outside New Zealand; and
- (k) upon us becoming entitled to possession of the Unit, deliver to us all documents relating to the Unit's licensing, registration, operation, maintenance or servicing.

## 6.2 Inspection and testing

You:

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

## 6.3 You have no authority to bind us

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

## 6.4 You bear risk of loss or damage to Unit

You bear the risk of any loss or damage or any Casualty Event occurring in respect of any Unit, during or subsequent to the Term unless such Unit is returned to us.

## 6.5 Casualty Event

No later than 30 days after the occurrence of a Casualty Event, you or the Guarantor must pay the Termination Amount for the affected Unit to us. Upon payment of the Termination Amount by you or the Guarantor, the hire of the relevant Unit shall terminate. If that Unit was not the only Unit the subject of this Agreement, then this Agreement will continue in respect of each other Unit for which a Casualty Event has not occurred.

## 7 DEFAULT

### 7.1 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 a subsidiary of you or the Guarantor and (B) us or any of our Related Company; and
  - (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 circumstance 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 threaten to cease carrying on your business or undertaking or a substantial part of it or you or the Guarantor dispose of the whole or a substantial part of your or the Guarantor's business, undertaking or assets whether by one transaction or a series of transactions (whether related or not).

### 7.2 Actions upon Event of Default

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

- (a) terminate this Agreement and your right of possession of each Unit, by notice in writing to you, whereupon you must immediately pay to us the Termination Amount and all other amounts (whether or not related to this Agreement) due to us and all of your rights to the use or possession of such Unit shall cease;
- (b) proceed by appropriate court action to enforce performance by you of the applicable provisions of this Agreement or to recover damages flowing from that Event of Default;
- (c) appoint one or more Receivers;
- (d) do anything a Receiver could do under clause 7; and/or
- (e) initiate the use of the remote shut off feature on the Unit's Monitoring System.

### 7.3 Essential terms

Each party agrees that the occurrence of any Event of Default constitutes a breach and repudiation of this Agreement.

### 7.4 Receiver - 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.

### 7.5 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.

### 7.6 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.

### 7.7 Contracting out of PPSA enforcement provisions

We do not need to comply with and you waive any rights under and/or may not exercise 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.

### 7.8 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 exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a secured party 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 from giving a notice under the PPSA or any other law.



## **8 EXPIRY OF THE TERM OF THIS AGREEMENT**

### **8.1 You are to become owner of Unit**

On the Expiry Date, you shall become the owner of each Unit, and title to the Unit shall automatically pass to you without any further act or consent required from us, provided that:

- (a) you have paid to us the last Rent Payment and all other amounts accrued, due and payable under this Agreement or any other agreement or arrangement between you and us as at the Expiry Date (such amounts being secured by each Security Interest created under this Agreement); and
- (b) no Event of Default is continuing as at the Expiry Date.

### **8.2 Early termination**

Subject to and upon payment of the amounts referred to in Clause 2.8, we shall transfer title in each Unit to you (unless the termination occurred due to an Event of Default and we have already sold or agreed to sell the Units, in which case we shall pay you the Net Proceeds of Sale less any other amounts due under this Agreement or any other agreement or arrangement between you and us).

### **8.3 "As is, where is" basis**

Any transfer of title to the Unit from us to you under this Clause 8 shall be on an "as is, where is" basis and without warranty by us of any type.

## **9 ACTIONS UPON TERMINATION OF AGREEMENT**

### **9.1 Unit to be returned**

If, upon the expiry or earlier termination of this Agreement, clauses 8.1 or 8.2 (as applicable) are not satisfied, you must at your own expense immediately deliver possession of each Unit to us, appropriately protected and in the condition required by Clause 6.1, to the premises we notify to you at that time.

### **9.2 Payment by you if Unit not in required condition**

If a Unit returned to us is not in the condition required under Clause 6.1:

- (a) you must pay to us, on demand, all Costs incurred by us to bring that Unit into that condition; and
- (b) until the Unit is brought into that condition, you must pay to us a daily holding cost determined, by us and notified to you or, in the absence of such determination, the daily equivalent of the Rent Payments last payable by you under this Agreement.

### **9.3 We may retake possession of Unit if not returned**

If a Unit is not returned to us in accordance with Clause 9.1, we may retake possession of that Unit and for that purpose we and our employees and agents may, with reasonable notice, and without liability or legal process, enter upon any land or premises on which that Unit is kept or on which we believe that Unit is kept and detach or dismantle that Unit from any part of the land or premises to which that Unit may have been affixed.

### **9.4 If you continue to be in possession**

If clauses 8.1 or 8.2 are not satisfied and you continue to be in possession of a Unit after the expiration or termination of this Agreement (without prejudice to the exercise by us of our rights, powers and remedies under this Agreement) you shall pay to us a monthly rent equal to the amount from time to time determined by us, or in the absence of any such determination, the Rent Payments last payable by you under this Agreement prior to such expiration or termination, and you shall continue to be bound by the terms of this Agreement so far as they may be capable of applying.

### **9.5 Legislation applicable to repossession**

We acknowledge that the *Credit Contracts and Consumer Finance Act 2003*, the PPSA or similar legislation may apply to a repossession by us of a Unit, and if such legislation does apply, we will comply with our obligations under it in repossessing a unit (notwithstanding any other provision of this Agreement with the exception of clause 7.4 above, which for the avoidance of doubt, applies notwithstanding this clause).

### **9.6 We may offer Unit for sale**

Upon us receiving possession of a Unit, we may offer that Unit for sale to any person by way of public auction, tender or private treaty or to a dealer or in any other manner or by any other means and upon such terms and conditions as we may reasonably determine.

## **10 GUARANTEE AND INDEMNITY**

### **10.1 Consideration**

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

### **10.2 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.

**10.3 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 10.2 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.

**10.4 Continuing indemnity**

Clause 10.3 is a continuing separate and independent obligation. It continues until all of the Guaranteed Money is paid and all Guaranteed Obligations are satisfied.

**10.5 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.

**10.6 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.

**10.7 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.

**10.8 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.

**10.9 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 Unit 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.

#### 10.10 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.

### 11 TRUST

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

This clause 11 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 11, "Trustee" means you and/or the Guarantor in such capacity.

#### 11.2 Representations and warranties relating to you and/or a 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).

#### 11.3 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; and
- (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.

### 12 NOTICES

#### 12.1 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.

#### 12.2 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.

#### 15.3 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.

**13 MISCELLANEOUS**

**13.1 Costs and expenses**

You and the Guarantor agree to pay reasonable Costs 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.

**13.2 Indemnity and release**

You indemnify us against, and agree to repay us on demand, any liability from, 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 Unit not being delivered by the Commencement Date for any reason except our default;
- (b) any Rent Payment being paid or discharged other than on a Rent Payment date applicable to it;
- (c) an Event of Default, or us exercising or attempting to exercise a right or remedy in connection with the Transaction Documents after an Event of Default;
- (d) the Unit, including the possession, use, condition, repair, maintenance, storage or any loss or destruction of, or damage to the Unit;
- (e) any person exercising or attempting to exercise a right or remedy in connection with the Unit after an Event of Default;

- (f) our inability to recover the Unit for any reason whatsoever;
- (g) the Transaction Documents; or
- (h) the use of the Monitoring System on the Unit and/or the use of the remote shut off feature on the Monitoring System,

including "break costs" calculated by any method we reasonably choose, including by reference to any loss we incur by terminating arrangements we have made with others to fund the purchase price of the Unit (or any part of it).

You use, operate and possess a Unit 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 a Unit or any accident to or involving a Unit or its use, operation, repair, maintenance or storage or arising from the use of the Monitoring System on the Unit and/or the use of the remote shut off feature on the Monitoring System.

**13.3 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 Unit) 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 Unit) that are manifestly incorrect; and
- (c) file or record any notice that we consider necessary to protect our interest under this Agreement.

**13.4 Warranties excluded**

All warranties, conditions, guarantees, liabilities or representations (other than those which cannot be excluded or modified under any statute) in relation to a Unit that would or may be, but for this Clause 13.4, implied in, or otherwise applicable to, this Agreement by statute (including by the *Contract and Commercial Law Act 2017*, the *Consumer Guarantees Act 1993* or sections 9, 12A, 13, or 14(1) of the *Fair Trading Act 1986*) or law or otherwise are expressly excluded. You expressly acknowledge that we give no warranty or undertaking and make and have made no representations in relation to the condition, suitability, quality, fitness or safety of a Unit or our title to a Unit. If, in respect of a Unit, we become liable to you for either a breach of any condition or warranty implied under the relevant provisions in the *Contract and Commercial Law Act 2017*, or a breach of the *Consumer Guarantees Act 1993* or under sections 9, 12A, 13, or 14(1) of the *Fair Trading Act 1986* or under any law having a similar effect to the above Acts, our liability for such breach shall be limited to the: (i) replacement of the Unit or supply of an equivalent Unit; (ii) repair of the Unit; (iii) payment of the cost of replacing the Unit or of acquiring or hiring an equivalent Unit; or (iv) payment of the cost of having the Unit repaired, whichever we determine to be appropriate in the circumstances.

**13.5 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.

**13.6 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.

**13.7 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.

**13.8 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.

**13.9 Mortgagee in possession**

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

**13.10 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 any amounts owed to us.

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

**13.11 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 Secured 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.

**13.12 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.

**13.13 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 the 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 or 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).

#### **13.14 Monitoring System consent**

You acknowledge that we may collect, use and disclose information regarding the Unit from the Monitoring System including, without limitation, information on the Unit'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.

#### **13.15 Severability and survival**

If any part of any Transaction Document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remaining provisions of the Transaction Document have full force and effect and the validity or enforceability of the severed provision in any other jurisdiction is not affected. 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.

#### **13.16 Counterparts**

This Agreement may consist of a number of copies, each signed by one or more parties to them. If so, the signed copies are treated as making up the one document.

#### **13.17 Governing Law**

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