

Contract Number: \_\_\_\_\_

# Master Operating Lease Agreement

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THIS AGREEMENT is made on the .....day of ..... 20.....

**BETWEEN:** CATERPILLAR FINANCIAL NEW ZEALAND LIMITED (NZBN 9429036240050) of 24 Amyes Road, Hornby, Christchurch 8042 ("CFNZ")

**AND:** The party whose name, address, description and other particulars required by law are set out in Item 1 of Annexure 1 to this Agreement (the "Customer")

**AND:** The party whose name, address, description and other particulars required by law are set out in Item 2 of Annexure 1 to this Agreement (the "Guarantor")

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement unless inconsistent with the context or subject matter –

**"Act of Repudiation"** means any act, omission, refusal, failure or other conduct on the part of the Customer or Guarantor (other than or in addition to any act, omission, refusal, failure or other conduct that constitutes an Event of Default) that upon application of general principles of contract would constitute or be deemed to constitute a repudiation of this Agreement or a Lease.

**"Annexure"** means an annexure to this Agreement.

**"Application Survey"** means the equipment/on road vehicles application survey forming Parts 2 and 2A of Annexure 2 (*Lease Schedule and Tax Invoice*).

**"Business Day"** means a day on which banks are open for general banking business in the place this Agreement is executed (not being a Saturday, Sunday or public holiday in that place).

**"Casualty Event"** means, in relation to a Unit, that Unit being:

- lost, stolen or destroyed; or
- damaged to such an extent as reasonably determined by CFNZ to be beyond economic or financially prudent repair or reinstatement; or
- seized, forfeited, confiscated or otherwise unavailable for use and employment by the Customer permanently or for such continuous period as CFNZ determines is unacceptable to it.

**"Commencement Date"** means, for each Unit, the date prescribed in Section E of the relevant Schedule, or if no such date is prescribed, the later of:

- the date upon which CFNZ executes that Schedule;
- the date upon which CFNZ takes title to that Unit; and
- unless Clause 3 (*Purchase of Unit by CFNZ from the Customer*) applies, the date upon which the Customer or any agent or other representative of the Customer assumes control and responsibility for that Unit (including, but without limitation, taking actual or constructive possession of that Unit).

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

**"Customer"** means the person described in Item 1 of Annexure 1 to this Agreement. If there are more than one, "Customer" means each of them individually and every two or more of them jointly.

**"Customer Representative"** means the natural person nominated and appointed by the Customer to represent it pursuant to Clause 27.1 (Nomination of Customer Representative) or Clause 27.4 (New Nominations) or, if more than one, whether jointly, severally or jointly and severally, each or any combination of them (as the case may require).

**"Dealer"** means a person being a dealer in or distributor of Permitted Equipment duly appointed and authorised by the manufacturer or importer to perform and carry out that function.

**"Discount Rate"** means, on any date that the lease of a Unit is terminated under a Lease, the lesser of:

- the rate of interest that was used to calculate the Rent Payments for that Lease; and
- the rate of interest equal to the 90 day New Zealand bank bill reference rate (bid) administered by the New Zealand Financial Markets Association on that date, as determined by CFNZ by reference to any published wholesale money-market rate.

**"Early Termination Fee"** means the amount notified by CFNZ to the Customer and calculated as 1% of the sum of the amounts in paragraphs (a) to (c) 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 any of the events, occurrences or happenings identified in Clause 14.1 (*Events of Default*).

**"Expiry Date"** of a Lease means the date prescribed in Section E of the relevant Schedule.

**"Government Agency"** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**"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 16 (*Guarantee and Indemnity*).

“**Guarantor**” means the person described Item 2 of Annexure 1 to this Agreement. If there are more than one, “**Guarantor**” means each of them individually and every two or more of them jointly.

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

“**Insolvent**” means 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).

“**Lease**” means each lease consisting of this Agreement and a Schedule.

“**Nomination**” means an effective nomination of the Customer’s Representative by the Customer under Clause 27.1 (*Nomination of Customer’s Representative*).

“**Maintenance Specification**” means any direction in writing by CFNZ or any agreement between the Customer and a Qualified Person, annexed to a Schedule, which specifies and identifies the particular preventative maintenance and servicing of a Unit and of specific components, sections or parts of a Unit to be carried out by a Qualified Person during the term of the relevant Lease and the times or intervals at which such preventative maintenance and servicing must be carried out by a Qualified Person.

“**Permitted Equipment**” means machines, equipment, engines, attachments (including anything installed or affixed for the purposes of the PPSA) and accessories of a class, kind, specification or source of manufacture that CFNZ is willing in the ordinary course of its business and undertaking, to acquire from a Dealer and to lease to its customers from time to time.

“**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 lease of a Unit is terminated under a Lease, the value at that date of a future Rent Payment that would have been payable by the Customer to CFNZ at the time specified in that Lease but for its termination, determined by discounting that amount at the Discount Rate (as certified by CFNZ).

“**Productlink**” means the monitoring system that may be attached to the Unit to monitor and collect information on that Unit, and includes a remote shut off function.

“**Qualified Person**” means, in relation to a Unit, a person having the necessary experience, qualifications, skill, expertise and training for, and carrying on a business that includes, the servicing, maintenance and repair of Permitted Equipment identical to that Unit.

“**Regulatory Change**” (a) the introduction of, or a change in, an applicable law or regulatory requirement or in its interpretation or administration by a Government Agency; or (b) compliance by CFNZ or any Related Entity with an applicable direction, request or requirement (whether or not having the force of law and whether existing or future) of a Government Agency.

“**Related Entity**” means

- (a) any related company (as defined in section 2(3) of the Companies Act 1993, but as if the word "subsidiary" in that section had the same meaning as "subsidiary" in this Agreement) of the Customer or a Guarantor;
- (b) any person that is treated as an associated company of the Customer or a Guarantor in terms of NZ GAAP;
- (c) any person who beneficially owns (or together with its related persons, determined on the same basis as set out in paragraphs (a) and (b) above, beneficially owns) whether directly or indirectly, 20% or more of the equity share capital in the Customer or a Guarantor;
- (d) any related entity (determined on the same basis as set out in paragraphs (a) and (b) above) of any person referred to in paragraph (c) above; and
- (e) the beneficiary of a trust under which a trustee of the trust is a related entity in terms of paragraphs (a) to (d) above.

“**Rent Payments**” means the total amounts for payment set out in Section D of a Schedule.

“**Review Event**” means any of the events, occurrences or happenings identified in Clause 14.6 (*Review Events*).

“**Schedule**” means each document entitled “Lease Schedule and Tax Invoice” issued by CFNZ to the Customer from time to time under this Agreement and executed by the Customer and CFNZ in respect of a Unit or Units, substantially in the form of Annexure 2.

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

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

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

“**Taxes**” means any tax, levy, duty, charge, deduction or withholding, however described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

“**Term**” means the term of a Lease set out in Section E of the relevant Schedule.

“**Termination Amount**” means, in respect of a Unit, the aggregate of the following amounts:

- (a) the sum of all Rent Payments and other amounts of money that have fallen due or have accrued and are payable for that Unit under a Lease as at the date of termination of the lease of that Unit; and
- (b) all overdue interest at the rate specified in the Lease that has accrued upon the amounts identified above and is due as at the date of termination; and
- (c) the aggregate of the Present Values for each future Rent Payment in respect of that Unit that would have been payable by the Customer to CFNZ at the time specified in the Lease, but for the termination;
- (d) the Early Termination Fee; and
- (e) any damages, costs, charges, expenses, fees, or disbursements (including all reasonable legal costs and expenses on a full solicitor and own client basis) paid or incurred by CFNZ in obtaining possession of that Unit and in enforcing the rights of CFNZ under the Lease or otherwise suffered in connection with the Customer’s breach of the Lease; and
- (f) any costs and losses CFNZ suffer if CFNZ cannot recover the Unit for any reason whatsoever.

“**Trust**” means a Trust established under a Trust Deed of which the Customer or a Guarantor is trustee.

“**Trust Deed**” means the Deed of Trust by which a Trust is established, full particulars of which have been provided by the Customer or Guarantor to CFNZ prior to the date of this Agreement.

“**Unit**” means any item of the Permitted Equipment nominated and selected by the Customer and identified and described in Section C of a Schedule.

## 1.2 Interpretation

In this Agreement and in any Lease:

- References to a “Unit” shall include references to any part, component or section of a Unit; and to all and any attachments, accessories, tools, optional parts and other items or components (not being included in the specifications for the standard Unit as identified by the manufacturer) attached, connected to, assembled upon or delivered with the Unit.
- Unless a clear intention to the contrary can be established, to the extent of any inconsistency between an express term of this Agreement and an express term of a Schedule, the express term of this Agreement shall prevail.
- The singular includes the plural and vice versa.
- A reference to a person includes an individual, a firm, a body corporate, a partnership, an unincorporated association and a government body.
- Headings are for the purpose of more convenient reference only and shall not form part of this Agreement or a Lease or affect the construction or interpretation of this Agreement or a Lease.
- Every agreement or undertaking by which more than one person agrees to or undertakes any obligation shall bind such persons jointly and each of them severally.
- References to any party includes that party’s executors, administrators or permitted assigns or, being a body corporate, its successors and permitted assigns.
- References to the termination of this Agreement or a Lease 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, and
  - (iii) termination by CFNZ by reason of the occurrence or happening of an Event of Default.
- The Units the subject of a particular Lease shall be only the specific and ascertained Units described and identified in the Schedule forming part of that Lease (and not any other goods in replacement for or in addition to, those Units, whether the other goods are of a class the same as, or of a class different from, the Units).
- References to “law” are to common law, principles of equity and laws and regulations, in each case of any jurisdiction whatever.

- A reference to a document, agreement or legislation includes any variation, novation or replacement of it.
- Time is of the essence.
- No variations or modification of this Agreement or any Lease shall be valid unless in writing and executed by the party or parties to be bound.

## 2. THE LEASE

### 2.1 Customer may deliver Schedule

If the Customer wishes CFNZ to acquire a Unit or Units from a Dealer and to lease that Unit or those Units to the Customer, the Customer shall give to CFNZ in duplicate a Schedule completed and executed by the Customer and Guarantor. The Customer must deliver the duly executed Schedule at least 3 Business Days before the proposed Commencement Date. The Customer's submission of a duly completed and executed Schedule to CFNZ shall be construed as an offer by the Customer to CFNZ.

### 2.2 CFNZ may accept or reject Schedule

CFNZ shall be free and entitled, in its discretion:

- to reject the offer made by the Customer pursuant to Clause 2.1 (*Customer may deliver Schedule*) without ascribing any reason for that rejection; or
- to accept the offer made by the Customer pursuant to Clause 2.1 (*Customer may deliver Schedule*) by executing the Schedule submitted by the Customer and giving one executed part to the Customer.

### 2.3 Authority to complete Schedule and other documentation

The Customer authorises CFNZ to:

- Complete and fill in any blanks in this Agreement, a Lease or any document connected with them (such as Companies Act forms, financing statements, financing change statements, change demands, transfers for the Unit or any parts of a Schedule) which have been left blank or incomplete; and
- make amendments to any parts of a Schedule which are manifestly incorrect.

### 2.4 If CFNZ accepts Schedule

If CFNZ accepts a Schedule, then it agrees, subject to the satisfaction of the conditions precedent in Clause 2.5, to:

- acquire each Unit specified in the Schedule from the Dealer; and
- lease each Unit specified in the Schedule to the Customer upon the terms of the Lease of which that Schedule forms a part.

### 2.5 Conditions Precedent to each Lease

In order for CFNZ to accept a Schedule and a Lease to be formed, each of the following conditions precedent must be fulfilled to CFNZ's satisfaction:

- the Customer has accepted and taken delivery of each Unit listed in the Schedule on or before the Commencement Date for that Unit, at the location set out in Section G of the Schedule;
- no Event of Default or Potential Event of Default exists as at the relevant Commencement Date;
- the representations and warranties of the Customer and Guarantor contained in this Agreement are true and correct as at the relevant Commencement Date; and
- there has been no material adverse change in the Customer's business, financial or operating condition since the date of this Agreement.

### 2.6 Unit is responsibility of Customer

If CFNZ accepts a Schedule, the Customer shall bear the responsibility for the selection of each Unit described in the Schedule and the Customer shall satisfy itself as to the characteristics, specifications, suitability and performance of that Unit and other factors and criteria relevant to the uses and applications proposed by the Customer for that Unit. As between CFNZ and the Customer, the Customer shall bear the responsibility for all aspects of the delivery of such Unit to the Customer. In accepting any Schedule, CFNZ shall rely upon the selection of each Unit made by the Customer and the responsibilities in respect of the Unit undertaken by the Customer.

### 2.7 Representations and warranties

Each of the Customer and (in relation to this Agreement only) the Guarantor represents and warrants to CFNZ as at the time of execution of this Agreement, at the time it executes each Schedule and on each Commencement Date, that:

- it has full power and authority to enter into this Agreement and each Lease and all instruments and documents contemplated by them;
- it has taken all necessary and appropriate action to authorise the execution, delivery and performance of this Agreement and each Lease and all instruments and documents contemplated by them;

- (iii) the person or persons executing and delivering this Agreement, each Lease and all instruments and documents contemplated by this Agreement and each Lease are authorised to do so on its behalf;
- (iv) this Agreement constitutes, and each Lease will constitute, a valid obligation of it, legally binding upon it and enforceable in accordance with its terms;
- (v) the execution, delivery and performance of this Agreement, each Lease and all instruments and documents contemplated by them do not and will not require any consent or approval which has not been obtained;
- (vi) no option, proviso or representation express or implied, written or oral, has been made by or on behalf of CFNZ to the Customer that any Unit the subject of a Lease may be purchased from CFNZ by the Customer or any agent or nominee of the Customer; and
- (vii) it benefits by entering into this Agreement and each Lease.

### **2.8 Acknowledgments on Commencement Date**

On each Commencement Date for a Unit, the Customer warrants and acknowledges to CFNZ that:

- (i) all antecedent negotiations in relation to that Unit and its selection by the Customer were conducted between the Dealer and the Customer to the exclusion of CFNZ;
- (ii) the creation and formation of the Lease for that Unit was the result of an approach made by the Customer to CFNZ, that was not induced by a Dealer;
- (iii) CFNZ has not taken or will not take (as the case may be) physical possession of that Unit before it is delivered to the Customer;
- (iv) it has made all due enquiries in order to satisfy itself that the reputation of the Dealer in respect of the Dealer's financial standing and business conduct is good and that the supplier of the Unit would be able to meet its liabilities as and when they fall due; and
- (v) neither CFNZ nor any of its servants, agents or representatives has made any statement or representation concerning the reputation, financial standing or business conduct of the Dealer from whom the Unit is to be acquired by CFNZ.

### **2.9 Nature of Lease**

A Lease under this Agreement is not intended to secure payment or performance of any obligation for the purposes of the PPSA.

## **3. PURCHASE OF UNIT BY CFNZ FROM THE CUSTOMER**

### **3.1 Provisions of Clause 2 also to apply where Customer owns Unit**

If the Customer has already taken legal and beneficial title to a Unit from a Dealer, the provisions of Clause 2 (*The Lease*) may be applied to the prospective acquisition of that Unit by CFNZ from the Customer and the lease back of that Unit by CFNZ to the Customer, save for those provisions relating to the acquisition of the Unit by CFNZ from a Dealer, and provided that Clauses 3.2, 3.3 and 3.4 below are met.

### **3.2 Additional items to be provided by Customer with Schedule**

In addition to the submission by the Customer of a duly completed and executed Schedule as provided in Clause 2.1 (*Customer may deliver Schedule*), the Customer must deliver to CFNZ with that duly completed and executed Schedule:

- (i) the original invoice addressed to the Customer from the Dealer for that Unit;
- (ii) evidence satisfactory to CFNZ that the Customer has paid the full purchase price for that Unit to the Dealer; and
- (iii) a statement in writing from the Customer to CFNZ setting out the purchase price at which the Customer offers to sell that Unit to CFNZ, being an amount no greater than the arm's length market value of the Unit at that time.

These documents form part of the offer by the Customer to CFNZ.

### **3.3 Additional conditions precedent**

In addition to the conditions precedent set out in Clause 2.5 (*Conditions precedent to each Lease*), the Customer must provide evidence satisfactory to CFNZ that the following conditions precedent have been met:

- (i) the Unit has not been used and is not damaged, lost, stolen, seized or confiscated as at the Commencement Date;
- (ii) policies of insurance complying with the terms of this Agreement have been effected and remain current in respect of that Unit;
- (iii) a purchase agreement, in form and substance satisfactory to CFNZ, in respect of the Unit has been executed by the Customer and CFNZ, and, in respect of such purchase agreement:
  - a) there has been no breach of its terms;
  - b) CFNZ is satisfied that all representations and warranties are true and correct;
  - c) CFNZ is satisfied that all conditions precedent have been met; and
- (iv) full and absolute legal and beneficial ownership of and title to the Unit shall pass to CFNZ free and clear of any and all mortgages, liens, charges, claims and encumbrances of every kind whatsoever on the Commencement Date.

**3.4 Additional representation and warranty**

The Customer represents and warrants to CFNZ both at the time at which the Customer makes its offer under Clause 2.1 (*Customer may deliver Schedule*) and at a time immediately prior to the acceptance by CFNZ of that offer that full and absolute legal and beneficial ownership of and title to the Unit shall pass to CFNZ free and clear of any mortgages, liens, charges, claims and encumbrances of every kind whatsoever on the Commencement Date.

**4. TERM**

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

**5. RENT AND OTHER PAYMENTS****5.1 Rent**

In respect of each Lease, the Customer shall pay to CFNZ the total Rent Payments for each Unit in the amounts and at the times set out Section D of the relevant Schedule (without prejudice to Clause 13.1(ii)).

**5.2 Change in use or operation of Unit**

If the Customer permits (whether with or without the consent of CFNZ) a Unit to be used or operated other than in accordance with an applicable Application Survey:

- (i) the Customer shall pay to CFNZ for the period commencing on the date when such use and application or method of operation commenced (or in the reasonable opinion of CFNZ is likely to have commenced) and expiring on the Expiry Date, an amount commensurate with the total rent CFNZ would require in the usual course of its business from a Customer entering into a Lease for that period and for an identical item of the Permitted Equipment in which such use and application or method of operation (as the case may be) is disclosed and agreed upon; and
- (ii) CFNZ shall give to the Customer a notice in writing in which the statement of the Rent Payments varied in the manner contemplated under paragraph (i) of this Clause 5.2 shall be set out and that statement shall stand in place of the Rent Payments set out in the Schedule for that Lease and shall be binding upon CFNZ and the Customer accordingly as from the date of the first Rent Payment to be paid after the date when such use and application or method of operation commenced (or in the reasonable opinion of CFNZ is likely to have commenced).

**5.3 GST**

- (i) If CFNZ makes a Taxable Supply to the Customer under this Agreement or a Lease and the consideration payable or to be provided for that supply is not expressed to be inclusive of GST, the Customer must pay an additional amount to CFNZ equal to the value of that GST exclusive consideration (without deduction or set-off), multiplied by the prevailing GST rate.
- (ii) CFNZ will issue a Tax Invoice to the Customer for any Taxable Supply made to the Customer under this Agreement or a Lease.
- (iii) 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;
- (iv) If the amount of GST recovered by CFNZ from the Customer differs from the amount of GST payable at law by CFNZ (or an entity grouped with CFNZ for GST purposes) in respect of the Taxable Supply, the amount of the difference must be paid by, or refunded to the Customer, as the case may be.
- (v) Where the Customer is required pursuant to this Agreement or a Lease to pay an amount to CFNZ by way of a reimbursement of an amount paid or payable by CFNZ to a third party, the amount the Customer is required to pay will exclude any amount included in the calculation of our Input Tax, but will be increased under Clause 5.3(i) if the amount payable is consideration for a Taxable Supply.
- (vi) If CFNZ is not entitled to claim a full credit or refund of GST in respect of its purchase of any Unit, the Customer must pay to CFNZ on demand the amount that CFNZ determines to be the difference between the amount of GST payable in respect of the supply of the Unit to CFNZ and the amount of credit or refund of GST which CFNZ is entitled to claim in respect of the purchase of the Unit.

**5.4 Registration fees and other Taxes**

The Customer shall pay to CFNZ or reimburse CFNZ for all registration fees and other Taxes (except income tax of CFNZ, subject to Clause 13.4 (*Increased costs and change of law*)) payable in connection with, or the receipt or payment of any moneys under or pursuant to, this Agreement and each Lease.

**5.5 Payments**

The Customer and the Guarantor shall make all payments to CFNZ free from all deductions and offsets and in immediately available funds at CFNZ's address set out in this Agreement or at such other place as CFNZ may from time to time direct in writing. Any payment otherwise made and any

payment sent by mail shall be at the Customer's or Guarantor's risk until immediately available funds are received by CFNZ.

**5.6 Interest on Overdue Amounts**

If the Customer fails to pay any Rent Payment or any other amount payable under a Lease on the due date, the Customer must pay to CFNZ on demand interest at a rate equal to the lesser of:

- (i) CFNZ's then current overdue interest rate for similar transactions; and
- (ii) The maximum rate allowed by law

on that amount. Such interest shall accrue on a daily basis and be computed from and excluding the due date for payment until and including the date of actual payment. Each month, CFNZ may add the interest payable to the amount outstanding, so that the Customer is then liable for interest on the whole amount. This Clause 5.6 also applies to amounts owed by the Guarantor under the Guarantee.

**5.7 Business Day**

If a date for payment under this Agreement or a Lease is not a Business Day, then the payment must be made on the preceding Business Day.

**5.8 Payment of first Rent Payment together with Schedule**

If the Customer submits to CFNZ a Schedule, and the first Rent Payment date is on the Commencement Date, then the Customer must pay to CFNZ an amount equal to the first Rent Payment for all Units described and identified in that Schedule when that Schedule is submitted to CFNZ in accordance with Clause 2.1 (*Customer may deliver Schedule*). If CFNZ accepts and executes that Schedule, that amount shall be applied to the first Rent Payment due under the Lease. If CFNZ does not accept that Schedule, that amount will be returned to the Customer.

**5.9 Payment obligations unconditional**

Each of the Customer and the Guarantor acknowledges and agrees that its obligation to pay Rent Payments and all other moneys payable in respect of each Lease, and the rights of CFNZ in and to such Rent Payments and other moneys, shall be absolute and unconditional and (notwithstanding any provision of this Agreement, of any Lease or any rule of law or course of conduct to the contrary) shall not be subject to any abatement, reduction, set-off, defence, counterclaim or recoupment of any kind whatsoever. All Rent Payments and other amounts payable by the Customer or the Guarantor in respect of a Lease shall continue to be payable in all events in the manner and at the times provided, unless the Customer's or Guarantor's obligations in respect thereof have been terminated pursuant to the express provisions of that Lease.

**5.10 Obligations not affected**

Except as is specifically provided in this Agreement and a Lease, the obligations of the Customer under a Lease are absolute and unconditional and shall not be affected, restricted, excluded or modified by reason of:

- (i) any present or future claims of the Customer against CFNZ under that Lease or otherwise or against the Dealer or the manufacturer of a Unit;
- (ii) any Casualty Event, breakdown of a Unit or damage to or loss or destruction of a Unit;
- (iii) any prohibition or interruption of or other restriction or limitation upon the Customer's use, operation or possession of a Unit, whether pursuant to a restraining or other order of a Court or the interference with such use, operation or possession by any person;
- (iv) the inability or unenforceability of or other defect in a Lease or the lack of the right, power or authority of the Customer to enter into a Lease; or
- (v) any defect in a Unit or in the condition, design, suitability, operation or fitness for use of a Unit.

**6. PPSA**

**6.1 No accessions**

The Customer shall not allow any Unit (or any part of a Unit) to become an accession (as defined in the PPSA) to any property;

**6.2 No change of name without notification**

The Customer shall not change its name without first notifying CFNZ of its new name at least 21 days before the change takes effect.

**6.3 Contracting out of PPSA enforcement provisions**

CFNZ need not comply with and the Customer waives 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 the Customer by CFNZ after the date of this Agreement, to the extent the law permits such provision to be excluded.

**6.4 Registration**

CFNZ may at the Customer's expense apply for any registration, or give any notification, in connection with a Security Interest created under this Agreement or a Lease.

**6.5 No PPSA notice required unless mandatory**



CFNZ need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

#### **6.6 Confidentiality**

Neither party is permitted to disclose information provided by the other party that is not publicly available (including the existence of or contents of this Agreement or a Lease) except to any person in connection with an exercise of rights under this Agreement or a Lease or a transfer or other dealing with rights or obligations under this Agreement or a Lease, or to officers, employees, agents, contractors, legal and other advisors and auditors of the party (provided the recipient agrees to act consistently with this paragraph), or with consent of the other party (such consent not to be unreasonably withheld) or as required by any law, stock exchange or rating agency.

### **7. POSSESSION, USE AND MAINTENANCE**

#### **7.1 Registration, licences**

The Customer shall at its own expense during the term of a Lease effect and maintain at all times all registrations, licences and permits which may be required under any statute, regulation or other law for or in respect of each Unit or its use or operation, including without limitation, where applicable, any such registrations, licences and permits prescribed by the road transport authority in the relevant province or area and promptly pay all applicable fees and charges in relation thereto.

#### **7.2 Unit to be maintained in good working order**

The Customer shall at its expense take all proper and reasonable care of each Unit and shall keep and maintain each Unit in good working order, repair and condition (fair wear and tear excepted) for equipment of its description and age. The Customer shall make good all damage caused to or sustained by a Unit whether or not occasioned by its own act or default (fair wear and tear excepted), replacing all missing, damaged or broken parts and components with new parts or components as specified in a Maintenance Specification or, if there is no Maintenance Specification, with parts or components of the manufacturer or if no such parts or components are reasonably available, parts or components of equal quality and value.

#### **7.3 Specific maintenance obligations**

The Customer must:

- (i) ensure that each Unit is serviced, maintained and repaired in accordance with the Maintenance Specification (if applicable) and/or other relevant recognised and approved methods and standards of servicing, maintenance and repair, and only by Qualified Persons, and only in accordance with the manufacturer's or the Dealer's instructions and recommendations, and at the sole cost of the Customer;
- (ii) keep log books and service records for each Unit and ensure that they are duly and accurately completed and, where appropriate, executed by the Qualified Person who performs the servicing, maintenance or repair;
- (iii) arrange for inspection and maintenance and servicing of each Unit by a Qualified Person at the Customer's expense strictly in the manner and at the intervals prescribed in the Maintenance Specification and in the absence of a Maintenance Specification or to the extent that it does not apply, at least as frequently as set out in any applicable operator and/or manufacturer's guide, service manual, and lubrication and maintenance guide for the Unit published or approved by the manufacturer;
- (iv) keep each Unit in a suitably safe and secure place;
- (v) use and permit the use of each Unit only in accordance with the normal use of that Unit having regard to the general purpose for which it was designed and manufactured and not use a Unit or permit a Unit to be used or operated in violation of the terms of this Agreement or a Lease or for any illegal purpose or in any manner or under any circumstances which would amount to a breach of any law (whether such breach is committed by the Customer or otherwise) or which in CFNZ's opinion would be likely to endanger the safety or condition of a Unit;
- (vi) upon CFNZ becoming entitled to possession of a Unit, immediately deliver up to CFNZ all registration certificates, licences, permits, authorities, log books, service records and other documents relating to that Unit or the operation, maintenance or servicing of that Unit; and
- (vii) ensure that each Unit is operated only by competent and properly trained and qualified and where required by law, registered and licensed personnel and only by methods and standards of operation recommended, specified and approved by the manufacturer.

#### **7.4 Covenants regarding Unit**

The Customer shall not and shall not purport to:

- (i) abandon any Unit;

- (ii) sub-lease, bail or part with the physical possession or control of the use of any Unit or permit the use of any Unit by any person other than the Customer without the prior written consent of CFNZ (excluding possession by a Qualified Person for the sole purpose of any servicing or maintenance of that Unit). If CFNZ consents to the sub lease or bailment of the Unit, the Customer must register its Security Interest in the Unit against the sub-lessee or bailee (as applicable as required by CFNZ). If a Security Interest in connection with the Unit in the form of chattel paper (as defined in the PPSA) is held by the Customer or arises in the Customer's favour (whether or not as a result of a breach by the Customer under this Lease), the Customer grants a Security Interest in the chattel paper and its proceeds (the "**chattel paper**") to CFNZ for the purposes of securing payment of any money it owes to CFNZ under or in connection with this Lease. The Security Interest created by this clause is a charge and the Customer may not transfer, dispose of or otherwise deal with the chattel paper or allow another Security Interest to exist over it. The Customer must ensure it deposits with CFNZ all original documents of title comprising the chattel paper and any other documents CFNZ requires relating to the chattel paper;
- (iii) permit the use of any Unit to be changed from that specified in Section H of the Schedule without the prior written consent of CFNZ;
- (iv) permit any Unit to be moved or relocated outside New Zealand;
- (v) sell, assign or transfer, or directly or indirectly create, incur or suffer to exist any lien, mortgage, charge, encumbrance, Security Interest or claim on any of its rights under this Agreement, under a Lease or under or in respect of any Unit;
- (vi) where the Unit is an on road vehicle, not to permit the location of registration or garaging to be changed from that specified in the Schedule; or
- (vii) tamper, remove, modify or otherwise damage the Unit's Productlink system.

#### **7.5 Consent of proprietor and mortgagee**

The Customer, if requested by CFNZ, will use its best endeavours to procure from the registered proprietor of the premises where any Unit is situated, and from any mortgagee (registered or otherwise) of such premises:

- (i) a waiver in such form as CFNZ may reasonably require of any rights which any such person might otherwise be or become entitled to claim in respect of or against that Unit; and
- (ii) an irrevocable authority in writing to enter upon those premises if CFNZ exercises its rights under Clause 15.3 (*CFNZ may retake possession of Unit if not returned*).

#### **7.6 Unit property of CFNZ**

Each Unit the subject of a Lease shall be and remain at all times the sole and exclusive legal and beneficial property of CFNZ and nothing contained in this Agreement or in that Lease shall confer on the Customer any proprietary right to or interest in a Unit. The Customer shall have and retain possession of and the right to use a Unit as a bailee only upon and subject to the express terms of the Lease to which that Unit relates.

#### **7.7 Unit not to be affixed to real property**

The Customer shall not attach or affix any Unit to any real property except with the prior written consent of CFNZ.

#### **7.8 Business Purposes**

The Customer declares to CFNZ that the whole or the greater part of the amount payable under or pursuant to a Lease is or is reasonably and objectively expected to be a loss or outgoing necessarily incurred in carrying on the Customer's business.

#### **7.9 No assignable interest**

Each Lease is personal between CFNZ and the Customer, and the Customer has no interest assignable at law or in Equity in the Lease or in any Unit.

#### **7.10 Productlink privacy consent**

Customer acknowledges that CFNZ may collect, use and disclose information on each Unit from the Productlink monitoring system including without limitation, information on the Unit's usage hours, location and usage pattern. Customer consents to the collection, use and disclosure of any information collected from the Productlink system for the purpose of managing the Customer's account with CFNZ and any other related purpose deemed necessary by CFNZ.

#### **7.11 Further assurances**

The Customer shall at its expense do any further act and execute any further documents which CFNZ may reasonably request in order to:

- (i) protect CFNZ's title to any Unit and CFNZ's rights, powers and remedies under this Agreement and under a Lease;
- (ii) provide more effective security over the Unit for payment of the Rent Payments or any other payments payable under a Lease;
- (iii) ensure that any Security Interest in favour of CFNZ is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or

- (iv) enable CFNZ to apply for any registration, or give any notification, in connection with any Security Interest in favour of CFNZ so that the Security Interest has the priority required by CFNZ; or
- (v) enable CFNZ to exercise rights in connection with any Security Interest.

## 8. MANUFACTURER'S WARRANTIES

### 8.1 Benefit of Manufacturer's warranties to be given to Customer

CFNZ will use its best endeavours to extend to the Customer the benefit of any guarantee, condition or warranty which may have been given to CFNZ by the manufacturer of a Unit or the Dealer or otherwise implied in favour of CFNZ, but so that the benefit of any such guarantee, condition or warranty shall only be extended to the Customer on terms that the Customer shall fully indemnify CFNZ against all costs, claims, damages and expenses incurred or suffered in connection with the enforcement or attempted enforcement of any such guarantee, condition or warranty.

### 8.2 Rights to revert to CFNZ

If the benefit of any guarantee, condition or warranty referred to in Clause 8.1 (*Benefit of manufacturer's warranties to be given to Customer*) is extended to the Customer (whether by way of assignment or otherwise), it shall be a fundamental condition of any such extension that the rights and benefits attaching to any such guarantee, condition or warranty (or such of those rights and benefits as may then remain in force) shall revert (whether by way of re-assignment or such other means as may be most effective in the circumstances prevailing at the relevant time) to CFNZ absolutely and unconditionally at the expiration or upon the termination of a Lease at the expense of the Customer.

### 8.3 Customer to comply with terms of manufacturer's warranties

The Customer must at all times observe and duly comply with the terms and conditions of all and any guarantees, conditions or warranties given by the manufacturer of a Unit or the Dealer and must not engage in any conduct that renders void or unenforceable or otherwise vitiates any such guarantee, condition of warranty.

## 9. INSURANCE

### 9.1 Insurance policies

The Customer shall, at its own expense, effect and maintain in respect of each Unit:

- (i) insurance against any loss, destruction or physical damage to the Unit caused by fire, theft, accident and such other risks as CFNZ may from time to time require, for an amount equal to the full insurable value of the Unit;
- (ii) public liability insurance for combined coverage for bodily injury or death and damage to property or the environment up to an amount approved by CFNZ (acting reasonably); and
- (iii) insurance against any other liability that the law or CFNZ reasonably requires the Customer to insure against.

### 9.2 Form of insurance; interests to be noted

All such insurance shall be in such form and with such insurers as CFNZ shall approve, in the names of CFNZ and the Customer for their respective rights and interests, and naming CFNZ as the sole "loss payee" for all amounts which may be payable, and shall provide that such insurance may not be cancelled or altered so as to affect the interest of CFNZ without at least thirty days' prior written notice to CFNZ.

### 9.3 Payment of premiums

The Customer shall duly and punctually pay all premiums payable in respect of such insurances in order to effect and keep such insurances on foot and deposit with CFNZ on demand the receipts for such premiums, but CFNZ may in its discretion pay any premiums on the Customer's behalf, in which case the Customer agrees to reimburse the amount of any such premiums to CFNZ immediately on demand.

### 9.4 CFNZ may take out insurance

If the Customer does not take out the insurances required under Clause 9.1 (*Insurance policies*), then CFNZ may take out such insurance policies on behalf of the Customer, and the Customer must pay or reimburse CFNZ for the premium.

### 9.5 Certificates to be deposited with CFNZ

The Customer shall deposit immediately with CFNZ copies of certificates of insurance and currency in respect of the insurances for each Unit.

### 9.6 Customer not to void insurance

The Customer shall not do anything or suffer anything to be done which would permit the insurer under any insurance policy to decline any claim in respect of any loss or damage whether under any condition or exclusion contained in the policy or otherwise, or which would prejudicially affect any such insurance.

### 9.7 Claim following Casualty Event

If the Customer or CFNZ makes a claim to an insurer as a consequence of the occurrence or happening of a Casualty Event, CFNZ shall be entitled to receive for its own use and benefit

absolutely, the whole of the moneys which may become payable to the Customer or to CFNZ and the Customer by the insurer under a relevant policy of insurance. If (despite the requirement that CFNZ be named as "loss payee") the Customer receives moneys from the insurer, the Customer must pay such moneys immediately to CFNZ, and until so paid, must hold them in a separate account in the name of CFNZ, on trust for CFNZ.

**9.8 CFNZ may use insurance money**

The Customer irrevocably authorises CFNZ to appropriate any insurance or other moneys received by CFNZ in respect of the loss of or damage to a Unit towards any debt or liability which may then be payable by the Customer to CFNZ under that Lease, and except in the case of termination of that Lease by reason of the occurrence or happening of a Casualty Event, the balance of any such moneys shall be made available to the Customer to assist it to reinstate and repair that Unit.

**9.9 Customer to notify of event giving rise to claim**

The Customer shall notify CFNZ in writing as promptly as practicable and in all events within five business days of the occurrence of any event that is would or might give rise to any right to compensation or to any claim under any insurance policy.

**9.10 CFNZ directions regarding insurance**

The Customer must do anything reasonably requested by CFNZ in relation to an insurance claim. The Customer agrees that CFNZ may, after giving notice to the Customer, take over the Customer's right to make, pursue or settle an insurance claim and exercise those rights in any manner CFNZ chooses. The Customer may not settle or compromise a claim where it accepts less than the Termination Amount without the prior consent of CFNZ.

**10. LOSS OR DAMAGE**

**10.1 Customer bears risk**

The Customer shall bear the risk of any loss or damage being suffered or sustained by or any Casualty Event occurring or happening in respect of any Unit, during or subsequent to the term of the Lease until such Unit is returned to CFNZ pursuant to Clause 15 (*Return of Unit*).

**10.2 Notice and repair of damage**

If any Unit shall become damaged from any cause whatsoever, and such damage is material, the Customer shall give CFNZ prompt notice. If following consultation with Customer CFNZ reasonably determines that such damage is not irreparable, then the Customer shall, at its expense, promptly restore such Unit to the condition required by Clause 7.2 (*Unit to be maintained in good working order*).

**10.3 Casualty Event**

- (i) If any Casualty Event occurs the Customer must promptly notify CFNZ.
- (ii) No later than 30 days after the occurrence of that Casualty Event, the Customer must pay the Termination Amount for the affected Unit to CFNZ (which, for the avoidance of doubt, will include the loss suffered by CFNZ as a result of the Customer's inability to return the Unit in accordance with the return conditions).
- (iii) Upon payment of the Termination Amount by the Customer, the lease of the relevant Unit shall terminate, but such termination shall not prejudice any right or remedy of CFNZ in respect of any other breach by the Customer under the Lease. If that Unit was not the only Unit the subject of that Lease, then the Lease will continue in respect of each other Unit for which a Casualty Event has not occurred.
- (iv) If CFNZ receives an amount of insurance moneys from an insurer under Clause 9.7 (*Claim following Casualty Event*) which, when taken together with amounts paid by the Customer to CFNZ, is in excess of the Termination Amount for that Unit, then CFNZ agrees to pay such excess to the Customer.

**11. COVENANTS**

**11.1 No tampering with Unit**

The Customer shall not tamper with or alter any Unit or attach or affix any accessory or equipment to a Unit if any such conduct would or would be likely to prejudice or vitiate any policy of insurance in respect of the Unit or any warranties of the manufacturer attaching to the Unit, impair or diminish the ability or capability of the Unit to perform the functions as specified or recommended by the manufacturer or as nominated by the Customer and agreed to by CFNZ as at the date of commencement of the Lease for that Unit or limit the available market for or reduce the market value of that Unit. Any alteration or addition to any Unit, including the alteration of any safety feature, shall be at the sole risk and shall be the sole responsibility of the Customer. All parts, accessories, replacements and equipment incorporated or installed in or affixed to any Unit shall be deemed to be a permanent part of that Unit.

**11.2 Plates on Unit**

If CFNZ supplies the Customer with plates or labels stating that a Unit is leased or hired from CFNZ (or that the Unit is subject to a Security Interest in favour of CFNZ prohibiting any dealing in the Unit) the Customer shall affix and keep them and each of them upon a prominent place on the Unit throughout the term of the Lease. The Customer shall not remove, alter or deface any plate or label or any identifying number, name or mark on a Unit.

**11.3 Compliance with laws**

The Customer shall comply with all requirements at law relating to each Unit, its possession and use and the occupation and use of the premises upon which each Unit is situated and the Customer shall protect each Unit from distress, execution or seizure.

**11.4 Inspection and testing**

The Customer shall produce each Unit for inspection and testing as reasonably required by CFNZ from time to time. The Customer hereby irrevocably authorises CFNZ and its employees and agents during the Term to inspect each Unit and observe its use and to inspect any maintenance records at any reasonable time and to enter any premises where they believe that Unit may be located for the purpose of any such inspection or observation or protecting CFNZ's rights in that Unit upon the giving of appropriate notice.

**11.5 Financial and other information**

- (i) Each of the Customer and the Guarantor shall promptly deliver to CFNZ copies of its annual audited financial statements, accounts and reports prepared in accordance with recognised accounting principles, and such other financial information as may reasonably be requested by CFNZ from time to time. Each of the Customer and the Guarantor represents and warrants to CFNZ that all credit, financial and other information submitted to CFNZ in connection with a Lease is and shall be true, correct and complete at the time it is submitted.
- (ii) The Customer must provide to CFNZ information relating to a Unit as may be reasonably requested by CFNZ from time to time.

**11.6 Customer has no authority to bind CFNZ**

The Customer shall not have or be deemed to have any authority to pledge CFNZ's credit or involve CFNZ in any liability whatsoever in respect of any Unit.

**12. WARRANTIES****12.1 Warranties by CFNZ in respect of Unit excluded**

CFNZ expressly excludes from this Agreement, all conditions, warranties, guarantees and terms which may be implied into, 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*), custom, general law or any applicable international conventions and are capable of being excluded

**12.2 Consumer Guarantees under the New Zealand Consumer Law**

Subject to Clause 12.1 (*Warranties by CFNZ in respect of Unit excluded*), if, in respect of a Unit, CFNZ becomes liable to the Customer for a breach of any condition or warranty imposed under 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, or for any other claim or loss relating in any way to a Unit, CFNZ's liability for such breach, claim or loss shall, where permitted by any applicable statute 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 CFNZ determines to be appropriate in the circumstances.

**12.3 Warranties by Customer in respect of Unit**

On each occasion that the Customer submits a Schedule to CFNZ pursuant to Clause 2.1 (*Customer may deliver Schedule*) and upon each Commencement Date, the Customer warrants and acknowledges to CFNZ that:

- (i) it has, or prior to or upon delivery of each Unit described in the Schedule it will have, thoroughly examined that Unit and satisfied itself:
  - (a) as to its condition, quality, suitability and fitness for the Customer's purposes and intended use;
  - (b) as to the sufficiency and validity of manufacturer's warranties for that Unit;
  - (c) that the Unit contains all attachments, accessories and safety features deemed necessary by the Customer; and
  - (d) that the Unit complies with its description in the relevant Schedule; and
- (ii) it has relied solely upon its own skill and judgment in selecting and leasing or hiring each Unit listed in the Schedule.

**12.4 No warranties by CFNZ regarding taxation**

The Customer acknowledges to CFNZ that neither CFNZ nor any person having authority to act on its behalf has given any warranties or undertakings or made any representations in connection with the Customer's rights or position under any law relating to taxation or regarding the disposal of a Unit at the expiration of a Lease.

**13. COSTS AND INDEMNITIES****13.1 Costs**

The Customer agrees to pay or reimburse (unless otherwise agreed), on demand, CFNZ's reasonable costs, charges and expenses incurred in connection with:

- (i) the negotiation, preparation, execution and registration of this Agreement, each Schedule and any other documents in connection with them;
- (ii) the payment of Taxes on this Agreement and each Schedule and on each transaction contemplated by either of them;
- (iii) everything the Customer is required to do, and the costs of CFNZ in connection with anything the Customer is required to do, in relation to the PPSA;
- (iv) giving and considering consents, waivers, variations, discharges and releases; and
- (v) otherwise acting under this Agreement or a Lease, such as providing information in connection with this Agreement or a Lease, recovering dishonoured payments, exercising, enforcing or preserving rights, or doing anything in connection with any enquiry by an authority involving the Customer or the Guarantor (but CFNZ shall not be entitled to recover the same amount twice, if such amounts have been paid by the Customer as part of the Termination Amount).

**13.2 Customer releases CFNZ from any liability**

The Customer shall use, operate and possess a Unit at the Customer's risk and, to the full extent permitted by law, the Customer hereby releases and discharges CFNZ and its agents and employees from all claims and demands on CFNZ and from any loss or damage whatsoever and whenever caused to the Customer or its 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 Productlink system on the Unit and/or the use of the remote shut off feature on Productlink.

**13.3 General indemnity to CFNZ**

The Customer indemnifies CFNZ and its agents and employees from and against all losses, liabilities, costs and expenses (including all reasonable costs and expenses of legal counsel and other advisers) of whatsoever nature (including claims based upon strict liability in tort, and including third party claims for death, injury or damage) arising out of or in connection with:

- (i) any amount not being paid for the acquisition of a Unit on its proposed Commencement Date for any reason except default of CFNZ;
- (ii) any amount due under a Lease being repaid, discharged or made payable other than on its due date;
- (iii) an Event of Default;
- (iv) the delivery, selection, purchase, acceptance or rejection, ownership, possession, use, condition, operation, repair, maintenance or storage of any Unit;
- (v) any loss of a Unit by seizure, distress, execution or other legal process, confiscation or forfeiture, any loss or destruction of or damage to a Unit and any inability of CFNZ to recover the Unit for any reason whatsoever;
- (vi) CFNZ exercising or attempting to exercise its rights under this Agreement or a Lease; or
- (vii) CFNZ seizing or storing a Unit,  
except to the extent caused by the gross negligence or wilful misconduct or fraud of CFNZ.

Clause 13.3 (*General Indemnity to CFNZ*) specifically excludes indirect costs that are not otherwise quantifiable including opportunity costs and loss of profit.

**13.4 Increased costs and change of law**

If:

**(a) a Regulatory Change:**

- (i) subjects CFNZ to any Tax relating to any Lease;
- (ii) changes the basis of taxation of any payment due or to become due to CFNZ relating to any Lease;
- (iii) imposes, modifies or deems applicable any capital, liquidity, reserve or prudential requirement or requires the making of any special deposit against or in relation to any assets or liabilities (actual or contingent) of, deposits with or for the account of, or loans by, CFNZ; or
- (iv) imposes on CFNZ any other condition affecting any Lease; and

- (b) the result is (directly or indirectly) to:
  - (i) increase the cost to CFNZ, of the provision or maintenance by CFNZ of the Lease, or the performance by CFNZ of its obligations under any Lease;
  - (ii) reduce:
    - (i) the effective rate of return (on capital, property, deposits or otherwise) under any Lease; or
    - (ii) the amount of any payment received by CFNZ under any Lease; or
  - (iii) require CFNZ to make a payment or to forgo or suffer a reduction in return on or calculated by reference to any amount payable to CFNZ under any Lease,
- (c) then, after receiving notice from CFNZ stating the nature of the relevant Regulatory Change, the Customer must indemnify CFNZ in relation to, and must pay to CFNZ on demand the amount of, each amount that CFNZ determines (acting reasonably) is necessary to compensate CFNZ for the additional cost, reduction or payment, calculated from the day on which it was first incurred by CFNZ.

CFNZ must on request of the Customer provide reasonable details to the Customer of its calculation of any amount claimed by it under this clause.

## 14. EVENTS OF DEFAULT AND TERMINATION

### 14.1 Events of Default

Each of the following events shall constitute an Event of Default under a Lease:

- (i) **(non-payment)**: the Customer or Guarantor fails to make any payment to CFNZ within five days of its due date under a Lease;
- (ii) **(misrepresentation)**: any statement or representation made or repeated or deemed to be made or repeated by the Customer or Guarantor in a Lease or any instrument or document in connection with a Lease is false, inaccurate or incorrect or is misleading or deceptive in any material respect when made or repeated or deemed to have been made or repeated or when furnished (as the case may be);
- (iii) **(insurance)**: the Customer fails to perform its obligations under Clause 9.1 (*Insurance policies*), or any insurer in respect of a Unit cancels or gives notice that it does not intend to indemnify either the Customer or CFNZ under any policy of insurance or disclaims liability by reason of misstatement in any proposal for such policy of insurance or for any other reason, other than an act or omission on the part of CFNZ;
- (iv) **(breach of obligation)**: the Customer or the Guarantor fails to perform or observe any condition, covenant, agreement or warranty (other than those listed in this Clause 14.1) of a Lease (or any other instrument or document contemplated by a Lease) on its part to be observed or performed and, if such failure is capable of remedy, such failure continues for ten days after written notice of that failure is given by CFNZ to the Customer or Guarantor;
- (v) **(cross-default)**: any event of default (however described) occurs under:
  - a) any other agreement between (A) the Customer or the Guarantor or any subsidiary of the Customer or Guarantor and (B) CFNZ or any Related Entity of CFNZ, subsisting concurrently with this Agreement, including any other Lease; or
  - b) any other agreement or arrangement for the provision of financial accommodation to the Customer or Guarantor (from any person);
- (vi) **(insolvency)**: the Customer or a Guarantor becomes Insolvent;
- (vii) **(death or incapacity)**: if the Customer or the Guarantor is a natural person, such person dies or is convicted of an indictable offence or sentenced to a term of imprisonment or is or becomes incapable of managing his or her own affairs;
- (viii) **(creditor's process)**: any execution or other process of any court or authority or any distress is issued against or levied upon any Unit;
- (ix) **(material adverse effect)**: any event or circumstance or series of events or circumstances occurs which, in the reasonable opinion of CFNZ, would have a material adverse effect on the business or financial condition of the Customer or the Guarantor, or on the ability of the Customer or the Guarantor to perform its obligations under a Lease;
- (x) **(cessation or disposal of business)**: the Customer or Guarantor ceases or threatens to cease carrying on its business or undertaking or a substantial part of it or the Customer or Guarantor disposes of the whole or a substantial part of its business, undertaking or assets to any person, whether by one transaction or a series of transactions (whether related or not).

### 14.2 Actions upon Event of Default or Act of Repudiation

If any Event of Default or Act of Repudiation occurs under a Lease, then CFNZ, at its election, may:

- (i) proceed by appropriate court action or actions either at law or in Equity to enforce performance by the Customer or Guarantor of the applicable provisions of that Lease or to recover damages flowing from that Event of Default;

- (ii) terminate that Lease and the Customer's right of possession of each Unit the subject of that Lease, by notice in writing to the Customer, whereupon all rights of the Customer to or in the use of such Unit or Units shall cease; or
- (iii) initiate the use of the remote shut off feature on the Unit's Productlink system.

**14.3 Customer to pay Termination Amount following termination**

If CFNZ terminates a Lease under Clause 14.2(ii), the Customer must immediately pay to CFNZ the Termination Amount, which represents the damages flowing from the termination of that Lease.

**14.4 Termination Amount is fair and reasonable**

The Customer acknowledges and agrees with CFNZ that the Termination Amount:

- (i) represents fair and reasonable compensation to CFNZ upon the termination of a Lease by reason of the occurrence of an Event of Default or an Act of Repudiation; and
- (ii) is not extravagant, exorbitant or unconscionable and represents a genuine pre-estimate of the loss to CFNZ that would flow from the termination of the Lease pursuant to the occurrence of an Event of Default or an Act of Repudiation.

**14.5 Essential terms**

Each party acknowledges and agrees that, without limitation, the occurrence or happening of any Event of Default under a Lease shall constitute a breach of a fundamental and essential term of and a repudiation of that Lease.

**14.6 Review Events**

Each of the following events will constitute a Review Event under a Lease:

- (i) 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 the Customer or Guarantor;
- (ii) there is a change in more than half of the voting rights attaching to the capital of the Customer or Guarantor and/or there is a change in more than half of the issued capital of the Customer or Guarantor (excluding any part of that capital that carries no right to participate beyond a specified amount in the distribution of either profit or capital);
- (iii) the acquisition by any means by a person of an interest in shares of a Customer or Guarantor that is sufficient to allow that person either alone or jointly with others to exercise the control.

If any Review Event occurs under a Lease, CFNZ, at its election, may review its decision to extend financial accommodation to the Customer pursuant to the Lease. If CFNZ, acting reasonably, believes that the Review Event would have a material adverse impact on the Customer's ability to perform its obligations under the Lease, or on the Guarantor's ability to perform its obligations under this Agreement, CFNZ may elect to treat the Review Event as an Event of Default and to take any of the actions described in Clause 14.2 of this Agreement.

**14.7 Subordination of debt to Related Entities**

Where an Event of Default is subsisting under a Lease, the Customer agrees:

- (i) not to make any payments of principal, interest, fees, costs or other amounts to any of its Related Entities in respect of any financial indebtedness to that Related Entity; and
- (ii) to ensure that any financial indebtedness acquired by the Customer occurs on terms that give priority to all payments due and payable to CFNZ under this Agreement and each Lease.

**15. RETURN OF UNIT**

**15.1 Unit to be returned**

Upon the expiry or termination of a Lease, the Customer shall at its own expense immediately deliver possession of each Unit the subject of that Lease to CFNZ, appropriately protected and in the condition required by Clause 7.2 (*Unit to be maintained in good working order*), to the premises CFNZ notifies the Customer at that time, which shall be within the New Zealand area, province or city listed in Section I of the Schedule.

**15.2 Payment by Customer if Unit not in required condition**

If a Unit returned to CFNZ is not in the condition required by Clause 7.2 (*Unit to be maintained in good working order*):

- (i) the Customer must pay to CFNZ, on demand, all costs and expenses incurred by CFNZ to bring that Unit into that condition; and
- (ii) until the Unit is brought into that condition, the Customer must pay to CFNZ a daily holding cost determined by CFNZ and notified to the Customer or, in the absence of such determination, the daily equivalent of the Rent Payments last payable by the Customer under the Lease.

**15.3 CFNZ may retake possession of Unit if not returned**

If a Unit is not returned to CFNZ in accordance with Clause 15.1 (*Unit to be returned*), CFNZ may retake possession of that Unit and for that purpose CFNZ and its 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 they 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.



**15.4 If Customer continues in possession**

If the Customer continues in possession of a Unit after the expiration or termination of a Lease (without prejudice to the exercise by CFNZ of its rights, powers and remedies under the Lease) the Customer shall pay to CFNZ a monthly rent equal to the amount from time to time determined by CFNZ, or in the absence of any such determination the Rent Payments last payable by the Customer under the Lease prior to such expiration or termination, and the Customer shall continue to be bound by the terms of the Lease so far as they may be capable of applying.

**15.5 Legislation applicable to repossession**

CFNZ acknowledges that the *Farm Debt Mediation Act 2019* or other similar legislation may apply to a repossession by CFNZ of a Unit, and if such legislation does apply, CFNZ will comply with its obligations under it (notwithstanding any other provision of this Agreement).

**16. GUARANTEE AND INDEMNITY****16.1 Guarantee and Indemnity**

In consideration for CFNZ entering into this Agreement and any future Leases, the Guarantor irrevocably and unconditionally:

- (i) guarantees to CFNZ the punctual performance by the Customer of all the Customer's obligations under this Agreement and any Lease entered into at any time;
- (ii) undertakes to CFNZ that whenever the Customer does not pay any amount due under or in connection with this Agreement or any Lease, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (iii) indemnifies CFNZ immediately on demand against any cost, loss or liability suffered by CFNZ if any obligation guaranteed by it becomes unenforceable, invalid or illegal.

**16.2 Continuing guarantee**

This Guarantee is a continuing guarantee and shall remain in force until all of the Customer's obligations under this Agreement and each Lease have been fully paid or satisfied.

**16.3 Immediate recourse**

The Guarantor waives any right it has of first requiring CFNZ to proceed against or enforce any other right, power, remedy or security against the Customer or any other person or claim payment from the Customer or any other person before claiming from the Guarantor under this Guarantee.

**16.4 Guarantor's consent not required for entry into new Leases**

The Guarantor acknowledges and agrees that the Customer and CFNZ may from time to time execute Schedules and enter into new Leases without notice to or consent from the Guarantor. The Guarantor acknowledges and agrees that this Guarantee will extend to the Customer's obligations under all such new Leases.

**16.5 Guarantor's liability not affected**

CFNZ may from time to time without any consent from the Guarantor and without discharging or affecting the Guarantor's liability under this Guarantee:

- (i) renew, vary or determine any lease or Lease-Purchase arrangement provided to the Customer under a Lease;
- (ii) amend, vary or substitute any Lease and any other agreements or arrangements now or hereafter in force between CFNZ and the Customer or any other Guarantor or person;
- (iii) grant any time, waiver, consent or other indulgence or consideration to the Customer or Guarantor or any other person;
- (iv) vary, exchange, renew, modify, release, abstain from completing or enforcing or assigning any securities, guarantees, negotiable or other instruments, judgments or rights from or against the Customer or any other Guarantor or person held by CFNZ;
- (v) compound with or release the Customer or any other Guarantor or person;
- (vi) assent to or become bound by any compromise, assignment of property, scheme or deed of arrangement, scheme of reconstruction or to any composition of debts and either with or without sequestration of the estate or the liquidation of the Customer or any other Guarantor or person; or
- (vii) do anything which would not have discharged or affected the liability of the Guarantor if the Guarantor had been a principal Customer to CFNZ instead of a surety.

**16.6 Waiver of defences**

The obligations of the Guarantor under this Guarantee shall not be discharged or affected by the following events, without limitation:

- (i) the death, disability or incapacity of the Customer or the Guarantor;
- (ii) the bankruptcy, insolvency, liquidation or similar proceedings of the Customer or the Guarantor;
- (iii) any change in the name, style, capacity or constitution of the Customer or the Guarantor;
- (iv) any change by retirement, addition, incorporation, reconstruction, amalgamation, acquisition or otherwise of the Customer or the Guarantor,

- (v) any present or future agreement, arrangement or transaction between CFNZ and the Customer or any other Guarantor or person;
- (vi) any loss, release, discharge, abandonment or transfer of any security or guarantee now or hereafter held by CFNZ from the Customer or from any other Guarantor or person;
- (vii) CFNZ failing or neglecting to recover all or any portion of the amounts payable under this Agreement and each Lease by realisation of any security held by CFNZ;
- (viii) any laches, acquiescence, delay, forbearance, act, omission or mistake on the part of CFNZ or any other person,
- (ix) any security held by CFNZ or other obligation in favour of CFNZ being or becoming void, defective or unenforceable.

**16.7 Additional security**

This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or hereafter held by CFNZ from the Guarantor.

**16.8 No security from Customer to Guarantor**

The Guarantor has not taken and will not take without the prior written consent of CFNZ any Security Interest from the Customer in connection with this Guarantee.

**16.9 Deferral of Guarantor's rights**

Until all of the Customer's obligations under this Agreement and each Lease are paid or satisfied in full, the Guarantor shall not be entitled on any grounds whatsoever to:

- (i) share in or claim the benefit of any security or money now or hereafter held or received by CFNZ in respect of the Customer's obligations;
- (ii) take any steps to enforce any right or claim against the Customer or any other Guarantor in respect of any money paid by the Guarantor to CFNZ under this guarantee;
- (iii) have or exercise any rights as surety in competition with CFNZ;
- (iv) either directly or indirectly claim or receive the benefit of any distribution, dividend or payment out of the estate or in the liquidation of the Customer or of any other Guarantor; or
- (v) prove or claim in the estate or in the liquidation of the Customer or any other Guarantor in competition with CFNZ.

The receipt by CFNZ of any dividend or other payment out of such estate or in such liquidation shall not prejudice or affect the rights of CFNZ under this Guarantee. The Guarantor waives all rights of suretyship inconsistent with the provisions of this Guarantee.

**16.10 Reinstatement of rights**

Under law relating to insolvency, a person may claim that a transaction (including a payment) in connection with this Agreement or a Lease is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (i) CFNZ is immediately entitled as against the Guarantor to the rights in respect of the amounts payable under this Agreement and any Lease to which it was entitled immediately before the transaction; and
- (ii) on request from CFNZ, the Guarantor agrees to do anything (including signing any document) to restore to CFNZ any encumbrance (including this Guarantee) it held from the Guarantor immediately before the transaction.

**16.11 Multiple Guarantors**

This Guarantee binds each person who signs as Guarantor even if another person who was intended to sign it does not sign it or is not bound by it.

**17. COMMISSION TO BROKERS**

The Customer agrees to CFNZ paying or receiving out of money paid or payable by the Customer under a Lease commission, fees or other remuneration to or from any broker, agent, Dealer, financier or other person who introduces the Customer to CFNZ or to whom CFNZ introduces the Customer.

CFNZ may give to or receive from any broker, agent, Dealer, financier or other person monetary and non-monetary rewards based on the volume and value of introductions they give to CFNZ or CFNZ gives to them and in calculating the volume and value of introductions CFNZ may take the Leases into account.

**18. ASSIGNMENT**

CFNZ may at any time at its own cost assign all or any of its rights under this Agreement and under any Lease and transfer title to any Unit accordingly. The Customer may not assign any of its rights under this Agreement or under any Lease without the prior written consent of CFNZ.

**19. SET-OFF**

Each of the Customer and the Guarantor irrevocably authorises CFNZ to apply money in or towards payment of amounts owed to CFNZ in the order that CFNZ determines and to apply any money that CFNZ owes to it in or towards payment of to satisfy amounts that it owes to CFNZ under this Agreement, any Lease or any other agreement between (i) the Customer and the Guarantor and (ii) CFNZ.

**20. CUSTOMER'S OMISSIONS**

If the Customer neglects or fails to perform any of its obligations under this Agreement or under a Lease CFNZ may at its discretion perform such obligation (but without prejudice to any other right or remedy of CFNZ by reason of such neglect or failure) and all moneys, costs, charges and expenses reasonably paid or incurred by CFNZ in connection with the performance of such obligation shall be paid to CFNZ by the Customer on demand.

**21. CFNZ'S EXERCISE OF RIGHTS**

CFNZ may exercise a right or remedy in any way or at any time it considers appropriate. If CFNZ does not exercise a right or remedy fully or at a given time, CFNZ may still exercise that right or remedy later. CFNZ is 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. CFNZ's rights under this Agreement and a Lease are in addition to any other rights or remedies available to it by law.

**22. STATEMENT OF CFNZ**

A statement in writing signed by a director, secretary, regional manager or manager of CFNZ as to the amount due or owing by the Customer to CFNZ, the identity of a Unit, any information whatsoever collected on the Unit from that Unit's Productlink system or any other act, matter or thing arising under this Agreement or any Lease as at any date or dates set out in such statement shall be prima facie correct evidence of the facts so stated.

**23. SEVERABILITY AND SURVIVAL OF COVENANTS**

If any provision of this Agreement or any Lease at any time is or becomes void or unenforceable the remaining provisions shall continue in full force and effect and any void or unenforceable provision shall be replaced by a lawful and enforceable provision which, so far as possible, achieves the same economic benefit or burden for the parties as the unlawful or unenforceable provision was intended to achieve. All obligations of the Customer and Guarantor under this Agreement and under a Lease shall survive the expiration or termination of this Agreement and that Lease to the extent required for their full observance and performance.

**24. NOTICES****24.1 When notices take effect**

Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is duly given or made.

**24.2 Where notices to be delivered**

Any communication in connection with this Agreement 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 any replacement of such notified by the intended recipient. Such replacement is effective upon confirmation by CFNZ that its records have been updated.

**24.3 When notices taken to be received****Method:**

Hand delivery  
Post  
Facsimile  
Electronic

**Received:**

When delivered  
3 days after posting (7 if to or from outside New Zealand)  
At the last time shown on the transmission summary  
When delivered

**24.4 Persons deemed to be authorised**

Any notice, demand, consent or other communication required to be given or made pursuant to this Agreement shall be sufficient if it be under the hand of:

- (i) in the case of a Customer or Guarantor being a natural person, that person;
- (ii) in the case of a Customer or Guarantor being a corporation, the secretary or a director of that Customer or Guarantor, or any other person authorised in writing by the directors of that Customer or Guarantor; and
- (iii) in the case of CFNZ, a director, secretary, regional manager or manager of CFNZ.

**24.5 Notification of change in details**

Each of the Customer and the Guarantor agree to notify CFNZ immediately in writing of any change of its address or registered office.

**24.6 Electronic communication**

- (i) Any communication to be made between CFNZ and the Customer and/or CFNZ and a Guarantor (if applicable) under or in connection with this Agreement or a Lease may be made by electronic mail.
- (ii) CFNZ may still send paper communications to the Customer and Guarantor (if applicable) but communications provided by electronic means may not be provided as paper communications. The Customer and Guarantor (if applicable) must regularly check their electronic communications.

- (iii) Electronic communication made by the Customer and/or a Guarantor (if applicable) to CFNZ must be addressed as CFNZ specifies for this purpose.

**25. GOVERNING LAW**

This Agreement and each Lease shall be governed by and construed in accordance with the laws of New Zealand and the parties hereby irrevocably submit to the jurisdiction of the Courts of New Zealand and any Courts which may hear appeals from those Courts.

**26. CUSTOMER OR GUARANTOR AS A TRUSTEE**

**26.1 This Clause to apply if Customer or Guarantor is a trustee**

If the Customer or the Guarantor enters into this Agreement and a Lease in its capacity as the trustee of a Trust, the following provisions of this Clause 26 shall apply to that Customer or Guarantor.

**26.2 Representations and warranties of Customer or Guarantor as trustee**

The Customer or Guarantor (as applicable) represents and warrants to CFNZ 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 CFNZ prior to the execution of this Agreement discloses all the terms of the Trust and there has been no other amending 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 this Agreement and under a Lease and it has entered into this Agreement and it will enter into a Lease 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 property or fund of the Trust in respect of obligations incurred by it under this Agreement and under a Lease without any impairment and without any set-off on account of any liability owed by it to the beneficiaries of the Trust in respect of any breach of trust or otherwise;
- f) the property and fund of the Trust is sufficient to satisfy that right of indemnity and all other obligations in respect of which it has a right to be indemnified out of the property and fund of the Trust;
- g) it is not in default under the Trust Deed;
- h) CFNZ's rights under this Agreement and under a Lease rank in priority to the interest of the beneficiaries of the Trust, and
- i) it has in full force and effect the authorisations necessary to make and enter into this Agreement and a Lease, perform obligations under each of them and allow each of them to be enforced (including, without limitation, under the Trust Deed and its constituent documents).

**26.3 Repeated representations**

The representations and warranties in Clause 26.2 (*Representations and warranties of Customer as trustee*) are taken to be repeated by the Customer or Guarantor (as applicable) as at each time immediately prior to an acceptance by CFNZ of any offer made by the Customer under Clause 2.1 (*Customer may deliver Schedule*), and on each payment date under a Lease.

**26.4 Indemnity from Trust**

At the request of CFNZ, the Customer or Guarantor (as applicable) agrees to exercise its right of indemnity from the property and fund of the Trust and the beneficiaries of the Trust in respect of obligations incurred by it under this Agreement or under any Lease.

**26.5 Undertakings of Customer or Guarantor as trustee**

The Customer or Guarantor (as applicable) agrees to observe its obligations as trustee of the Trust. The Customer or Guarantor may not, without the consent of CFNZ, do anything that:

- (i) effects or facilitates its retirement, removal or replacement as trustee of the Trust;
- (ii) could restrict its right of indemnity from the property and fund of the Trust in respect of obligations incurred by it under this Agreement or under any Lease;
- (iii) could restrict or impair its ability to observe its obligations under this Agreement or under any Lease; or
- (iv) effects or facilitates the termination of the Trust, the variation of the Trust Deed or the re-settlement of the property and fund of the Trust.

**27. CUSTOMER'S REPRESENTATIVE**

**27.1 Nomination of Customer's Representative**

The Customer hereby nominates and appoints the Customer's Representative identified in Item 4 of Annexure 1 and, in the case where more than one natural person is nominated and appointed as the Customer's Representative for the purposes of this Clause 27, jointly, severally or jointly and severally as may be specified in Item 4 of Annexure 1, to sign and execute for and on behalf of the Customer, and so as to bind the Customer absolutely and unconditionally, each or any Schedule.

**27.2 Continuing Nomination and validity of acts**

The Customer declares to CFNZ that:

- a) the Nomination shall be and remain of full force and effect until notice in writing of the revocation or suspension of that Nomination is given by the Customer to CFNZ and CFNZ acknowledges in writing receipt of that notice of revocation or suspension;
- b) for so long as the Nomination remains of full force and effect, the Customer shall ratify and confirm the validity and enforceability of each Schedule signed and executed by the Customer's Representative;
- c) CFNZ shall be entitled to rely upon the validity and enforceability of any Schedule signed and executed by the Customer's Representative;
- d) CFNZ shall be under no obligation to make any enquiry or investigation concerning:
  - (i) the signing and execution of any Schedule by the Customer's Representative or, if more than one, any of them;
  - (ii) the validity or authenticity of the signature of the Customer's Representative or, if more than one, any of them, appearing on any Schedule; or
  - (iii) the circumstances under which that signature was effected or obtained;
- e) unless CFNZ has received from the Customer actual notice of revocation or suspension of any Nomination, CFNZ shall be deemed and taken conclusively to have been acting in good faith; and
- f) the execution by the Customer's Representative of a Schedule shall be binding upon the Customer to the same extent and with like effect as if Customer had executed that Schedule in accordance with the constitution of the Customer.

**27.3 Reliance on Customer's Representative**

CFNZ shall be entitled to rely upon a written statement by the Customer's Representative to the effect that he or she has no notice of the revocation or suspension of the Nomination as conclusive evidence of that fact.

**27.4 New Nominations**

If the Customer wishes to nominate a natural person or several natural persons to be the Customer's Representative, whether in place of or in addition to the existing Customer's Representative, the Customer:

- a) shall revoke the existing Nomination by notice in writing to be given to CFNZ; and
- b) upon receipt of an acknowledgment in writing from CFNZ as to that revocation, shall nominate and appoint in writing and by such instrument as CFNZ may require, that person or those persons either alone or together with the existing Customer's Representative, and if more than one, jointly, severally or jointly and severally, as the Customer's Representative.

Any succeeding Nomination made by the Customer pursuant to this Clause 27.4 shall be construed, interpreted and relied upon to the same extent and with like effect as if it were the original Nomination made by the Customer under Clause 27.1 (*Nomination of Customer's Representative*).

**28. ATTORNEY**

For valuable consideration and by way of security for the interest of CFNZ in each Unit and for the performance of the obligations owed by the Customer to CFNZ under that Lease, the Customer irrevocably appoints CFNZ and its successors and assigns, and every director, secretary, regional manager and manager of CFNZ severally, the attorney of the Customer for the purpose of doing all acts and things which the Customer is obliged to do or which the Customer is empowered or authorised to do under this Agreement or under a Lease.

**29. COUNTERPARTS**

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

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## ANNEXURE 1

### - ITEM ONE -

#### PARTICULARS OF THE CUSTOMER

##### ORGANISATION

**Name:** [CUSTOMER LEGAL NAME]  
**N.Z.C.N.:** [N.Z.C.N.]  
**N.Z.B.N.:** [N.Z.B.N.]  
**Principal Business Address:** [PROPERTY NAME] [ADDRESS 1] [ADDRESS 2] [SUBURB] [POST CODE]  
**Facsimile Number:** [FAX NUMBER]  
**Email Address:** [EMAIL ADDRESS]

##### INDIVIDUAL

**Name:** [CUSTOMER LEGAL NAME]  
**Address:** [PROPERTY NAME] [ADDRESS 1] [ADDRESS 2] [SUBURB] [POST CODE]  
**Occupation:**  
**Date of Birth:** [DATE OF BIRTH]  
**N.Z.B.N.:** [N.Z.B.N.]  
**Facsimile Number:** [FAX NUMBER]  
**Email Address:** [EMAIL ADDRESS]

### - ITEM TWO -

#### PARTICULARS OF THE GUARANTOR

##### ORGANISATION

**Name:** [GUARANTOR LEGAL NAME]  
**N.Z.C.N.:** [N.Z.C.N.]  
**N.Z.B.N.:** [N.Z.B.N.]  
**Principal Business Address:** [PROPERTY NAME] [ADDRESS 1] [ADDRESS 2] [SUBURB] [POST CODE]  
**Facsimile Number:** [FAX NUMBER]  
**Email Address:** [EMAIL ADDRESS]

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**Name:** [GUARANTOR LEGAL NAME]  
**N.Z.C.N.:** [N.Z.C.N.]  
**N.Z.B.N.:** [N.Z.B.N.]  
**Principal Business Address:** [PROPERTY NAME] [ADDRESS 1] [ADDRESS 2] [SUBURB] [POST CODE]  
**Facsimile Number:** [FAX NUMBER]  
**Email Address:** [EMAIL ADDRESS]

**INDIVIDUAL**

**Name:** [GUARANTOR LEGAL NAME]  
**Address:** [PROPERTY NAME] [ADDRESS 1] [ADDRESS 2] [SUBURB] [POST CODE]  
**Occupation:**  
**Date of Birth:** [DATE OF BIRTH]  
**N.Z.B.N.:** [N.Z.B.N.]  
**Facsimile Number:** [FAX NUMBER]  
**Email Address:** [EMAIL ADDRESS]

**Name:** [GUARANTOR LEGAL NAME]  
**Address:** [PROPERTY NAME] [ADDRESS 1] [ADDRESS 2] [SUBURB] [POST CODE]  
**Occupation:**  
**Date of Birth:** [DATE OF BIRTH]  
**N.Z.B.N.:** [N.Z.B.N.]  
**Facsimile Number:** [FAX NUMBER]  
**Email Address:** [EMAIL ADDRESS]

**- ITEM THREE -**

**PARTICULARS OF CFNZ FOR THE PURPOSES OF CLAUSE 24**

**Address:** 24 Amyes Road, Hornby, Christchurch 8042  
**Facsimile Number:** N/A  
**Email Address:** CFNZ.CustomerService@cat.com

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**- ITEM FOUR -  
CUSTOMER'S REPRESENTATIVE**

**Name:**

**Address:**

**Occupation:**

**Specimen Signature:** .....

**Name:**

**Address:**

**Occupation:**

**Specimen Signature:** .....

**Name:**

**Address:**

**Occupation:**

**Specimen Signature:** .....

**Name:**

**Address:**

**Occupation:**

**Specimen Signature:** .....

If more than one Customer's Representative is nominated, the nomination is

- Any one of the above
- Any two of the above
- Other: Please specify \_\_\_\_\_



# ANNEXURE 2

Contract Number: \_\_\_\_\_

|   |
|---|
| <h2>Lease Schedule and<br/>Tax Invoice</h2> |
|---|

Dated:.....

**CATERPILLAR FINANCIAL NEW ZEALAND LIMITED ("CFNZ")**  
(N.Z.C.N. 1256805) (N.Z.B.N 9429036240050)  
GST Number 083-761-318  
24 Amyes Road, Hornby, Christchurch 8042

**SECTION A: PARTICULARS OF THE CUSTOMER**

Name:  
Principal Business Address:  
N.Z.C.N.:  
N.Z.B.N.:

**SECTION B: MASTER AGREEMENT**

Reference is made to Master Operating Lease Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.  
Terms used in this Lease Schedule have the meanings given to them in the Master Agreement.

**SECTION C: UNITS**

| Description of Units: | Model | PIN/Serial/Identification No |
|-----------------------|-------|------------------------------|
|-----------------------|-------|------------------------------|

Registration No (where applicable):

**SECTION D: RENT PAYMENT SUMMARY**

TAXABLE SUPPLY SUMMARY (GST inclusive)

| Rent Payment<br>\$ | GST<br>\$ | Total Rent Payment<br>\$ | Number of Rent Payments | Frequency     | First Due |
|--------------------|-----------|--------------------------|-------------------------|---------------|-----------|
|                    |           |                          |                         |               |           |
|                    |           |                          |                         |               |           |
|                    |           |                          |                         |               |           |
|                    |           |                          |                         | <b>TOTALS</b> |           |

**SECTION E: TERM, COMMENCEMENT DATE AND EXPIRY DATE**

The **Term** of the Lease shall be a period of \_\_\_\_\_ months

The **Commencement Date** shall be the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

The **Expiry Date** shall be the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

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## ANNEXURE 2 - continued

### **SECTION F: LOCATION OF UNITS**

The location/garage location (where applicable) of the Units during the Term of the Lease shall be:

### **SECTION G: DELIVERY LOCATION**

The Units will be delivered to the Customer at

### **SECTION H: USE**

See Application Survey (Part 2 and 2A (On Road Vehicles) of this Schedule)

### **SECTION I: RETURN LOCATION**

### **SECTION J: NOT USED**

### **SECTION K: ACCEPTANCE OF DELIVERY**

The Customer confirms that, for the purposes of the condition precedent set out in Clause 2.5(i) of the Master Agreement, it has accepted delivery of the Units or will have accepted delivery of the Units on or before the Commencement Date.

### **SECTION L: NO ADDITIONS OR REPLACEMENTS**

No additional Units shall be leased to the Customer under this Schedule and no Units leased under this Schedule shall be replaced except if a Unit is lost, destroyed or stolen, and where agreed between CFNZ and the Customer (in their absolute discretion).

## ANNEXURE 2 - PART 2

### CATERPILLAR FINANCIAL NEW ZEALAND LIMITED (“CFNZ”) EQUIPMENT APPLICATION SURVEY & RETURN CONDITIONS

|   |  |
|---|--|
| Customer Name:  |  |
| Location:   |  |
| Site Name:  |  |
| Make:   |  |
| Model:  |  |
| Quantity:   |  |
| PIN/Serial Number(s) (including VIN, chassis number, registration number and manufacturers number, if applicable) |  |
| Current Frame Hours:  |  |

**MAJOR ATTACHMENTS (Check all that apply):**

|  |   |   |   |  |
|--|---|---|---|--|
| <input type="checkbox"/> Cab             | <input type="checkbox"/> Forks          | <input type="checkbox"/> Cab Riser        | <input type="checkbox"/> Access Platform  | <input type="checkbox"/> Auger         |
| <input type="checkbox"/> Air Conditioner | <input type="checkbox"/> Lumber Forks   | <input type="checkbox"/> Solid Tyres      | <input type="checkbox"/> Generator        | <input type="checkbox"/> Trencher      |
| <input type="checkbox"/> Slope Board     | <input type="checkbox"/> Top Clamp      | <input type="checkbox"/> Special Rims     | <input type="checkbox"/> Magnet           | <input type="checkbox"/> Compactor     |
| <input type="checkbox"/> Ripper          | <input type="checkbox"/> Saw Head       | <input type="checkbox"/> Long Reach Stick | <input type="checkbox"/> Rotator          | <input type="checkbox"/> Tiller        |
| <input type="checkbox"/> Winch           | <input type="checkbox"/> Rotasaw        | <input type="checkbox"/> 4 Wheel Drive    | <input type="checkbox"/> Grapple          | <input type="checkbox"/> Mower         |
| <input type="checkbox"/> Snow Plow       | <input type="checkbox"/> Delimber       | <input type="checkbox"/> E-Stick          | <input type="checkbox"/> Metal Shear      | <input type="checkbox"/> Pallet Forks  |
| <input type="checkbox"/> Ride Control    | <input type="checkbox"/> Feller Buncher | <input type="checkbox"/> All Wheel Steer  | <input type="checkbox"/> Concrete Crusher | <input type="checkbox"/> Block Forks   |
| <input type="checkbox"/> OHT Body        | <input type="checkbox"/> Flat Floor     | <input type="checkbox"/> Broom            | <input type="checkbox"/> Landscape Rake   | <input type="checkbox"/> Cold Planer   |
| <input type="checkbox"/> Gullwing        | <input type="checkbox"/> Shear Head     | <input type="checkbox"/> Dual Slope       | <input type="checkbox"/> Body Liner       | <input type="checkbox"/> Mine Specific |
| <input type="checkbox"/> Overload Boards |   |   |   |  |

Other: \_\_\_\_\_

**BLADES AND BUCKETS (Check all that apply):**

|   |   |   |   |  |
|---|---|---|---|--|
| <input type="checkbox"/> Straight Blade | <input type="checkbox"/> "PAT" Blade            | <input type="checkbox"/> Landfill Blade       | <input type="checkbox"/> Bottom Dump Bucket | <input type="checkbox"/> Landfill Bucket |
| <input type="checkbox"/> "U" Blade      | <input type="checkbox"/> Carry Dozer Blade      | <input type="checkbox"/> Front Dump Bucket    | <input type="checkbox"/> Ejector Bucket     | <input type="checkbox"/> "SU" Blade      |
| <input type="checkbox"/> Coal Blade     | <input type="checkbox"/> General Purpose Bucket | <input type="checkbox"/> Side Dump Bucket     | <input type="checkbox"/> High Volume Bucket | <input type="checkbox"/> Angle Blade     |
| <input type="checkbox"/> Chip Blade     | <input type="checkbox"/> Rock Bucket            | <input type="checkbox"/> Multi Purpose Bucket | <input type="checkbox"/> Slag Bucket        |  |

Other: \_\_\_\_\_

**OPERATING ENVIRONMENT (Check All That Apply)**

|  |   |
|--|---|
| <input type="checkbox"/> <b>Standard Environment</b><br>Agricultural, Clay, Coal, Frac Sand, Road Building, Site Development, Utilities, Standard service and Maintenance levels | <input type="checkbox"/> <b>Corrosive Environment</b><br>Cold Storage, Compost, Paper Mill Sludge, Salt Fertilizer, Saltwater, Chemical, Mushroom Farming                   |
| <input type="checkbox"/> <b>Abrasive Environment</b><br>Glass, Coral, Cliché, Rock Quarry, Sand, Limestone   | <input type="checkbox"/> <b>High Impact Environment</b><br>Arctic, Antarctic, Hammer Attachment, Ripping Rock, Land Clearing, Logging, Mill Yard, Pipe Yard, Storm Clean-up |
| <input type="checkbox"/> <b>Industrial Environment</b><br>Demolition, Cold Slag, Concrete, Recycling, Salvage, Scrap, Aluminium, Steel, Landfill                                 | <input type="checkbox"/> <b>Severe Environment</b><br>Foundry, Steel Mill, Extreme Heat, - Please Specify Below   |
| <input type="checkbox"/> <b>Manure Environment</b><br>Feedlot, Poultry, Dairy, Rendering   | <input type="checkbox"/> <b>Situational Environment</b><br>Extended Service Intervals, Accumulation of Materials on Paint, Oversize Bucket, Over Loading                    |
| <input type="checkbox"/> <b>Other Environment or Other Severe Environment</b><br>Enter details here:<br>_____  |   |

**MANDATORY CONDITION OF EQUIPMENT UPON RETURN:**

In addition to the requirements set out in the Master Lease, the Customer agrees that, in respect of each Unit, it shall:

**MAINTENANCE AND GENERAL REQUIREMENTS:**

- Give CFNZ 90 days' notice prior to the Expiry Date of the Customer's intention to return any Units to CFNZ.
- Ensure that a Dealer TA2 Inspection report complete with photographs is carried out at the Customer's expense by the local Caterpillar dealer not more than 30 days and not less than 7 days prior to disassembly and return of any Unit.
- Maintain Off Highway Truck payloads within Caterpillar operational guidelines with adherence to the 10/10/20 rules.
- Return the Units in the same configuration, with original paintwork, with all attachments, as when delivered at the Commencement Date. However you must return rubber tyre Units with tyres in sets matched by common axle in size, specification and tread type and pattern, even if the Unit was delivered without tyres at the Commencement Date.

- Pay all costs of returning the Units, including but not limited to fees, taxes and duties associated with tear down, loading, shipping and unloading of Units.
- Ensure the Units upon return are thoroughly cleaned and free from all oil, hydraulic and fuel leaks.
- Operate and maintain all Units in accordance with the Caterpillar Lubrication and Maintenance and Operators guide books, and ensure all maintenance is performed at recommended intervals with parts or components of the manufacturer or if no such parts or components are reasonably available, parts or components of equal quality.
- Ensure all Units are in good operating condition and able to perform all tasks under rated load.
- Enrol all Units in a Caterpillar dealer Scheduled Oil Sampling (SOS) program for the entire Term of the Lease, and ensure all fuels and lubricants comply with Caterpillar recommended standards.
- Ensure all Units are operated only in the applications they were designed and manufactured. Any abuse resulting from misapplication will result in damage charges being assessed to the Customer.
- Maintain a working engine hour meter at all times.
- Keep complete records of all hour meter changes along with major component change outs and routine maintenance and repair records.
- Complete Product Improvement Programs (PIP's) for the Unit before it is returned.
- Provide a secured place to store off-lease Units upon request from CFNZ.
- Provide access to the Units for purposes of maintenance or demonstration to prospective buyers at CFNZ's request.
- **ATTACH TO THIS APPLICATION SURVEY A COPY OF ANY AND ALL REPAIR AND MAINTENANCE CONTRACTS AND PLANNED COMPONENT REPLACEMENT PROGRAMS.**

**SPECIFIC TINWARE AND SAFETY REQUIREMENTS:**

- Ensure all safety guidelines and standards are met and all safety devices are fully functional.
- Ensure the operator's compartment is clean, and all switches, monitoring systems (EMS, VIMS, VIDS), gauges, control levers, pedals, radio, mirrors, seats, insulation and all other contents are complete and in good working order.
- Ensure all window glass is clear, and free from cracks and pits, all window frames, doors and weather stripping are complete, and all service access compartment covers and doors are complete and in good working order.
- Ensure all safety items are complete and in good working order, including but not limited to, roll over protection (ROPS) and falling object protection (FOPS) systems, seat belts, steps, safety rails, grab irons, cat walks, fire suppression systems, warning alarms, cameras and monitors.
- Ensure all electrical components, including but not limited to: wiring harness, batteries, alternators, drive belts, lighting and air conditioning systems, are complete and in good working order.
- Ensure all repairs made to main structures, including but limited to: main frames, roller frames, car bodies, swing gears, drawbars, circles, component housings, loader arms, booms, sticks, tag links, loader linkages, truck bodies, buckets, rippers, and arches, are accomplished in accordance with factory recommended materials and repair procedures.

**REMAINING LIFE REQUIREMENTS FOR ALL EQUIPMENT:**

Subject to the remedy or reimbursement for return conditions charges below:

- Ensure all ground engaging tools, including but not limited to: buckets, dozer blades, base cutting edges, rippers, scarifiers, drums, feet, tines, screeds, elevator flights, forks, and top clamps, have good structural integrity and have fifty percent (50%) minimum remaining life.
- Return all track and rubber belted units with a minimum of fifty percent (50%) remaining life on each and every component, including but not limited to: track shoes, links, pins, bushings, idlers, bogies, sprockets, carrier rollers, and track rollers. Ensure Belts have no cuts that extend into the cords and are not missing guide blocks or grouser bars (lugs). Charges will be assessed for each component not meeting the requirement.
- Return all rubber tyre units with a minimum of fifty percent (50%) remaining life of the original tread life of each tyre. Recapped tyres are not acceptable substitutes. Ensure all tyres are a matched set with the same tread type and pattern and have no significant cuts or chunking of the tread or side walls.
- Return Off Highway Truck fitted with fully operational Caterpillar truck body as referred to in section "Major Attachments", with the minimum of fifty percent (50%) remaining life.

**MAJOR COMPONENT REMAINING LIFE REQUIREMENTS FOR LARGE MODELS ONLY:**

- For Large Models (as defined below), the following major component groups must have a minimum of fifty percent (50%) life remaining: engine and/or electric drive, drive train components and hydraulic system components.
- Large Models are defined as the following units and all units of similar or larger size (including equipment by manufacturers other than Caterpillar): D9, 770, 988, 14M, 390 and 657.
- Changes will be assessed for each component not meeting the requirement based on your local Caterpillar dealer’s retail prices and labour rates.

**CFNZ RETAINS THE RIGHT TO ASK FOR ANY AND ALL REPAIR AND MAINTENANCE RECORDS DURING THE LEASE TERM AND/OR AT LEASE TERMINATION. A FULL MACHINE INSPECTION MAY BE CONDUCTED AT THE CUSTOMER’S EXPENSE ANY TIME EVIDENCE DEMONSTRATES UNITS ARE BEING ABUSED FROM NEGLIGENCE OR MISAPPLICATION.**

**REMEDY FOR RETURN CONDITIONS:**

The Customer will be invoiced for the parts and labour based on your local Caterpillar dealer’s retail prices and retail labour rates to replace tyres, undercarriage components, belts and all other non-conforming components as outlined in the “Remaining Life Requirements” section of the Mandatory Condition of Equipment Upon Return. The invoiced amounts will be based on the following percentages of remaining life and is payable upon receipt of invoice:

| <b>Life Remaining</b> | <b>Charge to Customer</b> |
|-----------------------|---------------------------|
| 50% or greater        | No charge to Customer     |
| 31% to 49%            | 50% charge to Customer    |
| 0% to 30%             | 70% charge to Customer    |

**MAXIMUM USAGE:**

The model listed and equipped as stated above will be operated an estimated total of {Estimated Hours} hours per month over a term of {Term of Months} months for total usage during the leasing term of {Term of Hours} hours. This total usage combined with any accumulated hours prior to the Lease inception date, as stated above under current hours, will be the total allowable machine hours for the life of the Lease and the basis for any overuse charges.

Total Lease Hours {Total Lease Hours} + Current Hours {Current Hours} = Total Allowable Machine Hours {Total Hours Allowed}

(See Page One)

**OVERUSE CALCULATION:**

In addition to CFNZ’s other rights hereunder and not in lieu thereof, The Customer shall pay CFNZ additional rent for each hour in excess of the Total Allowable Machine Hours established for the Lease as stated above. This hourly rate shall be #{Hourly Rate} per hour (**plus GST**). Overuse charges will be calculated at Lease termination and be due upon receipt of invoice. To avoid overuse charges, notify CFNZ immediately of any increase in machine usage. The total allowable machine hours will be increased and a new payment will be established based on the new hour usage provided by the Customer. Likewise, the Lease contract will be adjusted to reflect the correct hour usage.

This Application Survey is attached to and forms part of the Lease between CFNZ and the Customer. The information obtained in this Application Survey will be of primary importance in the Rent Payments schedule. Any change in the location, operating environment, annual hourly usage and/or attachments or configuration must be approved in writing by CFNZ in advance.

## ANNEXURE 2 (On Road Vehicles) - PART 2A

### CATERPILLAR FINANCIAL NEW ZEALAND LIMITED ("CFNZ") ON ROAD VEHICLES APPLICATION SURVEY & RETURN CONDITIONS

|   |  |
|---|--|
| Customer Name:  |  |
| Main Garage Location:   |  |
| Make:   |  |
| Model:  |  |
| Quantity:   |  |
| Registration Number/s:  |  |
| PIN/Serial Number(s)<br>(including VIN, chassis number and manufacturers number, if applicable) |  |
| Current Odometer Reading:   |  |
| Dealer:   |  |
| Dealer Location:  |  |

**MAJOR ATTACHMENTS/ACCESSORIES (Check all that apply):**

|                                    |                                      |                                 |                                     |                                    |
|------------------------------------|--------------------------------------|---------------------------------|-------------------------------------|------------------------------------|
| <input type="checkbox"/> Mudguards | <input type="checkbox"/> Sleeper Box | <input type="checkbox"/> Cranes | <input type="checkbox"/> Hydraulics | <input type="checkbox"/> UHF Radio |
| <input type="checkbox"/> Turntable | <input type="checkbox"/> Bullbars    |                                 |                                     |                                    |

Description of Trailer if financed: [Model] [Make] [Year] [VIN/Serial No] [Registration]

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Other:

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## ANNEXURE 2 (On Road Vehicles) - PART 2A (cont.)

**MARKET CATEGORIES (Check All That Apply)**

|  |   |
|--|---|
| <input type="checkbox"/> Local Intra-State Transport | <input type="checkbox"/> National Inter-State Transport |
| <input type="checkbox"/> Food and Beverage           | <input type="checkbox"/> Retail Merchandise             |
| <input type="checkbox"/> Building and Construction   | <input type="checkbox"/> Forest Products                |
| <input type="checkbox"/> Petroleum & Gas             | <input type="checkbox"/> Mining                         |
| <input type="checkbox"/> Industrial                  |   |

Other:

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**MANDATORY CONDITION OF EQUIPMENT UPON RETURN:**

In addition to the requirements set out in the Master Lease, the Customer agrees that, in respect of each Unit, it shall:

**MAINTENANCE AND GENERAL REQUIREMENTS:**

- Give CFNZ 90 days' notice prior to the Expiry Date of the Customer's intention to return any Units to CFNZ.
- Ensure that a Dealer Inspection report complete with photographs is carried out at the Customer's expense by the local Caterpillar dealer not more than 30 days and not less than 7 days prior to disassembly and return of any Unit.
- Comply with all rating and other regulations applicable to the on road vehicle.
- Return the Units in the same configuration, with original paintwork, with all attachments, as when delivered at the Commencement Date (including without limitation, the spare tyre).
- Pay all costs of returning the Units, including but not limited to fees, taxes and duties associated with tear down, loading, shipping and unloading of Units.
- Ensure the Units upon return are thoroughly cleaned and free from all oil, hydraulic and fuel leaks. The fuel tank must be at least half full.
- Operate and maintain all Units in accordance with the Manufacturer's Lubrication and Maintenance and Operators guide books, and ensure all maintenance is performed at recommended intervals with parts or components of the manufacturer or if no such parts or components are reasonably available, parts or components of equal quality.
- Ensure all Units are in good operating condition and able to perform all tasks under rated load.
- All engine components must meet or exceed the manufacturer's minimum recommended specifications while operated under full load. Determination of satisfaction of these specifications shall be made by subjecting the engine to standard industry testing to include (but not limited to) testing of the crankcase manifold pressure, oil analysis, and fuel and oil consumption. Cooling, heating and lubrication systems must not have any leaking systems or be contaminated. All internal fluids, such as lube oil and hydraulic fluids must be filled at operating levels, all filler caps must be secured, and all filters must be new filters that meet or exceed OEM standards.
- All hydraulic pumps, cylinders, valves, pipe/tubing and hoses must be fully operational at rated capacity with no leaks, bent cylinder rods, or worn out bushings/pins.



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**ANNEXURE 2 (On Road Vehicles) - PART 2A (cont.)**

- The brake system including the parking brake must be functioning as intended. Brakes will operate smoothly and evenly and stop or hold the trucks safely during normal operation. No drums or other braking components will be damaged or cracked.
- All trucks must be in good mechanical and roadworthy condition and fit to be used for its intended purpose. A roadworthy certification by a body qualified to provide such certification must be presented as evidence of such.
- Ensure all Units are operated only in the applications they were designed and manufactured. Any abuse resulting from misapplication will result in damage charges being assessed to The Customer.
- Maintain a working odometer at all times.
- Keep complete records of all odometer changes along with major component change outs and routine maintenance and repair records.
- Complete Product Improvement Programs (PIP's) for the Unit before it is returned.
- Provide a secured place to store off-lease Units upon request from CFNZ.
- Provide access to the Units for purposes of maintenance or demonstration to prospective buyers at CFNZ's request.
- **ATTACH TO THIS APPLICATION SURVEY A COPY OF ANY AND ALL REPAIR AND MAINTENANCE CONTRACTS AND PLANNED COMPONENT REPLACEMENT PROGRAMS.**

**SPECIFIC TINWARE AND SAFETY REQUIREMENTS:**

- Ensure all safety guidelines and standards are met and all safety devices are fully functional.
- Ensure the operator's compartment is clean, and all switches, monitors, gauges, control levers, pedals, radio, mirrors, seats, insulation and all other contents are complete and in good working order.
- Ensure all window glass is clear, and free from cracks and pits, all window frames, doors and weather stripping are complete, and all service access compartment covers and doors are complete and in good working order.
- Ensure all safety items are complete and in good working order, including but not limited to, seat belts, steps, grab irons, warning alarms, cameras and monitors.
- Ensure all electrical components, including but not limited to: wiring harness, batteries, alternators, drive belts, lighting and air conditioning systems, are complete and in good working order.
- Ensure all repairs made to main structures are accomplished in accordance with factory recommended materials and repair procedures.

**REMAINING LIFE REQUIREMENTS:**

Subject to the remedy or reimbursement for return conditions charges below:

- Return all rubber tyre units with a minimum of fifty percent (50%) remaining life of the original tread life of each tyre. Recapped tyres are not acceptable substitutes. Ensure all tyres are a matched set with the same tread type and pattern and have no significant cuts or chunking of the tread or side walls.

**CFNZ RETAINS THE RIGHT TO ASK FOR ANY AND ALL REPAIR AND MAINTENANCE RECORDS DURING THE LEASE TERM AND/OR AT LEASE TERMINATION. A FULL MACHINE INSPECTION MAY BE CONDUCTED AT THE CUSTOMER'S EXPENSE ANY TIME EVIDENCE DEMONSTRATES UNITS ARE BEING ABUSED FROM NEGLIGENCE OR MISAPPLICATION.**

**REMEDY FOR RETURN CONDITIONS:**

The Customer will be invoiced for the parts and labour based on your local Caterpillar dealer's retail prices and retail labour rates to replace tyres, undercarriage components, belts and all other non-conforming components as outlined in the "Remaining Life Requirements" section of the Mandatory Condition of Equipment Upon Return. The invoiced amounts will be based on the following percentages of remaining life and is payable upon receipt of invoice:

| <b>Life Remaining</b> | <b>Charge to Customer</b> |
|-----------------------|---------------------------|
| 50% or greater        | No charge to Customer     |
| 31% to 49%            | 50% charge to Customer    |
| 0% to 30%             | 70% charge to Customer    |

**ANNEXURE 2 (On Road Vehicles) - PART 2A (cont.)**

**MAXIMUM USAGE:**

The truck model listed and equipped as stated above in Section C shall not have travelled more than the maximum allowable kilometres of [insert kms] per calendar month of the lease Term. Customer shall promptly furnish CFNZ such information as CFNZ may reasonably request from time to time in order to document the kilometre usage of the trucks.

**OVERUSE CALCULATION:**

In addition to the CFNZ's other rights hereunder and not in lieu thereof, Customer shall pay CFNZ additional rent for each excess kilometre at [insert \$\$\$ per kilometre] (plus GST). Overuse charges will be calculated at Lease termination based on the odometer reading at the lease inception and be due upon [10] calendar days of the issue of invoice by CFNZ. If any such odometer becomes inoperable or inaccurate, Customer shall immediately repair or replace same, and shall immediately notify CFNZ in writing of such event and of the correct kilometres of usage of the trucks before and during the period of time the odometer was inoperable or inaccurate.

**This Lease Schedule and Tax Invoice details the total amounts of rent payable under the Lease. Please retain this for taxation purposes and financial records management. No further invoices will be produced unless there is a change to the rent payment amounts or existing agreements**

This Application Survey is attached to and forms part of the Lease between CFNZ and the Customer. The information obtained in this Application Survey will be of primary importance in the Rent Payments schedule. Any change in the location, market categories, annual hourly usage and/or attachments or configuration must be approved in writing by CFNZ in advance.

DATED: \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_

SIGNED on behalf of [Customer Legal Name] [NZBN: [insert]] by its directors:  
)  
)  
)  
)  
)  
)  
)  
.....

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| _____<br>Signature of Director | ) | _____<br>Signature of Director |
|                                | ) |                                |
|                                | ) |                                |
|                                | ) |                                |
|                                | ) |                                |
|                                | ) |                                |
|                                | ) |                                |

|   |   |                           |
|---|---|---------------------------|
| _____<br>Name of Director (Block Letters) | ) | _____<br>Name of Director |
|---|---|---------------------------|

|   |   |                                |
|---|---|--------------------------------|
| <b>SIGNED</b> on behalf of <b>[Customer Legal Name]</b> <b>[NZBN: [insert]]</b> by its sole director: | ) |                                |
|   | ) |                                |
|   | ) |                                |
|   | ) |                                |
|   | ) |                                |
|   | ) | _____<br>Signature of Director |
|   | ) |                                |
|   | ) |                                |
|   | ) |                                |
|   | ) |                                |
|   | ) | _____<br>Name of Director      |

|   |   |  |
|---|---|--|
| <b>SIGNED</b> by <b>[Customer Legal Name]</b> <b>[NZBN: [insert]]</b> : | ) |  |
|   | ) |  |
|   | ) | _____<br>Signature of <b>[Customer Legal Name]</b> |

|  |   |  |
|--|---|--|
| <b>SIGNED</b> on behalf of <b>[Customer Legal Name]</b> <b>[NZBN: [insert]]</b> by its Customer Representatives: | ) |  |
|  | ) |  |
|  | ) |  |
|  | ) |  |
|  | ) |  |

|   |   |   |
|---|---|---|
| _____<br>Signature of Customer Representative | ) | _____<br>Signature of Customer Representative |
|   | ) |   |
|   | ) |   |
|   | ) |   |
|   | ) |   |
|   | ) |   |

|  |   |  |
|--|---|--|
| _____<br>Name of Customer Representative (Block Letters) | ) | _____<br>Name of Customer Representative |
|--|---|--|



**N WITNESS WHEREOF** the parties hereto have duly executed this Master Operating Lease Agreement.

Dated: \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

**CUSTOMER**

**SIGNED** on behalf of **[Customer Legal Name]** **[NZBN: [insert]]** by its directors:

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Name of Director (Block Letters)

\_\_\_\_\_  
Name of Director

**SIGNED** on behalf of **[Customer Legal Name]** **[NZBN: [insert]]** by its sole director:

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Signature of Director

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Name of Director

**SIGNED** by **[Customer Legal Name]** **[NZBN: [insert]]**:

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Signature of **[Customer Legal Name]**

**SIGNED** for and on behalf of **[CUSTOMER LEGAL NAME]** **[NZBN]** by its duly authorised signatory:

)  
)  
)  
)  
)  
)  
)  
\_\_\_\_\_

|       |   |                                   |
|-------|---|-----------------------------------|
| _____ | ) | Signature of authorised signatory |
|       | ) |                                   |
|       | ) |                                   |
|       | ) |                                   |
|       | ) | -----                             |
|       | ) | Name of authorised signatory      |
|       | ) |                                   |
|       | ) |                                   |
|       | ) | -----                             |
|       | ) | Title of authorised signatory     |

**GUARANTORS**

**SIGNED** on behalf of **[Guarantor Legal Name]** [NZBN: [insert]] by its directors:

\_\_\_\_\_  
 Signature of Director

\_\_\_\_\_  
 Name of Director (Block Letters)

\_\_\_\_\_  
 Signature of Director

\_\_\_\_\_  
 Name of Director

**SIGNED** on behalf of **[Guarantor Legal Name]** [NZBN: [insert]] by its sole director:

\_\_\_\_\_  
 Signature of Director

\_\_\_\_\_  
 Name of Director

\_\_\_\_\_  
 Signature of Director

\_\_\_\_\_  
 Name of Director

**SIGNED** by **[Guarantor Legal Name]** [NZBN: [insert]]:

\_\_\_\_\_  
Signature of **[Customer Legal Name]**

