

**METRO FINANCE LIMITED
BUSINESS LOAN AGREEMENT**

SCHEDULE

Lender	Metro Finance Limited
Lender's Notice Details	Physical Address: [•] Postal Address: [•] Phone: [•] Email: [•]
Borrower	[•]
Borrower's Notice Details	Physical Address: [•] Postal Address: [•] Phone: [•] Email: [•]
Guarantor	[•]
Guarantor's Notice Details	Physical Address: [•] Postal Address: [•] Phone: [•] Email: [•]
Guarantor	[•]
Guarantor's Notice Details	Physical Address: [•] Postal Address: [•] Phone: [•] Email: [•]
Independent Trustees:	[•]
Facility Limit	\$(•) (plus any accrued but unpaid interest and Lender's Costs)
Advances:	Initial Advance: \$(•) Subsequent Advances: \$(•) on each of [Insert Date] [Subsequent Advances may be made on agreement between the parties, with the Lender having, in its sole discretion the right to refuse any request for a further Advance.] [Subsequent Advances may be made on the delivery of [insert any relevant information that the Lender may need before a

	Subsequent Advance is made] to the Lender, provided such deliverable is acceptable to the Lender in its sole discretion.]
Purpose:	[General working capital requirements] [The acquisition of [•] and all transaction costs associated with that acquisition]
Final Repayment Date:	[•]
Interest Rate:	[•]% per annum
Default Interest Rate:	[•]% per annum
Lender's Fees	<p>\$(•) as an establishment fee</p> <p>\$(•) as an introducer fee</p> <p>A fee of \$(•) [1% per month] will be charged for each month that the Advances remain outstanding.</p>
Security:	<p>[1st][2nd] ranking general security deed over all present and after acquired property of the Borrower</p> <p>[1st][2nd] ranking general security deed over all present and after acquired property of the [Name of Guarantor]</p> <p>[1st][2nd] ranking specific security deed over the Borrower's [•]</p> <p>[1st][2nd] ranking general security deed over the [Name of Guarantor's] [•]</p>
Mortgage	<p>An all obligations registered first mortgage on Auckland District Law Society's then current form of mortgage memorandum (currently 2018/4346) with a priority sum of \$(•) plus interest and costs, over the Land being:</p> <p>[Property Address]</p> <p>[Registered Proprietor]</p> <p>[Title]</p> <p>[Deposit Plan Number]</p> <p>[Lot Number]</p>
Dispute Resolution Scheme	<p>Insurance & Financial Services Ombudsman</p> <p>It is free to make a complaint to this independent dispute resolution scheme. The scheme can help you to resolve any disagreements that you have with us. Contact details of dispute resolution scheme:</p> <p>Phone: 0800 888 202</p> <p>Website: http://www.ifso.nz</p> <p>Business address: Level 2, Solnet House, 70 The Terrace, Wellington 6143</p> <p>Postal Address:- PO Box 10-845, Wellington 6143</p>

Signed as a Deed

Dated

[202_]

Signed by [Individual]

in the presence of:

Witness signature

Witness name

Occupation

Address

Signed by [Company - One Director] by:

Director's signature

Director's full name

Witnessed by:

Signature

Full name

Occupation

Address

Signed by [Company - Two Directors] by:

Director's signature

Director's full name

Director's signature

Director's full name

BACKGROUND

- A. The Lender has agreed to advance to the Borrower the Loan on the terms set out in this Agreement.
- B. The Obligors have agreed to provide the Security in support of that borrowing.

TERMS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** Unless the context requires otherwise, words and clauses in this Agreement are to be interpreted in accordance with the following:

Act means the Companies Act 1993.

Advance means each advance by the Lender to the Borrower pursuant to this Agreement, including each relevant Advance set out in the Schedule.

Agreement means this Agreement including the background recitals, the Schedule and any amendments pursuant to clause 20.13.

Available Facility means, at any time, the Facility Limit at that time less the Unpaid Balance.

Business Day means a day (other than a Saturday or a Sunday) on which registered banks (as defined in the Reserve Bank of New Zealand Act 1989) are open for general banking business in Hamilton.

Default Interest Rate has the meaning set out in the Schedule.

Event of Default means any of the events described in clause 12.

Facility means the loan facility evidenced by this Agreement.

Facility Limit has the meaning set out in the Schedule.

Financial Statements has the same meaning as in the Financial Reporting Act 1993, and includes a reference to group financial statements (where applicable) within the meaning of the Financial Reporting Act 1993.

Guarantor means:

- (a) each person named as a guarantor in the Schedule; and
- (b) any other person who has issued any Security in support of the Borrower's obligations pursuant to a Relevant Agreement.

Initial Advance has the meaning set out in the Schedule.

Interest Payment Date has the meaning given to that term in clause 3.3.

Interest Rate has the meaning set out in the Schedule.

Lender's Costs means costs, sums, fees, duties (including stamp duty), taxes (including GST, and any fines, interest and penalties), legal fees (including as between solicitor and own

client), including (without limitation) in respect of the negotiation, preparation, execution, registration, discharge or release of any securities, and enforcement or attempting to enforce any Relevant Document, registration fees, interest, premiums, penalties, break costs, loss of profit or margin, levies, payments, rates, rentals, charges, outgoings, expenses, liabilities, claims and other financial obligations, in each case whether direct or indirect suffered or incurred by the Lender.

Lender's Fees has the meaning set out in the Schedule.

Material Adverse Effect includes in relation to a person, a material adverse effect:

- (a) on that person's financial condition or business or assets; or
- (b) on the consolidated financial condition or business of that person and that person's subsidiaries (if any); or
- (c) on that person's current and future ability to perform and comply with that person's obligations under a Relevant Document,

and **Material Adverse Change** will be construed accordingly.

Obligor means the Borrower and each Guarantor.

Purpose has the meaning set out in the Schedule.

Potential Event of Default means any event that with the giving of notice or the lapse of time or the satisfaction of any other condition could constitute an Event of Default.

Relevant Document means, in respect of each Obligor:

- (a) this Agreement;
- (b) each document evidencing or creating each Security to which that Obligor is expressed to be a party; and
- (c) each other agreement or document (present or future) that the Lender confirms in writing is a Relevant Document.

Security or **Securities** means any and all of the following security or credit support issued or to be issued in favour of the Lender:

- (a) each of the relevant general or specific security agreements referred to in the Schedule granted by an Obligor in favour of the Lender on or about the date of this Agreement;
- (b) any guarantee and indemnity granted by any Obligor in favour of the Lender on or about the date of this Agreement;
- (c) each mortgage over real property granted by an Obligor in favour of the Lender; and
- (d) any security or credit support issued in substitution or addition to the above and confirmed in writing by the Lender as falling within this definition.

Security Interest includes a mortgage, charge, pledge, lien, assignment by way of security, hypothecation, encumbrance or other security interest given or arising in respect to any present or future assets and any arrangement the effect of which is to prefer any creditor over unsecured creditors, and any deferred purchase, title retention, finance lease, sale and repurchase or sale and leaseback arrangement or contractual right of set-off and irrespective of whether such security interest is registered or otherwise, but does not include:

- (a) any lien or encumbrance arising solely by operation of law; or
- (b) any title retention arrangement,

which in either case will be discharged in the ordinary course of business within 30 days of its creation.

Unpaid Balance means the total amount outstanding under this Agreement but unpaid at a particular time, being each Advance together with all interest and Lender's Costs, and less any repayments made by the Borrower.

- 1.2 **Interpretation:** In this Agreement, unless the context requires otherwise, or specifically stated, reference to:

assets of any person is to be construed as a reference to the whole or any part of that person's present and future undertaking, property, assets or revenues including that person's uncalled capital and called but unpaid capital;

a **contract** also includes any deed, agreement, instrument, arrangement, understanding or commitment whether or not in writing;

indebtedness includes any obligation relating to payment of money, whether present or future, actual, prospective or contingent, secured or unsecured, joint or several, as principal or surety or otherwise

law includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure in each case of any jurisdiction whatever;

- 1.3 **Construction:** Unless the context requires otherwise, words and clauses in this Agreement are to be construed in accordance with the following:

- (a) if any provision of any Relevant Document will be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected or prejudiced;
- (b) if any provision of any Relevant Document conflicts with any provision of any other Relevant Document or other document or arrangement between the Lender and any Obligor, the Lender will determine (in its discretion) which provision is to prevail in respect of any particular conflict;
- (c) expressions defined the main body of this Agreement bear the defined meaning in the whole of this Agreement including the recitals;
- (d) words importing the singular include the plural and vice versa;

- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) words importing one gender include the other and the neutral gender and vice versa;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (h) a reference to a "person" includes an individual, company, body corporate, association of persons (whether corporate or not), trust, state or agency of a state or other entity, in each case whether or not having separate legal personality;
- (i) headings are to be ignored in construing this Agreement;
- (j) references to parties are references to parties to this Agreement, and include reference to their successors (including by virtue of any amalgamation or other reconstruction) and permitted transferees and assignees;
- (k) references to clauses and the Schedule are references to such as they appear in this Agreement;
- (l) references to times are references to New Zealand times;
- (m) references to money are to New Zealand currency;
- (n) references to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it; and
- (o) where any date which is specified in, or determined pursuant to the terms of, this Agreement would otherwise fall on a day that is not a Business Day, that date will be adjusted so that it will be the first following day that is a Business Day, unless that day falls in the next calendar month, in which case that date will be adjusted so that it will be the first preceding day that is a Business Day.

2. ADVANCE

2.1 **Conditions:** The Lender will make each Advance available to the Borrower provided that:

- (a) the Lender has received the Security duly executed in the form acceptable to the Lender;
- (b) any conditions attached to the relevant Advance have been complied with by the Borrower or any third party to the Lender's absolute satisfaction, including for the avoidance of doubt any relevant condition set out under the heading 'Advances' in the Schedule;
- (c) the making of the Advance shall not cause the Unpaid Balance to exceed the Facility Limit;
- (d) no Event of Default or Potential Event of Default has occurred or is continuing, or would occur as a result of the drawdown of the relevant Advance; and

- (e) no representation, warranty or statement (whether or not in writing) made by or on behalf of any Obligor to the Lender in any Relevant Document or in relation to the Facility or the drawdown is untrue, inaccurate or misleading in any respect.

2.2 **Purpose:** The Borrower must only use the Advances for the Purpose.

3. INTEREST

3.1 **Interest:** The Borrower will pay interest on the Unpaid Balance at the Interest Rate.

3.2 **Interest Calculation:** Interest will be calculated on a daily basis on the Unpaid Balance outstanding at the end of each day. Interest on the Unpaid Balance will accrue from day to day from the date the Initial Advance is made until the Unpaid Balance is repaid in full.

3.3 **Interest Payments:** Interest will be payable in consecutive monthly instalments on the corresponding date to the date that the Advance was made, or if no such date exists, on the last date of the month (the **Interest Payment Date**). If not paid, interest will be capitalised on the Interest Payment Date and added to the Unpaid Balance.

3.4 The Lender may from time to time vary (so as to increase or decrease) the annual interest rate, default interest rate, credit fees and default fees payable under this agreement or any of them and the Borrower must pay such varied interest rate and varied fees as applicable. In each case, the Lender will give the Borrower not less than a month's notice of any such variation and any increase or decrease in the Borrower's periodic payment and the date when any increased or decreased payments begin. From that date the Borrower must pay the varied amount and if the Borrower is in default or default generally, the Borrower must also pay any varied default interest or default fees. No increase will be backdated. Any increase in annual or default interest will be proportionate to the increase in the Lender's cost of funds. Any increase in credit or default fees will be proportionate to the increase in the costs relied on by the Lender in connection with the credit or default fees.

4. LENDER'S FEE

4.1 The Borrower shall pay the Lender each of the Lender's Fees which shall be either:

- (a) payable by way of deduction from the Initial Advance; or
- (b) as an addition to the Unpaid Balance immediately following the Lender making the Initial Advance.

5. DEFAULT INTEREST

5.1 If any Obligor does not pay any amount due under this Agreement, any Relevant Document or otherwise in respect of the Facility on its due date (other than interest capitalised pursuant to clause 3.3) then the interest rate on the Unpaid Balance will increase to the Default Interest Rate and all relevant amounts will attract interest at the Default Interest Rate calculated daily from the date on which payment was due until the date on which the unpaid amount together with default interest and Lender's Costs in full.

6. REPAYMENT

6.1 **Repayment Date:** The Borrower must repay the Unpaid Balance to the Lender on earlier of:

- (a) the Final Repayment Date;

- (b) in accordance with clause 6.2; and
- (c) two Business Days after the Lender provides written demand to the Borrower.

6.2 **Repayment of Drawings:** The Borrower will make scheduled amortisation repayments in reduction of the Unpaid Balance in accordance with the schedule of payments set out below:

Repayment Date	Repayment Amount

6.3 **Application of funds:** The Lender may apply any sum paid to or recovered by it to the Unpaid Balance in such proportions and order and generally in such manner as it thinks fit.

7. PREPAYMENT

7.1 Subject to clause 7.1b, the Borrower may repay part or all of an Advance before the date that payment is to be made provided that:

- (a) such prepayment is made on the last Business Day of a calendar month; and
- (b) the amount repaid is a minimum of \$[●] or a multiple thereof.

8. PAYMENTS, DEDUCTIONS AND TAXES

8.1 **Free and Clear:** All payments due by any Obligor to the Lender in accordance with any Relevant Document are to be made by no later than 2.00 pm on the relevant due date. All payments are to be made by funds which are immediately available and transferable in the way indicated by the Lender and to the account as specified by the Lender from time to time without deduction, counter claim or set-off.

8.2 **Deductions and Set-off:** Where an Obligor is compelled by law to make a deduction or set-off, it shall pay to the Lender such amount so that the Lender receives the full amount due, as if the deduction or set-off had not been made.

8.3 **Lender's Set-Off:** If an Obligor has a claim against the Lender or if the Lender owes an Obligor money, the Lender may set-off that claim or debt against any claim the Lender has against the Obligors for any debt the Obligors may owe the Lender.

8.4 **Gross Up:** The Obligors will pay to the Lender on demand any amount of tax, deduction or withholding paid by the Lender in respect of any amount received under any Relevant Document.

9. FINANCIAL, OTHER INFORMATION AND AUDIT

9.1 **Information requirements:** Each Obligor will make available to the Lender within 10 days of a request by the Lender to do so:

- (a) a current valuation on usual terms addressed to the Lender undertaken by a registered valuer previously approved by the Lender, of all or any of the Obligor's assets as the Lender may request;
- (b) any other information, agreement or arrangement affecting any asset subject to any Security.

9.2 **Financial Statements:** Each Obligor will deliver to the Lender:

- (a) where the Obligor is a company, not later than 120 days after the end of each of its financial years, the Obligor's Financial Statements (audited if applicable) for that year;
- (b) where the Obligor is a natural person, within 10 days of a request by the Lender to do so, a personal statement of position which will include details of its contingent liabilities under any guarantees to which it is a party; and
- (c) not later than 20 days after the end of each month, its year to date management accounts.

9.3 **Audits:** The Lender may at any time audit any Obligor for the purpose of:

- (a) determining the accuracy of information provided by the Obligor; or
- (b) otherwise determining the Obligor's compliance with the Obligor's obligations under any Relevant Document.

9.4 **Audit compliance:** In relation to any audit of the Borrower pursuant to clause 9.2 the Borrower shall comply with any recommendation made as a result of such audit.

9.5 **Audit costs:** In the event such audit reveals a breach of this Agreement or a matter of concern to the auditor (acting reasonably) the costs of such audit shall be a Lender's Cost payable by the Obligors on demand.

10. REPRESENTATIONS AND WARRANTIES

10.1 **Obligor Representations:** Each Obligor represents and warrants to the Lender as follows:

- (a) its obligations under each Relevant Document to which it is a party are legal, valid and binding obligations enforceable against it;
- (b) it is solvent and is able to pay its debts as they become due in the normal course of business;

- (c) its latest Financial Statements, as supplied to the Lender, are prepared in accordance with generally accepted accounting principles and practices consistently applied which give a true and fair view of the Obligor's financial position and results of its operations and actual and contingent liabilities as of the date in respect of which they were prepared and there has been no Material Adverse Change in respect of it;
- (d) it has and will have as at the date of execution, good title to each and any Security to which it is expressed to be a party, and is and will be the sole legal and beneficial owner of, all the assets described in such Security, free of any encumbrance (other than in favour of the Lender or as previously disclosed to, and accepted by, the Lender in writing);
- (e) there is no current, pending or threatened litigation, arbitration, tax claim or proceeding against or affecting any Obligor before any Court, government agency or arbitrator which may have a Material Adverse Effect on it;
- (f) all Lender's Costs payable by it under any deed, contract or otherwise at law have been paid when due;
- (g) it has and will do everything required by law to be done (including obtaining any necessary consents) so that its entry into, and exercise of its rights and performance of its obligations under each Relevant Document are legally valid, binding and enforceable;
- (h) it has complied with all laws relating to it or any of its assets;
- (i) it is in compliance with the terms of all or any instrument, contract or obligation, which would or might have, if not complied with, a Material Adverse Effect on it; and
- (j) no Event of Default or Potential Event of Default has occurred.

10.2 **Natural Persons:** Where an Obligor is a natural person, he or she also represents and warrants to the Lender in addition to clause 10.1 as follows:

- (a) the Obligor's execution, delivery and performance of the Relevant Documents is in compliance with all or any law or contractual restriction or obligation on or affecting the Obligor;
- (b) the terms of this Agreement constitute valid, binding and enforceable obligations on the Obligor;
- (c) all information provided to the Lender by the relevant Obligor in connection with this Agreement is true, complete and accurate in all material respects; and
- (d) it Obligor is unaware of any facts or circumstances which would or might, if disclosed, materially and adversely affect the decision of a lender considering whether or not to provide finance to any Obligor for a like amount and on like terms as those pursuant to this Agreement.

10.3 **Companies:** Where an Obligor is a company, it also represents and warrants to the Lender in addition to clause 10.1 as follows:

- (a) it is a company duly incorporated and validly existing under the laws of New Zealand;
 - (b) it has the power and authority and/or has been duly authorised by all necessary corporate action to:
 - (i) own its assets;
 - (ii) carry on its current and/or proposed business; and
 - (iii) to execute, deliver and carry out its obligations pursuant to each Relevant Document;
 - (c) execution and performance of the Relevant Documents is in compliance with its constitution, and any law or contractual obligation affecting it;
 - (d) everything required to be done (including obtaining any necessary consents) whether at law or otherwise to enable the lawful and binding entry into, exercise of its rights and performance of its obligations under each Relevant Document, has been done;
 - (e) the money borrowed under this Agreement is within the Borrower's borrowing powers;
 - (f) all information provided to the Lender by it or any of its employees or agents in connection with this Agreement is true, complete and accurate in all material respects; and
 - (g) it is unaware of any facts or circumstances which would or might, if disclosed, materially and adversely affect the decision of a lender considering whether or not to provide finance to any Obligor for a like amount and on like terms as those pursuant to this Agreement.
- 10.4 **Lender's Reliance:** Each Obligor acknowledges that the Lender has entered into, and has been induced to lend money pursuant to, this Agreement in reliance on the applicable representations contained clauses 10.1, 10.2 and 10.3.
- 10.5 **Time for Warranties:** The representations and warranties in clauses 10.1, 10.2 and 10.3 (as applicable) will be deemed to be repeated by each Obligor on each day that any Advance remains outstanding by reference to the facts and circumstances existing on each such date.

11. COVENANTS

11.1 Each Obligor covenants that it will during the continuance of this Agreement:

- (a) comply with all applicable laws;
- (b) keep at all times its assets insured for full replacement value covering all risks against which that Obligor is prudent to insure (including fire, flood, volcanic and earthquake damage) and all such other risks as the Lender may from time to time require (and such insurance must be at all times with insurers acceptable to the Lender);

- (c) pay all sums due in respect of all insurance policies when such sums fall due, and ensure the Lender's interest is accurately noted on each such policy;
- (d) maintain and preserve all property subject to any Security and, subject to the terms of any Security, not dispose of all or any part of the Obligor's assets except in the ordinary course of business and for full commercial value;
- (e) will carry on business in a prudent and proper manner and according to standards of commercial practice appropriate to the Obligor's businesses, property and assets;
- (f) not (where the relevant Obligor is a company):
 - (i) provide financial assistance (within the meaning attributed to that term by sections 76 to 81 (inclusive) of the Act) to any other person;
 - (ii) enter into any major transaction (as that term is defined in section 129(2) of the Act); or
 - (iii) make any distribution (as that term is defined in section 2(1) of the Act);
- (g) notify the Lender in writing immediately upon the occurrence of an Event of Default or Potential Event of Default;
- (h) not do any thing, or suffer anything to be done, or suffer any circumstance to arise or continue, which could give rise to an Event of Default or otherwise prejudice the Lender's rights, interest or position under any Relevant Document or in respect of the Facility;
- (i) do all things in order to obtain, maintain, renew and preserve in full force and effect (and not dispose of) all consents required by it to enter into and remain in compliance with any Relevant Document or which are required or desirable for the business that Obligor conducts or proposes to conduct or in respect of any of its assets, and duly and punctually comply with all conditions and stipulations in those consents and promptly forward copies of such to the Lender;
- (j) perform all of its obligations under each Relevant Document,
- (k) execute and deliver to the Lender in a prompt manner all transfers, assignments, deeds and other agreements, and do all acts in addition to and in respect of each Relevant Document, as in the opinion of the Lender may be necessary or desirable to assure or secure to the Lender the full benefit of each Relevant Document;
- (l) not incur any other indebtedness without the Lender's prior written consent;
- (m) not create or permit to subsist any Security Interest over any of the Obligor's assets other than:
 - (i) in favour of the Lender; or
 - (ii) as consented to in writing by the Lender;

- (n) not (where the relevant Obligor is a company) propose or be a party to any amalgamation under the Act or amend or propose any amendment to the Obligor's constitution without the Lender's prior written consent;
- (o) permit the Lender to inspect and take copies and extracts from all accounting records and Financial Statements relating in any way to the business and affairs of that Obligor, to enter upon any land owned or occupied by that Obligor to inspect assets, make stocktakes or carry out valuations as the Lender may from time to time require;
- (p) not change the basis on which its Financial Statements are prepared; and
- (q) inform the Lender in writing of any Material Adverse Effect or Material Adverse Change of the Borrower or any Obligor that may materially affect the Borrower's ability to meet its obligations under this Agreement.

12. EVENTS OF DEFAULT

12.1 **Events of Default:** If at any time and for any reason (whether or not in the control of any Obligor) any of the following events occur then the Lender may declare that an Event of Default has occurred:

- (a) any Obligor fails to pay any amount (whether principal, interest or otherwise) due under any Relevant Document or fails to comply with any other term, obligation, undertaking, covenant or term contained in any Relevant Document;
- (b) any event of default or enforcement event (however described) occurs or arises under any Security;
- (c) any indebtedness of any Obligor is not paid when due, or becomes capable of being declared, due and payable prior to its stated maturity by reason of a default, or demand is made in respect of any indebtedness which is payable on demand, or any Obligor defaults in that Obligor's obligations pursuant to any contract or agreement.
- (d) any representation, warranty, covenant or statement (whether or not in writing) made by or on behalf of any Obligor in any Relevant Document or otherwise in relation to or for the purposes of the Facility is or becomes incorrect, inaccurate or misleading when made or deemed to be made or repeated;
- (e) a resolution is proposed or passed, or any order is made or sought, for the liquidation of any Obligor, or any step is taken for the removal of any Obligor from the register of companies under the Act;
- (f) any Obligor is, or is deemed under the Act to be, unable to pay that Obligor's debts;
- (g) any Obligor proposes, seeks or makes any moratorium, compromise or assignment or other arrangement for the benefit, or in respect, of that Obligor's creditors generally or any of them or stops or threatens to stop payment of any indebtedness;
- (h) any Obligor becomes bankrupt or commits any act of bankruptcy or is the subject of any order placing the whole or any part of that Obligor's assets under the control of any other person;

- (i) a receiver, receiver and manager, administrator, or manager, trustee, statutory inspector or investigator, statutory manager, liquidator, interim liquidator, assignee or any similar person is appointed (or the appointment thereof is requested by any Obligor) in respect of any of the Obligor's assets, or any step is taken or proposed by any person for such;
- (j) any judgment against any Obligor is not paid or otherwise settled within five Business Days of such judgment, or any holder of a Security Interest enforces, or takes any step to enforce, such;
- (k) any Obligor ceases or threatens to cease to carry on all or a substantial part of that Obligor's business, or disposes of or threatens to dispose of a substantial part of that Obligor's assets or any asset becomes susceptible to forfeiture, or is seized or otherwise confiscated or compulsorily acquired for inadequate consideration (as determined by the Lender in its discretion) or any Obligor resolves or agrees to do or permit any such thing;
- (l) any litigation, arbitration or administrative proceeding or claim is pending or threatened against an Obligor which, if adversely determined, is likely to have a Material Adverse Effect on it;
- (m) an Obligor suffers a Material Adverse Change;
- (n) any provision of any Relevant Document will for any reason become invalid, illegal, unlawful or unenforceable, or any consent or approval in respect of any Relevant Document will cease;
- (o) any Obligor alleges or seeks to, discontinue that Obligor's liability to the Lender under any guarantee or indemnity; or
- (p) there is any a (or any proposed change) in the effective ownership, management or control of any Obligor without the prior written consent of the Lender.

12.2 **Remedies:** At any time after making a declaration under clause 12.1, and while the Event of Default is continuing, the Lender may take any one or more of the following actions:

- (a) by written notice to the Borrower, declare all or any part of the Advances to be immediately due and payable, after which the same shall become so payable together with accrued interest on that and any other sums then owed by each relevant Obligor;
- (b) by written notice to the Borrower, declare that any undrawn portion of the Facility shall be cancelled, after which the same shall be cancelled and the Available Facility shall be reduced to zero; and
- (c) exercise all or any of its rights, powers and remedies under the Relevant Documents and at law.

13. LENDER'S COSTS AND INDEMNITY

13.1 **Lender's Costs:** Each Obligor will pay (or reimburse to the Lender) all Lender's Costs on demand.

- 13.2 **Indemnity:** Each Obligor indemnifies the Lender on demand from and against any Lender's Cost that the Lender may incur as a result of or in connection with:
- (a) the occurrence or continuation of any Event of Default or Potential Event of Default;
 - (b) any obligation imposed on the Lender under any law in connection with any Relevant Document or any Obligor or any Obligor's assets;
 - (c) any amount payable to the Lender under any Relevant Document not being paid when due; and
 - (d) any prepayment (even if permitted by any Relevant Document);
- 13.3 **Third parties:** Each Obligor indemnifies every officer, employee, attorney and agent of the Lender, and each receiver or receiver and manager or attorney appointed by the Lender, against any costs, losses, expenses and liabilities they may suffer or incur in acting pursuant to the terms of any Relevant Document.

14. POWER OF ATTORNEY

- 14.1 Each Obligor hereby irrevocably and unconditionally appoints the Lender, and any officer or manager of the Lender, and the Lender's assignees or transferees, severally to be the Obligor's attorney and in its name and as its agent and at the Obligor's expense to do everything which it has undertaken or agreed to do under any of the provisions of any Relevant Document. Your attorney may appoint in place of your attorney another attorney or attorneys to exercise any or all of the powers and authorities you are now granting and from time to time your attorney may revoke any such appointment and appoint any further one or more attorneys in place of such other attorney(s).

15. GUARANTEE

- 15.1 **Continuing obligation:** Each Guarantor unconditionally and irrevocably guarantees by way of continuing obligation to the Lender the due and proper performance by the Borrower of all its obligations under this Agreement.
- 15.2 **Liability:** The liability of each Guarantor under this clause will constitute a principal obligation of the Guarantor and not merely liability as a surety. Such liability will not be released or in any way affected in a manner prejudicial to the Lender by any granting of time, waiver, indulgence, concession, variation of this Agreement, release or forbearance to sue by the Lender, or by any other act, omission, matter, circumstance or law under which the Guarantor, as a surety only, would, but for the provisions of this clause, have been released from liability under this Agreement.
- 15.3 **Obligation to Perform:** If the Borrower fails to perform punctually and properly any of its obligations under this Agreement, the Guarantor shall, immediately after receiving written notice from the Lender specifying such failure or failures, perform the obligations in terms of this Agreement.
- 15.4 **Effect of Guarantee:** The liability of the Guarantor under this clause will remain in full force and effect until all obligations that the Borrower is required to perform under this Agreement have been punctually and properly performed in terms of this Agreement.

15.5 **Guarantee as additional security:** The liability of the Guarantor under this clause is in addition to, and not in substitution for, any other security or right that the Lender may have in respect of any obligation to be performed by the Borrower, and may be enforced against the Guarantor without first having recourse to any such securities or rights and without first taking any action against the Borrower.

15.6 **Indemnity:** In addition to its obligations under this clause, the Guarantor will indemnify the Lender against all losses, damages and expenses suffered or incurred by the Lender arising directly or indirectly out of any breach or non-fulfilment of any of the Borrower's obligations contained or implied in this Agreement.

16. GUARANTOR'S ACKNOWLEDGEMENT

16.1 Each Guarantor, by execution of this Agreement, confirms that:

- (a) the provision of the Facility and the Advances to the Borrower has been at that Guarantor's request;
- (b) the Relevant Documents to which that Guarantor is expressed to be a party are legally valid, binding and enforceable in accordance with their terms; and
- (c) each Security to which that Guarantor is expressed to be a party supports and secures, among other things, the Borrower's obligations and indebtedness to the Lender under this Agreement and in respect of the Facility.

17. ASSIGNMENT

17.1 **Obligors assignment:** The Obligors will not assign or purport to assign the Obligor's rights or obligations under any Relevant Document or charge, encumber or otherwise alienate their interests in any Relevant Document.

17.2 **Lender's assignment:** The Lender may assign or transfer to any person(s) all or any parts of its rights and obligations under the Relevant Document and may disclose to potential assignees, transferees or novatees any of the Obligor's information or any information in respect of any Obligor, whether or not confidential or publicly available, for such purpose.

17.3 **Obligations on assignment or transfer:** Upon assignment, or transfer under clause 17.2:

- (a) each Obligor irrevocably consents to any novation by the Lender of its obligations under any Relevant Document and will enter into such documents as the Lender may require for such purpose; and
- (b) each assignee or transferee and each Obligor will assume obligations towards each other and acquire rights against each other, identical to the rights and obligations assigned or transferred to such assignee or transferee.

18. NOTICES

18.1 **Delivery:** All notices and other communications to be given under this Agreement or any Relevant Document will be in writing and will be given by hand delivery, post, courier or email at the address(es) of the relevant recipient(s) set out in any Relevant Document or otherwise advised from time to time. Each method of communication will be presumed to be received under the following circumstances:

- (a) hand delivery, upon personal delivery to the recipient or to such address;
 - (b) airmail post or courier (from and to a New Zealand domestic address), upon the expiry of 5 Business Days or earlier if receipt of delivery is obtained; or
 - (c) when sent to the email address of the relevant recipient set out in any Relevant Document or otherwise advised from time to time.
- 18.2 **Address changes:** Each Obligor will notify the Lender in writing of any change to postal, physical address and email address of such Obligor or Borrower.
- 18.3 **Lender's representatives:** Any communication to be given by the Lender to a Obligor under this Agreement or any other Relevant Document will be sufficient if it is signed by the Lender or on behalf of the Lender by any officer, employee, solicitor or agent of the Lender.
- 18.4 **Lender's reliance:** The Lender may rely on any communication given or where it appears to be given by an Obligor or a director or an authorised signatory of a Obligor and will have no obligation to enquire or require any evidence as to the authenticity, validity or legality of such communication given by facsimile, notwithstanding that the communication was unauthorised or not signed or given by the person purported in the facsimile to have signed or given it.
- 19. INDEPENDENT TRUSTEE**
- 19.1 Each person named as an Independent Trustee in the Schedule has entered into each Relevant Agreement in their capacity as an independent trustee of the relevant Obligor trust. Their liability under the Relevant Agreements is limited to the assets for the time being of the relevant Obligor trust which are available in the ordinary course of administration unless their personal liability is attributable to their fraud or dishonesty.
- 20. MISCELLANEOUS**
- 20.1 **Change in law or increase in costs:** Without prejudice to any other term of this Agreement, if the Lender determines in its discretion that:
- (a) due to a change of law or a change in the interpretation or application of law, or a change in the compliance requirements of the Lender under any agreement entered into by the Lender in order to fund any Advance, or any other event or circumstance of any nature makes it unlawful, impossible or impracticable for the Lender to perform any of its obligations under any Relevant Document, its obligations under the Relevant Document will end and on receiving notice of termination from the Lender, the Obligors will repay the Unpaid Balance; and/or
 - (b) there is an increase in costs to the Lender in providing or maintaining any Advance or the Lender is obliged to make any additional payment calculated on the amount receivable by the Lender under any Relevant Document, then the Obligors will (on notice from the Lender given before or after repayment or prepayment) pay to the Lender the amount as stated in the notice to compensate the Lender for any additional costs, Lender's Costs, reductions or payments.
- 20.2 **Force Majeure:** The Lender will not be liable to any Obligor in whole or part to action by any government or governmental agency or other external agency or event, including force

majeure, natural disaster or emergency, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies.

- 20.3 **Certificates:** A certificate by the Lender as to any amounts owing or payable under any Relevant Document or in respect of the Facility will (in the absence of manifest error) be conclusive evidence for all purposes including legal proceedings.
- 20.4 **Time of Essence:** Unless otherwise stated in any Relevant Document, time will be of the essence for the performance of any obligations of any Obligor under each Relevant Document.
- 20.5 **Joint and Several:** Unless otherwise stated in any Relevant Document, obligations or liabilities under any Relevant Document of more than one person will be the joint and several obligations and liabilities of those persons.
- 20.6 **Consumer Legislation:** Each Obligor undertakes that the Facility is entered into for the purposes of a business and not for personal, domestic, or household purposes and the Obligor agrees that the guarantees and obligations under the Consumer Guarantees Act are excluded to the fullest extent permitted by law.
- 20.7 **Information:** Each Obligor irrevocably authorises the Lender to discuss that Obligor's financial affairs at any time with:
- (a) the Obligor's accountants, auditors, legal and financial advisers, and irrevocably authorises the Obligor's accountants, auditors, legal and financial advisers to provide to the Lender any information regarding it as requested by the Lender;
 - (b) any other Obligor (or potential Obligor) or other guarantor of any indebtedness or other obligation of the Borrower to the Lender; and/or
 - (c) any other party who has or claims an interest in the Security or Securities,
- and nothing in this clause 20.7 will oblige the Lender to provide any information concerning any Obligor to any other person.
- 20.8 **Privity:** Any benefit expressed in any Relevant Document to be conferred on a person who is not a party to that Relevant Document is intended to be enforceable at the suit of that person, but the consent of that person will not be required to any variation or discharge of that benefit or that Relevant Document.
- 20.9 **Remedies Not Exclusive:** The Lender's rights, powers, privileges and remedies under this Agreement and the Securities are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law.
- 20.10 **Partial Invalidity:** If any provision in any Relevant Document is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 20.11 **Electronic Signature:** A party may sign this Agreement by way of the application of that party's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.

- 20.12 **Non-Merger:** The terms contained in this Agreement will not merge on either the execution of this Agreement or drawdown of any Advance, but will remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.
- 20.13 **Amendments:** Except as otherwise expressly provided in this Agreement, no amendment to this Agreement will be effective unless it is in writing and signed by the Lender and Borrower. Any such amendment will be effective as against, and will not release or prejudice the obligations of, any other Obligor.
- 20.14 **Waiver:** No failure, forbearance, delay or attempts by the Lender in exercising any right, power or privilege under any Relevant Document will:
- (a) make the Lender liable for any loss or expense incurred by any Obligor; nor
 - (b) operate as a waiver or prejudice the Lender from any other or further exercise of any right, power or privilege arising under law or under any Relevant Document.
- 20.15 **Counterparts:** This Agreement may be executed in counterparts (which may be electronic or PDF copies), all of which, when taken together constitute the one instrument.

21. ENTIRE AGREEMENT

- 21.1 The Relevant Documents constitute the entire agreement between the parties in relation to the transactions contemplated by this Agreement, and subject to clause 1.3(b), supersede all previous negotiations, commitments and/or oral or written agreements between the parties (including any letter of offer).

22. GOVERNING LAW

- 22.1 This Agreement is governed by and construed according to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction in respect of any dispute or proceeding arising out of this deed.