

GENERAL TERMS

1 Getting your Advance

1.1 **Availability:** You may borrow a single Advance on a Business Day during the Availability Period, provided that we have first received:

- all the Document Conditions we have asked for (in form and substance satisfactory to us); and
- each fee due on or before the Date of Advance.

1.2 **Loan Amount:** You must borrow the Loan Amount on the Date of Advance.

1.3 **No obligation to lend:** We are under no obligation to make the Advance at any time if an Event of Default or Potential Event of Default has occurred or will occur as a result of the Advance.

1.4 **Payment:** We will pay the Advance to the account(s) you have nominated to us for payment of the Advance, provided that you have first given us all information or documents that we require in relation to such account(s). Where the Advance is used to purchase any asset, we may require that the Advance is paid by us directly to the vendor.

1.5 **Purpose:** You must apply the Advance for the Purpose and, until so used, hold the proceeds of the Advance on trust for us.

2 Paying us back

2.1 **Regular repayments:** You promise to pay us the Payment Amount on each Payment Date (unless the Total Amount Owing is paid back in full earlier).

2.2 **Final repayment:** You promise to pay us back the Advance in full, plus all accrued and unpaid interest on the Advance calculated at the Annual Interest Rate, and all other fees, charges and other amounts due to us under this Agreement.

2.3 Interest:

a **Interest calculation:** We calculate and charge interest on the Advance on each Payment Date by multiplying:

- the average unpaid daily balance of the Advance for each payment period; by
- the average period interest rate.

A **payment period** is the period ending on a Payment Date and starting on the day immediately after the prior Payment Date (and includes the initial period between the date we pay the Advance to you and the First Payment Date if that initial period is the same as each other payment period).

The **average period interest rate** is calculated by dividing the Annual Interest Rate by 12 (where the Payment Dates are at monthly intervals), 26 (where the Payment Dates are at fortnightly intervals), or 52 (where the Payment Dates are at weekly intervals).

If the initial period between the date we make the Advance to you and the First Payment Date is not the same as each other payment period, we calculate interest for the initial period by multiplying the unpaid daily balance of the Advance by a daily interest rate (calculated by dividing the Annual Interest Rate by 365).

b **Interest payable:** Interest is payable in arrears on each Payment Date (as part of the Payment Amount).

2.4 **Interest Only Periods:** During any Interest Only Period, each Payment Amount will comprise accrued interest only under this Agreement (with no reduction of the Principal Amount Owing). At the end of the Interest Only Period, each Payment Amount will be calculated as described above.

2.5 **Fees and charges:** Unless otherwise specified, each fee or charge in connection with a Relevant Document, if not paid separately on or before its due date, is automatically added to the Principal Amount Owing on its due date (and each fee or charge so capitalised will bear interest under this Agreement).

2.6 **Method of payment:** Each payment by you to us under a Relevant Document must be made by you to the account we advise to you.

2.7 **Time for payment:** If a due date for payment under a Relevant Document is not a Business Day, you must pay on the next Business Day (unless that next Business Day occurs in the following month, in which case you must pay on the previous Business Day). Any payment made by you after 3.00 pm on any date will be deemed to have been made on the next Business Day.

2.8 **Voluntary full prepayment:** You can prepay the Total Amount Owing in full at any time by paying us the Total Amount Owing, any administrative costs we incur due to your early repayment and any early settlement fee.

2.9 **Voluntary part prepayment:** You may not prepay the Total Amount Owing in part without the Lender's prior written consent. If the Lender consents to a part prepayment:

- if a Minimum Optional Prepayment Amount applies, any part prepayment must be no less than that amount;
- it will not reduce the amount of interest paid by you as the Lender will hold each prepaid amount and credit it in accordance with the Payment Schedule;
- administrative costs we incur due to your early repayment and/or an early settlement fee may be payable; and
- the Lender may amend the Payment Schedule or refinance the Facility.

You should contact us before making any prepayment to check what fees and other amounts may be payable (this may include an early settlement fee).

2.10 **Default interest:** If you do not pay an amount when it is due under a Relevant Document, we will charge you interest at the Default Interest Rate on the amount which is due and unpaid while the payment default continues. The obligation to pay default interest will arise without the need for any notice or demand. Default interest accrues daily, both before and after judgment, for the period from the due date for payment until the actual date of payment. If it remains unpaid, the default interest will be added to the Principal Amount Owing on each Payment Date and will itself bear interest under this Agreement.

3 Representations and warranties

3.1 **General representations and warranties:** You represent and warrant that:

- you have made (and are relying on) your own enquiries and determination in relation to the taxation and accounting treatment of this Agreement; and
- you are registered under the Goods and Services Tax Act 1985 and at least 75% of supplies made by you in the last 12 months have been subject to GST.

3.2 **Continuous repetition:** Each of the representations and warranties in this clause will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

4 Undertakings

4.1 **General:** You promise that each Relevant Party will (and each Relevant Party who is a party to this Agreement promises to):

- comply with the Special Conditions applicable to that Relevant Party (if any);
- duly and promptly comply with all applicable Laws, the non-compliance with which could have a Material Adverse Effect on that Relevant Party (including all Laws relating to the environment or to health and safety); and
- file all tax returns as required by Law, and pay and discharge all taxes, assessments and governmental charges payable by that Relevant Party or on that Relevant Party's assets on or prior to the date on which penalties become payable.

4.2 **Information:** You promise that each Relevant Party will (and each Relevant Party who is a party to this Agreement promises to):

- promptly give us any information about that Relevant Party, and/or that Relevant Party's business, financial condition or the Secured Assets (if any), that we reasonably request;
- give us at least 14 days' prior notice of any change of name, ownership, Authorised Persons or contact details in respect of that Relevant Party;
- provide us with any information or documents we may require from time to time for the purposes of Regulatory Compliance;
- notify us of any loss or damage to the Assets or any other thing that may or does give rise to a claim under the insurance policy for the Assets; and
- notify us of the occurrence of any Event of Default or Potential Event of Default immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result.

5 Events of Default and our enforcement rights

5.1 **Events of Default:** There will be an Event of Default if any of the following things happen, whether or not it was within the control of a Relevant Party:

- non-payment:** a Relevant Party does not pay us when due all or any part of the Total Amount Owing or any other amount payable by that Relevant Party to us (or a related entity), unless the non-payment is caused solely by a payment system failure which is beyond the control of a Relevant Party and we receive payment within two Business Days of its due date;
- breach of obligations:** a Relevant Party does not perform any other obligation under a Relevant Document in any respect that we consider material;
- untrue statement:** any statement made by a Relevant Party in connection with a Relevant Document was misleading or untrue in a material respect when made;
- unenforceability:** any obligation of a Relevant Party under a Relevant Document is not (or is claimed by any person other than us not to be) legal, valid, binding and enforceable in a material respect;
- insolvency event:** a Relevant Party is unable to pay that Relevant Party's debts when they fall due or is bankrupt, in receivership, liquidation, under statutory management or voluntary administration, wound up, subject to any arrangement, assignment or compromise with creditors, or involved in any insolvent restructuring, or any steps are taken in relation to any such event, or any such event is threatened, or anything analogous or having a substantially similar effect to any such event occurs;

- f **cross default:** an event of default (however described) occurs under any other finance agreement or guarantee entered into by a Relevant Party as borrower or guarantor;
- g **cease business:** any Relevant Party ceases or threatens to cease to carry on all or substantially all of that Relevant Party's business or operations;
- h **Change of Control:** there is a Change of Control in relation to any Relevant Party without our prior written consent;
- i **related entity transactions:** any Relevant Party provides finance to a related person or entity, or (except on arm's length commercial terms) enters into any other transaction with a related person or entity, in each case without our prior written consent;
- j **Material Adverse Effect:** the occurrence of an event which, or series of events which (when taken together), we reasonably believe has or could have a Material Adverse Effect on a Relevant Party;
- k **Secured Assets enforcement:** distress, attachment, execution or other legal process is levied, issued or enforced against any Secured Assets; or
- l **Secured Assets at risk:** we reasonably believe that any Secured Assets are at risk of being seized or dealt with in breach of a Relevant Document in a way that would have a Material Adverse Effect on a Relevant Party.
- 5.2 **Our rights if there is an Event of Default:** Subject to applicable Law, if an Event of Default happens:
- a we are under no further obligation to make the Advance;
- b we can, at any time, by notice to you, declare all or any part of the Total Amount Owing to be immediately due and payable (and, if we give such notice, the Facility is automatically cancelled); and/or
- c we can exercise any other right given to us by Law or in a Relevant Document (including clause 7, if applicable).
- 5.3 **Exclusion of liability:** To the fullest extent permitted by Law, we will not be liable for any damage, injury or other loss or cost to any person, entity or property arising from the exercise of our rights (or the rights of any receiver) under this Agreement if an Event of Default happens.
- 6 Guarantee**
- 6.1 **Guarantee:** Each Guarantor absolutely, unconditionally and irrevocably guarantees to pay to us immediately on demand all or any part of the Total Amount Owing which you do not pay when due.
- 6.2 **Separate promise to pay:** As a separate promise which is independent of the guarantee, each Guarantor absolutely, unconditionally and irrevocably promises to pay us immediately on demand all or any part of the Total Amount Owing (on a full indemnity basis) that is not paid when due for any reason. Each Guarantor is liable under this Agreement in relation to the Total Amount Owing as a sole and principal debtor and not as a surety.
- 6.3 **Guarantor's liability:** No Guarantor's liability or obligations are released or otherwise affected by any matter or thing which (but for this clause) might operate to release or affect the liability or obligations of, or otherwise provide a defence to, any Guarantor, including:
- a any further advance or other financial accommodation made or given by us to you;
- b any amendment (however fundamental) to any Relevant Document or other agreement, or to any of our rights against any other Relevant Party;
- c any time, waiver or other concession given by us to any other Relevant Party;
- d any of our rights against any other Relevant Party being unenforceable for any reason;
- e any release (in whole or part) of any other Relevant Document;
- f a bankruptcy or insolvency event in respect of any Relevant Party;
- g anything we do or fail to do, whether in exercise of our rights under any Relevant Document or otherwise; or
- h anything else, other than our agreement in writing that the obligations of that Guarantor have been released.
- We have no liability to any Guarantor in respect of any of these matters or things, even if that Guarantor's rights are prejudiced as a result.
- 6.4 **Continuing guarantee:** Each guarantee given under this Agreement is a continuing guarantee, and each Guarantor's obligations under this clause 6 remain in full force and effect until we agree in writing that the obligations of that Guarantor have been released.
- 6.5 **Selective enforcement:** We may enforce any guarantee or promise given under this clause 6 against any Guarantor without first taking any steps or proceedings, or exercising any right which we may have, against any other Relevant Party.
- 6.6 **Suspense account:** In the case of any amount we receive from a Guarantor, we may retain, carry to a suspense account (with a view to preserving our rights to prove as against any other Relevant Party for all of the Total Amount Owing), and appropriate
- at our discretion, that amount until the Total Amount Owing has been paid in full.
- 6.7 **Subrogation and marshalling:**
- a Each Guarantor waives all rights of subrogation, and any other right to exercise or benefit from our rights as against any other Relevant Party.
- b Each Guarantor waives all rights under the doctrine of marshalling, and any other right to exercise or benefit from our rights under any Relevant Document or other guarantee or security we hold which secures, in addition to the Total Amount Owing, other amounts owing to us.
- 7 Security**
- 7.1 **All Assets:** If security in "All Assets" is specified as applicable in the Commercial Terms, then to secure payment of the Secured Indebtedness each Relevant Party so specified in the Commercial Terms:
- a gives us a charge over all of that Relevant Party's present and future assets (other than Excluded Assets);
- b assigns by way of security to us all of that Relevant Party's present and future assets which constitute rights or things in action; and
- c agrees to mortgage to us any or all of that Relevant Party's present and future assets which constitute interests in land, and further agrees to provide us with all documents and do anything else required to grant us a registrable mortgage over such interests in land on request at any time.
- Each security given under this clause includes a security interest in all of that Relevant Party's present and after-acquired property for the purposes of the PPSA.
- 7.2 **Specific Assets:** If security in "Specific Assets" is specified as applicable in the Commercial Terms, then to secure payment of the Secured Indebtedness each Relevant Party so specified in the Commercial Terms gives us a charge over:
- a the Assets;
- b all other assets (including any after-acquired property as defined in the PPSA) which that Relevant Party agrees are "Assets" for the purposes of this Agreement;
- c all present and future attachments, accessories, replacements or spare-parts relating to the assets referred to in paragraphs (a) and (b) (including software licences supplied with any such assets); and
- d all present and future documents of title relating to, and proceeds of, the assets described in paragraphs (a) to (c) above.
- Each security given under this clause is a security interest for the purposes of the PPSA.
- Priority:**
- a For the purposes of section 92 of the Property Law Act 2007, each Relevant Party who gives us security under this Agreement acknowledges that:
- the security secures further advances by way of financial accommodation (within the meaning of that section) up to a stated priority limit; and
 - the maximum amount for which the security has priority over any subsequent security is the Priority Amount.
- b This clause is included solely to assist our priority. Nothing in this clause limits the amount secured by any security given under this Agreement.
- 7.4 **Secured Assets:** Each Relevant Party who gives us security under this Agreement promises that:
- a the Secured Assets are and will remain in that Relevant Party's possession in New Zealand (and, if a specific location has been notified to us for this purpose, the Secured Assets will ordinarily be kept at that location);
- b that Relevant Party is and will remain the sole legal and beneficial owner of the Secured Assets;
- c that Relevant Party has not given and will not give security in the Secured Assets to anyone other than us (provided that where security in "All Assets" is specified as applicable in the Commercial Terms, Permitted Security is allowed);
- d that Relevant Party will not sell, transfer, loan, lease or otherwise part with possession or dispose of any Secured Assets (provided that, where security in "All Assets" is specified as applicable in the Commercial Terms, a Permitted Disposal is allowed);
- e that Relevant Party will keep the Secured Assets in good condition, promptly repair any damage to them, and promptly remedy any defects in them;
- f that Relevant Party will not allow any Secured Assets to become an accession or fixture to any asset that is not a Secured Asset;
- g that Relevant Party will ensure compliance with all Laws applicable to any of the Secured Assets or their use;
- h that Relevant Party will not do or fail to do anything that will affect the value of any Secured Assets in a material way;
- i that Relevant party will promptly notify us if that Relevant Party acquires any interest in land, or any motor vehicles or aircraft;

- j that Relevant Party will provide us with access (on any Business Day) to inspect the Secured Assets following reasonable notice from us;
 - k on request by us at any time, that Relevant Party will use best endeavours to procure the consent of any third party on whose land or premises the Secured Assets are located for us to enter such land or premises for the purpose of exercising any of our rights under this Agreement;
 - l that Relevant Party will keep the Secured Assets insured against all risks that should sensibly be insured against for a value agreed with us, and with our interest as lender noted on the policy; and
 - m that Relevant Party will provide us on request with an up-to-date valuation for any or all of the Secured Assets.
- 7.5 **Our right to remedy:** Each Relevant Party who gives us security under this Agreement agrees that, if that Relevant Party fails to comply with any promise under this Agreement, then (in addition to any other rights we have, and without prejudice to our right to rely on that failure as an Event of Default) we may do whatever we think appropriate to remedy that failure or otherwise protect the security given under this Agreement.
- 7.6 **Our security rights if there is an Event of Default:** Subject to applicable Law, if an Event of Default happens, then (in addition to our rights under clause 5 or otherwise) the security given under this Agreement will be immediately enforceable and we can do all or any of the following:
- a take possession of all or any Secured Assets;
 - b appoint a receiver to all or any Secured Assets;
 - c sell, transfer, loan, lease or otherwise part with possession or dispose of all or any Secured Assets;
 - d exercise all or any rights which a person would have if appointed as a receiver under this Agreement (whether or not a receiver has been appointed);
 - e for any of these purposes, we (or any person on our behalf) may enter any premises where the Secured Assets are reasonably believed to be located (whether or not any occupier is present); and
 - f if we reasonably consider it necessary to do so, use your name and act on the behalf of a Relevant Party in exercising any of our rights under this Agreement.
- 7.7 **Power of sale:** In selling all or any part of the Secured Assets, we:
- a may sell by auction, public tender, private contract or another method;
 - b may sell generally on such terms and conditions as we think desirable;
 - c may buy in at any sale by auction;
 - d may cancel any sale contract (and refund to the purchaser any amount which the purchaser may be entitled to on cancellation) and resell the relevant assets without being answerable for any loss or reduction in price;
 - e are not responsible for anything a purchaser does or fails to do, and are not obliged to enforce any right under any sale contract;
 - f may give effective receipts for the purchase money and do everything else to complete the sale as we think desirable; and
 - g may exercise such other incidental powers in relation to the sale as are conferred on us (whether under this Agreement, by Law or otherwise).
- 7.8 **Receivers:**
- a Every receiver we appoint to Secured Assets is the agent of the Relevant Party concerned, except to the extent that the receiver is required by notice from us to act as our agent. We are not responsible for a receiver's actions (including any misconduct, negligence or default of a receiver).
 - b A receiver also has and may exercise all the rights we have under clauses 7.6 and 7.7 (whether or not those rights are yet exercisable by us) and, in addition, all rights in relation to the relevant Secured Assets as if the receiver had absolute ownership of those Secured Assets.
 - c We may remove or replace a receiver or appoint an additional receiver.
 - d We may fix the remuneration of a receiver at an amount, or on a basis, agreed with the receiver or, failing agreement, as we determine.
- 7.9 **Security independent and continuing:** Each security given under any Relevant Document is:
- a in addition to and enforceable independently of any other guarantee, security, or other agreement; and
 - b a continuing security, and each Relevant Party's obligations under this clause 7 remain in full force and effect until we agree in writing that the obligations of that Relevant Party have been released.
- 7.10 **PPSA contracting out:** Each Relevant Party who gives us security under this Agreement:
- a waives that Relevant Party's right under section 148 of the PPSA to receive a copy of any verification statement;
- b waives that Relevant Party's rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
 - c agrees that sections 114(1)(a) and 133 of the PPSA do not apply to this Agreement or the security given under it.
- 8 Illegality**
If, at any time, we determine that, as a result of our Regulatory Compliance obligations, we are no longer reasonably able to continue to provide or fund the Facility, or to exercise any of our rights or comply with any of our obligations under a Relevant Document, then:
- a we are under no further obligation to make the Advance; and
 - b we can, at any time, by notice to you, declare all or any part of the Total Amount Owed to be immediately due and payable (and, if we give such notice, the Facility is automatically cancelled).
- 9 General indemnity**
You fully indemnify us on demand for each amount that we confirm is required to compensate us against any loss (including loss of profit) or cost that we incur in connection with:
- a the appointment of experts or professional advisers in accordance with this Agreement;
 - b any enquiry by a governmental authority involving a Relevant Party or any transaction or activity with which a Relevant Party is connected;
 - c anything we do in accordance with a Relevant Document to remedy any failure or otherwise protect the security given under a Relevant Document;
 - d anything else we do or do not do in exercising our rights under a Relevant Document or at Law;
 - e an Event of Default happening or continuing;
 - f any fraudulent or negligent act on the part of a Relevant Party; or
 - g any amount falling due or being paid under this Agreement on a date which is not the date it is due for payment for any reason. This may include a loss or cost relating to our funding for the Facility or any part of it ('break costs').
- 10 Payments generally**
- 10.1 **No deductions:** Each payment by a Relevant Party to us under a Relevant Document must be made free and clear of any restriction or condition, and without any deduction, set-off or withholding (unless required by Law).
- 10.2 **Gross-up:** If a Relevant Party is required by Law to make any deduction or withholding on account of tax (or we are required by Law to make any payment on account of tax, other than tax on our overall net income) from or in respect of any amount paid or payable under a Relevant Document, that Relevant Party must pay to us an additional amount to the extent necessary to ensure that we receive and retain (free from any liability in respect of such deduction, withholding or payment) a net amount not less than the amount which we would have received and retained had no such deduction, withholding or payment been required.
- 10.3 **Order of payments:** Unless otherwise specified in a Relevant Document or required by Law, all amounts received or recovered by us under a Relevant Document will be applied as between principal, interest and other amounts in the manner and order determined by us, notwithstanding any purported application by a Relevant Party or any other person or entity, or any other matter or circumstance.
- 11 Changes to Relevant Documents**
- 11.1 **By agreement:** Subject to clause 11.2 below, no change to a Relevant Document will be effective unless:
- a in the case of this Agreement, the change is made in writing agreed between you and us, provided that any change to clause 6 and this clause 11 also needs the agreement in writing of any Guarantor, and any change to clause 7 and this clause 11 needs the agreement in writing of any Relevant Party who gives us security under this Agreement; or
 - b in the case of any other Relevant Document, the change is made in writing agreed between us and each other party to that Relevant Document.
- 11.2 **Other changes:** We can make the following changes at any time without the specific agreement of any Relevant Party:
- a any change to a Relevant Document that we reasonably believe is:
 - sensible or necessary in order to comply with applicable Law;
 - sensible or necessary in order to correct a manifest error or omission; or
 - of a technical or administrative nature and will not prejudice or disadvantage any Relevant Party in a material respect; and
 - b any change to the Annual Interest Rate (except while a Fixed Rate Period applies), the Default Interest Rate, the Priority Amount, the Payment Amounts, the Payment Dates or any fees and charges payable by you at any time under a Relevant Document.

- 11.3 **Notices:** We will give notice of any change to a Relevant Document (including notice of the effective date of the change) in accordance with applicable Law.
- 12 Communications**
- 12.1 **How to communicate with us:** In respect of each Relevant Document, each Relevant Party must give notices and other formal communications to us in writing, which may be by means of an electronic message, using the details provided in the Commercial Terms or any other Relevant Document (or any updated details subsequently provided by us).
- 12.2 **How we will communicate:** In respect of each Relevant Document, we must give notices and other formal communications to a Relevant Party in writing, which may be by means of an electronic message, using the details provided in the Commercial Terms or any other Relevant Document (or any other details we reasonably believe to be the details of that Relevant Party or an Authorised Person of that Relevant Party). In some circumstances, we may instead communicate with you indirectly through our website, our branches, the internet or the media, or otherwise as we see fit and permitted by applicable Law.
- 12.3 **When received:** Notices and other communications given under a Relevant Document will be deemed to have been received by the addressee:
- if delivered personally, at the time of service;
 - if sent by post, on the fourth Business Day after being posted by prepaid postage; or
 - if sent by electronic message, on the second Business Day after sending.
- 12.4 **Electronic messages:** For the purposes of each Relevant Document, the conditions relating to sending and receiving information in electronic form are those in the Contract and Commercial Law Act 2017 (and any other applicable Law from time to time). Where a Relevant Party has given us an electronic message address, that Relevant Party consents (unless otherwise requested in writing) to receiving information (including, but not limited to, information required by Law) in electronic form, by means of an electronic communication, and signed by means of an electronic signature. This may include receiving electronic messages allowing access to statements from a website or by means of the internet.
- 12.5 **We can rely on communications:** If we receive any communication that we reasonably believe to be from a Relevant Party, or an Authorised Person of a Relevant Party, we may rely on that communication without any further enquiry or verification. Unless otherwise agreed, we may act on an instruction from any one Authorised Person of a Relevant Party acting alone. Despite this, we may (at our discretion) decline to act, or delay acting, on any instructions received where we consider that we have good reason to do so. Without limitation, we may decline to act if there is a dispute between, or we receive contradictory communications from, any Relevant Parties or Authorised Persons.
- 13 Online services/internet banking**
- By using any online services provided by us from time to time, each Relevant Party consents to our online services/internet banking terms of use (which are available on our website). We can change those terms of use from time to time in accordance with their terms.
- 14 Trusts, partnerships and limited partnerships**
- 14.1 **Your promises in relation to changes:** Where a person or entity has entered into a Relevant Document as a trustee, partner or general partner, you promise that (without our prior written consent) there will be:
- no change to the trustees, partners or general partner;
 - no change to the terms of the relevant trust, partnership or limited partnership;
 - no vesting or final distribution of the assets or capital of the trust, partnership or limited partnership; and
 - no winding-up, dissolution or terminating event of the trust, partnership or limited partnership.
- 14.2 **Our recourse:** In enforcing any obligations under a Relevant Document against a trustee, partner or limited partnership, we may have full recourse to the assets of the relevant trust, partnership or limited partnership (as applicable). For this purpose, we will be subrogated to the right of indemnity of each trustee, partner or general partner (whether from the trust, partnership or limited partnership assets or otherwise) and you promise that there will be no restriction on any such right of indemnity. Subject to clause 14.3, each trustee, partner or general partner also has unlimited personal liability, jointly and severally with each other trustee, partner or general partner (as applicable), to us under each Relevant Document.
- 14.3 **Independent trustees:** Where a person or entity is identified in the Commercial Terms as an independent trustee, that independent trustee will have no personal liability to us under a Relevant Document except in respect of any loss or cost that we incur as a result of:
- that independent trustee being unable to recover (in whole or in part) from the trust assets because that independent trustee has acted without power or improperly in relation to the trust;
 - any statement made by that independent trustee in a trustee's certificate (or any similar certificate, promise or statement) being misleading or untrue in a material respect when made; or
 - fraud, negligence or wilful default on the part of that independent trustee (including, for the avoidance of doubt, any fraud, negligence or wilful default on the part of that independent trustee that results in a breach of any promise in clause 14.1),
- and in each such case, that independent trustee will have unlimited personal liability.
- 15 Privacy and information sharing**
- 15.1 **Our privacy statement:** By entering into this Agreement, each Relevant Party who is an individual consents to the collection, use, disclosure, storage and processing of that Relevant Party's information in accordance with the Privacy Act 2020 and our privacy statement (which is available on our website). We can change our privacy statement from time to time in accordance with its terms.
- Clause 15.2 to 15.6 summarise some important information from the Privacy Statement as at the date of this Agreement.
- 15.2 **What information we collect about each Relevant Party**
- We collect various types of personal information about each Relevant Party who is an individual, which may include that Relevant Party's name, age, gender, address, contact details (including phone numbers and email addresses), image, biometric data and financial information, including payment information. If the information we request from or about a Relevant Party is not provided, we may not be able to provide the requested services.
- 15.3 **How we collect information about each Relevant Party**
- We collect information about each Relevant Party who is an individual, when they interact with us, including when that Relevant Party:
- applies for a loan (or commences the process for applying for a loan), including when the Relevant Party, who is an individual, provides personal information when completing this Agreement);
 - visits our website;
 - contacts us with queries or feedback; and
 - subscribes to receive marketing communications from us.
- Each Relevant Party who is an individual authorises us to collect information about that Relevant Party from third parties including credit reporting agencies, that Relevant Party's present or former creditors and insurance companies, identification service providers, the Relevant Party's referees, government agencies, and the Relevant Party's past and present employers and business partners. We may do this to confirm the Relevant Party's identity, verify their current credit obligations, help us assess their ability to meet repayment obligations and make credit decisions, and to provide the Relevant Party with quotations for the cost of credit.
- 15.4 **Rights to access to and correction of information:** Each Relevant Party who is an individual has the right to access and request correction of information we hold about that Relevant Party. The Relevant Party can do so by contacting us using the details provided in the Commercial Terms.
- 15.5 **What we can do with information:** Subject (in the case of a Relevant Party who is an individual) to any update to our privacy statement in accordance with clause 15.1, information that we collect, or that is provided to us, about each Relevant Party may be used by us to:
- consider any application for an account or service (and any future application involving that Relevant Party), including to establish and verify that Relevant Party's identity and to assess their creditworthiness and financial position from time to time;
 - carry out our business functions and activities;
 - collect amounts owed to us, including taking enforcement action and to notify credit reporting agencies of the Relevant Party's repayment history and account details;
 - exercise our rights and fulfil our obligations under any agreement;
 - exercise our rights and fulfil our obligations for the purposes of Regulatory Compliance;
 - generally administer and monitor services provided to you (or any related entity); and
 - provide information about our other services, or the services of selected third parties in which we think you may have an interest, including by post, telephone and electronic message – **any Relevant Party can opt out of receiving information about our other services and/or the services of selected third parties by telling us in writing.**
- 15.6 **Who we can share information with:** Subject (in the case of a Relevant Party who is an individual) to any update to our privacy

- statement in accordance with clause 15.1, each Relevant Party agrees that we can share any information we get, for the purposes set out above, with:
- a our related companies;
 - b existing and potential business partners;
 - c identity verification agencies;
 - d credit reporting agencies – credit reporting agencies may retain information (including default information) and use it to provide their credit reporting services;
 - e third parties for the purposes of fraud prevention, identity verification, and any other purposes relevant to those purposes – those third parties may retain information and use it for identity verification and fraud detection purposes;
 - f the New Zealand Transport Agency's 'Driver Check' service;
 - g insurers;
 - h any other Relevant Party;
 - i anyone to whom we consider assigning or transferring any of our rights or obligations;
 - j anyone that we engage with about selling all or any part of our business;
 - k anyone providing any credit or funding support to all or any part of our business and anyone else involved in the funding process;
 - l government agencies and regulators, or anyone else with whom we are required to share that information for the purposes of Regulatory Compliance;
 - m service providers – this may include information being held on our behalf by data storage providers, including cloud-based data storage providers in New Zealand or overseas;
 - n referees; and
 - o debt recovery agencies.
- 16 Other important things to note**
- 16.1 **Multiple Borrowers or Guarantors:** If there is more than one of you (or more than one Guarantor), each of you (or each Guarantor (as applicable)) has joint and several liability under this Agreement. Any security under this Agreement is given in the relevant Secured Assets by you (or the relevant Guarantor (as applicable)) regardless of whether that Secured Asset is held by that Relevant Party individually or jointly with any other person or entity.
- 16.2 **Waivers:** The only time we give up any of our rights under a Relevant Document is if we agree to do so in writing. A failure or delay in exercising any right does not operate as a waiver of that right. A single or partial exercise of any right does not preclude further exercise of that right or the exercise of any other right.
- 16.3 **Assignment:**
- a We can assign or transfer any of our rights or obligations under a Relevant Document without seeking specific consent from any Relevant Party.
 - b No Relevant Party can assign or transfer any rights or obligations under a Relevant Document without our prior written consent.
- 16.4 **Commission:** We may pay commission, fees or other remuneration to any broker, agent, dealer or other person or entity in connection with a Relevant Document.
- 16.5 **Right to appoint experts and advisers:** We may at any time, where we reasonably believe it sensible or necessary to do so, instruct lawyers, accountants, investigators, valuers or other experts or professional advisers in relation to any matter arising in connection with a Relevant Document. Each such person or entity will be engaged to represent our interests, even if the costs are paid or payable by you or another Relevant Party. To the fullest extent permitted by Law, we will not be liable for any loss or cost to any person arising from the provision of services by a third party expert or professional adviser instructed under this clause.
- 16.6 **Our right to set off:** We can use any funds deposited or invested with us by a Relevant Party (or which we otherwise owe to a Relevant Party) to pay all or any part of an amount which that Relevant Party owes to us under a Relevant Document but has not paid. We may break any term deposit for this purpose. If, at any time following an Event of Default, an amount is contingently due to us or an amount due to us is not quantified, we may retain and withhold repayment of any amount we owe to a Relevant Party, pending that amount becoming due or being quantified. We do not need to give any prior notice before taking any action under this clause.
- 16.7 **Giving effect to promises:** You promise that each Relevant Party will (and each Relevant Party who is a party to this Agreement promises to) provide us with all documents we ask for, and do anything else we appropriately request, at that Relevant Party's cost and in a timely manner, to give effect to the promises and the rights we are intended to have under each Relevant Document.
- 16.8 **Interaction with Law:** The rights provided in this Agreement are in addition to any rights provided by Law. If any provision of this Agreement conflicts with any provision of Law, then:
- a to the extent that the relevant provisions of Law may be varied or excluded, the provisions of this Agreement prevail; and
 - b to the extent that the relevant provisions of Law may not be varied or excluded, then the provisions of this Agreement must be read subject to those provisions of Law.
- 16.9 **Severability:** If any part of a Relevant Document is illegal, invalid or unenforceable, the other parts of that document will still be legal, valid and enforceable.
- 16.10 **We do not have to be a party:** We can enforce our rights under a Relevant Document even if we are not a party to the document for the purposes of the Contract and Commercial Law Act 2017, Part 2, Subpart 1.
- 16.11 **Counterparts:** Each Relevant Document can be signed or accepted in one or more counterparts, which together constitute the same document.
- 16.12 **Entire agreement:** To the fullest extent permitted by Law, this Agreement contains all the terms in relation to its subject matter that apply between the Relevant Parties and us, and supersedes all previous agreements, understandings and negotiations in relation to its subject matter.
- 16.13 **Governing Law:** This Agreement is governed by and must be interpreted under New Zealand Law.
- 17 Dictionary and interpretation**
- 17.1 **Dictionary:** In this Agreement (unless it would not make sense):
- Advance** means the advance made or to be made by us to you under the Facility.
 - Agreement** means these General Terms and the Commercial Terms.
 - Annual Interest Rate** means the rate specified in the Commercial Terms (or the updated "Annual Interest Rate" if we have changed it in accordance with this Agreement or such other rate as we may agree).
 - Assets** means the specific assets specified in the Commercial Terms (if any).
 - Authorised Person**, in relation to a Relevant Party, means any person whose name or position is specified as an authorised person by that Relevant Party, and any other person we reasonably believe to be an authorised person of that Relevant Party.
 - Availability Period** means the availability period specified in the Commercial Terms (or such other period as we may agree). If the Facility is cancelled in accordance with this Agreement, the Availability Period automatically ends.
 - Business Day** means a day (other than a Saturday, Sunday or public holiday observed in New Zealand) on which registered banks are open for general banking business in New Zealand.
 - Change of Control**, in relation to a Relevant Party, means that a new person, entity or group of persons/entities acting together (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, agreement or otherwise):
 - a has the power to appoint and/or remove the majority of the members of the governing body of that Relevant Party;
 - b otherwise controls or has the power to control the affairs and policies of that Relevant Party; or
 - c is in a position to derive the whole or a substantial part of the benefit of that Relevant Party.
 - Commercial Terms** means the terms set out under the heading "Commercial Terms" at the beginning of this Agreement, and any separate payment schedule or asset schedule referred to in those terms.
 - Date of Advance** means the Business Day during the Availability Period on which the Advance is made.
 - Default Interest Rate** means the rate per annum equal to the Annual Interest Rate at the time of the default plus 10 per cent per annum (or the updated "Default Interest Rate" if we have changed it in accordance with this Agreement or such other rate as we may agree).
 - Disclosure Date** means the disclosure date specified in the Commercial Terms.
 - Document Condition** means each document condition specified in the Commercial Terms.
 - Event of Default** means any event listed in clause 5.1.
 - Excluded Assets** means assets which, by applicable Law at any time, may not be subject to security (including consumer goods and documents in terms of section 83ZN of the Credit Contracts and Consumer Finance Act 2003).
 - Facility** means this facility, the terms of which are set out in this Agreement.
 - Fixed Rate Period** means the fixed rate period specified in the Commercial Terms, commencing on the Date of Advance (or such other period as we may agree).
 - General Terms** means the terms set out under the heading "General Terms" in this Agreement.
 - Guarantor** means each guarantor (if any) specified in the Commercial Terms.

Heartland Group means Heartland Bank Limited and all subsidiaries, or related companies or related entities of Heartland Bank Limited from time to time.

Interest Only Period means the interest only period specified in the Commercial Terms, commencing on the Date of Advance (or such other period as we may agree).

Law means any law, regulation, rule, official directive, order, request, guideline or consent (whether or not having the force of law) of any governmental body or regulatory authority and, if not having the force of law, with which responsible entities in the position of the relevant party would normally comply.

Loan Amount means the loan amount specified in the Commercial Terms (or such other amount as we may agree).

Material Adverse Effect, in relation to a Relevant Party, means:

- a a material adverse effect on that Relevant Party's business, operations, assets, condition (financial or otherwise) or prospects;
- b the ability of that Relevant Party to perform that Relevant Party's obligations under any Relevant Document; or
- c our ability to exercise our rights against that Relevant Party in accordance with the Relevant Documents.

Minimum Optional Prepayment Amount means the minimum optional prepayment amount (if any) specified in the Commercial Terms (or such other amount as we may agree).

Payment Amount means each payment amount specified in the Commercial Terms or otherwise determined in accordance with this Agreement (or any updated "Payment Amount" if we have changed it in accordance with this Agreement or any other payment amount as we may agree).

Payment Date means each payment date specified in the Commercial Terms or otherwise determined in accordance with this Agreement (or any updated "Payment Date" if we have changed it in accordance with this Agreement or any other payment date as we may agree).

Payment Schedule means the payment schedule set out in the Commercial Terms.

Permitted Disposal means:

- a disposing of inventory; or
- b paying money,

in each case in the ordinary course of normal business.

Permitted Security means:

- a a netting or set-off arrangement for the purpose of netting debit and credit balances as part of a banking arrangement;
- b a lien or other security arising by operation of Law;
- c a purchase money security interest (as defined in the PPSA) in favour of a seller to secure payment of the purchase price;
- d holding personal property under a lease for a term of more than 1 year or on commercial consignment (each as defined in the PPSA),

in each case in the ordinary course of normal business.

Potential Event of Default means any event or circumstance which would become an Event of Default if it continued after the lapse of time or giving of notice.

PPSA means the Personal Property Securities Act 1999.

Principal Amount Owing means, at any time, the unpaid principal balance under the Facility (including capitalised interest and fees).

Priority Amount means three times the Loan Amount (or the updated "Priority Amount" if we have changed it in accordance with this Agreement or such other priority amount as we may agree), plus interest.

Purpose means the purpose specified in the Commercial Terms (or such other purpose as we may agree).

Regulatory Compliance means the requirements for us to comply with all applicable Laws, including those relating to money laundering, terrorist financing, bribery, corruption, tax evasion, fraud or similar, and manage all economic and trade sanction risks.

Relevant Document means this Agreement, each Security Document and each other agreement (present or future) evidencing or relating to Secured Indebtedness.

Relevant Party means each party to a Relevant Document (other than us) and, in the case of a party that is a company, trust, partnership or limited partnership, includes each director, trustee or partner (as applicable) as well as the relevant company, trust, partnership or limited partnership.

Secured Assets means the assets (if any) in respect of which a Relevant Party gives us security under this Agreement.

Secured Indebtedness means the Total Amount Owing, together with interest and costs, and all of your other indebtedness to us and the Heartland Group (including, for the purposes of sections 71 and 72 of the PPSA, future advances).

Security Document means each security document specified in the Commercial Terms, and each other guarantee, security, or other agreement (present or future) expressed or intended to be security for any Secured Indebtedness.

Special Condition means each special condition specified in the Commercial Terms.

Term means the term specified in the Commercial Terms, commencing on the Date of Advance (or such other term as we

may agree). You agree that if the **initial period** between the Date of Advance and the First Payment Date is not the same interval as the interval between Payment Dates (the **payment period**), the Term is automatically reduced by the difference between the payment period and the initial period.

Total Amount Owing means, at any time, the Principal Amount Owing, plus all accrued but unpaid interest, and any other fees, charges and other amounts owing under this Agreement.

Interpreting this Agreement: This Agreement must be interpreted using the following rules (unless it would not make sense to do so):

- a the Commercial Terms prevail over the General Terms if there is any inconsistency;
- b where we refer to any statute, we include all future versions of it, including all changes to it, all re-enactments or replacements of it, and all statutory instruments issued under it;
- c where we refer to a document we mean that document as varied or replaced from time to time;
- d each reference to us or a Relevant Party includes any person or entity that legally takes over our responsibilities or that Relevant Party's responsibilities (as applicable);
- e each reference to including, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- f each reference to an asset includes:
 - anything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible;
 - any right or interest in the above; and
 - any right, benefit or undertaking; and
- g each reference to security includes a security interest (as defined in the PPSA), mortgage, assignment by way of security, charge, encumbrance, lien, pledge, finance lease, deferred purchase, title retention, sale-and-repurchase, sale-and-leaseback arrangement and preferential arrangement of any kind, the practical effect of which is to secure a creditor.

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