

COMMERCIAL FACILITY DETAILS

(Version June 2019)

The terms of this **Commercial Facility Contract (this contract)** are set out in these **Commercial Facility Details (Version June 2019)** and the **Commercial Facility Terms (Version June 2019)**.

This contract is made between **the lender**; and **the borrowers** and **the guarantors** (if any) (both referred to as “you”).

The parties agree and covenant as follows:

1. We agree to advance the **loan amount** on the terms and conditions set out in **this contract**. However, if any of our pre-drawdown requirements are not met or if our instructions to any solicitor acting for you are not met, we may choose to withdraw this offer.
2. **The guarantor** agrees to guarantee repayment of **the money secured** and to indemnify us as set out in the guarantee section below.
3. **The borrowers** and **the guarantors** agree to comply with the pre-settlement requirements and provide us with all information and documents we request to enable us to comply with the AML/CFT Laws or other legislative or regulatory requirements.

PARTIES:

Lender: Core Finance Limited (referred to as “**the lender**”, “we” and “us”)

Financial Service Provider

PO Box 31764, Milford, Auckland 0741

Registration: FSP32947

Telephone: 09 480 2500

You may send notices by:

e-mail: grant@corefinance.co.nz

- writing to us at our postal address;
- sending an email to the address specified.

www.corefinance.co.nz

Borrowers: (referred to as “**the borrowers**” or as “you”)

Full Name:

Address:

Email address:

Full Name:

Address:

Email address:

Guarantors: (referred to as “**the guarantors**” or as “you”)

Full Name:

Address:

Email address:

LOAN DETAILS

Loan Amount:	\$
<i>made up of:</i>	
Available Advance	\$
Establishment Fee	\$
LINZ Registration Fee	\$
Brokerage	\$
Legal Fees	\$
Other Fees	\$

Payments: You are required to make the following payments by the time specified:	
Amount of each payment:	\$ interest payments plus one final payment of principal: \$
Frequency of payments:	
Timing of payments:	First payment is due: Last payment:

Interest: The Annual Interest Rate is:	% for the term .
Interest is charged on the unpaid balance of the loan by multiplying the unpaid balance at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the Annual Interest Rate by 365. Interest is debited to this loan on the last day of each month.	

Term: The term of the loan is:	from the date of advance
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Total amount of interest and payments <i>(These figures calculated on the assumption that the loan is advanced in one sum and all payments are made on time over the term.)</i>	
Interest charges over the term :	\$ Total amount of payments over the term : \$

Default Interest: The Annual Default Interest Rate is	%
In the event of a default in payment and while the default continues you must pay default interest charges in accordance with clauses 12 and 13 of the Commercial Facility Terms .	

Our Fees:
The following fees, which are not included in the Loan Amount section above, are, or may become, payable under, or in connection with this contract :
<ul style="list-style-type: none"> • Early repayment fee - calculated as 30 days' interest at the Annual Interest Rate on the loan amount (as specified in the loan details section of this contract). If the remainder of the term is less than 30 days, then the early repayment fee will be divided by 30 and multiplied by the remaining number of days in the term remaining. This fee is charged in accordance clauses 16 and 17 of the Commercial Facility Terms.

- **Early repayment administration fee of \$50.00** – payable in addition to the early repayment fee and charged in accordance clauses 16 and 17 of the **Commercial Facility Terms**.
- **Mortgage discharge fee of \$50.00** - this is for the cost of preparing an authority to discharge a mortgage and providing it with our instructions to your solicitor. If you request that we instruct our solicitor to complete registration of the discharge of mortgage, you will pay the legal fees we incur for that discharge of mortgage.
- **Home visit fee of \$50.00** - if we consider that it is necessary to visit you in person at your home or place of work in relation to any missed payment or to any other default under **this contract**.
- **Extension Fee-** calculated as 0.5% of the outstanding balance at that time and is charged if the loan is extended under Special Condition 2 below.

We may vary these fees and charges at any time in accordance with the **Commercial Facility Terms**.

GUARANTEE

The **guarantor** guarantees and indemnifies us for all the obligations of **the borrower** in **this contract**.

If we require, **the guarantor** agrees to enter into a Deed of Guarantee and Indemnity in the form acceptable to us to further assure **the guarantor's** guarantee and indemnity obligations to us. To the extent that any of the **secured property** is owned by a **guarantor**, that **secured property** supports this **guarantee** and **this contract**.

The existing Deed of Guarantee and Indemnity given by **the guarantor** extends to all amounts due under **this contract**.

SECURED PROPERTY

This is secured credit. You give us a security interest in the personal property and a mortgage over the real property as set out in the Secured Property Schedule to secure payment to us of **the money secured** and also to secure your performance of your obligations.

FURTHER ADVANCES

We are not obliged to make any further advances to **the borrower**. If **the borrower** requests and we agree to make any other loan advances in the future, **the borrower** will enter into another Commercial Facility Contract with us, made up of the Commercial Facility Details document and the Commercial Facility Terms. The Commercial Facility Details will set out the details of any new loan advance. We may, but are not required to, provide you with another copy of the Commercial Facility Terms. Any **security** that we take in **this contract** over the **secured property** will extend to every loan that you have with us.

SPECIAL CONDITIONS/ OTHER TERMS

1. This loan is advanced for the Our discretion to grant a **term extension**:
 - a) On or before the expiry of the **term**, **the lender** may, at its sole discretion, grant a **term extension to the borrower**.
 - b) **The lender** will grant a **term extension** by giving notice to **the borrower** at any time prior to the expiry of the **term**, in accordance with the requirements in clauses 50 - 55 of the **Commercial Facility Terms**.
 - c) If **the lender** grants a **term extension**, **the borrower** will be taken to have accepted the **term extension** if it does not repay the loan on or before the **term expiry**.

- d) The parties agree that an **Extension Fee**, as detailed in the Our Fees section above, will apply to each **term extension** and will be added to **the borrower's** loan account.
- e) The parties agree that if **the lender** grants a **term extension**, an **Early Repayment Fee** will not be payable if **the borrower** repays the outstanding balance prior to the **term expiry** except where **the borrower** repays the outstanding balance prior to the expiry of the term as detailed in Loan Details section of the **Commercial Facility Details**. If **the lender** grants a **term extension**, **the borrower** will be taken to have accepted the **term extension** if it does not repay the loan on or before the **term expiry**.

SIGNED AND DELIVERED AS A DEED:

By signing **this contract**, you:

1. acknowledge your indebtedness to us for the **loan amount**;
2. acknowledge that you have received a copy of this document and the **Commercial Facility Terms**, you confirm that you have read this this document and **Commercial Facility Terms** and that you understand **this contract**;
3. promise to comply with all the terms and conditions of **this contract** and any **security** and if you are a **guarantor**, then you also promise to comply with **the guarantee**; and
4. pay all amounts due under **this contract** at the times required by **this contract** and any variation of it.

Date of Deed:

Signed by **the borrower**

Director Signature:

Full Name:

Director Signature:

Full Name:

In the presence of

Name:

Signature:

Address:

Occupation:

Signed by the guarantors

Signature:

Full Name:

Signature:

Full Name:

In the presence of

Name:

Signature:

Address:

Occupation:

SECURED PROPERTY SCHEDULE

Real Property: Agreement to mortgage specific property

You (where you are a Registered Owner as set out below) grant or you have granted an all obligations mortgage on the terms set out below securing payment of all **the money secured** and performance of all your obligations under **this contract**, any **guarantee** and any **relevant agreement**, over the following **secured property**:

Address 1:

Record of Title:

Legal Description:

Registered Owners:

Section 92 Priority Sum:

Mortgage Memorandum:

Address 2:

Record of Title:

Legal Description:

Registered Owners:

Section 92 Priority Sum:

Mortgage Memorandum:

Real Property: Agreement to mortgage all property

You (being **the borrower** and **the guarantor**) grant or you have granted a mortgage to us over all land you own both now and in the future securing payment of all **the money secured** and performance of all your obligations under **this contract**, any **guarantee** and any **relevant agreement**, on the following terms and conditions:

- a) the mortgage will be an all obligations form and will incorporate a memorandum from the ADLS Inc, as we consider appropriate, and otherwise all the covenants implied in mortgages of land by schedule 2 of the Property Law Act 2007;
- b) for the purposes of section 92(1) of the Property Law Act 2007, we may specify a priority figure to be included in the mortgage as the then outstanding balance plus an allowance for any estimated costs and a further \$150,000.00. The priority figure will be expressed as an amount plus interest.

By way of further assurance:

- a) you will, at our request, authorise and instruct a lawyer of our choice to register our mortgage instrument on the terms set out above; and
- b) you irrevocably authorise your attorney, appointed under **this contract**, to authorise and instruct a lawyer to register a mortgage on the terms set out above at any time and without the need to first request you to do so.

We may lodge a caveat against any land that you own to give notice of our interest as mortgagee.

Personal Property:

APAAP You grant, or you have granted, to us a security interest over all present and after-acquired personal property that you own (except any consumer goods as defined in section 5 Credit Contracts and Consumer Finance Act 2003) on the terms set out in **this contract** and on the terms set out in the Memorandum of General Terms 2018/4344 which are incorporated into this **security**.

Specific Collateral You (where you are an Owner as set out below) grant or you have granted to us a security interest in the following specific property on the terms set out in **this contract** and on the terms set out in the Memorandum of General Terms 2018/4344 which are incorporated into this **security**. If you are purchasing this specific property with the loan, our security is also a purchase money security interest.

Vehicles Regn No:
Description:
Vin/Chassis No:
Owner/s:

Equipment/ Goods Description:
Other Make & Model:
Owner/s:

Other Collateral Description:

COMMERCIAL FACILITY TERMS

(Version June 2019)

Introduction

1. The terms of the **Commercial Facility Contract** are set out in:
 - a) a **Commercial Facility Details**;
 - b) these **Commercial Facility Terms**;
 - c) any **security** given in connection with **this contract**; and
 - d) any change or variation to these documents made by agreement or in accordance with **this contract**.
2. These **Commercial Facility Terms** have four parts that are to be read and interpreted as follows:
 - a) **PART A: LOAN TERMS** – in this section when we use the term “you” we mean **the borrower**.
 - b) **PART B: OTHER TERMS** - in this section when we use the term “you” we mean **the borrower and the guarantor**.
 - c) **PART C: SECURITY TERMS** - in this section when we use the term “you” we mean **the borrower and the guarantor**.
 - d) **PART D: GENERAL TERMS** - in this section when we use the term “you” we mean **the borrower and the guarantor**.
3. The words shown in bold have special meanings that are set out in clause 81.

PART A: LOAN TERMS *(for the borrower)*

Requirements before drawdown

4. Before we will advance the **available advance**, or any part of the **available advance**, both you and **the guarantor** must comply with all of our pre-drawdown requirements that are set out in this clause, the **Commercial Facility Details**, our letter or our solicitor’s letter of instruction, and/or the checklist document provided to you or your solicitor with **this contract**.
5. We will determine in our sole discretion whether our pre-drawdown requirements have been met.
6. If you fail to deliver any of the documents set out in a) to e) below, or if any of those documents are unsatisfactory to us or our solicitor in any respect (in our discretion), we are not required to advance the **available advance**, or any part of it:
 - a) a declaration pursuant to section 14 of the Credit Contracts and Consumer Finance Act 2003 signed by you;
 - b) the **Commercial Facility Details** and each and every **security** duly signed and, if required by us, evidence of registration of that **security**;
 - c) all certificates and statements required by us;
 - d) if there is **secured property**, then an insurance certificate showing full comprehensive insurance on the **secured property** and noting us as the interested party;
 - e) all identification documents and information required by us for our compliance with AML/CFT Laws.

Your obligation to pay

7. You must make all payments as shown in the **Commercial Facility Details** when each is due and without any deduction or set-off or counter claim and in such manner as we require.

8. You must pay us the following amounts in accordance with **this contract** or otherwise immediately upon demand:
 - a) the interest debited to the loan;
 - b) any **default interest** debited to the loan;
 - c) any fees due in accordance with the **Commercial Facility Details**,
 - d) our costs, expenses and any other liabilities that we incur pursuant to clause 11; and
 - e) any sums due pursuant to a **security** or a **relevant agreement**.
9. If you make a payment other than in accordance with the **Commercial Facility Details**, we may decide how to apply the payment to the loan.
10. If you fail to pay one or more instalments in full so that you are in default but otherwise are paying on time, we, at our absolute discretion, may add the unpaid amount to the loan and extend the **term** and vary the final payment or payments. We may but are not bound to do this and we may do this more than once.

Costs

11. You must pay immediately on demand our costs and charges (including all third-party costs and our solicitor costs) that we incur, on a full indemnity basis, in connection with:
 - a) the preparation, signing, registration, administration, variation and release of any security given in **this contract** or any financing statement in relation to a **security interest** and the negotiation and grant of any consent or waiver;
 - b) the exercise of enforcement or protection or the attempted exercise of enforcement or protection of any right including any step in or towards the Court or Disputes Tribunal, the seizure and/or sale of any **secured property**, and any debt collection step;
 - c) any dispute negotiation or communication with any other secured party or party claiming to be a secured party with respect to the **secured property** and/or the priority of a **security** granted by or in connection with **this contract**;
 - d) the transfer of a **security** from any other secured party to us or our transfer of our **security** to any other secured party;
 - e) any dispute, negotiation or communication with any of you or with any guarantor in respect of a **default**;
 - f) our doing anything that you should have done but have otherwise not done; andyou agree that such amounts are deemed to be contractual damages and if not paid those amounts incur default interest until paid in full.

Default Interest

12. We will charge interest at the **annual default interest rate** on any amount in default from the time that you are in financial default until you are no longer in financial default. Financial default means that you have failed to pay an instalment or other amount when due or demanded as the case may be.
13. Default interest charges are calculated by multiplying the amount of arrears (amounts due but not paid) at the end of the day by the daily default interest rate. The daily default interest rate is calculated by dividing the **annual default interest rate** by 365. **Default interest** is charged to your account on the last day of the month.
14. If you fail to do anything which you must do or do anything you must not do, we may do anything or pay an amount or amounts to remedy that default and may add any amount paid to the outstanding balance of the loan and if you do not reimburse us for the amount paid on demand we may charge you **default interest** on such amount.

Prepayments (Part and Full)

15. You may make a payment before it is due (part prepayment) at any time before the final payment is due as long as the total of all part prepayments made to the loan over its **term** are no more than 50% of the **loan amount**.
16. We will charge you the early repayment fee and the early repayment administration fee when you make a part prepayment if the total of all part prepayments made to the loan, including this part prepayment, is more than 50% of the **loan amount**.
17. You may pay the outstanding balance of the loan in full before it is due (full prepayment). However, you must also pay the early repayment fee and early repayment administration fee set out in the **Commercial Facility Details**.

Changes we can make

18. We may change any or all fees specified in the **Commercial Facility Details** at any time.
19. We may vary any term of **this contract** for one or more of the following reasons without seeking your consent:
 - a) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general banking practice;
 - b) to reflect any decision of a court, ombudsman or regulator;
 - c) to reflect a change in our systems or procedures, including for security reasons;
 - d) to make it clearer.
20. We will notify you of a change no later than 5 days after it takes effect.

PART B: OTHER TERMS *(For the borrowers and the guarantors)*

Covenants and Warranties

21. Each of you warrants and represents to us as follows:
 - a) you have the power to enter into and comply with your obligations under **this contract** and each and every **security** to which you are party;
 - b) you have in full force and effect all the authorisations necessary to enter into **this contract** and each and every **security** to which you are a party, to comply with your obligations under them and to allow them to be enforced;
 - c) your obligations under **this contract** and each and every **security** to which you are a party are valid and binding and are enforceable against you in accordance with their terms;
 - d) if you are an entity (including a company, partnership, trust) (other than an individual):
 - (i) **this contract**, each and every **security** to which you are a party, and the transactions under them do not contravene your constituent documents or any law, regulations or official directive or any of your obligations or undertakings to which any of your assets are bound or cause a limitation on your powers or the powers of your directors (if a corporation) to be exceeded; and
 - (ii) the execution of **this contract**, the borrowing, and the performance of your obligations are fully within your legal authority, are not in breach of your constitution or deed (as applicable), and do not and will not contravene or be in conflict with any provision of law or of any agreement binding upon you; and
 - (iii) you and your directors / trustees / partners (as applicable) are of the belief that you are of sound financial position at the date of entering **this contract** and are of the belief that you will meet your obligations under **this contract**; and
 - (iv) you and your directors / trustees / partners (as applicable) are not aware of any information, event, or action that would result in an adverse change to your financial performance; and

- (v) the financial information you have given us has been prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of preceding financial years, and that since its date there has been no material change in your financial condition or your operations;
- e) no default or event which, with the giving of notice, the lapse of time or the fulfilment of any condition, would be likely to become a default, continues unremedied;
- f) the financial information is accurate and fairly represents its financial state at the date of **this contract** knowing that we have relied on it in granting the loan;
- g) you have no undisclosed debts or contingent obligations;
- h) there are no material, unrealised or anticipated losses from any of your present commitments;
- i) you will advise us of material adverse changes which occur at any time prior to the date of the final payment;
- j) no litigation, arbitration proceedings, governmental proceedings, event or action is pending or threatened against you which would, if adversely determined, adversely affect your financial condition or the financial condition of any of your subsidiaries and/or jeopardise your obligations under **this contract** or under a **security** to which you are a party;
- k) none of your assets is subject to any lien, except:
 - (i) for current taxes not yet paid or taxes being contested in good faith and by appropriate proceedings, and which we are aware of; or
 - (ii) those in our favour;
- l) you have filed all tax returns, if any, which are required to be filed, and have paid all taxes which have become due unless disclosed otherwise; and
- m) the nominated bank account for the purposes of the automatic payment or direct debit authority for the payments under **this contract** is your main transaction account and all income and revenue from your services or sales will be deposited into that account in a timely manner.

When you are in default

22. You are in default of **this contract** if:

- a) you do not pay any amount payable under **this contract** when it is due; or
- b) you breach any term of **this contract** or any **relevant agreement**; or
- c) there is a breach under any **security** or a breach of any **guarantee**; or
- d) the **security** does not have the priority we expected; or
- e) you are in default under any other credit contract you have entered into with us or any other security you have granted to us; or
- f) we believe on reasonable grounds that we were induced by fraud or misrepresentation to enter **this contract** or any **security**; or
- g) the value of the **secured property** falls substantially because:
 - (i) a building on it has been pulled down or damaged;
 - (ii) any lease or licence under which the **secured property** or any part of the **secured property** is held is terminated, surrendered, forfeited or cancelled or becomes liable to any of these events;
 - (iii) all or any part of the **secured property** is taken or is proposed to be taken by any process without our written consent; or

- h) you become bankrupt or make any formal arrangement or compromise with your creditors or in our opinion there is a material adverse change in your financial condition; or
- i) we discover that any of the information given to us by you or by someone on your behalf before the **Commercial Facility Details** was signed is wrong or that you omitted to tell us something when you applied for the loan and that information or omission had or has a material effect on our decision to lend or to continue to lend to you; or
- j) a mortgagee or other person interested in the **secured property** takes proceedings for possession, to realise their interest in it, or otherwise enforce their interest; or
- k) any change in your circumstances occurs which we reasonably believe might adversely affect your ability to perform your obligations under your **Commercial Facility Details**; or
- l) you die, become incapable of managing your own affairs or are jailed; or
- m) you give possession of the **secured property** to us; or
- n) you are a company and:
 - (i) there is any change in ownership or control of the company or any company of which you are a subsidiary and we have not given our consent to that change; or
 - (ii) a receiver, manager, receiver and manager, standby servicer, administrator, controller, provisional liquidator, or liquidator is appointed to any part of your assets; or
 - (iii) any action is commenced to strike the company's name off any register of companies; or
 - (iv) you sell or transfer to any other person the whole or any major part of your assets without our prior written consent; or
 - (v) you fail the solvency test as defined in section 4 of the Companies Act 1993; or
 - (vi) the company is, in our opinion, insolvent; or
- o) you are a trustee and without our prior written consent:
 - (i) you cease to be a trustee of the trust; or
 - (ii) any trust property is transferred to another trustee who is not a party recorded in the **Commercial Facility Details**; or
 - (iii) any part of the trust capital is distributed to beneficiaries; or
 - (iv) any court proceeding against the trustees is brought which in our opinion is adverse to our interests; or
 - (v) any change is made to the documents creating or recording the trust.

Powers and obligations after default occurs

23. At any time after default occurs, we can take any of the following actions:
- a) subject to any notice requirements at law, demand and require immediate payment of all or any part of **the money secured** and, if applicable, the statutory default notice that we issue pursuant to our rights under the **security** will, on expiry of that default notice, cause **the money secured** to be immediately due and payable by you to us without the need for us to make any further demand for payment;
 - b) exercise any right, power or privilege conferred by any law, **this contract**, the **security** or the **guarantee** including:

- (i) enter into and/or take possession of any or all of the **secured property**;
 - (ii) sell the **secured property**;
 - (iii) appoint a receiver in respect of any or all of the **secured property**;
 - (iv) take a claim for recovery or **the money secured** as a debt due; and
 - (v) if you are a company, issue a statutory demand for **the money secured**.
24. We can exercise these rights with or without taking possession of the **secured property**. If we hold a **security** over more than one **secured property**, we can enforce our **security** against any one of the properties that are **secured property** first, or any number of them at the same time.
25. You must pay **the money secured** whether or not the proceeds on sale of the **secured property** or any other security for it are sufficient or are likely to repay **the money secured**.
26. To the extent permitted by law, we will not be liable in any way to you or to any third party for any damage or loss which occurs in the process of entry into any premises or during or as a result of the seizure and subsequent sale of the **secured property** and you will indemnify us against such damage or loss.
27. If you **default** under **this contract** we may, with or without notice (but, if applicable, subject to the requirements of the Credit Contracts and Consumer Finance Act 2003) seize the **collateral** and for such purposes you irrevocably give us the right and licence for our agents to enter any premises and if necessary to break into any building where the **collateral** may be situated or where you are for the purpose of searching for and seizing the collateral.
28. If we take possession of the **collateral**, we may sell the **collateral** by auction or otherwise in any manner and in all respects (including, without restricting the generality of the power, the right to buy in, give credit and allow payment over time) as if we were the unencumbered owner subject to any applicable obligations under the Personal Property Securities Act 1999 and under the Credit Contracts and Consumer Finance Act 2003.
29. If we sell any **secured property** in accordance with our rights in **this contract** or a **security**, no purchaser shall be bound to investigate the propriety or regularity of any such sale and no purchaser will be affected by any notice, express or constructive, that a sale was improper or irregular.
30. We may appropriate any payment received from you or money which is proceeds of the sale of **secured property** against any debt owed by you in any manner that we may decide, notwithstanding any appropriation you claim to have made or the fact that the time for payment of the amount has not yet arrived.

Power of Attorney

31. In consideration for lending **the borrower** the **loan amount** and to enable us to obtain the benefits of **this contract** more effectively, each of you jointly and severally irrevocably appoints us and any one director of us, severally, to be your attorney to do anything which you agree to do and to do anything and to sign any document that the attorney thinks desirable to ensure we are paid **the money secured** and otherwise to protect our interests under **this contract**, a **security** and **the guarantee** and any **relevant agreement**.
32. Without in any way limiting the generality of the power, the attorney may:
- a) execute any document relating to the **secured property** including any document, instrument or authority and instruction for the purposes of registration of any interest under the Land Transfer Act 2017;
 - b) execute any document for the purpose of creating a **security interest** contemplated by **this contract** or **any relevant agreement** or causing that **security interest** to attach under the **PPSA**; and

- c) act on behalf of each of you to notify any insurance company of our interest in any insurance policy and deal with any claims and receive any payments from any insurance company on behalf of the insured.
33. This power shall remain in force and irrevocable until **the money secured** has been paid to us in full. You ratify anything done by an attorney under this clause and further indemnify any person acting in reliance upon this power.
34. If we assign the benefit of **this contract** the assignee shall have the same rights and powers under this clause as we have, and each of you irrevocably appoints the assignee his/her or its attorney accordingly.

PART C: SECURITY TERMS *(For the borrowers and the guarantors)*

Security – General Terms

35. You give us the **security** as set out in the Secured Property Schedule of the **Commercial Facility Details** to secure payment to us of **the money secured** and to secure your performance of your obligations.
36. Other than the interests in the **secured property** that we are aware of, you promise us that there is no other party with an interest in the **secured property**.
37. You must not grant any other **security interest** in the **secured property** without our consent. If you give a **security interest** to someone else without our consent, then you are in default. If you are in default we may require that you repay us the total amount owing to us and if you don't pay us when we demand it, we may exercise our rights under a **security**, which includes the right to sell any **secured property**.
38. You must not part with possession, destroy, damage, dispose of or allow the disposal by sale or gift or lease of any **secured property**.
39. We may impose such conditions on the payment or on the application of the **available advance** as we see necessary to protect our **security interest** in the **secured property**. **The borrower** authorises and requests us to pay or apply any part of the **available advance** to the person named or for the loan purpose(s) set out in **this contract** or any separate document or written communication provided to us by **the borrower**. If the loan is being used to purchase **secured property**, you must apply the **available advance** to the purchase and if we consider it prudent, we may pay the loan money directly to the seller of the property that is to become **secured property**.
40. In the event that another party's security interest has priority over our **security**, we may at our discretion take a transfer or assignment of that interest. On transfer or assignment any money owing under **this contract** is deemed to be owing under that prior security agreement and default under **this contract** shall be deemed to be default under that security agreement.
41. If default has occurred, then, subject to any notice requirements at law, we are entitled to repossess and sell the **secured property** and if the net proceeds that we receive from a sale of the **secured property** are insufficient to repay the amount owing to us then you will remain indebted to us for the remaining balance after the application of the net sale proceeds to the loan.

Security – Personal Property

42. If any of the **secured property** is personal property, then the following terms apply:
- a) You must store any goods that are **secured property** at the address shown as that of its owner in the **Commercial Facility Details** and you must not allow any **collateral** to be taken out of New Zealand.
 - b) If we hold **security** over all of your present and after acquired property, and if you acquire any goods that are used or acquired primarily for personal, domestic, or household purposes, then you must write to us and tell us that you have acquired those goods. This

tells us that those goods are covered by our **security** as a specific appropriation to our **security**.

- c) You must care for and maintain the **collateral** and comply with any laws relating to its ownership and use and you must not use it in any dangerous or illegal activity or for any purpose for which it was not intended.
 - d) You may not use any motor vehicle that is **collateral** for motor sport activity such as (without limitation) racing, rallying, speed or time trials.
 - e) You must not replace your registration plate on any motor vehicle which is **collateral** nor otherwise alter or remove any serial number on any goods that are **collateral**.
 - f) We may inspect any **collateral** on giving you 24 hours' written notice and you shall make such **collateral** available for inspection at the address that you have provided as the place where the owner lives.
 - g) If we consider that the **collateral** is at risk we may, with or without giving you notice, enter any place where we believe any of the **collateral** may be to look for and inspect that **collateral**.
 - h) You must not do anything or allow anything to happen which may impair or undermine your ownership of the **collateral** or our **security interest** in the **collateral**.
 - i) Any accessions (including replacements and accessories) which are attached to **collateral** which is goods shall become part of the collateral.
 - j) You waive your right to receive a verification statement following registration of any **security** on the Personal Property Securities Register.
43. You agree that, to the extent permitted by law and in respect of **this contract**:
- a) **this contract** contracts out of sections 114(1)(a), 133 and 134 of the PPSA;
 - b) you contract out of your rights to:
 - (i) receive a statement of account under section 116 of the PPSA;
 - (ii) receive notice of a proposal to retain collateral under section 120(2) of the PPSA;
 - (iii) object to a proposal to retain collateral under section 121 of the PPSA;
 - (iv) not have goods damaged if we remove an accession under sections 125 and 126 of the PPSA;
 - (v) refuse permission to remove an accession under section 127 of the PPSA;
 - (vi) receive notice of the removal of an accession under section 129 of the PPSA; and
 - (vii) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA.
44. If we do not at any time have priority over all other secured parties in relation to any **collateral** then pursuant to section 107(1) of the **PPSA** and for the purposes of dealing with that **collateral** you contract out of section 108 to the extent that the words "with priority over all other secured parties" in section 108 will not apply so as to restrict our ability to seize and to sell the collateral. In addition, you irrevocably authorise us to pay any secured party over whom we do not have priority.

Insurance

45. You must insure or procure the insurance of the **secured property** which is goods and any buildings or improvements on the **land to be mortgaged** on a sum-insured or full replacement basis (in the case of such buildings or improvements for a sum-insured amount that is acceptable to us and adjusted annually to account for building cost inflation) and keep that

secured property insured against damage, fire, accident, theft and all other risks as we may reasonably require.

46. You must ensure that we are recorded by the insurance company as an interested party to the insurance taken in respect of **secured property**.
47. On request you must provide a certificate of currency of your insurance for the **secured property**, which notes us as an interested party to that insurance.
48. In the event of an insurance claim, you must notify us immediately and all payments from the insurance company are to be made to us, unless we otherwise direct.
49. You must not do or allow any act or omission which causes the insurance to be invalidated or cancelled.

PART D: GENERAL TERMS *(For the borrowers and the guarantors)*

Notice and Communication

50. Subject to the requirements of any law, any communication, notice, consent or demand given to you in relation to **this contract** will be duly delivered and served if it is:
 - d) delivered to you; or
 - e) left at that your usual or last known place of residence or business specified in the **Commercial Facility Details** for you; or
 - f) posted to the address specified in the **Commercial Facility Details** for you; or
 - g) sent by email to the email address specified in the **Commercial Facility Details** for you.
51. The communication, notice, consent or demand will be deemed to have been served on you:
 - a) in the case of delivery, immediately when it is it is handed to you, or, if you do not accept it when it is handed to you, when it is put down in your presence and brought to your attention or otherwise in accordance with clause 52 below; or
 - a) in the case of posting, on the second day after posting; or
 - b) in the case of email, when the email was sent.
52. If your address is a flat, apartment, or room in a building and if we or our agents are unable to obtain access to such flat, apartment, or room by virtue of the security system of the building or for some other reason, then service will be deemed to have been effected on you if the document is posted at the letterbox corresponding to such flat, apartment or room. If there is no such letterbox, service will be deemed to have been effected on you if the document is affixed to what appears to be the principal external entry to the building for the purposes of obtaining access to the address provided by you or if the document is given to any building manager or receptionist for the building and directed to be given to you.
53. You may by notice in writing nominate a new address and/or email address for receiving communication, notices, consents or demands, and such new address or email address will apply from the date we receive notice of your new address, except that if you nominate a new residential address which is outside of New Zealand, you must appoint an agent to accept notices and personal service of documents on your behalf in New Zealand.
54. We may by notice in writing nominate a new address and/or email address for receiving communication and such new address or email address will apply from the date we give notice of our address in accordance with clause 50.
55. Any communication, notice, consent or demand we give you may be given by our solicitor on our behalf.

Privacy

56. The following clauses contain the terms of our agreement with you in relation to the collection, retention and use of confidential information about you. You may have already given us permissions in the loan application that you signed. The following clauses confirm and are in

addition to the permissions you have already given us and deal with how we may use this information.

57. We may use the personal information you provide us for the purpose of arranging or providing credit, and for direct marketing of products and services offered by us or an organisation we are affiliated with or represent. We may also use your personal information for the purpose of establishing a customer loyalty programme.
58. The information provided by you will be held by us and you can gain access to the information held about you by contacting us. You have the right to correct any information that we hold. You have the right to request not to receive direct marketing material.
59. We and any mortgage broker, mortgage originator, mortgage manager or any person or company who at any time provides or has an interest in the credit can do any of the following at any time.
 - a) **Credit information:** Seek and use credit information about you to assess an application for credit.
 - b) **Collection of overdue payments:** Seek and use a credit report about you provided by a credit-reporting agency to collect overdue payments from you.
 - c) **Exchange of information between credit providers:** Seek from and use or give to another credit provider any information about your loan, credit-worthiness, credit standing, credit history or credit capacity. In particular, we may provide our opinion on any of these matters to another credit provider.
 - d) **Exchange of information with advisers:** Seek from and use or give to any mortgage broker, mortgage originator, mortgage manager, financial consultant, accountant, lawyer, or other adviser acting in connection with any financing provided or proposed to be provided to you, any consumer or commercial credit information.
 - e) **Provide information to credit reporting agencies:** Give to a credit reporting agency personal or commercial information about you. The information may include identity particulars; the fact that credit has been applied for and the amount; the fact that we are a current credit provider to you; payments which are more than 60 days overdue, and for which action is commenced; advice that payments are no longer overdue; advice that cheques drawn by you have been dishonoured more than once; in specified circumstances, that, in our opinion, you have committed a serious credit infringement; and the credit provided to you by us has been paid or otherwise discharged.
 - f) **Provide information for securitisation:** Disclose any report or personal information about you to another person in connection with funding financial accommodation by means of an arrangement involving securitisation or any other proposed transfer of or proposed dealing with your loan.
 - g) **Provide information to guarantors:** Provide information to any person who proposes to guarantee or has guaranteed repayment of any credit provided to you.
 - h) **Disclose of personal information:** Disclose personal information about you as required by law, or to organisations involved in providing services associated with your loan or providing credit to you, any associate or contractor of ours, (including for example statement printing houses, card and PIN producers, mail houses, lawyers, accountants), or people considering acquiring an interest in our business or our assets or with an interest in your loan.
 - i) **Incorrect personal information:** If you consider that any of the information we hold about you is incorrect, you may apply to us in writing to have the information corrected. We will consider your request in accordance with the requirements of the Privacy Act 1993. In some circumstances we may require evidence from you to prove the validity of any information you provide us to correct any information we hold.

You allow us to pass on any information or documents held or provided in relation to your loan and a **security** to:

- a) actual or proposed transferees of the loan or a **security**;
 - b) any direct or indirect provider of funds for the loan;
 - c) any party with whom we or our agents have, or are considering entering into, a contractual agreement in relation to your loan;
 - d) credit reporting agencies;
 - e) any other party who it may be relevant to inform in connection with any contemplated litigation or enforcement action in relation to **this contract** or a **security**;
 - f) any of our subsidiaries or companies associated with us or those companies' professional advisers; and
 - g) any other person if required or permitted by law to do so.
60. If we telephone you or any person shown as a contact person for you, you consent to our leaving our name with any person who answers that telephone number.

Assignment

61. We may assign our right, title and interest in **this contract**, a **guarantee** and/or a **security**.
62. You must not assign your right, title and interest in **this contract** to anyone.

Trustees

63. If you have been named in **this contract** as a trustee of a trust, then you warrant and undertake that:
 - a) the persons named in **this contract** as trustees of the trust are all the trustees of that trust;
 - b) each trustee has (so far as it is aware in respect of any trustees other than itself) been validly appointed and has the power and authority to hold the assets of that trust and to carry on the business of that trust;
 - c) each trustee has (so far as it is aware in respect of any trustees other than itself) the right to be fully indemnified out of the trust assets in priority to the interests of the beneficiaries in respect of all obligations incurred by that trustee under **this contract** or any **security**.
 - d) each trustee has the power to enter into this contract and each trustee has complied with all of their obligations and duties to the trust before their entry into **this contract**.
64. Each trustee must at our request exercise its right of indemnity against the trust assets or any beneficiary of the trust for our benefit.
65. No trustee will, without our prior written consent, permit any restriction, limitation, set-off, counterclaim or other defence to or against:
 - a) the trustee's right of indemnity out of the trust assets; or
 - b) any right of indemnity that may arise in the trustee's favour from a beneficiary of the trust; or
 - c) our right of subrogation to either indemnity.
66. If you have entered into **this contract** as a trustee, then you have full personal liability under **this contract** to us unless you have been named in **this contract** as a limited liability trustee.
67. If you have been named as a limited liability trustee then, in respect of your obligations entered into in your capacity as trustee of the trust, your liability under **this contract** is limited only to

the amount recoverable from the assets of the trust from time to time unless we are not able to recover all amounts owing under the **this contract** or any variation of it from the trust assets because:

- a) a trustee warranty set out above is incorrect; or
- b) you have breached a trustee undertaking set out above; or
- c) of your dishonesty, or wilful default or breach in respect of your obligations under the trust or **this contract**.

68. If the circumstances in clause 68 a) – c) apply (“exceptional circumstances”), this limitation of liability will not apply to you and you will be liable to us from your personal assets for the amount that we would have been able to recover from the trust assets if the exceptional circumstances had not occurred.

Indemnity

69. You indemnify us and keep us indemnified against any claim from any person relating to **this contract**, to the **secured property** or the use of the **secured property**. If we incur any loss, liability or expense in respect of the **secured property** or **this contract** as a result of any act or omission of yours then the amount of such loss, liability or expense plus goods and services tax, if any, is payable by you to us and will form part of **the money secured** and we may charge **default interest** on that amount.

All debts secured

70. If you have more than one loan or other obligation with us, **the money secured** includes all the amounts owing under any other **relevant agreement**. If an event of default occurs under any **relevant agreement**, it is a default under **this contract**.

General Terms

- 71. Any failure or delay in exercising any of our rights or powers under **this contract** or any **relevant agreement** shall not constitute a waiver of that right or power unless we waive that right or power in writing.
- 72. We are not obliged to marshal in your favour or in favour of any other person
- 73. We may receive commission on any insurance included in **this contract** or subsequently required by **this contract**. We may pay commission to your broker in relation to **this contract**.
- 74. To the extent allowed by law, we may from time to time without notice set off against any claim or demand which you may have against us, any debt owed by you or any claim or demand which we may have against you.
- 75. If we accept any payment you have made or bank any cheque which you have forwarded in purported full satisfaction or in terms connoting accord and satisfaction, we will not be deemed by such acceptance or banking to have accepted the terms upon which the payment is made or the cheque is forwarded unless we have, before we receive the payment or cheque, agreed in writing to accept the amount in full satisfaction or otherwise as accord and satisfaction.
- 76. If there is more than one of you, your obligations are joint and several.
- 77. The law applicable to **this contract** is the law of New Zealand.
- 78. This contract may be signed in any number of counterparts, all of which when taken together constitute one and the same document, and any of the parties to **this contract** may sign **this contract** by signing any such counterpart.

Meaning of Words

79. Each of the following words used in **this contract** and identified in bold for reference has the following meaning:

annual default interest rate is the interest rate set out in the "Default Interest" section of the **Commercial Facility Details**.

available advance means the amount specified as the "Available Advance" in the loan details section of the **Commercial Facility Details**.

Commercial Facility Contract or **this contract** means each contract made between you and us, using a **Commercial Facility Details** and incorporating these **Commercial Facility Terms** and it also includes any and all **security** given in support of the loan obligations in those documents.

Commercial Facility Details means each of the documents headed Commercial Facility Details which sets out the particulars of each loan and **security** that we have taken or will take and that you enter into with us.

Commercial Facility Terms means these terms (*Version June2019*).

collateral means the personal property described under the heading "Personal Property" in the Secured Property Schedule of the **Commercial Facility Details**.

default interest means default interest charged in accordance with clauses 12 and 13 of the terms at the **annual default interest rate**.

guarantee means any guarantee recorded in the Guarantee section of the **Commercial Facility Details** where that document records a Guarantor(s) in the parties' section and it includes any Deed of Guarantee and Indemnity provided by that Guarantor in support and further assurance of the guarantee obligations.

land to be mortgaged means the real property detailed or described in the Secured Property Schedule of the **Commercial Facility Details**.

loan amount means the amount specified as the "Loan Amount" in the loan details section of the **Commercial Facility Details**.

PPSA means the Personal Property Securities Act 1999.

relevant agreement means each other agreement or deed present or future, whether documented on a Commercial Facility Contract form or not that records a loan between you and us or records a loan between a guarantor and us that is secured by the **secured property**.

secured property means all real property and **collateral** recorded or described in the Secured Property Schedule of the **Commercial Facility Details**.

security means:

- a) in respect of **secured property** that is real property, any registered or unregistered instrument, deed or agreement that we hold over the **secured property**; and
- b) in respect of **collateral**, our security interest as recorded in **this contract** or our **security interest** recorded in any specific or general security deed or agreement taken in respect of the **secured property**.

security interest means:

- a) in respect of the **collateral**, any interest in personal property created or provided for by a transaction that secures payment or performance of an obligation (as defined in section 17 of the Personal Property Securities Act 1999); and
- b) in respect of real property, any mortgage, lease, licence or other interest or estate in land that secures payment or performance of an obligation.

term means the term of the loan set out in the loan details section of the **Commercial Facility Details** and if one or more **term extensions** apply to **this contract** it includes those extensions.

term expiry means the last day of the term of the loan as recorded in the Loan Details section of the **Commercial Facility Details**, or where one or more **term extensions** have occurred, then the last day of the most recent extension.

term extension means an extension of the existing term for an additional one-month period from the **term expiry**.

the borrower means each person and all people recorded as a Borrower in the **Commercial Facility Details**.

the guarantor means each person and all people recorded as a Guarantor in the **Commercial Facility Details**.

the money secured means all money, including the loan amount, interest, **default interest**, fees, costs and charges, and disbursements and other money, which you must pay to us under **this contract**, any **security**, any **guarantee**, under any other loan facility that you have with us, and includes any amount due to us if we exercise a right in our **security** or at law to repay any other security holder with an interest in the **secured property**.

Interpretation:

80. In **this contract**, unless the contrary intention appears:

- a) headings are for ease of reference only and do not affect the meaning of **this contract**;
- b) the singular includes the plural and vice versa and words importing gender include other genders;
- c) other grammatical forms of defined words or expressions have corresponding meanings;
- d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to **this contract** and a reference to **this contract** includes any schedules and annexures;
- e) a reference to a document or agreement, including **this contract**, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- f) a reference to “dollar” or “\$” is a reference to New Zealand currency;
- g) a reference to a specific time for the performance of an obligation is a reference to that time in New Zealand or other place where that obligation is to be performed;
- h) a reference to a party includes its executors, administrators, successors and in the case of the lender, its assignees and transferees;
- i) “own” includes “having an interest in” and “owner” is interpreted accordingly.

- j) words and expressions importing natural persons include partnerships, bodies corporate, associations (whether incorporated or not), government and governmental, semi-governmental and local authorities or agencies;
- k) any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and
- l) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

Borrower and Guarantor Acknowledgement

The borrowers and the guarantors acknowledge that they have read and received a copy of these terms, which form part of the Commercial Facility Contract with the lender.

Signed by **the borrower**

Director Signature:

Full Name:

Director Signature:

Full Name:

Signed by **the guarantors**

Signature:

Full Name:

Signature:

Full Name: