

**FACILITY AGREEMENT**  
**PREPARED ON 27 August 2014**

**ASB**

**BETWEEN:**

**ASB BANK LIMITED**

(the "Lender" and referred to in this Facility Agreement as "we," "us" and "our(s)"); and

**MUTUAL CREDIT FINANCE LIMITED**

(the "Borrower" and referred to in this Facility Agreement as "you" and "your(s)")

1. We will make the Facility detailed in the attached Facility Schedule available to you on the terms contained in this Facility Agreement.
2. The terms and conditions applying to the Facility are recorded in:
  - (a) this Facility Agreement;
  - (b) our general terms and conditions reference No. BRC06/2010 (the "Terms"); and
  - (c) Facility Schedule for Facility Number:  
                   12-3191-0035700                      Financial Markets Facility

This Facility Agreement should be read in conjunction with the Financial Markets & International Master Agreement.

3. If there is any conflict between this Facility Agreement and the Terms, the terms of this Facility Agreement shall prevail. Furthermore, if there is any conflict between this Facility Agreement and the Facility set out in the Facility Schedule, the terms of that Facility Schedule shall prevail over this Facility Agreement.
4. Words and expressions defined in the Terms and not otherwise defined in this Facility Agreement have the same meaning and construction where used in this Facility Agreement and the Facility Schedule unless the context otherwise requires. All references to clause references are to clauses of the Terms. In this Facility Agreement the Debenture Trust Deed means the Debenture Trust Deed dated 1 February 1985 between the Borrower and Trustees Executors Limited as subsequently varied pursuant to a Deed of Variation of Trust Deed dated 5 March 1999, a Deed of Variation of Debenture Trust Deed dated 12 December 2005, a Deed of Variation and Restatement of Debenture Trust Deed dated 14 September 2010, a Deed of Variation and Restatement of Debenture Trust Deed dated 30 November 2010 and a Deed of Variation and Restatement of Debenture Trust Deed dated 20 September 2012.

**Conditions Precedent to Availability of Facilities:**

Drawdown for any Facility shall not be available until we have received, and are satisfied in form and substance with the following:

**Conditions Precedent to Establishment of Facility**

1. All the conditions specified or referred to in the Terms (refer clause 7);
2. A Director's Certificate completed and executed by your Directors, on our standard form;
3. An executed Deed of Subordination and Priority, on our standard form, subordinating the security interest of Trustees Executors Limited to our security interest in relation to all assets owned by the Borrower. Our Priority Amount is to be \$1,000,000.00 plus 24 months interest and costs;
4. Confirmation from Trustees Executors Limited as at 31 August 2014 that the Borrower was not and is not in breach of any covenant contained within the Debenture Trust Deed; OS-114072-1-27-V1;

5. Confirmation as at the date of execution of this Facility Agreement by the Borrower that no material adverse event has occurred in respect of the Borrower or under any Security Document or that may otherwise affect the Borrower's ability to comply with its obligations under the Facility or any Security Document;
6. A certified copy of the Debenture Trust Deed
7. Any other document reasonably requested by us.

#### **Conditions Precedent to Subsequent Drawdown**

1. Confirmation by the Borrower as at the date of each Drawdown that the Borrower is compliant with all covenants contained within the Debenture Trust Deed and the Deposit Takers (Credit Ratings, Capital Ratios and Related Party Exposures) Regulations;
2. Confirmation as at the date of each Drawdown that no material adverse event has occurred in respect of the Borrower or under any Security Document or that may otherwise affect the Borrower's ability to comply with its obligations under the Facility or any Security Document.

#### **Conditions Subsequent to Establishment of Facility:**

You undertake and agree to comply with the following:

1. To provide a copy of the Directors Quarterly Report (as per the Debenture Trust Deed) to the Bank within 30 days of each quarters end (March, June, September and December).
2. To notify the Bank in writing of any changes in management or ownership (and you acknowledge that any such changes in management or ownership may at the Bank's sole discretion constitute an event of review).
3. That all facilities are subject to annual review, with the first annual review to take place on 31 March 2016 and from that date onwards, on each anniversary of that date.
4. To supply to the Bank annual audited financial statements for the Borrower, prepared in accordance with generally accepted New Zealand Accounting Standards, within 120 days of balance date.
5. To supply to the Bank six monthly financial statements for the Borrower, prepared in accordance with generally accepted New Zealand Accounting Standards, within 90 days of half years end.
6. To supply to the Bank financial forecasts for the Borrower for a minimum 1 year period, within 120 days of annual balance date.
7. To immediately notify the Bank in the event of any breach by the Borrower of the Debenture Trust Deed.



## **Security**

Security for the Facility is set out below.

Prior to the Facility being made available you will provide us with those securities marked "new" (and/or our completed form of Solicitor's Certificate), registered first in ranking unless otherwise specified (any security governed by the Personal Property Securities Act 1999 will be registered on the Personal Property Securities Register). We have a security interest in the property listed below to secure the performance of your obligations under the Documents or the payment of money under the Documents, or both. If you fail to meet your commitments under the Documents, then to the extent of the security interest we may be entitled to repossess and sell the property listed below:

A new all obligations first ranking General Security Deed, on our standard form, over all the assets and undertaking from MUTUAL CREDIT FINANCE LIMITED.

The security interest we hold over your property will secure all of your existing and future indebtedness to us, whether or not documented in this Facility Agreement or the Facility Schedules. Any other security interest granted to us in future over any of your other property will also secure your indebtedness to us.

## Borrower Acknowledgement and Agreement

You [each]:

1. acknowledge that for the purposes of initial disclosure under the Credit Contracts and Consumer Finance Act 2003 (if this is a consumer credit contract for the purposes of that Act) you have been provided with a complete copy of this Facility Agreement, the Terms, each of the new Security Documents and other documentation relating to the Facility; and
2. confirm that you have read and understood the Documents and accept the terms and conditions contained within (including each of the Conditions Precedent to Drawdown); and
3. agree that the provision of information by you is an essential term of this Facility Agreement. If at any time, whether before or after drawdown of this Facility, we reasonably believe that any information provided by you, either in your application for financial accommodation under this Facility Agreement or otherwise, is incorrect, misleading or incomplete, then we may immediately cancel this Facility Agreement. If cancellation occurs after a drawdown has been made, we may make demand for any amount owing to us at the time of cancellation; and
4. consent to receive disclosure, notices and other communications from us in electronic form, whether by means of our website, email or other electronic communication; and
5. understand that this Facility Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute any Facility Agreement by signing any such counterpart; and

6. agree that in accordance with the terms of this Facility Agreement, any one person named as Borrower may request an Interest Rate Switch during the term of this Facility, and we may act upon that request which will bind all of you.
7. agree that in accordance with the terms of this Facility Agreement, any one person named as Borrower may request an Interest Only Period during the term of this Facility, and we may act upon that request which will bind all of you.

*Please delete the above clause(s) if you require us to act upon the request of all of you, rather than only one.*

Dated this 17<sup>th</sup> day of September 2014

**EXECUTED AND DELIVERED as a deed**

**SIGNED by**

**MUTUAL CREDIT FINANCE LIMITED**

by [Signature]  
Director

and by [Signature]  
Director

each being a Director of the above Company

**WITNESS to all of the above signatures (otherwise specify)**

[Signature]  
Witness Signature

Witness Occupation

**Elizabeth Lucia Neazor**  
**Solicitor**  
**Christchurch**

Witness Name

Witness Address

*[Handwritten initials]*

## FACILITY SCHEDULE

Facility Number: 12-3191-0035700

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**Facility Type:** Financial Markets Facility

**Description:** Committed Cash Advance Facility

**Facility Limit:** An Amount of \$1,000,000.00. This represents the maximum amount that you may draw down under this Facility (as may be varied from time to time by agreement between us).

**Initial Unpaid Balance:** Nil

**Term:** We may terminate the Facility at any time and you will repay the Facility on demand.

**Drawdown:** Drawing Notice in the attached form.

**Deduction Account:** 12-3191-0035700-00

**Termination of Offer Date:** Not applicable.

**Fees:**

The following fees will be deducted from the Facility on Drawdown:

Loan Processing Fee	\$0.00
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Personal Property Security Registration Expenses (PPSR)	\$25.00
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The above PPSR Expenses consist of a \$3.07 Registration Fee and \$21.93 Administration Costs.

**International Trade Service Charge:** You will pay our applicable service charges prevailing from time to time.

**Service Commitment Fee:** Currently 2.00% per annum calculated on the Facility Limit during the previous quarter. This Service Commitment Fee will accrue from the date of the Facility Agreement and will be payable quarterly in advance until this Facility has been cancelled or terminated. We may alter the Service Commitment fee from time to time.

**Annual Interest Rate:** Offer Rate

The Interest Rate will be our Offer Rate (being the rate at which we offer to lend you the currency being financed) plus a Margin of 2.500% per annum. Our Offer Rate will change from time to time to reflect changes to the interest rate applicable in the currency market at that time.

We may alter the Margin from time to time. An alteration to the Margin shall be made by notice in writing to you and shall be effective immediately from the date specified in such notice.

Our Offer Rate will be determined by us on the proposed date of draw down and on each date an instalment is payable.

**Interest and Repayments**

**Interest:**

You will pay interest on each drawing in arrears on the last day of each Interest Period (or on the day we make demand for repayment of that drawing) ("the Interest Payment Date").

**Payments:**

To be made in accordance with clause 8A of the Terms.

**Address for Notices:** ASB Bank Limited, Lending Operations, 360 Dominion Road, Mt Eden, Auckland.

**Right to Cancel:** You have the right, for a short time, to cancel this Facility. A statement of your rights can be found in clause 15 of the Terms.

# BUSINESS & RURAL GENERAL TERMS AND CONDITIONS

# ASB

Reference Number: BRC06/2010

## 1. INTERPRETATION

### 1.1 Definitions:

In these General Terms and any Facility Agreement, unless the context otherwise requires:

**"Adverse Credit Event"** means if you commit an act of bankruptcy or if you are insolvent and are unable to pay your debts as they fall due or legal proceedings are commenced (and not dismissed within 30 days) or, if you are a company an order is made or any step is taken toward dissolution or a receiver, liquidator, trustee, administrator or similar officer is appointed in respect of you or any of your assets;

**"ASB Business Fixed Base Rate"** means the interest rate determined by us as our "ASB Business Fixed Base Rate" (being a daily swap mid rate plus associated transaction costs adjusted for 30 day compounding) and is subject to the daily fluctuation and is determined at our sole discretion;

**"Bank"** means ASB Bank Limited and its successors, assigns and transferees and is also referred to in these General Terms as "we", "us" and "our";

**"Base Rate"** means, in relation to a Facility, the interest rate specified in the applicable Facility Schedule as the "Business Base Rate", "Housing Fixed Rate", "Housing Variable Rate", "Corporate Indicator Rate", "Bill Rate", "Fixed Interest Rate", "Rural Base Rate", "Business Fixed Base Rate" and such other rates which we specify as our Base Rates from time to time, each as determined by us in our absolute discretion at any time and from time to time, including prior to the first Drawdown;

**"Bill Rate"** means in relation to:

- a) a Facility which is a committed cash advance facility and an Interest Period of 30, 60, 90 or 180 days, the rate displayed at or about 11:00am on the drawdown date of the relevant drawing on Reuters screen page BKBK (or its successor or equivalent page) as the bank bill bid rate for bills having a tenor of or about the Interest Period of that drawing;
- b) a Facility which is a committed cash advance facility and any Interest Period not specified in paragraph (a) above (if agreed to by us at our sole discretion), the rate as quoted by us and accepted by you; and
- c) all other Facilities, the bid rate for bank accepted bills of exchange (expressed as a percentage yield per annum) having a tenor of 90 days or, for trade facilities, the relevant Interest Period as quoted by us

in each case, plus or minus your Margin;

**"Borrower"** means the person referred to as the "Borrower" in a Facility Agreement and is also referred to in these General Terms as "you" and "your";

**"Business Day"** means a day (not Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Wellington;

**"Capped Rate"** means an Interest Rate capped at the rate specified in the applicable Facility Schedule;

**"Capped Rate Period"** means in respect of a Facility, the period specified as the "Capped Rate Period" in the applicable Facility Schedule;

**"Corporate Indicator Rate"** means the interest rate determined by us as our "Corporate Indicator Rate" and is subject to change by us in our absolute discretion at any time and from time to time, including prior to the first Drawdown;

**"Deduction Account"** is the account specified in the Facility Schedule for the deduction of Instalments;

**"Distribution"** means a distribution as defined by section 2 of the Companies Act 1993;

**"Documents"** means these General Terms, each Facility Agreement, Facility Schedule, Security Document and any other deed or agreement, present or future, required by or relating to a Facility and "Document" means any of them;

**"Drawdown"** means the advance of all or part of a Facility to you or the establishment of a Facility Limit on your Facility Account;

**"Drawing Notice"** means the notice requesting the making of a drawing substantially in the form attached to the applicable Facility Schedule;

**"Environmental Obligation"** means any obligation relating to the occupation or use of land or the use of assets, development, pollution, waste disposal, toxic and hazardous substances or conservation of natural or cultural resources, whether or not arising pursuant to any law (including the Resource Management Act 1991 and the Building Act

2004) or pursuant to any contract or arrangement with a governmental agency;

**"Event of Default"** means any of the events specified in clauses 11.2(d), 11.3(c), 11.4(c) and 14 or as defined in a Document and any other event or circumstance which, with the giving of notice, lapse of time or fulfilment of any other requirement, would constitute such an event;

**"Facility"** means:

- (a) any credit facility; or
- (b) any other facility for financial accommodation, which we provide or have agreed to provide to you;

**"Facility Account"** means the transactional account provided by us:

- (a) which records the amount owing by you to us from time to time; and
- (b) against which any moneys which may become due to us under the Facility Agreement or any Document may be charged; and
- (c) against which any payments to third parties either at your request or on your authority may be charged; and
- (d) into which any deposits may be paid;

**"Facility Agreement"** means the facility agreement entered into between you and us incorporating one or more Facility Schedules (where the context requires, references to a Facility Agreement includes references to the Facility Schedules attached to that Facility Agreement);

**"Facility Amount"** means the principal amount we advance to you under a Facility;

**"Facility Limit"** means at any time the maximum amount that you may draw down on your Facility Account at that time;

**"Facility Number"** means the unique number assigned to your Facility by us;

**"Facility Schedule"** means in relation to each Facility Agreement, the schedule setting out the specific terms of each Facility attached to the Facility Agreement;

**"Financial Markets and International Master Agreement" or "FIMIA"** means the ASB Financial Markets and International Master Agreement signed by you setting out the terms and conditions of certain Financial Markets and International services, products and transactions;

**"Fixed Interest Rate"** means the Interest Rate applicable to a Fixed Rate Period as specified in your Facility Schedule;

**"Fixed Rate Period"** means in respect of a Facility, the period specified as the "Fixed Rate Period" in the applicable Facility Schedule;

**"General Terms"** means these General Terms and Conditions;

**"Group Member"** means (if you are a company):

- (a) a subsidiary of you; and
- (b) any person of which you are a subsidiary;

**"Guarantor"** means the person or persons referred to as the "Guarantor" in a Facility Agreement;

**"Insolvency Event"** means, in relation to a person, if that person:

- (a) is insolvent or unable to pay its indebtedness as it falls due; or
- (b) suspends, stops or threatens to suspend or stop payment of a material part of its indebtedness; or
- (c) commences negotiations or takes any proceedings with a view to the general deferral, readjustment or rescheduling of its indebtedness or a material part of its indebtedness; or
- (d) makes, or proposes to make, any assignment, arrangement or composition for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;

**"Instalment"** means any payment of principal and/or interest or any other payment due under the Facility Agreement or any Document;

**"Interest Only Period"** has the meaning given to that term in clause 9.2;

**"Interest Period"** means, in relation to a drawing, each period by reference to which interest thereon is calculated and payable, as selected by you in your Drawing Notice to us or as otherwise notified by us to you;

**"Interest Rate"** is the rate of interest applicable to any Facility from time to time as recorded in a Facility Schedule and includes any Margin applicable to that Facility, as increased or reduced in accordance with clause 3.1 and/or clause 3.2;

**"Interest Rate Switch"** means, in relation to a Facility, the switch of the Interest Rate applicable to all or part of that Facility to another Interest Rate;

**"Limited Liability Trustee"** has the meaning set out in clause 11.2(c);

**"Margin"** means, in respect of a Facility, the margin (if any) applicable to that Facility, as specified in a Facility Schedule and is subject to change by us in our absolute discretion at any time and from time to time;

**"Margin Term"** means, in respect of a Facility, the period (if any) specified as such in the Facility Schedule;

**"Offer Rate"** means the rate determined by us as our "Offer Rate" at which we offer to lend you foreign currency and is subject to change by us in our absolute discretion at any time and from time to time, including prior to the first Drawdown;

**"Outstanding Amount"** means, on any date and in relation to a Facility, the principal amount outstanding under that Facility on such date;

**"Outstanding Money"** means, on any date and in relation to a Facility, the aggregate of all Outstanding Amounts and all other money payable by you to us under the Facility and outstanding at such date including accrued interest (including default interest), fees, indemnities, costs and expenses;

**"Permitted Disposal"** means any disposal of assets:

- (a) in the ordinary course of ordinary business on normal commercial terms for fair value; or
- (b) with the prior written consent of us; or
- (c) as permitted by any Security Document;

**"Permitted Security Interest"** means any security interest that is:

- (a) permitted by any Document; or
- (b) created in favour of us; or
- (c) created in favour of any other person with our prior written consent; or
- (d) in respect of goods, taken by a seller of those goods as part of an ordinary trading transaction and which is created in the ordinary course of business on arm's length commercial terms and for proper value and which is discharged within 90 days of the supply of those goods; or
- (e) a lien arising by operation of law;

**"Reducing Limit"** means, in respect of a Revolving Credit Facility, the Facility Limit applicable to that Facility which reduces in accordance with clause 8.3;

**"Relevant Party"** means you and each of the other parties to the Documents (other than us);

**"Repeating Representations"** means each of the Representations and Warranties;

**"Representations and Warranties"** means each of the representations and warranties given by you in these General Terms including without limitation under clauses 11.2, 11.3, 11.4 and 12;

**"Revolving Credit Facility"** means a Facility where you are able to deposit money into, or withdraw funds from, your Facility Account up to your Facility Limit or Reducing Limit, as applicable, provided all funds are cleared available funds;

**"Rollover Drawing"** means one or more drawings under a committed cash advance facility:

- (a) made or to be made on the same day that a maturing drawing is due to be repaid;
- (b) in the same currency as the maturing drawing;
- (c) the aggregate amount of which is equal to or less than the maturing drawing; and
- (d) made or to be made to the same Borrower for the purpose of refinancing a maturing Loan;

**"Rollover Notice"** means a notice substantially in the form available from us on request;

**"Security Document"** means each agreement at any time executed or delivered to evidence or secure your indebtedness under a Facility whether or not it secures other obligations as well (including any guarantee and all other documents which the parties agree shall be a Security Document);

**"Solvency Test"** has the meaning ascribed to that term by section 4 of the Companies Act 1993;

**"Term"** means, in respect of a Facility, the term of that Facility as specified in the applicable Facility Schedule;

**"Term Loan"** is a loan which is repaid through regular periodic payments, with a fixed maturity date;

**"Unarranged Overdraft Interest Rate"** means the interest rate determined by us as our "Unarranged Overdraft Interest Rate";

**"Undertakings"** means the undertakings given by you in these General Terms, including without limitation under clauses 11.2, 11.3, 11.4 and 13; and

**"Variable Rate"** means the interest rate as determined by us as our "Variable Rate" as specified in your Facility Schedule and is subject to change by us in our absolute discretion at any time and from time to time.

## 1.2 Interpretation:

In these General Terms, unless the context otherwise requires:

the provision or making available of "accommodation" includes the making of a loan, the discounting of bills, the provision of a letter of credit facility, the provision of overdraft accommodation on a current account or the provision of any other banking or financial services or accommodation;

an "agreement" includes a contract, deed, licence, franchise, undertaking or other document (in each case, oral and written) and includes that agreement as modified, supplemented, novated or substituted from time to time;

"assets" includes the whole and any part of the relevant person's business, undertaking, property, revenues and rights (in each case, present and future), and reference to an asset includes any legal or equitable interest in it;

**"borrowed money"** means all indebtedness for or in respect of money borrowed or raised (whether or not for cash consideration) by whatever means (including acceptances, deposits, discounting, factoring, finance leasing, hire purchase, sale and repurchase/leaseback and any form of "off-balance sheet" financing) or for the deferred purchase price of assets or services (other than for goods and services obtained on normal commercial terms in the ordinary course of trading) and includes:

- (a) all amounts raised by the issuance of redeemable preference shares; and
- (b) any amounts actually or contingently payable under or in respect of any swap, foreign exchange contract, hedging or other derivative or risk management transaction or product if such transaction or product is or was to be terminated or a settlement amount is or was to become payable at the relevant time;

a "consent" includes an approval, authorisation, exemption, filing, licence, clearing, order, permit, recording or registration;

one person being "controlled" by another means that that other person (whether directly or indirectly and by any means):

- (a) has the power to appoint or remove the majority of the members of the governing body of that person; or
- (b) otherwise controls or has the power to control the affairs and policies of that person; or
- (c) is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person,

and "control" shall be construed accordingly;

a "directive" includes a present or future order, regulation, request, notification or requirement of governmental agency (in each case whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive relates or is addressed);

a "disposal" of an asset includes any sale, assignment, exchange, transfer, loan, lease, concession, waiver, compromise, dealing with, release, parting with possession, the grant of an option in respect of it, capital distribution or the payment of money (including a dividend) and an agreement for any such disposal, but excludes the creation of a security interest (and references to "dispose" are to be construed accordingly);

the "dissolution" of a person includes the winding-up, liquidation, removal from the relevant register or bankruptcy of that person or an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, has carried on business or has assets;

"governmental agency" includes any state or government and any governmental, semi-governmental, judicial, statutory, monetary, accounting or regulatory entity, authority, body or agency or any person charged with the administration of any law or directive;

a "guarantee" includes any guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement of a negotiable instrument or legally enforceable undertaking or obligation to be responsible for any obligation (whether or not it involves the payment of money) or indebtedness or otherwise to be responsible for the solvency or financial condition of another person;

"Indebtedness" includes any obligation (whether present or future, actual or contingent, secured or unsecured, and whether incurred alone, jointly and severally, as principal, surety or otherwise) relating to the payment or repayment of money;

something having a "material adverse effect" on a person is a reference to it having, in our opinion, a material adverse effect on that person's commercial or financial prospects including a deterioration in that person's creditworthiness or on its ability to comply with its obligations under a Security Document, or, as the context may require, on our ability to recover any amount payable by you under any Security Document or to enforce performance of that person's obligations under the Security Documents and references to "material adverse change" shall be construed accordingly;

indebtedness which is payable "on demand" is due and payable on the date on which demand is made (or, if a later date is specified in the demand, on that date);

"partner" means, in the context of a limited partnership:

- (a) each general partner of a limited partnership from time to time, being each person whose name is entered as a general partner of the relevant limited partnership; and

- (b) each limited partner of a limited partnership from time to time, being each person whose name is entered as a limited partner of the relevant limited partnership in the register of limited partnerships maintained by the Registrar of Companies;
- "partnership agreement"** means:
- (a) (in the case of a limited partnership) the partnership agreement between each general partner and each limited partner relating to the relevant limited partnership; or
- (b) (in the case of any other type of partnership) the partnership agreement between each partner relating to the relevant partnership;
- a **"person"** includes an individual, firm, company, corporation, an association of persons (whether corporate or not), a trust, or governmental agency and any other entity (in each case, whether or not having a separate legal personality);
- a **"related company"** of any person means a related company of such person within the meaning of the Companies Act 1993;
- a **"security interest"** includes a mortgage, pledge, charge, encumbrance, lien, hypothecation, deferred purchase, title retention or other security arrangement of any kind, the practical effect of which is to secure a creditor and in the case of personal property includes any arrangement which falls within the definition of a "security interest" in section 17(1)(a) of the Personal Property Securities Act 1999;
- a **"solicitor"** means a practitioner as that term is defined in the Lawyers and Conveyancers Act 2006;
- a **"subsidiary"** of any person means:
- (a) a subsidiary of such person within the meaning of the Companies Act 1993; and
- (b) an 'in-substance' subsidiary or any other person treated as a subsidiary of another person under "generally accepted accounting practice" as defined in section 3 of the Financial Reporting Act 1993;
- "taxes"** includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature or whatever called (including interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed; and
- "trust deed"** means the trust deed constituting the relevant trust.
- 1.3 **Construction of Certain References:** In these General Terms unless the context otherwise requires:
- if more than one person is named as the **Borrower**, each reference to the Borrower, "you" or "your", is a reference to each Borrower and each of you separately and to all Borrowers and you all together;
- if more than one person is named as the **Guarantor**, each reference to the Guarantor is a reference to each Guarantor separately and to all Guarantors together;
- references to **clauses** and **schedules** are references to clauses of and schedules to these General Terms except where the content requires otherwise;
- derivatives** of any defined word or term shall have a corresponding meaning;
- a **gender** includes each other gender and a reference to "its" includes a reference to "his" or "her" as the context requires;
- the **headings** to clauses shall be ignored in construing these General Terms;
- the word **including** and other similar words do not imply any limitation;
- a reference to any **legislation** is a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders-in-council and other instruments from time to time issued or made under, that legislation and, unless otherwise stated, is a reference to New Zealand legislation;
- a **party** to any Document, if an individual, includes that person's executors and administrators and, in the case of a body corporate or any other person, its successors and permitted assignees and transferees, and in our case our transferees and assigns;
- the **singular** includes the plural and vice versa; and
- a reference to a **time of day** is to New Zealand time.
2. **AVAILABILITY**
- 2.1 **Availability of Accommodation:** We are not obliged to provide accommodation under a Facility if:
- (a) **Conditions Precedent:** we have not received and are not satisfied in all respects with the Documents and evidence we require prior to Drawdown or we are not satisfied that any condition we have specified has been fulfilled;
- (b) **Event of Default:** an Event of Default has occurred, or is likely to occur as a result of the accommodation being provided;
- (c) **Representations, Warranties and Statements:** any representation, warranty, information provided, or statement made in or in connection with a Facility or any Document is untrue, inaccurate, or misleading in any material respect;
- (d) **Material Adverse Change:** a material adverse change has occurred; or
- (e) **Illegality:** it is unlawful or contrary to any directive to make the accommodation available.
- 2.2 **Purpose:** You agree to use each Facility for the purpose (if any) set out in the relevant Facility Schedule and, until so used, you will hold the proceeds of the Facility on trust for us.
- 2.3 **Termination of Offer:** If you do not draw down the Facility by the "Termination of Offer Date" specified in the Facility Schedule, we may in our absolute discretion and without notice to you cancel all or part of the Facility either immediately or at any time afterwards and retain any fee charged in relation to it. For Progress Payment Facilities (as defined in clause 7.4 (a) below) we may in our absolute discretion, cancel all or part of the Facility either, immediately or at any time from the Termination of Offer Date and retain any fees charged, if you do not return to us your signed Facility Agreement by the Termination of Offer Date, and fully draw down any Progress Payment Facility within 10 months of the Termination of Offer Date
- 2.4 **Repayment:** Unless otherwise specified in any Document, all your indebtedness to us is payable on demand (which we may demand at any time at our absolute discretion).
3. **INTEREST RATES**
- 3.1 **Interest Rate and Alteration:** The Interest Rate shown in the Facility Schedule is the rate applicable at the date the Facility Agreement was prepared. Subject to this clause 3 and unless otherwise agreed in writing, the Interest Rate may be increased or reduced by us at any time and from time to time without prior notice (including at any time prior to a Facility being advanced). Notice of any change may be given by us, in such form, as we deem appropriate in our absolute discretion (including advertisement in regional or local newspapers).
- 3.2 **Alteration of Margin:** Subject to clause 3.3 we may alter the Margin at any time with notice, which shall be effective immediately from the date specified in such notice.
- 3.3 **Margin Term:** If a Margin Term applies to a Facility, we agree that we will not alter the Margin applicable to the Facility during that Margin Term. Unless otherwise agreed in writing, the Margin Term will commence from the earlier of the initial Drawdown date or the date of availability of the Facility Limit. For the avoidance of doubt, a Margin Term will end if an Interest Rate Switch is agreed to in accordance with clause 9.1.
- 3.4 **Fixed Rate Period:** Any Fixed Rate Period will, in respect of the initial Drawdown of the Facility, commence on the date of initial Drawdown and any subsequent Fixed Rate Period will commence on the date agreed by us. During any Fixed Rate Period the interest rate will be the applicable Fixed Interest Rate.
- 3.5 **Capped Rate:** Any Capped Rate Period will, in respect of the initial Drawdown of the Facility, commence on the date of initial Drawdown and any subsequent Capped Rate Period will commence on the date agreed by us. During any Capped Rate Period you will pay the Interest Rate provided that if the Interest Rate increases above the Capped Rate you shall pay the Capped Rate for so long as the Interest Rate remains above the Capped Rate.
- 3.6 **Bill Rate:** Unless otherwise agreed by us, if your Interest Rate is a Bill Rate then we will alter your Interest Rate quarterly on the 1<sup>st</sup> day of each of the months specified in your Facility Schedule ("**Specified Date**") provided that:
- (a) if a Drawdown date is not a Specified Date, the Interest Rate determined by us on the Drawdown date will apply to the Facility until the next Specified Date occurs; and
- (b) if a Specified Date occurs on a day which is not a Business Day, the Interest Rate will be determined by us on the last Business Day prior to the Specified Date, but will be effective from that Specified Date.
- We will notify you, in writing, of each change to the Interest Rate.
- 3.7 **Interest Periods:** No Interest Period shall extend beyond the Term.
4. **PAYMENTS**
- 4.1 **Currency:** Unless otherwise specified in any Document, the New Zealand Dollar is the currency of account and payment for each amount at any time due under any Document.
- 4.2 **Mode of Payments:** Each payment due to us under any Document is to be made at the time specified in the relevant Document or, if no time is specified, during normal banking hours, in each such case on the due date, in immediately available freely transferable cleared funds and to the bank account which we specify from time to time. Amounts due and payable by you will be debited from the Deduction Account. If you do not nominate an account, we may, at any time, debit from any of your accounts with us any amounts due and payable.
- 4.3 **Business Days:** Subject to the provisions of each Facility Agreement, if any payment is due to be made under any Document on a day which is not a Business Day, that payment shall be made on the next succeeding Business Day and any interest will be adjusted accordingly.



- 4.4 **Payments to be Free and Clear:** Each payment under any Document shall be unconditional and free and clear of any restriction, and shall be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim, charges or otherwise) unless such deduction or withholding is required by law.
- 4.5 **Reinstatement:** If any payment to us under any Document is avoided by law, your obligation to have made such payment will be deemed not to have been affected or discharged and you shall on demand indemnify us against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by us as a result of us being required for any reason (including any dissolution law) to refund all or part of any amount received or recovered in respect of such payment and in any event pay to us on demand the amount so refunded. In any such case we each will be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights we respectively would have had, if that payment had not been made.
- 4.6 **Payments of Principal and Interest:** Unless otherwise agreed in writing (including without limitation, under a Facility Agreement), the Facility is repayable on demand by us (which demand may be made by us at any time at our absolute discretion). Until such demand is made, you agree to pay the Instalments and any other amounts owing as detailed in the Facility Schedule or as otherwise agreed by us. The Facility also becomes immediately due and payable if an Adverse Credit Event happens or an Event of Default occurs. Because the Facility is repayable on demand, the number of payments to be made may differ from those detailed in the Facility Agreement.
- 4.7 **Amounts of Payments:** The amount of each payment or instalment (as specified in the Facility Schedule) has been calculated on the basis of a period equivalent to the Term and on the basis of the Interest Rate as at the date the Facility Agreement was prepared (and will change whenever the Interest Rate is changed). Unless repayment of the Facility Amount has been demanded as set out above before the last day of the specified Term or unless otherwise agreed in writing, all amounts outstanding, including any Facility Amount drawn down and interest shall be paid on the last day of that Term.
- 4.8 **Calculation of Interest:** Interest will be calculated at the Interest Rate from the date of advance of the Facility and will accrue on a daily basis on the balance of your Facility outstanding from time to time. Interest due and payable will be charged to your Facility Account or any Deduction Account on the interest payment dates specified in the Facility Agreement.
- 4.9 **Method of Calculating Interest:** We may alter the method of calculating Interest at any time and from time to time without prior notice to you. Unless otherwise agreed in writing, all interest will be calculated on the basis of the number of days elapsed and a 365 day year. Except for a manifest error, a certificate by us of an amount payable under a Facility Agreement or any Document is to be conclusive evidence for all purposes including for any proceedings.
- 4.10 **Method of Payment of Principal and Interest:** Subject to the terms of the Facility Agreement, we may alter the date, time, place, or method of payment of principal and/or interest at any time by notice in writing to you and such alteration shall be effective immediately from the date specified in such notice.
- 4.11 **Fees and Charges:** You must pay us the fees and charges included in the Facility Schedule, together with all other fees and charges for incidental services provided by us to you relating to the Facility or the Documents according to our usual practice from time to time.
- 4.12 **Authority to Charge:** Your Facility Account, the Deduction Account or any bank account you have with us, may be charged with any amount due and payable including but not limited to any Instalment, any interest payable under clause 5.1, and any costs for which we are entitled to be indemnified or reimbursed either under a Facility Agreement, any Document or any other agreed terms and conditions. Such amounts may be charged immediately to your Facility Account, Deduction Account or other account (and will be due and payable from that date) and interest will accrue on those amounts from that date in accordance with clause 5.1. This may occur even if the amount charged exceeds the Facility Amount or takes the balance of your Facility Account, Deduction Account or other account over any permitted limit.
- 4.13 **Deduction Account:** Unless we agree to substitute another account, you may not close your Deduction Account during the Term of your Facility.
5. **DEFAULT INTEREST**
- 5.1 **Default Interest Rate:** If at any time the Deduction Account is overdrawn in excess of any agreed limit, or, the balance owing under your Facility Account exceeds the Facility Limit or the Reducing Limit, and you fail to repay the overdraft or excess, then you shall pay interest (both before and after judgment) calculated on a daily basis on that overdrawn amount or excess at the Unarranged Overdraft Interest Rate until the overdraft or excess is paid in full. Any such overdrawn or excess amount shall be regarded as remaining due and payable under the applicable Facility Agreement until the amount has been paid or satisfied in full. This obligation to pay default interest shall arise without the need for notice or demand.
6. **SECURITY**
- 6.1 **Securities:** You will provide or procure the provision of the securities specified in the Facility Agreement prior to Initial Drawdown of the Facility, and any future securities required by us to secure your indebtedness to us. Any security governed by the Personal Properties Security Act 1999 will be registered on the Personal Property Security Register. All securities are to be first in priority unless otherwise agreed with us. All existing and future securities granted by you or any other person as security for your indebtedness or performance of your obligations to us also secure your indebtedness to us for all amounts owing under a Facility Agreement.
- 6.2 **Updated Valuation:** If we request, you agree at your expense to provide or procure the provision to us of a current registered valuation of any property given as security and other financial information to verify current income or servicing requirements.
- 6.3 **Insurance:** You must insure and keep insured all of the property which we require as security for any Facility for full insurable value in accordance with our insurance requirements as advised to you from time to time including that our interest as mortgagee be noted on each policy.
7. **DRAWDOWN**
- 7.1 **Conditions Precedent:** A Facility may not be drawn down until we have received and found the following satisfactory:
- (a) the Document(s) or a completed solicitor's certificate from your solicitor and/or our solicitor (as applicable) in relation to the Document(s);
  - (b) details of your insurance in accordance with our requirements;
  - (c) payment of any fees or other amounts payable in relation to that Facility;
  - (d) any other Conditions Precedent recorded in the Facility Agreement; and
  - (e) our Financial Markets and International Master Agreement signed by you (if applicable).
- 7.2 **Drawdown:**
- (a) **Term Loan:** If you have a Term Loan and your Facility Agreement provides for one drawing then, subject to satisfaction of the applicable conditions precedent and any other requirements that we may specify, the Facility will be drawn down on request by you or your solicitor in one amount.
  - (b) **Revolving Credit Facility:** If you have a Revolving Credit Facility then, subject to satisfaction of the applicable conditions precedent and any other requirements that we may specify, the undrawn portion from time to time of the Facility Amount may be drawn down by debiting your Facility Account. Any amount repaid may be redrawn by you up to your Facility Amount or Reducing Limit, as applicable, provided all funds are cleared available funds. Debits to your Facility Account by us for interest, fees and bank charges will be deemed to be drawings under the Facility.
- 7.3 **Drawing Notice:** If the Facility Agreement provides for drawing by Drawing Notice you may request a drawing by giving us a Drawing Notice in the form attached to your Facility Schedule.
- 7.4 **Progress Payments:**
- (a) **Progress Payment Generally:** If the Facility Agreement provides for "Progress Payments", then subject to the applicable conditions precedent and any other requirements that we may specify being satisfied:
    - (i) **Term Loan:** if you have a Term Loan, you or your solicitor may request to draw down the Facility by no more than four progress payments (unless otherwise agreed by us) upon giving us at least five Business Days notice. This notice is irrevocable; and;
    - (ii) **Revolving Credit Facility:** if you have a Revolving Credit Facility, the Facility Amount will be made available in your Facility Account on request by you or your solicitor by no more than four Progress Payments (unless otherwise agreed with us).
  - (b) **Progress Payments Costs to Complete:** if the Facility Agreement provides for "Progress Payments Costs to Complete", then notwithstanding clause 7.4(a) above, the amount of any drawing will be determined by us in our absolute discretion taking into account the value of the land on which the building(s) are being constructed and the cost to complete such building(s) as certified to us by a registered valuer or such other person as we may agree. The undrawn principal amount of the Facility following such drawing (other than the final drawing) must be equal to or greater than the amount it will cost to complete the building(s) in accordance with the plans and specifications for the construction. Prior to the final Drawdown we require confirmation that a Code Compliance Certificate has issued pursuant to the Building Act 2004.
- 7.5 **Authority to Disburse:**
- (a) **General:** Any Drawdown of a Facility (including any progress payment) will be applied by us, first, in payment of any fees

- payable under the Facility Agreement and, secondly, in repayment of any outstanding indebtedness specified under the heading "Conditions Precedent/Subsequent" in the relevant Facility Schedule.
- (b) **Term Loan:** If you have a Term Loan and we have instructed your solicitor, you authorise and direct us to pay the balance of the drawing to your solicitor. If a solicitor has not been instructed, the balance of the drawing will be paid to your Deduction Account.
- (c) **Revolving Credit Facility:** If you have a Revolving Credit Facility and we have instructed your solicitor, you authorise and direct us to make the first drawdown by debiting the Facility Account and issuing funds in favour of your solicitor. If a solicitor has not been instructed, the Facility Amount will be made available in your Facility Account.
- 7.6 **Conditions Subsequent:** You undertake to comply with any conditions subsequent recorded in your Facility Agreement.
8. **REDRAW. (ONLY AVAILABLE IF YOU HAVE A FLEXIFARM OR ORBIT FASTTRACK VARIABLE INTEREST RATE FACILITY)**
- 8.1 By paying each Instalment (which may change as Interest Rates change), you will repay the Facility Amount (together with interest) over the Term.
- 8.2 If you have a Facility and you make a payment to your Facility Account which is additional to your required Instalment this will further reduce the amount owing under the Facility. This additional payment does not reduce the required Instalments but, provided that you are not in default, it does entitle you if your Facility is a Revolving Credit Facility to redraw on your Facility Account (to the extent set out in clause 8.3)
- 8.3 If you have a Revolving Credit Facility and on any date your Facility Account balance (excluding uncleared funds) is less than the amount which would be owing at that time if all required Instalments from the commencement date of the Facility have been paid on the due date, you may redraw the difference. Your monthly Facility Account statement will show the "funds available for redraw" as at the last day of the statement period. Payments made to and from your Facility Account after the last day of the monthly statement will change the redraw amount available from time to time.
- 8.4 Notwithstanding clause 8.3, the ability to redraw funds under your Facility is not available to you during any Fixed Rate Period of the Facility.
- 8.5 **Amounts Charged are Deemed Advances:** Any amounts charged to your Facility Account in accordance with the terms of a Facility Agreement or any Document, including but not limited to any redraws on your Facility Account made in accordance with the redraw provisions in clause 8.3 are deemed to be advanced or paid by and owing to us and secured by each Security Document.
- 8A. **COMMITTED CASH ADVANCE FACILITIES**
- 8A.1 Notwithstanding any other provision of these General Terms, if your Facility is a committed cash advance facility, you will repay each drawing under that Facility by 11.00am on the earlier of:
- (a) the last day of the Interest Period applicable to such drawing; and
- (b) the last day of the Term of that Facility.
- If we make a drawing available to you on a day which you are required to repay an earlier drawing, we may apply the proceeds of the drawing towards repayment of the earlier drawing.
- 8A.2 **Rollover Notice:** Subject to clause 3.7, you may request a Rollover Drawing under a committed cash advance facility by giving us a Rollover Notice by no later than 11.00am on the last day of the Interest Period applicable to such maturing drawing.
- 8A.3 We will only be obliged to comply with a Rollover Notice under clause 8A.2 if on the date of such Rollover Drawing;
- (a) no Event of Default is continuing or would result from a proposed Rollover Drawing; and
- (b) the Repeating Representations to be made by you are true in all material respects.
- 8A.4 If you do not, provide a Rollover Notice in respect of such drawing in accordance with clause 8A.2, the Bank agrees that, unless an Event of Default is continuing, it will automatically make a further drawing under that committed cash advance facility of an amount sufficient to repay the maturing drawing and will apply the proceeds of such new drawing towards such repayment. The Interest Period for such new drawing shall be either (i) the same period as the immediately preceding Interest Period or (ii) 30, 60, 90 or 180 days determined at the Bank's discretion (or such other period as may be required to ensure the Interest Period does not extend beyond the Term of the committed cash advance facility).
9. **INTEREST RATE SWITCH AND INTEREST ONLY PERIODS**
- 9.1 **Interest Rate Switch:** You may at any time and from time to time in relation to a Facility request, and we may in our discretion (but shall not be under any obligation to) agree to, an Interest Rate Switch for such Interest Periods as we may agree. If the applicable Facility is not repaid in full on the last day of the final Interest Period to which the Interest Rate Switch applies, the Interest Rate applicable to that Facility will automatically revert to our standard variable interest rate as at that date unless we otherwise agree that a different Interest Rate will apply.
- 9.2 **Interest Only Period:** You may at any time and from time to time in relation to a Facility request and we may, in our discretion (but shall not be under any obligation to) agree, to suspend the principal Instalments payable in respect of that Facility for such Interest Periods as we may agree (the "Interest Only Period"). Unless otherwise agreed by us, at the completion of the Interest Only Period, the amount of the remaining principal Instalments payable in respect of the Facility will be increased as necessary to ensure repayment of that Facility in full by the last day of the Term.
- 9.3 If your request under 9.1 or 9.2 above is approved by us, we will give you and all Guarantors written confirmation that the Interest Rate Switch or Interest Only Period, as the case may be, has been effected.
- 9.4 You acknowledge and agree that:
- (a) if more than one person is named as the Borrower, a request for an Interest Rate Switch or Interest Only Period may be made by any one of you and we may act upon that request which will bind all of you, subject to clause 11.1(d);
- (b) a fee may be payable to effect an Interest Rate Switch or Interest Only Period, which will be charged to your Deduction Account or Facility Account or by agreement with us, may be added to your Facility Amount;
- (c) if any of you request an Interest Rate Switch to a Fixed Interest Rate, the provisions of clause 10 (the "ERA clause") will apply to your Facility Agreement. This means that if you repay the Facility Amount early in full or in part during that Fixed Rate Period, you agree to pay to us the ERA (as defined in clause 10.1(d)) calculated in accordance with the ERA clause; and
- (d) if any of you request an Interest Rate Switch or an Interest Only Period to take effect during a Fixed Rate Period, you will also be liable to pay the ERA; and
- (e) the terms of the Facility Agreement will continue to apply in all other respects.
10. **EARLY REPAYMENT ADJUSTMENT**
- 10.1 **Early Repayments:** Subject to the other terms of this clause 10, in addition to your Instalments, you may prepay the Facility in full or part at any time provided that:
- (a) any amount repaid will be applied firstly in payment of outstanding interest and other amounts owing to us and secondly in payment of principal;
- (b) a part payment during any Fixed Rate Period must be a minimum of \$10,000.00;
- (c) an amount prepaid during any Fixed Rate Period will not be available for re-borrowing;
- (d) if you prepay the Facility in part or in full during any Fixed Rate Period, then you may be required to pay an early repayment adjustment fee ("the ERA") to compensate us for any loss resulting from the prepayment. We may have suffered a loss if our current interest rate for a similar loan for a fixed interest rate period closest to your unexpired Fixed Rate Period is lower than the Fixed Interest Rate applying to your Facility. You may also have to pay our administration costs relating to the prepayment;
- (e) the amount you may have to pay to compensate us for the loss resulting from prepayment of the Facility in full is calculated using the formula prescribed in the Credit Contracts and Consumer Finance Regulations 2004. You may request a copy of this formula from us;
- (f) the ERA will be charged to the Deduction Account or Facility Account, as applicable; and
- (g) if the Facility is prepaid during a Fixed Rate Period as a result of us exercising our rights as mortgagee, we may charge an ERA as if prepayment was made by you.
11. **TYPE OF BORROWER**
- 11.1 **Two or More Borrowers:** If more than one person is named as the Borrower, then:
- (a) each of you is jointly and severally liable for all obligations under a Facility Agreement and the Documents including without limitation for the amount of any redraw;
- (b) in the event of a dispute arising between any of you and/or any Guarantors we may, at our own discretion, refuse to allow the Facility Account or Deduction Account to be operated until agreement has been reached between the disputing parties and notified to us by all of you;

- (c) we may, in our discretion, release any one or more of you from your obligations under a Facility Agreement provided that:
- no release shall be of any effect unless it is in writing and signed by us;
  - the rest of you shall not be discharged, nor shall your obligations be affected by such release; and
  - we shall not be under any obligation to any of you in respect of such release even though your rights in subrogation, contribution or otherwise may be prejudiced as a result;
- (d) subject to sub-clause (e) below, until we receive written notice from any one of you to the contrary, we may act on instructions received from only one of you as if that instruction had been given by all of you; and
- (e) we may only act on instructions received from one of you for the purposes of clauses 9.1 and 9.2 if you have previously confirmed that we may do so in writing.
- 11.2 Trustee:** In relation to any Document to which you are a party if you are described as a trustee of a trust:
- Warranties and Undertakings:** You warrant and undertake to us that the entering into the Documents is authorised by the trust deed and/or the Trustee Act 1956. The warranties and undertakings which have been given by the trustees in any trustee certificate will also continue to apply.
  - Enforcement:** In enforcing the Documents, we:
    - Recourse to Trust Assets:** may have full recourse to all of the assets of the trust and will be subrogated to each trustee's right to be indemnified from those assets or by any other person (including any beneficiary of the trust); and
    - Personal Assets:** subject to clause 11.2(c), may have recourse to the personal assets of any trustee.
  - Limited Liability Trustee:** If we have agreed in writing that a trustee is a "Limited Liability Trustee" in respect of the trust, then the personal liability of that trustee is limited to the assets of that trust. However, this limitation of personal liability will not apply, if the Limited Liability Trustee:
    - has acted dishonestly or is in wilful breach of trust; or
    - loses his or her right to be indemnified out of the assets of the trust for any reason,
 and in such circumstances the Limited Liability Trustee will have full personal liability under and in respect of the Documents.
  - Events of Default:** It shall be an Event of Default if any of the following occur without our prior written consent:
    - you cease to be a trustee of the trust;
    - a resolution is passed by the trustee(s) or beneficiary(s) of the trust or any other action is taken to wind up dissolve or terminate the trust; or
    - the trust deed is amended, varied or revoked.
  - Trustee Retirement:** Each trustee confirms and undertakes that the retirement of a trustee shall be effected in terms of section 45 of the Trustee Act 1956 and that it will notify us in writing that a trustee intends to retire in accordance with those provisions. Each trustee remains liable under and in respect of a Document after ceasing to be a trustee until released in writing by us. We will release a trustee from its liabilities under a Document (in its capacity as trustee and not, if applicable, in its personal capacity) when we are satisfied that all things required to vest the secured property in the continuing or new trustee(s) have been executed and done.
- 11.3 Partnership:** In relation to any Document to which you are a party if you are described as a partner of a partnership:
- Warranties and Undertakings:** You warrant and undertake to us that the entering into of the Documents is authorised by the relevant applicable law and partnership agreement. You represent and warrant to us that:
    - the partnership is properly constituted and validly existing under the applicable law and the relevant partnership agreement and you are all of the partners of the partnership;
    - the partnership has not been terminated or dissolved and there is no intention to do so, no termination event has occurred in relation to the partnership and no event for the vesting or final distribution of the assets of the partnership has occurred; and
    - all the assets of the partnership are legally owned by you as the partners of the partnership,
 and you further undertake to us that you will:
    - ensure that no other person is appointed a partner of the partnership other than a person who:
      - assumes all of the obligations and liabilities of an existing partner under the Documents on terms reasonably acceptable to us; and
      - is otherwise a person reasonably acceptable to us;
    - not amend or revoke or permit any amendment or revocation of the partnership agreement; or
    - not permit all or any part of the capital of the partnership to be distributed to or on behalf of the partners of the partnership.
  - Acknowledgement:** Each partner acknowledges that:
    - distinct from your joint liability as a partner, you have separate personal liability for all the obligations of the partnership so that we may have recourse to your personal assets on the same basis as any other personal creditor; and
    - you will notify us immediately upon the appointment of each new partner and the retirement or death of any partner.
  - Events of Default:** It shall be an Event of Default if any of the following occur without our prior written consent:
    - you cease to be a partner of the partnership;
    - a resolution is passed by the partners or any other action is taken to wind up, dissolve or terminate the partnership; or
    - the partnership agreement is amended, varied or revoked.
- 11.4 Limited Partnership:** In relation to any Document to which you are a party if you are described (in a Facility Agreement or elsewhere) as a limited partnership:
- Warranties and undertakings:** You warrant and undertake to us that the entering into of the Documents is authorised by the relevant partnership agreement and the Limited Partnerships Act 2008. The warranties and undertakings which have been given by you in any limited partnership certificate will also continue to apply. In addition, you represent and warrant to us that:
    - the limited partnership is properly (and solely) constituted and validly existing under the Limited Partnerships Act 2008 and its partnership agreement, and that it is a limited partnership registered under the Limited Partnerships Act 2008; and
    - the limited partnership has not been terminated or dissolved and there is no intention to do so, no terminating event has occurred in relation to the limited partnership under the Limited Partnership Act 2008 or partnership agreement and no event for the vesting or final distribution of the assets of the limited partnership has occurred;
 and you further undertake to us that you will:
    - ensure that no other person is appointed a general partner of the limited partnership other than a person who:
      - assumes all of the obligations and liabilities of an existing general partner under the Documents on terms reasonably acceptable to us; and
      - is otherwise a person reasonably acceptable to us;
    - not amend or revoke or permit any amendment or revocation of the partnership agreement; or
    - not make any distribution nor permit any distribution to be made unless the limited partnership is solvent and will remain solvent after the distribution is made.
  - Acknowledgement:** Each general partner acknowledges that:
    - as general partner it is jointly and severally liable with the limited partnership and the other general partners for the unpaid debts and liabilities of the Borrower so that we may have recourse to the general partner's personal assets on the same basis as any other personal creditor; and
    - it will notify us immediately upon the appointment of each new general partner and the removal, retirement or death of any general partner; and
  - Events of Default:** It shall be an Event of Default if any of the following occurs without our prior written consent:
    - any general partner ceases to be a general partner of the limited partnership;
    - a resolution is passed by the partners or any other action is taken to wind up, dissolve or terminate the limited partnership
    - the partnership agreement is amended, varied or revoked; or
    - a terminating event occurs under the Limited Partnerships Act 2008 or the limited partnership agreement.
- 12. REPRESENTATIONS AND WARRANTIES**
- 12.1 Representations and Warranties:** In addition to any representations and warranties specified in any Document, you represent and warrant to us that:
- Status:** If you are a company, you are duly incorporated and validly existing under the laws of your jurisdiction of incorporation;

- (b) **Power:** You have power and authority to own assets and to carry on business as is now being conducted or contemplated and to enter into, exercise your rights and perform and comply with your obligations under any Document to which you are a party;
- (c) **Binding Obligations:** Your obligations under any Document to which you are a party are legal, valid, binding and enforceable against you (subject to any law affecting creditors' rights generally);
- (d) **No Contravention:** Your entry into or exercise of your rights and performance of and compliance with your obligations under any Document to which you are a party does not and will not contravene any law to which you are subject, any of your constitutive documents (including, without limitation, any trust deed or partnership agreement (if applicable)) or any agreement to which you or any Group Member is a party or which is binding on any assets;
- (e) **Authorisations:** You have taken all necessary corporate, trustee and other relevant action (including the obtaining of consents and other requirements) required to be taken to authorise the entry into and performance of, and compliance with, your obligations under the Documents to which you are a party and such authorisations and consents are in full force and effect;
- (f) **No Event of Default:** Other than as disclosed to us and accepted in writing, no Event of Default has occurred and is continuing;
- (g) **Breach of Obligations:** You are not in breach of or default under any agreement which is binding on you or your assets which might have a material adverse effect on you;
- (h) **Information:** All information provided by you to us in connection with any Document was true, accurate and complete in all material respects and not misleading when provided to us, and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate, incomplete or misleading;
- (i) **No Security Interest:** No security interest exists over or affect, nor is there any agreement to give or permit to exist any security interest over or affecting, any of your assets, except a Permitted Security Interest;
- (j) **No Litigation:** Other than as disclosed to and accepted by us in writing, no litigation, arbitration, claim or administrative proceeding of or before any court, arbitrator, tribunal or governmental agency is current, pending or (to the best of your knowledge and belief) has been started or threatened against you or any Group Member;
- (k) **No Indebtedness:** Other than indebtedness disclosed to and approved by us in writing, you and each Group Member has, and will have on each Drawdown Date, no indebtedness for borrowed money to any person other than us;
- (l) **Accounts:** Your latest financial statements (and, if you have subsidiaries, your latest consolidated financial statements) as delivered to us:
- (i) were prepared in accordance with and have been prepared, reported on and approved in accordance with all applicable laws;
  - (ii) give a true and fair view of your financial position and performance, and in the case of the consolidated financial statements, the consolidated financial position and performance of you and your subsidiaries as at the date and for the period to which they relate; and
  - (iii) include a true and complete copy of any auditors' report (if such report is prepared),
- and there has been no material adverse change in your financial condition or that of any Group Member since that date;
- (m) **Solvency:** You and each Group Member are able to pay your debts as they become due in the normal course of business;
- (n) **Bankruptcy:** If an individual, you are not and have never been adjudicated bankrupt;
- (o) **No Dissolution:** You have not:
- (i) taken any corporate action nor have any other steps been taken, orders made or legal proceedings started or (to the best of your knowledge and belief) threatened against you or any Group Member for your dissolution or reorganisation or for the appointment of a receiver, statutory manager, inspector, trustee, administrator or similar officer of it or your assets; or
  - (ii) been declared at risk pursuant to the Corporations (Investigation and Management) Act 1989; or
  - (iii) made nor intend to make any assignment, arrangement, or composition for the benefit of your creditors generally nor has any moratorium been agreed or declared in respect of or affecting all or any material part of your indebtedness;
- (p) **Execution will not Create Security:** The execution and delivery of any Security Document to which you are a party and the exercise of your rights and the performance of your obligations under them do not and will not result in the existence of nor oblige you to create any security interest over all or any of your assets save in favour of us; and
- (q) **Security Documents:** Each Security Document is (or will be on the initial Drawdown Date under a Facility) effective security, with the priority contemplated by such Security Document and you are not aware of any act, matter, thing or circumstance by reason of which any party thereto may not be able to comply with your obligations under that Security Document.
- 12.2 **Repetition:** The Repeating Representations are deemed to be made by you (by reference to the facts and circumstances then existing) on the date of each Drawdown and the first day of each Interest Period so long as any Facility is made available to you or any of you are indebted to us.
- 12.3 **Reliance:** You acknowledge that we have been induced to enter into each Security Document and to make each Facility available in reliance on the Representations and Warranties.
13. **UNDERTAKINGS**
- 13.1 **General Undertakings:** In addition to any undertakings specified in any Document, you undertake to us that you will:
- (a) **Comply with Laws:** Fully and promptly comply with all laws and directives applicable, and any relevant trust deed or partnership agreement (if applicable), the non-compliance with which might have a material adverse effect on you;
  - (b) **Security Documents:** Fully and promptly perform and comply with your obligations under the Security Documents to which you are a party and the transactions contemplated by them;
  - (c) **Consents:** Obtain, maintain in full force and effect and comply with all consents which are required in relation to your continuing business and to enable you to lawfully enter into, exercise your rights and perform and comply with your obligations under the Document to which you are a party and to ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms;
  - (d) **Environmental:**
    - (i) institute and at all times maintain and comply with proper procedures which are adequate to monitor compliance with your Environmental Obligations, and environmental directives and consents;
    - (ii) obtain, maintain in full force and effect and comply, with all consents and other material requirements in relation to your Environmental Obligations and any environmental directives, which may be necessary or desirable in respect of the land, buildings, water or other property or assets owned, occupied or otherwise used by you or any Group Member;
    - (iii) notify us of any actual or potential environmental liability, encumbrance, judgment, claim, order, obligation, penalty, fine, loss, cost or expense of any nature which might have a material adverse effect on you and provide us with full details of all action taken or proposed to be taken in relation to such liability; and
    - (iv) provide us on request, at your sole cost, with environmental audits and reports in respect of your assets, in a form and from an independent consultant acceptable to us;
  - (e) **Notify Events of Default:** Notify us of the occurrence of any Event of Default or any event or circumstance which may have a material adverse effect on you, immediately upon becoming aware of it (providing us with full details of it and any action taken or proposed to be taken in relation to it);
  - (f) **Proceedings:** Promptly deliver to us written details of any current, pending or threatened litigation, arbitration, dispute or administrative or other proceeding or claim which, had it been current, pending or threatened as of the date of these General Terms, would have rendered the warranty in clause 12(j) incorrect;
  - (g) **Carry on Business:** Carry on and conduct your business in an efficient, prudent and business-like manner and according to the best current commercial practice appropriate to that business;
  - (h) **Insurance:** Ensure that you and each Group Member:
    - (i) insures and keeps insured all your assets of an insurable nature which are customarily insured against loss or damage by fire, earthquake and war damage, and other risks normally insured against by persons carrying on the same class of business as that carried on by you (and any other risks which we may from time to time reasonably require) for their full insurable value; and
    - (ii) takes out and maintains such other insurance against liability on account of injury or damage suffered by the public and against such other risks that are considered prudent and in accordance with best commercial practice to insure against,

in each case with reputable insurers approved by us in our name and your name for each other's respective rights and interests (and, if requested by us, ensure that we are named as co-insured for your interest on all policies for such insurances) with all payments on account of loss or otherwise to be made to, our order;

(iii) applies money recoverable under any insurance claim at our direction (subject however to the rights of the holder of any Permitted Security Interest) either in or towards rebuilding, repairing, restoring or replacing the relevant asset or meeting the liability insured against or, after the occurrence of an Event of Default, in reduction of the Outstanding Money;

(iv) promptly pays all premiums and does all other things necessary to maintain the insurances required by this clause 13; and

(v) at such times as we may reasonably require, provides a certificate from an insurer or broker approved by us confirming that you are complying with your insurance obligations under this clause 13 (and, if not, stating any exceptions) and produces all cover notes, insurance policies and the renewal receipts for such insurances and any other details relating to that insurance as we may request;

(i) **Taxes:** Duly and promptly comply with all tax laws in all jurisdictions in which you are subject to taxation and pay all taxes due and payable by you before the date on which penalties become payable;

(i) **Inspection:** Upon reasonable notice from us, permit us and persons appointed by us to inspect your premises, books, documents and records;

(k) **Change of Balance Date:** Notify us of any change of, or intention to change, your annual balance date for accounting purposes;

(l) **Ranking of Obligations:** Ensure that your payment obligations under any Security Document rank and will rank at least pari passu in point of priority with all your other indebtedness (actual and contingent) except for indebtedness preferred solely by operation of law and except for indebtedness permitted to be secured by a Permitted Security Interest;

(m) **Change in Control:** If a company, not allow a change in control or proposed change in control without first obtaining our prior written consent;

(n) **Risk Management:** Establish, implement and maintain interest rate and other financial risk management policies approved by us and enter into and maintain such derivative products as agreed with us; and

(o) **Corporate Status:** If a company, do all things necessary to maintain your corporate existence and not change your place of incorporation or place of domicile for taxation purposes.

13.2 **Negative Undertakings:** In addition to any undertakings specified in any Document, you undertake to us that you will not, and will ensure that each other Group Member will not, without our prior written consent:

(a) **Negative Pledge:** Create or permit to exist any security interest over the whole or any part of your assets other than a Permitted Security Interest;

(b) **Provide Accommodation:** Lend or otherwise provide any other financial accommodation to, give any guarantee or indemnity in respect of, or otherwise assume, the indebtedness or the obligations of any person including, for the avoidance of doubt, any joint venture between a Group Member and any other person;

(c) **Change of Business:** Make a material change in the nature or scope of your business as it is presently conducted;

(d) **Disposals:** Either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary and whether one at a time or over a period of time, dispose of all or any material part of your assets other than a Permitted Disposal;

(e) **Indebtedness:** Incur any indebtedness for borrowed money other than indebtedness under or permitted by any Document;

(f) **Amalgamation:** If a company, amalgamate or make any proposal to amalgamate with any company;

(g) **Distribution:** If a company, subject to the provisions of each Facility Agreement (from time to time), make any Distribution;

(h) **Major Transactions:** If a company, enter into a major transaction (as defined in section 129 of the Companies Act 1993);

(i) **Subsidiaries:** If a company:

(i) create or acquire any subsidiaries; or

(ii) dispose of any shares in any subsidiary;

(j) **Shares:** If a company:

(i) acquire, redeem or issue any of your own shares;

(ii) give financial assistance for the purpose of, or in connection with, the purchase of shares issued or to be issued by you or by your holding company, whether directly or indirectly; or

(iii) cancel, limit or reduce the liability of a shareholder to you in relation to a share held by that shareholder;

(k) **Call Up Capital:** If a company, call up or allow to be called up or paid or receive in advance of calls any uncalled or unpaid capital nor apply the same when paid to any purpose other than in or towards payment of the Outstanding Money;

(l) **Modify Ability to Call Up:** If a company, pass or allow to be passed any resolution declaring or providing that any portion of your capital for the time being not already called up will not be called up or will only be called up on the occurrence of a particular event or in any other way limiting, qualifying or modifying your ability to call up or obtain payment of any capital; or

(m) **Related Party Securities:** Enter into any transaction with any Group Member or any subsidiary of any Group Member except for value in the ordinary course of business on an arm's length basis and on normal commercial terms.

13.3. **Reporting and Financial undertakings:** You undertake to us that you:

(a) **Accounts:** Will as soon as available and, in any event, within 90 days after the end of each financial year and, if accounts are prepared for each half year, for each half-year, deliver to us your financial statements and, if you have subsidiaries, your consolidated financial statements as at the end of that financial year or half-year (audited if we require); and

(b) **Other Information:** Will promptly deliver to us within seven (7) days of request, any other information to verify current income or servicing requirements, or other information that relates to the business affairs, financial condition or operations of you or any Group Member which we may, from time to time, request.

#### 14. EVENTS OF DEFAULT

14.1 If at any time and for any reason, whether or not within the control of a party:

(a) **Non-Payment:** You fail to pay on its due date any amount payable under a Facility or a Document; or

(b) **Breach of Undertaking:** You fail to comply with or are in breach of any Undertaking, or you do not perform or comply with any of your obligations under a Facility or any Document; or

(c) **Representations and Warranties Incorrect:** Any Representation and Warranty by you made in, or in connection with, a Facility or any Document is not true, accurate and complied with when made or repeated; or

(d) **Insolvency:** An Insolvency Event occurs in relation to you or any of your subsidiaries; or

(e) **Enforcement:** Any legal process is levied or enforced against you or your assets, and is not discharged or stayed within five (5) days, or a receiver, trustee, official assignee, statutory manager, administrator or similar officer is appointed in respect of you or any of your assets; or

(f) **Indebtedness Default:** Any of your indebtedness exceeding \$25,000 is not paid when due or becomes due, or capable of being declared due or any security interest affecting any of your assets becomes enforceable; or

(g) **Material Adverse Change:** In our opinion, a material adverse change occurs in relation to you; or

(h) **Incapacity:** You, being an individual, die or become insane or become in any way legally incapacitated; or

(i) **Avoidance or Repudiation:** It is or becomes unlawful for you to perform any of your obligations under any Document to which you are a party or any Document becomes or is claimed to be invalid or unenforceable in whole or in part or is claimed to have effect otherwise than in accordance with its terms or is withdrawn or revoked by a Relevant Party; or

(j) **Dissolution:** An application is made, a resolution is passed or proposed in a notice of meeting, any corporate action is taken or any legal proceeding is issued (other than a vexatious or frivolous proceeding) for the dissolution or reorganisation, of you, except for the purpose of, and followed by, an amalgamation or solvent reconstruction on terms previously approved in writing by us; or

(k) **Minority Buy Out:** You, if a company, agree to purchase all or any of the shares of a shareholder following receipt by you of a notice by that shareholder pursuant to section 111(1) of the Companies Act 1993 or you arrange for some person to agree to purchase those shares on terms that subject you to any type of liability or obligation; or

(l) **Cross Default:** An event of default or termination event (however described) occurs under a Facility or any other Document; or

(m) **Change in Control:** You are a company, and without our prior written consent, there is any change in the control of you or any person controlling you; or

(n) **Notification:** You fail to notify us of the occurrence of any Event of Default or circumstances which may have a material adverse effect on your ability to fulfil your obligations under a Facility or any Document, immediately upon becoming aware of it; or



- (o) **Relevant Parties:** Any event specified in the preceding sub-clauses of this clause 14.1 occurs with respect to a Group Member or another Relevant Party (as if references in those sub-clauses to you were references to each Group Member or other Relevant Party); or

- (p) **Deemed Default:** An event occurs which is treated by these General Terms as an Event of Default,

then we may, at any time, by notice to you:

- (i) cancel each or any Facility; and/or
- (ii) declare any or all of the Outstanding Money to be due and payable either immediately or at such later date as we may specify whereupon that indebtedness will become so due and payable; and/or
- (iii) require you to pay to us either immediately or upon demand or at a later date as we may specify an amount equal to the aggregate face values of all bills outstanding under any bill Facility (or any lesser amount which we may specify in writing); and/or
- (iv) exercise all or any of our rights under any Security Document; and/or
- (v) appoint an Investigator or investigators of your affairs (an "Investigator") at your cost and for such period as we shall determine. Every Investigator shall be your agent and you shall be responsible for the Investigator's acts and defaults. Every Investigator shall have the power to investigate and enquire into your financial and business position and you agree to and will ensure that all persons having possession or control of your records or of any other information relating to your assets or business transactions and financial affairs fully cooperate with and provide the Investigator with proper access to such records and other information as they may require.

## 15. STATEMENT OF RIGHT TO CANCEL

- 15.1 **Right to Cancel:** If the Facility Agreement is a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003 ("Act") that Act gives you a right for a short time after the terms of this contract have been disclosed to you to cancel the contract.

- 15.2 **How to Cancel:** If you want to cancel this contract you must give written notice to us. You must also return to us any advance and any other property received by you under the contract.

- 15.3 **Time Limits for Cancellation:** If the disclosure documents are:

- (a) handed to you directly, you must give notice that you intend to cancel within 3 Business Days after you receive the documents; or
- (b) sent to you by electronic means (for example, email), you must give notice that you intend to cancel within 5 Business Days after the electronic communication is sent; or
- (c) mailed to you, you must give notice that you intend to cancel within 7 Business Days after the date of posting.

- 15.4 **What You May Have to Pay If You Cancel:** If you cancel the contract we may charge you:

- (a) the amount of any reasonable expenses we had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports); and
- (b) interest for the period from the day you received the advance until the day you repay the advance in full as provided for the Facility Agreement

This clause only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Act that you do not understand, if there is a dispute about your rights, or if you think that we are being unreasonable in any way, you should seek legal advice immediately.

## 16. CHANGE IN CIRCUMSTANCES

- 16.1 **Illegality:** If, at any time, we determine that it is or may become unlawful to provide all or part of a Facility or allow all or part of the Outstanding Money to remain outstanding, or to discount bills, or to receive interest or to comply with any of our obligations or exercise any of our rights under any Document then we will not be obliged to provide or to continue to provide that Facility and we may, at any time, by notice to you:

- (a) cancel each Facility; and/or
- (b) declare all or any part of the Outstanding Money (and if we direct the aggregate face values of all bills outstanding under any bill Facility) to be due and payable either immediately or at such later date as we may specify and you shall, on such date, repay such Outstanding Money.

- 16.2 **Increased Costs:** If, as a result of:

- (a) the introduction of, or a change in, a law or directive or a change in its interpretation, application or administration; or
- (b) compliance by us with a directive,

we determine that:

- (i) the cost to us of making, funding or maintaining a Facility is increased; or
- (ii) any amount payable to us or the effective return to us under a Facility is reduced; or
- (iii) there is a reduction in our effective rate of return on our overall capital which, in our view, is attributable to either of sub clauses (a) or (b) applying in relation to our obligations under a Facility or to any class of obligations of which they form part; or
- (iv) we make any payment or forgo any interest or other return on or calculated by reference to any sum received or receivable by us from you in an amount which we consider material,

then, upon demand from time to time by us, you will pay to us the amount certified by us to be necessary to compensate us for that increased cost, reduction, payment or forgone interest or other return (or that portion of it as in our opinion is attributable to the relevant Facility).

## 17. INDEMNITY

- 17.1 **General Indemnity:** You will on demand indemnify and hold us harmless against each loss (including loss of profit), expense and liability sustained or incurred by us as a result of:

- (a) the occurrence or continuation of an Event of Default, or a Relevant Party not complying with its obligations under a Facility or a Document;
- (b) an amount payable to us under a Facility or a Document not being paid when due;
- (c) any accommodation not being drawn on the intended date for drawing; or
- (d) any Outstanding Money being paid earlier than originally due (even if that prepayment is permitted by the Documents or is required by us),

by payment to us of the amount we certify is required to indemnify us for that loss, expense or other liability.

## 18. SET OFF

- 18.1 **Set-Off:** You irrevocably authorise us to apply (without prior notice or demand) any credit balance (whether or not due and payable) to which you are entitled on any account (in any currency) and at any of our offices, in or towards satisfaction of any indebtedness then due and payable by you to us but unpaid.

- 18.2 **Contingent Liabilities:** If, at any time after the occurrence of an Event of Default and while it is continuing, an amount that is contingently owing to us or an amount owing is not quantified, we may retain and withhold repayment of any such credit balance you have with us and the payment of interest or other moneys in relation thereto pending that amount becoming due and/or being quantified. We may set-off against such credit balance, the maximum liability which may at any time be or become owing to us by you and in each case without prior notice or demand.

- 18.3 **Bank's Rights:** For the foregoing purposes, we:

- (a) **Break Term Deposits:** Are authorised to break any term deposit;
- (b) **Purchase Currencies:** May use all or any part of any credit balance to buy such other currencies as we consider may be necessary or desirable to effect the application; and
- (c) **Without Prejudice:** Need not exercise our rights under this clause, which are without prejudice and in addition to any other rights we have under any Security Document and any right of set-off, combination of accounts, lien or other right to which we are at any time otherwise entitled (whether by law, contract or otherwise).

- 18.4 **No Security:** Our rights under this clause are contractual rights affecting the terms upon which any of your credit balances are held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

## 19. DISCLOSURE

- 19.1 **Disclosure:** You authorise us to disclose and discuss your financial statements and financial affairs and, if a company, those of any Group Member at any time with:

- (a) **Advisers:** Both our and your respective accountants, auditors, legal and financial advisers;
- (b) **Guarantors:** Any guarantor of your indebtedness or other obligations to us; and
- (c) **Related Entities:** Our parent, subsidiaries or related companies.

Nothing in this clause shall oblige us to provide any of your information to any person.

## 20. REVIEW OF A FACILITY

- 20.1 We may periodically review any Facility and have the right to cancel, reduce or amend any Facility in our absolute discretion. We will give you notice of any such decision as we consider appropriate.

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20.2 Without limitation, where we are not satisfied:

- (a) with the operation of the Facility; or
- (b) with the value of any property given as security; or
- (c) that your current income levels satisfy our Facility servicing requirements,

then we retain the right to amend the terms and conditions of any Facility Agreement including the right to require you to repay all or part of any outstanding principal, interest and fees.

## 21. FLEXIBILITY

21.1 **Flexibility:** At your request, we may consider, and in our absolute discretion agree, to any one or more of the following changes to the structure of your Facility:

- (a) the term of the Facility;
- (b) repayment structure;
- (c) frequency of Instalments; or
- (d) Instalment amounts

21.2 If you restructure your Facility in accordance with clause 21.1 a fee may apply which shall be disclosed at the time of your request.

21.3 Changes to the structure of your Facility may alter the Term of the Facility.

## 22. ADDITIONAL CONDITIONS THAT APPLY TO FINANCIAL MARKETS AND INTERNATIONAL FACILITIES

22.1 **Currency Indemnity:** If any amount is received by us in a currency ("first currency") other than the currency ("second currency") in which it is payable (whether as a result of obtaining or enforcing an order or judgment, the dissolution of any person or otherwise), the amount received shall only satisfy your obligation to us to the extent which we are able, in accordance with our usual practice, to purchase the second currency with the amount received in the first currency on the date of receipt (or, if it is not practicable to make that purchase on that date, on the first date upon which it is practicable to do so) and you indemnify us against:

- (a) any loss sustained by us as a result of the amount purchased by us in the second currency being less than the amount due; and
- (b) all costs and expenses incurred by us in purchasing the second currency,

and you shall pay to us, upon demand, in the currency stipulated by us, all amounts payable pursuant to such indemnity.

Any amount due under this clause is a separate debt and will not be affected by, or merged into, any order or judgment.

22.2 **Foreign Currency Fluctuations:** If at any time we determine that the aggregate of all amounts outstanding under each of your Facilities, and, for the purposes of this paragraph, where a Facility is denominated in foreign currency, the amount outstanding under such Facility shall be its equivalent in New Zealand Dollars as determined by us at our exchange rates prevailing at that time, exceeds the Facility Amount by more than 20%, you must:

- (a) repay on demand, one or more Facilities designated by us, by such amount as we conclusively certify to be the excess over the Facility Amount (or such lesser sum as we may require in our discretion); or
- (b) with our prior consent, provide additional security for your obligations under the Facility Agreement, such security to be of a type and value and in all other respects acceptable to us;
- (c) not without our consent make any drawing under or utilise any Facility (however denominated).

In such instances, we reserve the right in our sole discretion to convert any outstanding moneys denominated in foreign exchange to New Zealand Dollars.

22.3 **Ability to Convert to New Zealand Dollars:** If any amount owing under a Facility Agreement is at that time denominated in a currency other than New Zealand Dollars, we may give you notice that we require the sum to be converted into New Zealand Dollars. If the amount concerned is not paid by you when due we may immediately or at any time thereafter liquidate or redeploy any deposits or funds fixed or acquired in such other currency in order to repay that amount in New Zealand Dollars. If we give such a notice, the amount concerned shall be immediately due and payable in New Zealand Dollars in an amount certified by us to be the equivalent of that amount in New Zealand Dollars, together with any penalties, losses, costs or expenses incurred in the liquidation or redeployment of any deposits or funds previously fixed (converted to New Zealand Dollars in the same manner).

## 22.4 Acknowledgements:

(a) **Risk Acknowledgement:** You acknowledge that any borrowings in a foreign currency other than New Zealand Dollars and the basis for determining interest payable in respect of such borrowings under a Facility Agreement is dependent on economic and other factors prevailing in the country of the foreign currency and carries additional risks which would not apply to a Facility in New Zealand Dollars. You acknowledge that the decision to establish any such foreign currency borrowings and to accept the consequent associated risks (including currency fluctuations and interest determination risks) has been made solely by you without any influence, encouragement or advice from us (other than advice as to the availability of a Facility) and in reliance on your judgment and your professional advisors (other than us).

(b) **Risk Decision:** You warrant that you have fully considered the risks associated with any such foreign currency borrowings and are satisfied that such borrowings are suitable for you in the light of your circumstances. You are solely responsible for, and fully acknowledge consequent risks associated with risk management and decision making pertaining to such borrowings.

(c) **Risk Management:** You will be solely responsible for managing ongoing risks associated with any such foreign currency borrowings and decision made to limit, manage or minimise risks. You acknowledge that any information or financial service provided by us that is intended to assist you in managing the inherent additional risks does not and will not represent an attempt by us to act in any form of advisory or managerial capacity to you.

## 23. MISCELLANEOUS

23.1 **Certificate Conclusive:** You agree that a certificate from us setting out the amount which you owe under a Facility Agreement is proof that you owe the amount stated, unless you prove the contrary.

23.2 **Cumulative Rights:** Our rights under the Documents are cumulative, may be exercised as often as we consider appropriate and are in addition to any other contractual rights we may have against you and our rights provided by law.

23.3 **Assignment:** We may assign or transfer any of our rights or obligations under a Facility or any Document without your consent. Each assignee or transferee will have the same rights against you under a Facility or any Document (or the relevant portion of those rights if it is the assignee or transferee of part only) as if it were us. You may not assign or transfer any of your rights or obligations under a Facility or any Document without our prior written consent.

23.4 **Disclosure of Information:** We may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom we have or may contemplate having contractual relations in connection with a Facility or any Document, any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available.

23.5 **Amendments:** Except as otherwise agreed in these General Terms, no amendment to any Document will be effective unless it is in writing signed by all the parties to that Document.

23.6 **Time of the Essence:** Time is of the essence in respect of all dates and times for performance by you of your obligations under a Facility Agreement and each Document.

23.7 **Waivers:** No failure to exercise any right under a Document will operate as a waiver of that right. No waiver by us of our rights under a Facility Agreement or other Document will be effective unless it is in writing signed by us.

23.8 **Repayments:** Unless otherwise agreed with us any amount repaid under a Facility Agreement will not be available for re-borrowing.

23.9 **Notices:** In addition to any notice provision contained in any Document, written notice may be sent to you under a Facility Agreement at the address or facsimile number last known to us. In the case of a letter, notice will be deemed to be received by you on the third Business Day after posting. In the case of a facsimile, notice will be deemed to be received by you on the Business Day on which it was dispatched or, if dispatched after 5.00pm, on the next Business Day. By being so delivered notice will be deemed to have been served on you personally, without prejudice to any other lawful means of service.

23.10 **Expenses:** You agree to pay, on demand and on a full indemnity basis, all costs and expenses and administration fees (including all legal expenses on a solicitor and own client basis) associated with the preparation, early repayment, variation, enforcement or exercising of any rights we may have under a Facility Agreement or any Document.

23.11 **Survival of Covenants:** Your payment and indemnity obligations under these General Terms, including, without limitation, under clauses 4.5, 17.1, 22.1 and 23.10, shall be separate and independent obligations giving rise to independent causes of action and will survive the termination of any Facility and payment of all other indebtedness under any Document.

23.12 **Partial Invalidity:** The illegality, invalidity or unenforceability of a provision of a Facility Agreement or any Document under any law will not affect the legality, validity or enforceability of another provision.

- 23.13 **Counterparts:** Any Facility Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute any Facility Agreement by signing any such counterpart.
- 23.14 **Conflict:** If there is any conflict between any Facility Agreement and these General Terms, the terms of the Facility Agreement shall prevail. Furthermore, if there is any conflict between any Facility Agreement and a Facility Schedule, the terms of that Facility Schedule shall prevail over the Facility Agreement.
- 23.15 **Further Assurance:** You agree at your expense and at our request to complete, sign and effect all assignments, transfers and other instruments and do all acts and things which we from time to time reasonably require or may consider necessary to protect our interests in assets and property charged or encumbered, or intended to be charged or encumbered by a Security Document or pursuant to any other Document.
- 23.16 **Address for Notices:** ASB Bank Limited, Lending Operations, 360 Dominion Road, Mt Eden, Auckland.
- 23.17 **Governing Law:** This Agreement is governed by and to be construed in accordance with New Zealand law.
- 23.18 **Jurisdiction in New Zealand:** Each of the parties irrevocably and unconditionally agrees that the courts of New Zealand shall have jurisdiction to hear and determine each suit, action or proceeding ("proceedings"), and to settle disputes, which may arise out of or in connection with any Document and for those purposes irrevocably submits to the jurisdiction of those courts.
- 23.19 **Other Jurisdictions:** This submission to jurisdiction does not (and is not to be construed to) limit our rights to take proceedings against you in another court of competent jurisdiction nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in another jurisdiction, whether concurrently or not.
- 23.20 **Service in New Zealand:** You agree that any suit, action or proceedings in New Zealand is begun may be served on you by being delivered to you in the same manner as set out above for delivery of notices without prejudice to any other lawful means of service.
- 23.21 **Other Terms:** Additional terms for your Facility are contained in the Security Document(s) and you acknowledge acceptance of these.

### FEES FOR INCIDENTAL SERVICES RELATING TO YOUR FACILITY. EFFECTIVE FROM 1 May 2010

These Fees are only intended as a guide. If you require any amendments over the life of your loan, the corresponding fee will be applicable. Over the Term of your loan none of these fees may be applicable; however under legislation we must disclose these in case any do arise due to a change in circumstances.

Release or substitution of security, Transfer with new mortgage required, or Land title changes with new mortgage required.	\$200.00
Settlement statements, Change parties to loan agreement or owners to title, Registrations affecting land titles, or Priorities.	\$100.00*
Release of repaid mortgage.	\$50.00
Early repayment adjustment administration fee.	\$50.00
Local body rates demand notice;	\$50.00
plus additional charge if we have to make rates payment.	\$60.00
Loan default enforcement letter fee.	\$50.00
*Urgent requests for settlement statements or changes to loan arrangements will incur an additional fee of	\$25.00

These fees are current at the time of print but may change from time to time.

Current fees may be viewed on our website [www.asb.co.nz](http://www.asb.co.nz)