



GENERAL TERMS AND CONDITIONS

Version 1.1 – 8 December 2025

These Terms and Conditions, in addition to any Facility Agreement(s), the Facility Terms and Conditions and any Securities, set out the terms on which we agree to provide any Facility to you.

1. **Terms:** The terms of your Facility(s) are set out in:
 - (a) these Terms and Conditions;
 - (b) any Facility Agreement(s);
 - (c) the Facility Terms and Conditions; and
 - (d) any Securities.
2. **Inconsistency:**
 - (a) If there is an inconsistency between these Terms and Conditions and any Facility Agreement or any Security, the term and conditions of the relevant Facility Agreement or the Security shall prevail.
 - (b) If there is any inconsistency between these Terms and Conditions and any other terms set out on the Website, these Terms and Conditions will prevail (except as expressly contemplated by these Terms and Conditions).
3. **Schedules:** In these Terms and Conditions:
 - (a) the general terms applicable to any Security or any Facility Agreement(s) are set out in Schedule 1;
 - (b) security interest terms applicable to any Security or any Facility Agreement(s) are set out in Schedule 2;
 - (c) agreement to mortgage terms applicable to any Security or any Facility Agreement(s) are set out in Schedule 3;
 - (d) guarantee terms applicable to any Security or any Facility Agreement(s) are set out in Schedule 4; and
 - (e) definitions and interpretation applicable to these Terms and Conditions, any Security and any Facility Agreement(s) are set out in Schedule 5.

SCHEDULE 1
GENERAL TERMS

The terms set out in this Schedule apply to any Facility Agreement(s) or Security entered into by you or any Guarantor.

1. Representations & Warranties

1.1 General Representations: You represent as follows:

- (a) you are incorporated, have full power and authority to enter into and comply with your obligations under the Transaction Documents and have taken all corporate and other action and obtained all consents needed to enable you to do so;
- (b) your obligations under the Transaction Documents are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application;
- (c) your latest financial statements and your latest group financial statements as delivered to us:
 - (i) were prepared in accordance with IFRS-NZ;
 - (ii) give a true and fair view of your financial position and the consolidated financial position of the Group as at the date and for the period to which they relate;
 - (iii) disclose or reserve against all of your liabilities (contingent or otherwise) as at that date and all unrealised or anticipated costs from any commitment entered into by the relevant person(s) and that existed on that date; and
 - (iv) include a true and complete copy of any auditor's report,and there has been no material adverse change in respect of you since the last date as at which such financial statements were made up;
- (d) no litigation, arbitration or administrative proceeding is current, pending or, to your knowledge, threatened that has or could have a material adverse effect on you or on our ability to exercise or enforce our rights under any Transaction Document;
- (e)
 - (i) all information provided by you to us in connection with the Transaction Documents was true in all material respects as at the date when that information was provided and remains so at the date of the Transaction Document;
 - (ii) there are no facts or circumstances that have not been disclosed to us that would make that information untrue or misleading in any material respect; and
 - (iii) you have disclosed to us every fact or matter which you know or ought to know which might influence our decision whether or not to enter into a Transaction Document and as to the terms of a Transaction Document;
- (f) each representation in each Transaction Document is true in all material respects;
- (g) you are not in default under:
 - (i) any agreement relating to indebtedness; or
 - (ii) any guarantee; or
 - (iii) any other agreement,to an extent or a manner that has or would have a material adverse effect on you;
- (h) you satisfy the Solvency Test and are able to pay your indebtedness as it falls due;
- (i) except as disclosed to and accepted in writing by us, no security interest exists over or affects, nor is there any agreement to give or permit to exist any security interest over or affecting, any of your property;

- (j) your entry into, exercise of your rights and performance of and compliance with your obligations under the Transaction Document and each other Transaction Document does not and will not:
 - (i) contravene any law to which you are subject; or
 - (ii) contravene any of your constitutional documents; or
 - (iii) exceed any limitation on, or constitute an abuse of, the powers of your directors or officers; or
 - (iv) contravene any agreement to which you are a party or that is binding on any of your property; or
 - (v) result in the creation of, or oblige you (absolutely or contingently) to create, or permit to exist, any security interest over or affecting your property other than under a Security;
- (k) no Event of Default has occurred and is continuing;
- (l) you are not aware of any facts or circumstances that have not been disclosed to us that might, if so disclosed, affect the decision of a person considering whether or not to provide, or to continue to provide, indebtedness to you;
- (m) each of the Securities is effective security with the priority contemplated by those Securities for the satisfaction of the indebtedness of the Transaction Parties under the Transaction Documents;
- (n) you are in compliance in all material respects with all applicable consents and other requirements (including any certificates of compliance, resource and buildings consents and orders) under all Environmental Laws and directives in relation to real property owned by you or on which you operate, and you are not in breach of any law binding upon you where non-compliance might have a material adverse effect on you;
- (o) none of your real property has been:
 - (i) used in connection with the creation, treatment, storage and handling of a pollutant;
 - (ii) polluted or contaminated by a pollutant; or
 - (iii) subject to a notice, direction, order or condition requiring a pollutant to be cleaned up, contained or dealt with in any way and you are not aware that a notice, direction, order or condition of that kind is pending;
- (p) each representation in this clause is true and correct in respect of each Transaction Party other than you; and
- (q) each representation made otherwise in these Terms and Conditions and the relevant Facility Agreement is true in all respects.

1.2 **Representations continuing:** Each of the representations in this clause 1 (including, for the avoidance of doubt, incorporated by reference) will be deemed to be repeated continuously so long as a Transaction Document remains in effect by reference to the facts and circumstances then existing except that each reference to financial statements is to be construed as a reference to the latest available financial statements of the relevant person.

1.3 **Reliance on representations:** You acknowledge that we have been induced to enter into each Transaction Document and will be induced to provide Facilities in reliance on the representations in this clause 1 (including, for the avoidance of doubt, incorporated by reference).

2. UNDERTAKINGS

2.1 **General undertakings:** You undertake that you will:

- (a) pay all your indebtedness when due;
- (b) comply with all consents and all obligations binding on you by law, contract or otherwise;

- (c) do all things necessary to maintain your corporate existence and the existence of each of your subsidiaries (if any) and will not transfer your jurisdiction of incorporation or place of domicile for taxation purposes, nor merge or consolidate with any other person without our prior written consent, nor enter into liquidation or otherwise cancel, reduce or redeem your capital funds;
- (d) maintain in full effect all consents required to enable you to comply with your obligations under the Transaction Documents and will procure that each Transaction Party does the same;
- (e)
 - (i) ensure that all information provided to us in connection with the Transaction Documents after the date of the Transaction Document is true in all material respects as at the date that information is provided;
 - (ii) not omit to state any fact or circumstance that would make that information untrue or misleading in any material respect; and
 - (iii) ensure that all projections and forecasts made by you will be made with all due care after diligent consideration;
- (f) execute and comply, and procure that each other Transaction Party executes and complies, with your or its respective obligations under each Transaction Document to which you or it is a party at the times and in the manner provided in the Transaction Documents;
- (g) immediately notify us of the occurrence of any Event of Default and any event or circumstance which might reasonably be expected to have a material adverse effect on you, immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result;
- (h) duly and promptly comply, and procure that each other Transaction Party will duly and promptly comply, with all laws, directives and consents the non-compliance with which might reasonably be expected to give rise to a security interest or have a material adverse effect on you or on a Transaction Party or might reasonably be expected to adversely affect our rights or security under a Transaction Document;
- (i) file all tax returns as required by law, and pay and discharge all taxes payable by you or on your property prior to the date on which penalties become payable, except only to the extent that those taxes are being contested in good faith by appropriate proceedings and adequate reserves have been set aside for their payment;
- (j) perform and comply in all respects with, and procure that each other Transaction Party will perform and comply in all respects with, your or its obligations under each Transaction Document to which you or it is a party;
- (k) provide us on a continuing basis with notice in writing of all purchase money security interests in your property, or property in which you have rights, arising by virtue of the normal trade terms of the supplier of that property other than a purchase money security interest that you have in a Debtor;
- (l)
 - (i) comply with, and have complied with all Environmental Laws affecting your operation or your property;
 - (ii) inform us of any breach of any Environmental Law, or any notice or order received by you under any Environmental Law, that could affect you or your property;
 - (iii) provide us upon request, but at your cost, with environmental audits and reports in respect of your property, in a form and from an independent consultant acceptable to us; and
 - (iv) indemnify us against any liability or cost arising out of any act or omission by you in respect of any circumstance that breaches or might reasonably be expected to breach any Environmental Law;

- (m) from time to time, upon our request, deliver, or procure the delivery, to us of a valuation in a form satisfactory to us, carried out at your cost and with your full co-operation, and specifying the current market value of any real property, by independent, reputable, licensed, professional valuers acceptable to us, in accordance with the standards and practices for the time being accepted in the professional valuer's profession and on such basis as we may stipulate, each such valuation to be dated not earlier than 15 days prior to the date of delivery;
- (n) procure that each other Group Member, Transaction Party and Guarantor complies with clause 2.1(a) to (m) inclusive as if references to you were to each such Group Member, Transaction Party and Guarantor (as applicable); and
- (o) ensure that any and all shareholder's advances now advanced to you are retained in your accounts and are not repaid to those shareholders without our prior written consent.

2.2 Negative undertakings: You undertake that you will not without our prior written consent:

- (a) give a guarantee (other than as created or permitted by any Security);
- (b) purchase or subscribe for shares in another company;
- (c) except in the ordinary course of business and then only on arm's length commercial terms, lend money to another person;
- (d) provide services to or accept services from a person other than on arm's length commercial terms;
- (e) create or permit to exist any security interest over or affecting your property other than as created by or permitted under a Transaction Document;
- (f) either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary, dispose of all or a substantial part of your property, other than:
 - (i) disposals made in the ordinary course of business;
 - (ii) disposals of money borrowed or raised for the purposes for which that money was borrowed or raised; or
 - (iii) disposals of property in exchange for property comparable in type and value;
- (g) incur any indebtedness other than in the ordinary course of business;
- (h) become party to an arrangement or agreement or adopt a constitution whereby the liability of any of its shareholders in respect of unpaid or uncalled capital is released, reduced or cancelled;
- (i) make or attempt to make any Distribution to shareholders or pay principal or interest on loans from shareholders;
- (j) enter into or make any proposal for a compromise, except on terms previously approved by us in writing;
- (k) form or acquire any subsidiary; or
- (l)
 - (i) make any changes to your name;
 - (ii) change your shareholding whether by a transfer of shares, issue of shares, share buy-back or otherwise;
 - (iii) change the nature of your business; or
 - (iv) change any of your directors; or
- (m) allow any Group Member, Transaction Party or Guarantor to do anything referred to in clause 2.2(a) to (l) inclusive as if reference to you were to each such Group Member, Transaction Party or Guarantor (as applicable).

2.3 Your accounts and records: You undertake that you will:

- (a) permit us and our authorised agents at all reasonable times to inspect all or any of your records and documents relating to your financial position;
- (b) permit us and our authorised agents at all reasonable and/ or regular times to carry audits of Debts and/ or Purchase Orders as required by us;
- (c) provide us:
 - (i) within 120 days of each financial year end for you (or such earlier date as we may reasonably request) during the term of a Transaction Document, copies of your financial accounts for the relevant financial year;
 - (ii) within 20 days of the end of each month or quarter (as required by us) during the term of the Transaction Document, financial accounts showing your financial position and cashflow and the results of your operations for that period, together with any other financial information required by us to be delivered at the same time; and
 - (iii) upon request, any records relating to taxation for your business;
- (d) promptly advise us of an appointment of authorised representatives by your board of directors, evidenced by a notice to us showing the signature of each authorised representative and bearing the certification of one or more of your directors that each signature is correct;
- (e) if we require you to, have your accounts audited (and if you do not do so, we may arrange for your accounts to be audited at your cost);
- (f) comply with all NZ-IFRSs, statements of standard accounting practice and all requirements under the Companies Act 1993 and the Financial Reporting Act 2013 relating to your accounting records;
- (g) allow us during the term of the Transaction Document and until such time as you have discharged all of your obligations to us, to:
 - (i) disclose to any bank to which payments of amounts payable to you by us under a Transaction Document are to be made in accordance with your instructions, any information concerning a Transaction Document and/or the state of your Current Account(s); and
 - (ii) obtain from any bank any information regarding the state of your accounts with that bank and any facilities that have been granted or that are under consideration by that bank;
- (h) authorise your existing bank and any other bank with whom you open any account to pass any information to us;
- (i) not open any new bank accounts, unless we give your prior written consent (if we do give our consent then you must immediately provide us with details of that account once it is opened);
- (j) promptly deliver to us and in any event within 7 days of request, any other information relating to the business, affairs, financial condition or operations of a Transaction Party which we may, from time to time, reasonably request; and
- (k) procure that each other Transaction Party, Guarantor and Group Member complies with clause 2.3(a) to (i) inclusive as if references to you were to that Transaction Party, Guarantor or Group Member (as applicable).

2.4 Additional undertakings: You will comply with each additional undertaking made otherwise in any Facility Agreement or Security.

2.5 Authority to auditors: You authorise us to discuss your financial statements and financial affairs at any time with your auditors and financial advisers and irrevocably authorise and request your auditors and financial advisers to participate in those discussions and provide any information we reasonably request.

2.6 Engagement of experts and consultants: You agree that:

- (a) any Appointee commissioned by us, is engaged exclusively for our benefit, whether or not their fees are for our account of or borne directly by you; and
- (b) neither we nor any of our employees will be liable to you or any other person for any liability or cost that is caused, directly or indirectly, by anything that an Appointee does or does do arising out of the provision of a service to us.

2.7 Insurance: You undertake that you will:

- (a) insure and keep insured all your insurable property (including your stock in trade) against loss or damage by fire, earthquake, theft, burglary, weather damage and such other risks that should prudently be insured against in accordance with best commercial practice, in each case for full replacement value and including public liability insurance, and otherwise in such amounts and on such terms approved by us from time to time;
- (b) take out and maintain insurance against third party liability that it is prudent to insure against in accordance with best commercial practice;
- (c) insure and keep insured all your real property for full replacement value against natural hazard (as defined in the Natural Hazards Insurance Act 2023);
- (d) ensure that each Policy provides that our interest is noted;
- (e) promptly provide us with particulars or copies of all Policies;
- (f) ensure that all premiums in respect of the Policies are paid; and
- (g) ensure that copies of any receipts for those premiums and the certificates of currency are delivered to us at the same time as the directors' certificate referred to below.

At any time on our request, you will furnish to us a certificate of one of your directors or other appropriate authorised officer confirming that to the best of his or her knowledge and belief you are complying with this clause 3.7 (and, if not, stating any exceptions) and otherwise providing details relating to that insurance as we may reasonably request.

3. EVENTS OF DEFAULT

3.1 Events of Default: An event of default occurs if, at any time and for any reason, whether or not within the control of a party:

- (a) you fail to pay on its due date any principal or, within three business days of its due date, any interest or other amount payable under any Transaction Document unless your failure to pay is caused by administrative or technical error; or
- (b) you do not perform or comply with any of your undertakings under clause 2.1(e) or (f), clause 2.2 or specifically in respect of Debts under any Invoice Finance Facility; or
- (c) you fail to perform or comply with any of your other undertakings under any Transaction Document or fail to comply with any other written undertakings given to us in any respect which we consider material and, in the case of a failure that is capable of remedy, that failure is not remedied to our satisfaction within 10 business days of the date that you first became aware of it; or
- (d) any representation or statement by you in or in connection with any Transaction Document is not true, accurate and complied with in any material respect, or is or proves to have been untrue, inaccurate or not complied with in any material respect when made or repeated or deemed to have been made or repeated;
- (e)
 - (i) any Transaction Document ceases to be, or is claimed not to be in full force and effect, or the validity or enforceability of a Transaction Document is contested by any person; or
 - (ii) a person repudiates or does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate a Transaction Document;
- (f) an Insolvency Event occurs in respect of you;

- (g) your board passes any resolution that has not previously been approved in writing by us, for or in contemplation of your amalgamation with or involving another company then existing or yet to be formed;
- (h) an order is made, resolution passed or other step taken by a person for your liquidation, except for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by us before that step is taken;
- (i) an order is made against you requiring you to pay the whole or any part of claims made against another company that is in liquidation;
- (j) a statutory manager is appointed to you or any step taken with a view to any such appointment in respect of it under the Corporations (Investigation and Management) Act 1989 (including a recommendation or submission by any person to the Securities Commission supporting such an appointment);
- (k) in our opinion, a material adverse change occurs in relation to you;
- (l) any of your indebtedness relating to borrowed money greater than NZ\$1,000:
 - (i) is not paid when due; or
 - (ii) becomes due, or capable of being declared due, before it would otherwise have been due;
 or any facility for financial accommodation or underwriting facility available to you or any subsidiary of yours is cancelled or suspended by a person providing it;
- (m) it is or will become unlawful or impractical for you to perform or comply with any of your obligations under the Transaction Documents;
- (n) you or your subsidiary agrees to purchase any shares from a shareholder or arranges for some other person to agree to purchase those shares on terms that subject you or that subsidiary to any type of liability or obligation, following receipt by you or that subsidiary of a notice by that shareholder pursuant to section 111(1) of the Companies Act 1993;
- (o) an Event of Default or termination event (however described) occurs under any Transaction Document;
- (p) any meeting of directors or shareholders is called for the purpose of considering and, if thought fit, passing any resolution the passing or the performance of which would cause an Event of Default;
- (q) a change of control of you occurs, unless such change has previously been approved in writing by us;
- (r) any of your real property is charged, or a restraining order or clean up notice is issued, or you are prosecuted under an Environmental Law and such charge, restraining order, clean up notice or prosecution, if adversely determined, might reasonably be expected to have a material adverse effect on you; or
- (s) any of the events mentioned in clause 3(a) to (r) occurs in respect of any Transaction Party, Group Member or Guarantor as if references therein to you were to that Transaction Party, Group Member or Guarantor (as applicable).

3.2 **Termination:** If, at any time and for any reason, whether or not within the control of a party an Event of Default occurs then the Transaction Documents shall become immediately enforceable and, we may, at any time, by notice to you:

- (a) cancel the relevant Facility Agreement with immediate effect;
- (b) declare all or any part of the Amount Outstanding, together with any accrued and unpaid interest and all costs and other amounts due and payable by you to us, to be, and that indebtedness will be, due and payable either immediately or upon demand or at a later date as we may specify.

- 3.3 **Voluntary Termination:** Either we or you may terminate the relevant Facility Agreement or any Facility by thirty (30) days' notice in writing. That notice of termination is effective on the date 30 days from the date on which notice is deemed served under these Terms and Conditions.
4. **FURTHER ASSURANCES**
- 4.1 **Security interests:** In return for us entering into any Facility Agreement and complying with our obligations under it, you agree:
- (a) to procure execution and delivery to us of the Securities;
 - (b) if requested, to charge all your freehold and leasehold interests in any property that you hold now or that you may in the future hold during the term of any Facility Agreement;
 - (c) if required, to execute in our favour registrable mortgages (in the standard "all monies" Auckland District Law Society form used from time to time with such modifications as we or our solicitor's deem necessary) over the property referred to in clause 4.1(b) to secure the due payment of all money payable by you to us under the Transaction Documents; and
 - (d) to pay any and all costs incurred by us in the preparation, execution and registration of the mortgages referred to above.
- 4.2 **Section 92 Amount:** For the purposes of section 92 of the PLA, we may, in our discretion, set a maximum amount up to which any Security will rank in priority to any subsequent charge over your property.
- 4.3 **Further assurance:** You must deliver to us any transfer, assignment, security instrument, or other deed or document and do any other thing that we require you to do as we deem appropriate, necessary or desirable to:
- (a) perfect our title under any Transaction Document;
 - (b) perfect the security interest created by any Transaction Document over the property and your undertakings;
 - (c) enable us to better secure any money you owe us;
 - (d) transfer or vest in us any property subject to any Transaction Document;
 - (e) enable realisation of the property subject to any Transaction Document;
 - (f) if we require you to switch to disclosed Invoice Finance Facility pursuant to any Facility Agreement; or
 - (g) otherwise secure to us the full benefit of our rights and intended rights under any Transaction Document,
- promptly and at your own cost.
- 4.4 **Collateral:** Each and every Security (whether specified in any Facility Agreement or given by you to us at a later date) held by us is deemed to be collateral with every other Security held by us so that a default under one Security will constitute a default under each other Security enabling us to enforce all Securities. We can enforce the Securities in any order we choose and can enforce any one or more Securities as we decide in our discretion.
- 4.5 **Reduction in Value of Security:** If at any time we consider that the value of the Securities is reduced below a level acceptable to us, you shall forthwith at your expense, in addition to anything we may require pursuant to clause 4.3:
- (a) provide additional security;
 - (b) reduce any Facility to a level acceptable to us; or
 - (c) deposit with our nominee an amount of money specified by us to be assigned by way of mortgage to us.

5. INDEMNITIES

5.1 **General indemnity:** You will indemnify and hold us harmless against each cost and liability sustained or incurred by us as a result of:

- (a) the occurrence or continuation of an Event of Default, or a Transaction Party not complying with any obligation expressed to be assumed by it in a Transaction Document;
- (b) an amount payable by a Transaction Party to us under a Transaction Document:
 - (i) not being paid when due, whether by prepayment, acceleration or otherwise (but, so far as appropriate, credit is to be given for amounts, if any, of default interest paid under the Transaction Document); or
 - (ii) being paid or becoming payable otherwise than on the date originally contemplated by a Transaction Document relating to the amount concerned (whether or not that payment is permitted or required under a Transaction Document);
- (c) any prepayment of any amount being made or becoming due (even if the prepayment is required under a Transaction Document);
- (d) any amount not being paid by us to you on the date requested by you;
- (e) any amount not being prepaid or repaid by you to us on the date requested by you or the date required to be prepaid or repaid;
- (f) deposits or other funds acquired or arranged to maintain or fund any amount; and
- (g) any foreign exchange transaction entered into in anticipation of funding any amount.

5.2 **Currency indemnity:** If any payment made under a Transaction Document has to be converted from the currency (the **first currency**) in which it is payable into another currency (the **second currency**) for the purpose of:

- (a) making or filing a claim or proof against you; or
- (b) obtaining an order or judgment in any court; or
- (c) enforcing any order or judgment,

then you will indemnify us by payment in immediately available funds upon demand, in the currency stipulated by us, against each cost incurred by us as a result of any discrepancy between:

- (d) the rate of exchange used for that purpose to convert the sum in question from the first currency into the second currency; and
- (e) the rate of exchange at which we may in the ordinary course of business purchase the first currency with the second currency.

Each amount due under this clause 5.2 is to be due as a separate debt and is not to be affected by, or merged into, any judgment obtained for other sums due.

5.3 **Irrevocable:** The above indemnities are unconditional and irrevocable, are to survive termination of the Transaction Documents and payment of all other indebtedness due under any Transaction Document and are not to be discharged or impaired by an act, omission, matter or thing that might discharge or impair them but for this clause 5.

6. CHANGES IN CIRCUMSTANCES

6.1 **Illegality:** If, at any time, it becomes unlawful for us to comply with any of our obligations or exercise any of our rights under any Transaction Document or fund any amount, then, upon us notifying you we may cancel any Facility Agreement, in which case the termination provisions of the relevant Facility Agreement shall apply.

6.2 Increased costs: If, as a result of:

- (a) the introduction of, or a change in, a law, treaty or directive of an agency of state or other regulatory, monetary or accounting authority or in its interpretation by the agency or authority charged with its administration or by a court of competent jurisdiction made after the date of the Transaction Document; or
- (b) compliance by us with a directive of an agency of state or other regulatory, monetary or accounting authority made after the date of the Transaction Document,

we determine that:

- (c) the cost to us of making, funding or maintaining any amount under a Transaction Document, is increased;
- (d) any amount payable to us or the effective return to us under a Transaction Document is reduced (other than by virtue of a tax on, or a change in the rate of tax on, our overall net income or a tax deduction required by law to be made by you); or
- (e) there is a reduction in the 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 its obligations under a Transaction Document or to any class of obligations of which they form part (other than by virtue of a tax on, or a change in the rate of tax on, our overall net income or a tax deduction required by law to be made by you); or
- (f) we make any payment or forego any interest or other return on or calculated by reference to any sum received or receivable by us (other than by virtue of a tax on, or a change in the rate of tax on, our overall net income or a tax deduction required by law to be made by you) from a Transaction Party under a Transaction Document in an amount that we consider material,

then, and in each case:

- (g) we will notify you; and
- (h) upon demand from time to time by us, you will pay to our account 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 our obligations under a Transaction Document).

6.3 Increase in funding costs: If:

- (a) we or any person on our behalf is required by law to make a deduction or withholding for or on account of tax or on another account from any amount paid or payable to a person from whom we have borrowed monies or entered into any other arrangement (including an interest or currency swap or foreign exchange or hedging transaction) to enable us to fund or maintain or sub-participate the funding or credit risk in respect of all or any part of any Facility Agreement, any amount outstanding to us or another payment by us under a Transaction Document; or
- (b) a provision relating to increased costs, change of circumstances, yield protection or otherwise in any agreement between such a person and us becomes operative; or
- (c) we incur any cost or liability as a result of any of the matters referred to in clause 6.2 (except to the extent that such cost or liability is attributable to the wilful breach by us of any law or regulation),

and, as a result, we increase any payment to or indemnify that person (in the case of (a), whether or not it is under a legal obligation to do so) or becomes liable to do so, you will indemnify and hold us harmless against that increased payment, indemnity or liability and will on demand pay to us the amount certified by us to be required so that, after receiving that amount and making that increased payment or indemnity payment, will place us in the same position in which we would have been if no increased payment or indemnity was required to have been made.

6.4 Survival of obligations: Your obligations under this clause 6 are to survive termination of the Agreement and payment of all other indebtedness due under any Transaction Document.

6.5 **Impossibility:** We are not to be liable for any failure to perform or comply with its obligations under a Transaction Document resulting directly or indirectly from the action or inaction of a governmental or local authority, strike, labour disturbance (whether of our employees, officers or otherwise) or other cause which is beyond our control.

7. PAYMENTS AND TAXES

7.1 **All payments on business days:** Where a payment to be made under a Transaction Document is due on a day that is not a business day the due date will be the next business day (unless the next business day falls in the next month of the year, in which case the due date will be the previous business day).

7.2 **Mode of payments:**

- (a) Each payment to us under a Transaction Document is to be made by 4.00 p.m. on the due date in immediately available freely transferable funds in the manner and to the account at the bank that we, by notice to you, specify from time to time. If a payment is made on the due date but after the specified time, you will pay to us, on request, interest on the amount paid until the next business day (as if the payment were made on the later day).
- (b) Any and all payments under a Facility Agreement may be made by direct debit at our discretion.

7.3 **Payments to be free and clear:** Each payment by you to us under a Transaction Document is to be made:

- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on another account, whether by way of set-off, counterclaim or otherwise.

7.4 **Reinstatement:** If a payment made by a Transaction Party to us pursuant to a Transaction Document is avoided by law:

- (a) that payment will be deemed not to have discharged or affected your relevant obligation; and
- (b) we and each Transaction Party will be deemed to be restored to the position in which each would have been if that payment had not been made.

7.5 **Taxes on payments**

- (a) If a Transaction Party or any person on its behalf is required by law to make a deduction or withholding for or on account of tax or on another account, whether by way of set-off or otherwise, from an amount paid or payable by that Transaction Party under a Transaction Document, the amount in respect of which that deduction or withholding is required to be made is to be increased to the extent necessary to ensure that, after any deduction or withholding is made we actually receive and retain on the due date (free from any liability in respect of any deduction or withholding and ignoring any amount which we are deemed to have received by reason of any legislation) a net amount equal to the amount which we would have received and so retained had no deduction or withholding been required to be made.
- (b) If we or a person on our behalf is required by law to make a deduction or withholding from, or a payment on or calculated by reference to, an amount received or receivable under a Transaction Document (excluding tax on our overall net income), then, without prejudice to sub-clause (a), you will pay to us on demand an amount equal to the amount of that deduction, withholding or payment, together with any interest, penalties and costs payable in connection with it. You will only be liable for interest or penalties relating to a late deduction, withholding or payment if this results from a default by you, or if the deduction, withholding or payment is made promptly upon us becoming aware that it has to be made (or, if later, before any interest or penalty for late payment is imposed).

7.6 **Notice of legal requirements:** If either party is required to make a deduction, withholding or

payment for or on account of tax or on another account, it is to notify the other party immediately.

- 7.7 **Timely payment to tax authority:** If a Transaction Party is required to make a deduction, withholding or payment for or on account of tax or on another account, that Transaction Party is to account to the appropriate tax or other authority for the relevant amount within the time allowed, without incurring a penalty for late payment.

- 7.8 **Tax receipts:** Promptly after making a deduction, withholding or payment, you are to deliver to us a receipt or other documents satisfactory to us evidencing the deduction, withholding or payment.

8. SET-OFF

- 8.1 **Set off:** Each Transaction Party authorises us to apply (without prior notice or demand) any credit balance that the Transaction Party has on any account in any currency and at any of our offices in or towards satisfaction of any indebtedness then due to us under a Transaction Document and unpaid. We are also entitled to set-off against any such credit balance any amount owed by a Transaction Party to our holding company or any subsidiary of that holding company. If at any time following an Event of Default an amount is contingently due or an amount due is not quantified, we may retain and withhold repayment of any such credit balance and the payment of interest or other money pending that amount becoming due and/or being quantified and may set off the maximum liability that may at any time be owing to us by a Transaction Party. We may use any credit balance to buy other currencies and may break any term deposit to effect that application.

- 8.2 **Contractual rights:** Our rights under this clause are contractual rights affecting the terms upon which a credit balance is held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

9. CALCULATIONS AND EVIDENCE

- 9.1 **Basis of calculation:** All interest will accrue from day to day and will be calculated on the basis of the number of days elapsed and a 365 day year. Interest in respect of each interest period is to accrue from (and including) its first day to (but excluding) its last.

- 9.2 **Accounts:** The entries made in the accounts maintained by us are, in the absence of manifest error, conclusive evidence of the existence and amounts of your obligations recorded in them.

- 9.3 **Certificates conclusive:** A certificate by us of an interest rate, exchange rate or amount payable under a Transaction Document are, in the absence of manifest error, conclusive evidence for all purposes including for any proceedings.

- 9.4 **Authenticity:** Where any communication is given or appears to have been given by a Transaction Party to us, we shall have no obligation to make any enquiry or require any evidence as to the authenticity, validity or legality of any such communication notwithstanding that the communication may subsequently be proven not to have been authorised or not to have been made, given or signed by the person purporting to give it.

- 9.5 **Statements:** We agree that we will send a statement of each Facility Account to you at least once every month. Except in the case of an obvious error, our statement will be binding on you unless you notify us of an error with which we agree within 14 days from the date on which we send that statement. Our failure to send you any statement shall not relieve you of your obligations under a Transaction Document.

10. POWER OF ATTORNEY

- 10.1 **Power of Attorney:** Each Transaction Party irrevocably and unconditionally appoints us and each of our directors and managers severally, with full power of substitution, as its true and lawful attorney and agent, with full power and authority in its name or otherwise, and in its place and stead, and for its use and benefit at any time, to do and execute anything which a Transaction Party covenant or agree to do or execute under a Transaction Document and generally to do all such things as may be in our sole discretion or that of any of our directors and managers necessary or desirable in order to fully protect our interests under the Transaction Documents including, without limitation:

- (a) such action as we may deem necessary or desirable in order to perfect title to any of the Debts or to collect Disapproved Debts on behalf of a Transaction Party;
- (b) the execution and registration of any mortgage;
- (c) the realisation of any assets secured by any Security upon the enforcement of a Facility Agreement; and
- (d) the exercise all our other remedies under or in connection with a Transaction Document or existing at law.

Each Transaction Party will assist and co-operate with us in connection with any matter required or contemplated by this clause and will ratify anything done by any attorney under this clause and further indemnify any person acting in reliance upon this power of attorney. This power of attorney shall remain in full force and effect until all the Secured Moneys has been paid to us in full.

11. APPOINTMENT OF INVESTIGATOR

- 11.1 **Power to Appoint:** We may, if, in our opinion your financial position has deteriorated or the value of the security interests held by us has diminished or may diminish to a material extent and notwithstanding that an Event of Default has not occurred, appoint in writing any person or persons (whether an officer of us or you or not) selected in accordance with this clause to act, at your cost, as an investigator of you (Investigator). An Investigator shall be your agent, and you alone shall be responsible for his or her acts and defaults. We may remove any Investigator and may appoint a new Investigator in place of an Investigator who has been removed, retired or died, or in addition to an Investigator already appointed.
- 11.2 **Joint and Several Appointment:** If we appoint one or more persons as Investigators then, unless the appointment expressly states otherwise, those persons shall be deemed to have been appointed, and be entitled to act, jointly and individually.
- 11.3 **Powers of Investigator:** An Investigator shall have power to investigate your affairs in such manner as he or she thinks fit, including the power to:
 - (a) enter, with reasonable prior notice, upon any land or premises owned or occupied by you at any time;
 - (b) make enquiries from any person (including, without limitation, any of your directors, officers, employees, auditors or legal advisers) regarding your business, assets or financial position; and
 - (c) inspect and take copies of or extracts from any document relating to your affairs, whether those documents are held by you, any professional advisor or any other person.
- 11.4 **You to Assist Investigator:** You shall do everything reasonably requested by the Investigator to enable the Investigator to exercise his or her powers.
- 11.5 **Remuneration of Investigator:** We may fix the remuneration of an Investigator at an amount, or on a basis, agreed with the Investigator or determined by us.

12. ASSIGNMENT

- 12.1 **Benefit and burden of Transaction Documents:** Each Transaction Document is binding on and enures for the benefit of the parties and their respective successors and permitted assignees or transferees.
- 12.2 **Our rights:** We may assign or transfer any of our rights or obligations under a Transaction Document without your consent. Each assignee or transferee is to have the same rights against you under the Transaction Document as if named in a Transaction Document as us.
- 12.3 **Transaction Parties:** No Transaction Party may assign or transfer any of its rights or obligations under a Transaction Document without our prior written consent.

12.4 Disclosure of information

- (a) We may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with a Transaction Document are contemplated, any information about you or another Group Member, whether or not that information was obtained in confidence and whether or not that information is publicly available.
- (b) You may not disclose any information relating to a Transaction Document to a third party (other than your legal and financial advisers and executives, in each case on a confidential basis) without our prior written consent.

12.5 Information privacy: In connection with each Transaction Document, each Transaction Party consents to us:

- (a) obtaining such information and conducting such enquiries in relation to you as we deem necessary or desirable, from any source whatsoever, including credit reference agencies and companies related to us;
- (b) disclosing such information about you as we deem necessary or desirable to:
 - (i) our associated companies;
 - (ii) any credit reference agency;
 - (iii) any surety or assignee under any Transaction Document;
 - (iv) any person we ask to perform some or all of our obligations hereunder (for example a printer); or
 - (v) any party that is considering becoming a surety or assignee under the Transaction Documents; and
- (c) using the information supplied by you to send you relevant promotional material from time to time.

Nothing in this clause limits your rights under the Privacy Act 2020:

- (d) to access any personal information held by us about you; and
- (e) if necessary, to request a correction of any errors in such information (upon the payment of the requisite fee).

13. NOTICES

13.1 Addresses and references: Each notice or other communication under a Transaction Document is to be made in writing and sent by email, personal delivery or by post to the addressee at the email address or address marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial email address, and address and relevant person or office holder of each party is set out alongside its name in the relevant Facility Agreement.

13.2 Deemed delivery: No communication will be effective until received. A communication to a Transaction Party is, however, deemed to be received:

- (a) in the case of a letter, on the third business day after posting; and
- (b) in the case of an email, on the business day on which it is sent or, if sent after 5.00 p.m. (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of sending.

14. COSTS, TAXES & FEES

14.1 Costs: You will pay each cost incurred by us in connection with:

- (a) the preparation, negotiation, entry into, registration and release of each Transaction Document or any related financing statement;
- (b) each amendment to, waiver in respect of, or discharge of, a Transaction Document; and
- (c) the exercise, protection or enforcement of our rights under a Transaction Document,

in each case on demand and on a full indemnity basis.

- 14.2 **Taxes:** You will pay promptly any tax (including GST) and registration fee payable in connection with:

- (a) the entry into, performance, registration, enforcement or admissibility in evidence of any Transaction Document; and
- (b) any amendment to, or waiver in respect of, any Transaction Document,

and will indemnify and hold us harmless against any liability with respect to, or resulting from, any failure to pay, when due, any tax. All such payments shall be made free and clear of any deduction for or on account of any set-off, counter-claim or taxes, except as required by law. In the event that a deduction is required, gross-up provisions are to apply to the calculation of that deduction.

- 14.3 **Fees:** You will pay us promptly any fee (including GST) as set out in the relevant Facility Agreement or any other Transaction Document, or as detailed on our website, www.lockfinance.co.nz, in connection with any Facility(s) or generally, as required by us from time to time, in each case on demand and on a full indemnity basis.

15. REMEDIES AND WAIVERS

- 15.1 **Exercise of rights and waivers:** Time is of the essence in respect of all dates and times for compliance by each Transaction Party with its obligations under each Transaction Document. However, no failure to exercise, and no delay in exercising, any of our rights under a Transaction Document will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by us of our rights under a Transaction Document is effective unless it is in writing signed by us.

- 15.2 **Remedies cumulative:** Our rights under the Transaction Documents are cumulative and not exclusive of any rights provided by law.

16. GENERAL

- 16.1 **Amendments:**

- (a) Subject to sub-clause (b), no amendment to any Transaction Document is effective unless it is in writing signed by all the parties.
- (b) Subject to the terms of the relevant Facility Agreement or Security, we may modify these Terms and Conditions or the Facility Terms and Conditions, at any time by notice on the Website. Any such modifications will apply from the date stated on the Website. You should check the notices section of the Website regularly.

- 16.2 **Property Law Act:** For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, any Transaction Document will be delivered by you and each Guarantor (as applicable) (each a **Delivering Party**) immediately on the earlier of:

- (a) physical delivery of an original of the Transaction Document, executed by each Delivering Party, into our custody or the custody of our solicitors; or
- (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the Delivering Party) of a facsimile, photocopied or scanned copy of an original of the Transaction Document, executed by each Delivering Party, to us or our solicitors.

- 16.3 **Partial invalidity:** The illegality, invalidity or unenforceability of a provision of any Transaction Document under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

- 16.4 **Counterparts:** Any Transaction Document may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into a Transaction Document by executing any counterpart.

- 16.5 **Governing Law:** Unless expressly stated to the contrary, each Transaction Document is governed by and are to be construed in accordance with New Zealand law.

- 16.6 **Attorney execution:** If you are executing any Transaction Document as attorney (including as Guarantor), you are stating, as at the time of any such execution, that he or she or it has no notice of revocation or suspension of his or her or its power of attorney.
- 16.7 **Commission:** You acknowledge and agree that we may be paid a commission or other financial benefit by any person in connection with any Facility.
- 16.8 **Electronic Signature:** You acknowledge and agree that any Transaction Document or other document entered into pursuant to a Transaction Document (such as a notice or Drawdown Request) may be signed by any Transaction Party and/ or us electronically

17. MARSHALLING

- 17.1 **No obligation:** We are not required to marshal, enforce or apply under:
- (a) any security interest, guarantee or other entitlement held at any time by us; or
 - (b) any money or property that we hold at any time or are entitled to receive.

18. TRUSTEES

This clause shall apply to any of you who are described as a trustee of a trust in a Transaction Document

- 18.1 We shall have full recourse to all of the assets of the trust and will be subrogated to your right to be indemnified from those assets or to be indemnified by any other person (including any beneficiary of the trust).
- 18.2 You warrant and undertake to us that:
- (a) you have the power to enter into each Transaction Document to which you are expressed to be a party and to grant any security interest to be given over assets of the trust in your capacity as trustee, and in each case does so for the benefit of and the proper purposes of the trust;
 - (b) other than with our prior written consent you will not permit:
 - (i) the terms and conditions of the trust to be varied in any way;
 - (ii) any of the assets subject to the trust to be disposed of, transferred, distributed, loaned or advanced otherwise than for the purposes of the trust;
 - (iii) the capital of the trust to be distributed to or on behalf of the beneficiaries of the trust; or
 - (iv) the trust to be determined (nor permit a new trustee of the trust to be appointed).
- 18.3 You will remain liable under each Transaction Document to which you are a party after you cease to be a trustee until released in writing by us.
- 18.4 If you are designated in the relevant Facility Agreement or Security as a Limited Liability Trustee, we will have no recourse to your assets which are not assets of the trust, except in respect of any loss incurred by us:
- (i) by reason of a wilful breach of trust by you; or
 - (ii) by reason of any lack of your capacity, power or authority to enter into any Transaction Document; or
 - (iii) resulting from your wilful default or dishonesty; or
 - (iv) resulting from a breach on your part of the statements or undertakings made by in clause 18.2.

Unless you are designated as a Limited Liability Trustee you will have full personal liability, so that we may have recourse to your personal assets as well as to the assets of the trust.

SCHEDULE 2
SECURITY INTEREST

The terms set out in this Schedule apply to any Security Interest granted by you or any Guarantor pursuant to any Facility Agreement(s) or Security(s).

1. SECURITY

1.1 **Security:** To secure due payment of the Secured Moneys, you grant to us:

- (a) a security interest in any Secured Assets being Personal Property; and
- (b) a fixed charge over any Secured Assets being Other Property.

In respect of Secured Assets being accounts receivable, the security interest takes effect as a transfer of those accounts receivable.

In respect of Secured Assets being Goods, the purchase of which is funded by us, the security interest takes effect as a purchase money security interest.

1.2 **Continuing security:** The relevant Facility Agreement or Security, and each security interest created under the Facility Agreement or Security (as the case may be):

- (a) is a continuing security, notwithstanding intermediate payments, settlement of accounts or anything else; and
- (b) is in addition to, and not to be merged in, any other Transaction Document.
- (c) is to remain in full force and effect until, subject always to clause 1.6, the execution by us of a release of the relevant security interest under the Facility Agreement or Security.

1.3 **Unconditionality of security:** No security interest created under the relevant Facility Agreement or Security is discharged, nor are your obligations affected, by:

- (a) any time, indulgence, waiver or consent at any time given to a Transaction Party or another person;
- (b) any amendment to a Transaction Document or to another security interest, guarantee or agreement (whether or not that amendment increases your liability);
- (c) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from, any Transaction Document or other security interest, guarantee or agreement;
- (d) the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any Transaction Party or other person (or the commencement of steps to effect any of these);
- (e) a person named as a Borrower or Guarantor, or who was intended to enter into the Facility Agreement or Security (as the case may be) or otherwise give security for the Secured Moneys, not having done so or not having done so effectively; or
- (f) anything else whatever.

We are not liable to you in relation to any of these matters, even though your rights in subrogation or otherwise may be prejudiced as a result.

1.4 **Further assurance:** On our request, you must, at your own cost, promptly execute and deliver to us all documents, and do anything else that we deem appropriate, to:

- (a) obtain the priority required by us;
- (b) perfect a security interest intended to be created under the relevant Facility Agreement or Security including, without limitation:
 - (i) providing serial numbers and other details of any Secured Asset required by us;
 - (ii) delivering possession of any Secured Asset to us;

- (iii) registering, or allowing the registration of, a financing statement or a financing change statement in respect of a security interest created under the Facility Agreement or Security; or
- (iv) granting a registrable Mortgage to us;
- (c) vest any Secured Asset in us (or our nominee) or in a purchaser;
- (d) secure to us the full benefit of our rights under the Facility Agreement or Security; or
- (e) assign absolutely to us any Secured Asset.

1.5 Release of security: If, in our opinion:

- (a) all the Secured Moneys have been paid and all the Secured Obligations have been performed;
- (b) we are not required to make available any further financial accommodation in respect of any Secured Moneys; and
- (c) there is no reasonable possibility that any Secured Moneys received by us will have to be repaid under any applicable law,

we will, at your request and cost, execute a release of the security interest in the Secured Assets under the relevant Facility Agreement or Security, subject always to clause 1.6. All documents that are necessary in connection with this release are to be in the form that we require.

1.6 Conditions of release: Any release and discharge given by us of any security interest granted to us will:

- (a) not discharge, impair or otherwise affect any indemnity given by you that is expressed to be unconditional, irrevocable and to survive payment of the Secured Moneys; and
- (b) be void if a payment or security interest that we have received prior to the date of such release and discharge or later receive from you or another person in respect of the Secured Moneys is set aside under applicable law or proves to have been, for whatever reason, invalid. In that case:
 - (i) that payment or security interest shall be deemed not to have released, discharged or affected your obligations in respect of which that payment or security interest was made, given or received; and
 - (ii) we and you shall be restored to the position each would have been in and shall be entitled to exercise all the rights that each would have had, if that payment or security interest had not been made or given.

2. REPRESENTATIONS

2.1 Representations relating to existing Secured Assets: You represent that:

- (a) **No foreign property:** at the date of this Agreement, all Secured Assets are in your possession and is situated in New Zealand;
- (b) **Serial numbered goods:** the information provided in the relevant Facility Agreement or Security is true in all respects and includes the details of all of your motor vehicles and aircraft that are consumer goods or equipment;
- (c) **Sole owner:** you are the sole legal and beneficial owner of all Secured Assets; and
- (d) **No security interests:** except as disclosed to and accepted in writing by us, no security interest exists over or affects, nor is there any agreement to give or permit to exist any security interest over or affecting any Secured Asset except as created or permitted by the relevant Facility Agreement or Security.

2.2 Representations relating to future Secured Property: Whenever any Secured Asset is acquired by you or comes into existence after the relevant Facility Agreement or Security, you will be deemed to give the representations in clause 2.1 in respect of that Secured Asset.

3. UNDERTAKINGS

3.1 **Undertakings relating to Secured Assets:** You undertake that you will:

- (a) **Disposals:** not, without our prior written consent, dispose of any Secured Asset, other than:
 - (i) inventory in the ordinary course of your business;
 - (ii) by collecting accounts receivable that are the proceeds of a disposal referred to in sub-paragraph (i);
 - (iii) if a company, disposals from another Group Member to you;
 - (iv) disposals of money borrowed or raised for the purpose for which that money was borrowed or raised;
 - (v) disposals of property in exchange for property comparable in type and value;
 - (vi) disposals on reasonable commercial terms of obsolete property or property no longer required for the purposes of your business;
 - (vii) in the case of Land, by way of granting a lease, tenancy or licence to occupy that Land for proper value on reasonable commercial terms; or
 - (viii) as otherwise permitted by the relevant Facility Agreement or Security;
- (b) **No security interests:** not create or permit to exist any security interest over or affecting any Secured Asset except as created or permitted by the relevant Facility Agreement or Security;
- (c) **No accessions:** not allow any Secured Asset to become an accession to any property that is not a Secured Asset, or to be affixed to any land;
- (d) **No rights of set-off:** not allow any of your accounts receivable being Secured Assets to be subject to any right of set-off or combination of accounts or another defence or claim (other than rights that arise solely by operation of law);
- (e) **Maintain and repair Secured Assets:** maintain in good working order all Secured Assets and, on our request, remedy every defect in the condition of any Secured Asset;
- (f) **Notice of Secured Assets located abroad or moved:** promptly notify us in writing of any Secured Assets that:
 - (i) is located abroad; or
 - (ii) is to be moved from the jurisdiction where it was situated at the time the security interest under the relevant Facility Agreement or Security attached to it,except in relation to inventory disposed of in the ordinary course of your business;
- (g) **Documents of title:** upon request, deposit with us all documents of title constituting or evidencing the Secured Asset;
- (h) **List of Secured Assets:** promptly, upon our request, provide to us a full and complete list of the Secured Assets, including the value and location of each Secured Asset;
- (i) **Access:** provide to us, and ensure that each person in possession of any Secured Asset provides to us, full access at all reasonable times to the Secured Asset;
- (j) **Identification:** upon request and at your cost, affix to any Secured Asset, a plate in the form required by us drawing our interest in the Secured Asset to the attention of other persons;
- (k) **Registration of security:** promptly register each security interest created under the relevant Facility Agreement or Security in each jurisdiction (other than New Zealand) in which registration may be required or advisable in order to ensure its enforceability, validity and priority; and
- (l) **No prejudicial actions or omissions:** not do, omit to do, or allow to occur, anything

that might:

- (i) render any Secured Asset or a security interest created under the relevant Facility Agreement or Security unenforceable or liable to forfeiture or cancellation;
- (ii) cause or contribute to a deterioration in the value of any Secured Asset; or
- (iii) otherwise adversely affect our security under any Transaction Document.

4. INSURANCE

4.1 **Secured Assets:** You undertake to us that you will use your best endeavours to ensure that each insurance policy provides that:

- (i) we are named as co-insured for our interest;
- (ii) the insurer will give to us copies of all notices given by the insurer that affect the insurance cover or its terms; and
- (iii) no cancellation or change of insurance is effective until at least 14 days after receipt by us of written notice to that effect.

4.2 **Application of insurance proceeds:**

- (a) Money recoverable under any insurance on the Secured Assets is to be applied, at our option, either:
 - (i) in or towards rebuilding, repairing or replacing the relevant Secured Asset or meeting the liability insured against; or
 - (ii) in reduction of the Secured Moneys.
- (b) Any such money released to or received by you is to be held by you on trust for us until applied in the manner required by this clause 4.2.

5. WAIVER OF PPSA RIGHTS

5.1 **Waiver:** You:

- (a) have no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) waive your rights to:
 - (i) not have goods damaged if we remove an accession under section 125 of the PPSA;
 - (ii) receive notice of the removal of an accession under section 129 of the PPSA;
 - (iii) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;
 - (iv) receive a statement of account under section 116 of the PPSA;
 - (v) receive notice of any proposal from us to retain collateral under section 120(2) of the PPSA; and
 - (vi) object to any proposal from us to retain collateral under section 121 of the PPSA.

5.2 **Verification Statement:** You waive your right under section 148 of the PPSA to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by us in respect of any Personal Property.

6. RECEIVER

6.1 **Appointment of Receiver:** We may (in addition to and without prejudice to any of our other rights), at any time, appoint in writing (and remove, replace and fix the remuneration and other terms of appointment of) one or more Receivers (jointly and severally) in respect of any Secured Asset on terms considered necessary or expedient by us if:

- (a) an Event of Default occurs;

- (b) you so request; or
 - (c) we, in our sole discretion, believes that any Secured Asset is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in contravention of the relevant Facility Agreement or Security.
- 6.2 **Receiver agent of Borrower:** A Receiver is your agent. You are solely responsible for the acts and defaults of a Receiver.
- 6.3 **Receiver's rights:** Subject to any restriction imposed by us, a Receiver has:
 - (a) all the rights conferred on receivers and managers by law (including under the Receiverships Act 1993); and
 - (b) all our enforcement rights set out in these General Terms and Conditions (whether or not those rights are yet enforceable by us).
- 7. **PROCEEDS OF ENFORCEMENT**
- 7.1 **Proceeds of enforcement:** All money arising from or in connection with the exercise of the enforcement rights of a Receiver or our enforcement rights is to be applied:
 - (a) in the case of Personal Property, in accordance with Part 9 of the PPSA; and
 - (b) in the case of Other Property, subject to any claim ranking in priority to the Secured Moneys, in the following order of priority:
 - (i) all costs incurred by a Receiver or us in connection with, or as a result of the exercise of, their respective rights (including the remuneration of a Receiver), in the order determined from time to time by a Receiver or us;
 - (ii) all other Secured Moneys, in the order determined from time to time by us; and
 - (iii) the claims of those entitled to any surplus.
- 7.2 **Contingent amounts:** If, at the time of distribution of any money under clause 7.1, any part of the Secured Moneys is contingently owing to us, we or a Receiver may retain an amount equal to all or part of that contingent indebtedness. This amount is to be placed in an interest-bearing deposit account until that contingent indebtedness becomes actually due and payable or otherwise ceases to be contingently owing.
- 8. **LIABILITY FOR SECURED PROPERTY**
- 8.1 **Liabilities and obligations:** We do not (and will not be deemed to) undertake any of your obligations in respect of the Secured Assets by virtue of the relevant Facility Agreement or Security.
- 8.2 **Performance of your obligations by us:** Notwithstanding clause 9.1, and in default of you doing so, we may (without being obliged to do so) perform any of your obligations in respect of any Secured Asset. Each amount spent for that purpose (including costs) must be reimbursed by you on demand by us.
- 9. **PROTECTION PROVISIONS**
- 9.1 **Exercise of powers:** Subject to any mandatory law, neither we nor any Receiver will be liable:
 - (a) in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by us or a Receiver of its rights under the relevant Facility Agreement or Security, or conferred by law; or
 - (b) to account as a mortgagee in possession in respect of any Secured Asset if it, any person on its behalf or any Receiver takes possession of any Secured Asset.
- 9.2 **Protection of third parties:** In relation to the exercise or purported exercise of our rights or the rights of a Receiver under the relevant Facility Agreement or Security, or conferred by law, no person:
 - (a) need enquire:

- (i) whether the relevant rights were exercised or are exercisable; or
 - (ii) about the propriety or regularity of any transaction or dealing; or
- (b) will be affected by notice that any such transaction or dealing is unnecessary or improper.

10. PROPERTY LAW ACT

- 10.1 **Section 92 amount:** For the purposes of section 92 of the PLA only, the maximum amount up to which the Secured Moneys ranks in priority to any subsequent security interest granted over any Real Property is the Priority Amount.
- 10.2 **Personal Property:** The covenants set out in clauses 3(2), 6(2) and 12 of Part 2 of Schedule 2 to the PLA are excluded from the relevant Facility Agreement or Security.
- 10.3 **Real Property:** To the extent that a Mortgage forms part of any Security, the covenants set out in clauses 3(2), 8(2), 16(2) and 18 of Part 1 of Schedule 2 to the PLA are excluded from the Mortgage.
- 10.4 **Conflict:** In the event of any conflict between the provisions of a Transaction Document and the provisions of Part 1 or Part 2 of Schedule 2 to the PLA, the provisions of the Transaction Document shall apply.

SCHEDULE 3

MORTGAGE

The terms set out in this Schedule apply to any Mortgage made by you or any Guarantor pursuant to any Facility Agreement(s) or any Security(s).

1. AGREEMENT

- 1.1 **Mortgage:** You agree to grant a mortgage in favour of us over all of your right, title and interest in the Land to us as security for the payment of the Secured Moneys and the due performance and observance of the Secured Obligations.
- 1.2 **Charge:** You charge all of your right, title and interest in the Land in favour of us as security for the payment of the Secured Moneys and the due performance and observance of the Secured Obligations.
- 1.3 **Terms:** In addition to the terms set out in this Schedule, the Land Information New Zealand standard terms applicable to all obligations mortgages from time to time shall also apply to any Mortgage made by you. If there is any inconsistency between such terms and the terms of this Schedule, the terms of this Schedule shall prevail.

2. REGISTRATION

- 2.1 **Caveat:** You authorise us to lodge and maintain a caveat against the record of title to the Land as notice of our interest arising under and in pursuant to the agreement to mortgage set out in this Schedule.
- 2.2 **Mortgage:** You agree to, immediately upon our request, execute in favour of us a client instruction and authority form for the registration of an all obligations mortgage in such form as we may require over the Land as security for the due payment of the Secured Moneys and the due performance and observance of the Secured Obligations. You irrevocably and unconditionally acknowledge that we may execute the said client instruction and authority form and register the mortgage against the Land as attorney for you.
- 2.3 **Costs:** In addition to any other costs payable pursuant to the Transaction Documents, you shall (if requested by us) pay the registration costs of any mortgage, caveat, discharge of mortgage and withdrawal of caveat.

3. UNDERTAKINGS

- 3.1 **No encumbrance etc.:** You agree not to further encumber the Land, or transfer or dispose of its interest in the Land without obtaining our prior written consent. If you shall sell, transfer, encumber, assign or agree to sell, transfer or exchange your interest in the Land then the Secured Moneys shall immediately become due and payable.
- 3.2 **Insurance:** You covenant to insure the buildings and improvements on the Land for their full replacement value against fire, accident, earthquake, weather damage and such other risks as we may require in the names of us and you for our respective rights and interests and with an insurer approved by us and to pay all premiums for the insurance and upon request by us produce policies and premium receipts to us.

SCHEDULE 4

GUARANTEE

The terms set out in this Schedule apply to any Guarantor in relation to any Facility Agreement(s) or Security(s).

1. GUARANTEE

1.1 **Guarantee:** You unconditionally and irrevocably guarantee to us:

- (a) due payment of the Secured Moneys; and
- (b) due performance by you of the Secured Obligations,

in either case by the Borrower and/ or other Guarantor(s) specified in any Facility Agreement or Security as guaranteed by you.

1.2 **Limit:** Where the relevant Facility Agreement or Security states that your liability is limited, your liability will be limited to the aggregate of:

- (a) the extent of the limit specified; and
- (b) interest and costs payable under the Transaction Documents.

If no limit of liability is specified in the Facility Agreement or Security, your liability to us is unlimited.

1.3 **Principal Debtor:** As between you and us (but without affecting the obligations of any Transaction Party guaranteed by you) you are liable under the relevant Facility Agreement or Security as a sole and principal debtor and not as a surety.

2. PAYMENTS

2.1 **Payment:** You undertakes to us that if, for any reason, any Secured Moneys is not paid to us when due (whether by acceleration or otherwise) or any Secured Obligations is not performed, the Guarantor will pay the relevant amount to us or perform the relevant obligation, in each case immediately on demand.

2.2 **Suspense account:** All amounts from time to time received by us in respect of the Secured Moneys from or on account of you may be placed in a suspense account (the **Suspense Account**) with a view to preserving our rights, to the extent permitted by law, to prove for the whole of the Secured Moneys in the event of any proceeding in, or analogous to, liquidation, bankruptcy; amalgamation, change in status, constitution or control, reconstruction or reorganisation of a Transaction Party. Any interest paid on the amount for the time being in the Suspense Account shall not be payable by us to you.

3. OBLIGATIONS

3.1 **Unenforceability:** As a separate and continuing undertaking, you unconditionally and irrevocably undertake to us that, should any Secured Moneys not be recoverable under any Transaction Document from any Transaction Party guaranteed by you for any reason, including a provision of any Transaction Document or an obligation (or purported obligation) on the other Transaction Party to pay any Secured Moneys or perform a Guaranteed Obligation being or becoming void, voidable, unenforceable or otherwise invalid, whether or not that reason is or was known to you and whether or not that reason is:

- (a) a defect in or lack of your powers or the powers of the other Transaction Party or the irregular exercise of those powers; or
- (b) a defect in or lack of authority by a person purporting to act on your behalf or on behalf of the other Transaction Party; or
- (c) a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of you or the other Transaction Party; or
- (d) a liquidation, bankruptcy, amalgamation, change in status, constitution or control, reconstruction or reorganisation of you or the other Transaction Party (or the commencement of steps to effect the same),

it will, as a sole and independent obligation, pay to us on demand the amount that we would

otherwise have been able to recover (on a full indemnity basis). In this clause, the expression "Secured Moneys" includes any indebtedness that would have been included in that expression but for anything referred to in this clause.

3.2 No discharge: You are not discharged, nor are your obligations affected, by:

- (a) any time, indulgence, waiver or consent at any time given to a Transaction Party or another person; or
- (b) an amendment (however fundamental) to, or replacement of, a Transaction Document or to another security interest, guarantee or other agreement (whether or not that amendment increases your liability or the liability of any Transaction Party guaranteed by you); or
- (c) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from, any Transaction Document or other security interest, guarantee or agreement; or
- (d) the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any Transaction Party or another person (or the commencement of steps to effect any of these); or
- (e) anything else whatsoever.

We are not liable to you in respect of any of these matters, even though your rights in subrogation or otherwise may be prejudiced as a result.

3.3 Continuing guarantee: The relevant Facility Agreement or Security and your obligations as a Guarantor under the Facility Agreement or Security:

- (a) is a continuing security, notwithstanding intermediate payments, settlement of accounts or anything else;
- (b) is in addition to, and not to be merged in, any other Transaction Document; and
- (c) is to remain in full force and effect until, subject always to clause 3.5, the execution by us of a discharge of that Guarantor's obligations under the Facility Agreement or Security.

3.4 Discharge: If, in our opinion:

- (a) all the Secured Moneys has been paid and all the Secured Obligations have been performed; and
- (b) we are not required to make available any further financial accommodation in respect of any Secured Moneys; and
- (c) there is no reasonable possibility that any Secured Moneys received by us will have to be repaid under any applicable law,

we will, at your request and cost, execute a discharge of your obligations as Guarantor under the relevant Facility Agreement or Security, subject always to clause 3.5. All documents that are necessary in connection with this discharge are to be in the form that we require.

3.5 Conditions of discharge: Any release and discharge given by us of your obligations as Guarantor will:

- (a) not discharge, impair or otherwise affect any indemnity given by you that is expressed to be unconditional, irrevocable and to survive payment of the Secured Moneys; and
- (b) be void if a payment or security interest that we have received prior to the date of such release and discharge or later receive from you or another person in respect of the Secured Moneys is set aside under applicable law or proves to have been, for whatever reason, invalid. In that case:

- (iii) that payment or security interest shall be deemed not to have released, discharged or affected your obligations as Guarantor in respect of which that payment or security interest was made, given or received; and
- (iv) we and you as Guarantor shall be restored to the position each would have been in and shall be entitled to exercise all the rights that each would have had, if that payment or security interest had not been made or given.

4. NO COMPETITION

4.1 Competition: You will not, without our written consent:

- (a) take, accept or hold a security interest from any Transaction Party guaranteed by you or, in relation to Secured Moneys, from another person; or
- (b) take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercise or enforce rights in respect of the indebtedness to any Transaction Party guaranteed by you or, in relation to Secured Moneys, indebtedness of another person to a Guarantor; or
- (c) claim, prove or accept payment in composition by, or a liquidation of, you or, in relation to Secured Moneys, another person,

and until such time as the Secured Moneys has been fully paid, you waive all rights of subrogation to which it would otherwise be entitled by reason of performance of your obligations under the relevant Facility Agreement or Security. If, notwithstanding this clause, you hold or receive any such security interest, money or property, you will pay or transfer it to us immediately and, pending that payment or transfer, will hold it on trust for us.

5. FURTHER SECURITY

5.1 Mortgage: You hereby charge all of your Land in our favour (such charge to constitute an equitable mortgage and a caveatable interest in such Land) and you covenant with us that if required by us you will:

- (a) execute a mortgage, in the current Auckland District Law Society form together with all necessary authority and instruction forms required by us to give effect to a registrable mortgage, over any such Land, as additional security for the due payment of the Secured Moneys and performance of the Secured Obligations; and
- (b) in respect of any leased Land, use your reasonable efforts to procure entry by the lessor into a deed of covenant acknowledging our interest in the Land.

5.2 Security Interest: You hereby grant a security interest in your Secured Assets and covenant with us that:

- (i) if there is an Event of Default the security interest shall (if not already) constitute a fixed charge and we may immediately take possession of the Secured Assets, enforce our security interest and exercise any of its rights under the Transaction Documents; and
- (ii) at any time after an Event of Default we may appoint a receiver and manager of all or any of the Secured Assets; and
- (iii) if required by us you will:
 - (i) execute in our favour a separate security agreement (in such form as our solicitors deem necessary) over any or all of the Secured Assets; and
 - (ii) execute in our favour a legal assignment of some or all of your book debts, give notice to any affected debtor and take all other steps necessary to effect such a legal assignment (in each case to the extent not already created in our favour); and
 - (iii) otherwise deal with some or all of your book debts in such manner as we reasonably direct

5.3 Valuations: You covenant that if requested you will provide us with an up-to-date written valuation of any of your Land by a valuer acceptable to us.

- 5.4 **Costs:** You covenant to pay all costs which may be incurred by us in connection with the preparation, execution, and registration of any documents in connection with any further security granted under this clause 5.

SCHEDULE 5

DEFINITIONS & INTERPRETATION

The definition and interpretation terms set out in this Schedule apply to these Terms and Conditions, any Facility Agreement(s), the Facility Terms and Conditions and any Security.

1. Definitions: In these Terms and Conditions, unless the context requires otherwise:

Amendment Date means:

- (a) in relation to any amendment pursuant to clause 16.1(a) of Schedule 1, the date upon which the parties agree such amendment is effective; or
- (b) in relation to any amendment pursuant to clause 16.1(b) of Schedule 1, the date stated on the Website.

Amount Outstanding has the meaning set out in the Facility Terms and Conditions

Appointee means any expert or consultant commissioned by us and providing services to us.

Borrower means any person who enters into a Facility Agreement as a Borrower.

Current Account means the Facility Account for an Invoice Finance Facility.

Debt and **Debtor** have the meaning set out in the Facility Terms and Conditions.

Distribution is defined in section 2 of the Companies Act 1993, and includes any reduction of capital, any acquisition by a company of any share in itself or in its holding company, and any financial assistance provided by a company to enable another person to acquire any such share.

Environmental Law means any law relating to the environment, land or water use, noise, smell, pollution or contamination, toxic or hazardous substances, waste disposal or conservation (including the Resource Management Act 1991) and any consent or notice under any such law.

Event of Default means any of the events specified in clause 3.1 of Schedule 1 of these Terms and Conditions and any other event or circumstance which, with the giving of notice, lapse of time or fulfilment of any other requirement, would be reasonably likely to constitute such an event.

Facility means each facility to be made available on the terms set out in the relevant Facility Agreement, the Facility Terms and Conditions, the General Terms and Conditions and the Securities.

Facility Agreement means each facility agreement between you and us pursuant to which we agree to provide Facility(s).

Facility Account means, in respect of a Facility, an account kept by us that we debit with all amounts of money paid by us to you and all amounts charged to you by us, and to which we credit all amounts of money received by us from you or otherwise (including without limitation in payment of Debts), except as otherwise set out in the Facility Agreement.

Facility Terms and Conditions means the terms and conditions of Facilities as incorporated by reference in each Facility Agreement.

Group means you and your subsidiaries for the time being and your holding company and any subsidiary of your holding company for the time being.

Group Member means any member of the Group.

GST means goods and services tax under the GST Act.

GST Act means Goods and Services Tax Act 1985.

Guarantee means each guarantee entered into by a Guarantor in favour of us.

Guarantor means any person who enters into a Facility Agreement or a Security as a Guarantor.

Insolvency Event means the occurrence of any of:

- (a) a distress, attachment, execution or other legal process is levied or enforced on or against property of a person and is not discharged or stayed within 14 days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of that person or that person's property;
- (b) a present or future security interest for an amount of or in excess of NZ\$1,000 over or affecting property of a person is enforced; or
- (c) an application is made (other than frivolous or vexatious, or contested in good faith by appropriate proceedings) to a court for an order appointing a liquidator, provisional liquidator, interim liquidator, receiver, manager, receiver and manager, administrator, administrative receiver, trustee in administration, statutory manager or similar officer in respect of a company or one of them is appointed; or
- (d) the members of a company pass a special resolution or the board of the company resolves to appoint a liquidator or any other steps (other than frivolous or vexatious, or contested in good faith by appropriate proceedings) are taken evidencing an intention to do so; or
- (e) a company stops or threatens to stop payment of creditors generally, is or deemed to be unable to pay its debts as they fall due, has a compromise proposed in respect of it, is declared "at risk" pursuant to the Corporations (Investigation and Management) Act 1989, commences negotiations with any one or more of its creditors with a view to the general readjustment for the benefit of, or a composition with, its creditors or proposes a reorganisation, moratorium or other administration involving them; or
- (f) a company ceases or threatens to cease to conduct all or substantially all of its business or disposes or threatens or agrees to dispose of (either by a single transaction or series of transactions whether related or not and whether voluntary or involuntary) all or substantially all of its property; or
- (g) a statutory demand is served on a company and expires unremedied,

other than where, in the case of any of the events referred to in sub-clause (c) to (d) above, such event takes place for the purpose of, and is followed by, a reconstruction, amalgamation or reorganisation (not involving or arising out of insolvency) approved in writing by us

Land means:

- (a) any real property specified as a Secured Asset in a Facility Agreement or Security; and/ or
- (b) any interest in real property whether freehold, leasehold, under licence, or profit or forestry right or otherwise including all buildings, structures, works, fixtures, fittings, minerals and standing timber on or under such land and any resource consent or other right of use or exploitation for or of such land,

as property over which we have or will have security.

Mortgage means, in respect of Land, each security interest and any mortgage, charge, lien or pledge entered into by a Borrower or Guarantor in favour of us.

Other Property means any or all of the Land and your other present and after-acquired property that is not Personal Property.

Personal Property means any or all of your present and after-acquired personal property and includes all personal property in which you have rights, whether now or in the future.

PLA means the Property Law Act 2007.

Policy means each policy of insurance undertaken by you in accordance with clause 2.7 of Schedule 1.

PPSA means the Personal Property Securities Act 1999.

Priority Amount means in respect of any Security, the amount specified in the Facility Agreement or Security, plus any interest and costs.

Secured Asset means:

- (a) any asset specified as a Secured Asset in a Facility Agreement or Security; and/ or
- (b) all of your present, future and after-acquired assets, property, business, undertakings, revenues, rights and uncalled and unpaid capital (whether in New Zealand or overseas) and includes all your right, title and interest in all of your personal property whatsoever, and any and all proceeds of such items of yours being the subject of a Security as specified in these General Terms and Conditions

as property over which we have or will have security and in either case whether Land or not.

Secured Moneys means all of your and the other Transaction Parties' indebtedness to us (including, for the purposes of sections 71 and 72 of the PPSA, future advances) (including all interest, costs, taxes, stamp or similar duties or taxes, commissions, charges and expenses (including legal fees and expenses) incurred or sustained in any way by us in connection with that indebtedness or the enforcement or attempted enforcement of that indebtedness) and, if you are described as the trustee of a trust, includes the indebtedness incurred on behalf of that trust by any former, present or future trustee.

Secured Obligations means all obligations (whether present or future but other than obligations to pay money) of you and the other Transaction Parties to us.

Security means any Guarantee, Mortgage or Security Interest (present or future) expressed or intended to be security for any Secured Moneys, whether given or made pursuant to a Facility Agreement or otherwise.

Security Interest means each security interest and any mortgage, charge, lien or pledge entered into by a Borrower or Guarantor in favour of us, other than any Mortgage.

Solvency Test is defined in section 4 of the Companies Act 1993.

Suspense Account has the meaning set out in Schedule 4.

Transaction Documents means any Facility Agreement(s), these Terms and Conditions, the Securities, and each other agreement or deed, present or future, required or contemplated by or relating to any Facility Agreement(s), these Terms and Conditions or the Securities including, without limitation, agreements or deeds in relation to priority of Security Interests.

Transaction Party means you and each of the parties to the Transaction Documents (other than us).

Website means the website at www.lockfinance.co.nz, or such other website as we may from time to time operate.

you or your means the person named as Borrower and where the context requires means the Borrower and each Guarantor.

we or us or Lock Finance means Lock Finance Limited (company number 1521147).

2.2 **Construction:** In these Terms and Conditions (and, by incorporation by reference, any Facility Agreement, the Facility Terms and Conditions, or any Security), unless the context requires otherwise, any reference to:

an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future) and includes that agreement as amended, assigned, novated or substituted from time to time.

assignment of a Debt where used in a Transaction Document also means a transfer of that Debt for the purposes of the PPSA.

borrowed money includes indebtedness for or in respect of money borrowed or raised by any means (including acceptances, deposits, financial leases, invoice finance, debt factoring with recourse, sale and repurchase arrangements and redeemable preference shares) and for the deferred purchase price of property and services.

a **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and, where payment is required in foreign currency, banks are open for business in the required place of payment.

a **change of control** occurs, if, without our prior written consent, effective control of you or any Guarantor or any of your or a Guarantor's subsidiaries is, in our sole opinion, altered to any material extent from that subsisting at the date of the relevant Facility Agreement.

a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration.

compromise includes a compromise as defined in section 227 of the Companies Act 1993.

costs incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person.

a **directive** includes a present and future directive, regulation and requirement (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 is addressed).

a **disposal** of property includes:

- (i) assigning, leasing, lending, subordinating, varying the terms of, parting with possession of, granting an option in respect of or otherwise dealing with that property;
- (ii) the payment of money or any distribution by way of dividend; and
- (i) an agreement for any of these,

but excludes the creation of a security interest.

financial statements has the meaning specified in section 6 of the Financial Reporting Act 2013.

group financial statements has the meaning specified in section 7 of the Financial Reporting Act 2013.

a **guarantee** includes an indemnity, letter of credit, legally binding letter of comfort, suretyship and other agreement the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person.

a **holding company** of a person includes a holding company as defined in section 5 of the Companies Act 1993.

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

the **liquidation** of a person includes the dissolution, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property.

loss includes loss of profit and loss of margin.

something having a **material adverse effect** on a person is a reference to it having a material adverse effect:

- (i) on that person's financial condition or operations or on the consolidated financial condition or operations of the Group; or
- (ii) on its ability to comply with its obligations under any Transaction Document,

and references to **material adverse change** are to be construed accordingly.

a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality).

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

rights includes authorities, consents, discretions, remedies, powers and causes of action.

a **security interest** includes:

- (i) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (ii) a "security interest" as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor,

but does not include:

- (iii) a lien arising solely by operation of law; or
- (ii) a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances.

a **subsidiary** of a person includes:

- (i) a subsidiary as defined in sections 5 and 6 of the Companies Act 1993; and
- (ii) a subsidiary in terms of any financial reporting standard issued from time to time by the Institute of Chartered Accountants of New Zealand.

tax(es) includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

writing includes a facsimile transmission, an email communication and any means of reproducing words in a tangible and permanently visible form.

the word **including** when introducing an example does not limit the meaning of the words to which the example relates.

an Event of Default **is continuing** until it has been waived in writing by or remedied to our satisfaction.

If we consider that an amount paid by you under a Transaction Document is capable of being avoided or otherwise set aside on your liquidation or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of the Transaction Documents.

2.3 Interpretation: In these Terms and Conditions (and, by incorporation by reference, any Facility Agreement(s), the Facility Terms and Conditions, or any Security):

- (a) headings are inserted for ease of reference only, and do not affect the interpretation of these Terms and Conditions, any Facility Agreement(s) or any Security;
- (b) references to you under these Terms and Conditions, any Facility Agreement(s) or any Security is reference to each of the parties comprising you;
- (c) references to the singular include the plural and vice versa;
- (d) a gender includes each other gender;
- (e) references to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (f) where you consist of more than one person, the terms of these Terms and Conditions, any Facility Agreement(s) or any Security bind each of you jointly and severally;
- (g) reference to any party includes its permitted assignee or transferee;
- (h) reference to the "liability" of a person include references to its liability under any cause of action, whether in contract, tort, or equity or under any enactment;
- (i) references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form;

- (j) a reference to any legislation is a reference to that legislation as amended or replaced from time to time, and includes any regulations or legislative instrument made under it;
- (k) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (l) unless otherwise specified, a reference to currency or \$ is to the currency of New Zealand.

2.4 **PPSA:** The terms **collateral**, **debtor**, **perfected security interest** and **purchase money security interest** in these Terms and Conditions, have the meanings given to them in the PPSA.