

TERM LOAN AGREEMENT

(Consumer Credit Contract)

Effective date:

We, the lender(s) specified below, agree to lend you, the borrower(s) specified below, the amount of the principal sum referred to in the attached Annexure Schedule.

Lender(s) (We/us):
(full name)

Physical address:

Postal address:

Fax:

Email:

Trading name of lender:
(if different to full name)

Financial Service Providers registration number:

We are registered under our full name / trading name

Dispute Resolution Information

* We are not required to be a member of a dispute resolution scheme

* We are a member of

which is an approved dispute resolution scheme.

Its contact details are:

Fax:

Email:

Physical address:

(* delete one)

Borrower(s) (You):

Physical address:

Postal address:

Fax:

Email:

Guarantor(s):
Covenantor(s):

Physical address:

Postal address:

Fax:

Email:

The terms and conditions that apply to your consumer credit contract (other than those implied by law) are set out in the following documents:

- this Term Loan Agreement;
- the Annexure Schedule and Loan Conditions attached; and
- each security interest.

When we refer to this contract, we are referring to all of these documents. When we refer to a table we are referring to the relevant table in the Annexure Schedule.

The initial disclosure statement that we are required to give you under the Credit Contracts and Consumer Finance Act 2003 is made up of the information in this contract.

The meaning of certain key words is explained in the "meaning of words" clause in the Loan Conditions.

Agreement to repay

You agree that:

- (a) you will repay all amounts that you borrow from us together with interest charges, fees, other charges and any default interest at the times and in the manner set out in an Annexure Schedule; and
- (b) the terms and conditions contained in the Loan Conditions apply to all loans that we make to you under this contract.

Security

All moneys that you owe us under this contract and under any other contract that you enter into with us will be secured to us by the mortgages and other securities set out in the Annexure Schedule. This contract is a secured agreement as defined by the Mortgage Memorandum (all obligations) 2015/4328 (Ref. 8010) / General Security Agreement (Ref. 6301) / Memorandum of General Terms 2015/4326 (Ref. 6302) / Purchase Security Agreement (Ref. 6303) published by the Auckland District Law Society over the property set out in the Annexure Schedule.

Conditions precedent to advance

Before we can make the first advance to you under this contract:

- (a) you must have signed this contract together with all of the securities;
- (b) the conditions set out in the Annexure Schedule (if any) and any other pre-settlement requirements that we ask you to complete must have been completed to our satisfaction; and
- (c) if any person is named in this contract as a guarantor, the guarantor must have signed a deed of guarantee and indemnity in the form required by us and the conditions precedent to the acceptance of that guarantee (if any) must have been completed to our satisfaction.

Signed

Signed by the borrower/director/authorised signatory

Date

Signed by the borrower/director/authorised signatory

Date

Signed by the guarantor/covenantor/director/authorised signatory

Date

Signed by the guarantor/covenantor/director/authorised signatory

Date

PART 1 ANNEXURE SCHEDULE

1. LOAN DETAILS

Key information relating to your consumer credit contract is contained in this Annexure Schedule and any further Annexure Schedules (if any) that may be attached to this contract. This information forms part of your contract with us.

The information in this Annexure Schedule is given as at the effective date. The payment dates, interest rates, and payment amounts in this Annexure Schedule are estimates that assume:

- (a) the initial loan advance will be made on the effective date;
- (b) all payments will be made on time;
- (c) the fees and charges will not change after the effective date; and
- (d) if an interest rate is subject to change, it will not change after the effective date.

If any of these assumptions are wrong, and a change occurs before the initial loan advance is actually made to you, we do not need to give you a new or replacement Annexure Schedule.

This Annexure Schedule only relates to those advances that we have already agreed to make. If we:

- (a) agree to make further advances to you in the future; and
- (b) are obliged by law to give you a disclosure statement,

then we will provide you with a new Annexure Schedule for those further advances.

Table A – Financial details

Principal sum: \$	Ordinary interest rate: % per annum Or as set out in Table D. Default interest rate: % per annum
Term expiry date:	
Repayment of principal sum:	As set out in Table I.
Interest commencement date:	As set out in Table E.
Interest dates:	As set out in Table E.

Table B – Make up of initial unpaid balance

The total credits should equal the total debits.

	Credits
Initial unpaid balance (being the principal sum less subsequent advances (if any)).	\$
Moneys paid by you (describe each payment made on or before the effective date).	
Total amount of all credits	\$

Debits	
Net loan amount paid to you	\$
Amounts paid to others (describe each disbursement made on or before the effective date for example, the net load amount and all credit fees and charges).	
Total amount of all disbursements	\$

Table C – Subsequent advances

Description	When available / timing of advance	Amount
Total of all subsequent advances		\$

Table D – Annual interest rate type(s)

Amount of principal sum to which rate type applies	Current annual interest rate (% per annum)	Interest rate type (variable / fixed / base plus margin)	Fixed rate period in months (if applicable) / margin (if applicable)

Table E – Method of charging interest

Interest commencement date:
Interest dates:

Table F – Total interest charges

*\$
*Only required to be disclosed if the loan will be repaid within 7 years of the date of the initial advance of the principal sum.

Table G – Interest free period (if any)

days / months / years from

Table H – Credit fees and charges

The following table contains a description of the credit fees and charges (other than interest charges) that are, or may become payable under this contract other than those payable on or before the effective date and which are set out in Table B. A description of some of the costs that may be payable under this contract are set out in clause 13.

Name of fee	When the fee is payable	Amount

Table I – Payments required

(Delete the first panel if not applicable).

Interest:	<p>You must make payments of interest only on each interest date set out in Table E.</p> <p>The first payment is due on the first interest date after the interest commencement date set out in Table E.</p> <p>The method of calculating each interest payment is set out in item (k) of the Initial Disclosure Statement set out in this contract.</p> <p>Interest payments are due at weekly / monthly / quarterly intervals.</p>
Principal:	The principal sum is repayable in one sum together with interest and all other moneys then outstanding on the term expiry date.
Payment No:	The number of payments you must make is
*Total Amount:	The total amount of all payments is \$
*Only required to be disclosed if the loan will be repaid within 7 years of the date of the initial advance of the principal sum.	

If the previous panel in this section has been deleted, include payments details in this panel and, if required, on a further Annexure Schedule.

Table J – Description of all security

The following table describes all security held or to be held in connection with the consumer credit contract recorded by this contract and the extent to which your obligations to the lender are secured.

Type of security	Description of property secured	Extent of security *

* (e.g. "all obligations" or "\$xxxxx.xx plus all interest, credit fees and charges and other costs and expenses")

Table K – Continuing disclosure statements

The lender will provide statements of account every	days / months.
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Table L – Electronic disclosure

*The borrower consents to receiving electronic disclosure. The lender may provide notices to the following email address:

*Please delete if the borrower does not consent to receiving electronic disclosure.

Table M – Additional items (continue on additional Annexure Schedules if required)

[This area contains a large, faint, diagonal watermark reading "SAMPLE" and a small, faint crest of the Auckland District Law Society. The crest features a shield with various symbols, topped by a crown and flanked by two figures. Below the shield is a banner with the Latin motto "NON VERBA SED VOLUNTAS".]

2. KEY INFORMATION – INITIAL DISCLOSURE STATEMENT

Key information relating to your consumer credit contract is contained in this initial disclosure statement section of your Term Loan Agreement.

This key information:

- makes up the initial disclosure statement that we are required to give you under the Credit Contracts and Consumer Finance Act 2003; and
- forms part of your contract with us.

How to contact the lender

(a) Full name and address of parties

The full name and address of each of the parties is set out at the start of this Term Loan Agreement.

You may send notices to the lender by:

- writing to the lender at the lender's postal address;
- sending a fax to the number specified (if any); or
- sending an email to the address specified (if any).

In this contract the lender is referred to as "us" or "we" and the word "you" is used to refer to all other persons other than the lender regardless of whether they are named as a borrower or a guarantor or a covenantor. Each person named as a borrower or guarantor or covenantor is liable to us in full, individually as well as together with all other borrowers, guarantors and covenantors.

(aa) trading name of the lender

The lender's trading name will be set out at the start of this Term Loan Agreement if it differs from the lender's full name.

Financial details

(b) Initial unpaid balance

The initial unpaid balance on the effective date is set out in Table B. This is the amount that you will owe at the end of the effective date after accounting for every payment made by you on or before that date.

(c) Make up of initial unpaid balance

The way in which the initial unpaid balance is made up is also set out in Table B.

(d) Subsequent advances

If all of the total advances are not available to you on the effective date, the amount of all subsequent advances to be made after the effective date and, if ascertainable, the descriptions and timing of each subsequent advance is set out in the Table C.

(e) Total advances

The total of all advances made or to be made in connection with this contract is the principal sum set out in Table A.

(f) Credit limit

If this contract is a revolving credit contract the credit limit available to you is the principal sum set out in Table A.

(g) Annual interest rate

If only one interest rate applies to the principal sum, the annual interest rate is the rate shown as the ordinary interest rate in Table A. If that rate is a fixed rate, details of the fixed rate type and term are set out in Table D.

(h) Annual interest rate types

If more than one interest rate applies to the principal sum, the interest rates and the portions of the principal sum to which they apply and the type of interest rate are set out in Table D.

(i) Variations to an annual interest rate

If the annual interest rate that applies to all or a portion of the principal sum is shown as fixed in Table D, we cannot vary that rate during the period shown as the fixed rate period in respect of that portion in Table D.

We may vary an annual interest rate at any time if it is a variable rate or at any time after the expiry of a fixed rate period if it is a fixed rate. Unless we have specified another time or method in the Annexure Schedule, we will give you written notice of any variation to an annual interest rate no later than 5 working days after the date on which the change takes effect.

(j) Determining a base plus margin annual interest rate

If the annual interest rate that applies to all or a portion of the principal sum is shown as base plus margin in Table D, the annual interest rate at any time will be the aggregate of the base rate plus the rate shown as the margin in respect of that portion in Table D. The method of determining the base rate is set out in Table D of the Annexure Schedule.

(k) Method of charging interest

Unless alternative provisions relating to the charging of interest are set out in the Annexure Schedule:

- (i) the amount of the interest charge for each interest period is due and payable by you on or before the end of the day on each interest date set out in the Table E;
- (ii) a day ends at 4.00 pm for the purposes of debiting and paying interest and a daily interest rate is determined by dividing an annual interest rate by 365;
- (iii) an interest period is the period from (and including) one interest date (or in the case of the first interest period, from the interest commencement date) to (but excluding) the next interest date;
- (iv) the interest charge for the current interest period will be debited on each interest date;
- (v) an effect of paragraph (iii) is that the amount of the interest charge debited on an interest date will not form part of the daily balance for that day for the purposes of calculating the interest charge debited on that day;
- (vi) **if an interest rate changes or if principal payments are made during an interest period** the interest charge for that interest period will be the sum of the daily interest charges for each day during the interest period calculated;
 - (A) if only one annual interest rate applies, by applying to the unpaid daily balances of the principal sum, the amount determined by applying the daily interest rate to the unpaid daily balances; or
 - (B) in any other case, as the sum of each of the amounts determined by applying each daily interest rate to that part of the unpaid daily balances of the principal sum that it applies to; and
- (vii) **if the interest rates do not change and/or if no principal payments are made during an interest period** the interest charge for an interest period of a week, fortnight, month, quarter or half year will be determined by applying the annual interest rate or rates, divided by 52 (for a week), by 26 (for a fortnight), by 12 (for a month), by 4 (for a quarter of a year), or by 2 (for a half of a year), to the whole or that part of the average unpaid daily balances of the principal sum that it applies to.

(l) Total interest charges

If the principal sum will be repaid within 7 years of the date of the initial loan advance, the total amount of interest charges payable under this contract are set out in Table F.

The assumptions in the Credit Contracts and Consumer Finance Regulations 2004 apply to:

- (i) determining if the principal sum will be repaid within the period of 7 years; and
- (ii) the calculation of the interest charges.

(m) Interest free period

If interest is not payable on all or any part of the principal sum for any period, the details of the interest free period are set out in Table G of the Annexure Schedule.

(n) Credit fees and charges

Table H contains a description of the credit fees and charges (other than interest charges) that are, or may become payable under this contract other than those payable on or before the effective date and which are set out in Table B. You will also find a description of some of the costs that may become payable under this contract in clause 13 of the Loan Conditions.

(o) Payments required

Table I sets out the following information relating to the payments:

- (i) the amount of each payment (or the method of calculating the amount);
- (ii) the number of payments (if this is ascertainable);
- (iii) the total amount of all payments if the term of the contract is less than 7 years and if this amount is ascertainable; and
- (iv) when the first payment is due and the frequency of payments.

(p) Full prepayment

You may repay the principal sum in full at any time without notice. Unless alternative provisions are set out in the Annexure Schedule, the amount payable on any full prepayment will be calculated in accordance with clause 5 of the Loan Conditions and, in the case of a fixed-rate component, will include a reasonable estimate of our loss on full prepayment, calculated in accordance with the statutory procedure prescribed by the Credit Contracts and Consumer Finance Regulations 2004 and the Credit Contracts and Consumer Finance Amendment Regulations 2004 as amended from time to time.

What can happen if you fail to make payments

(q) Security interest

The security interest being taken is described in Table J. Unless otherwise specified in Table J, the property specified in Table J is security for repayment of:

- (i) the principal sum;
- (ii) any further advances or other obligations that we may record in any other agreement that we link to this contract; and
- (iii) all interest, credit fees and charges and all other costs and expenses that are or may become payable to the lender.

If the security property is sold and the net proceeds of sale applied to repayment of the debt, you will remain indebted to the lender for the amount of that shortfall.

If you grant another security interest over the secured property without the lender's prior written consent, you will be in default and the lender may accelerate repayment of the debt and take steps to sell the secured property.

(r) Default interest

Default interest is payable on the amount of any payment in default for the period from the due date for payment until the date the payment is made.

Unless alternative provisions for the payment of default interest are set out in the Annexure Schedule, the rate of default interest is the default interest rate and clause 4(c) of the Loan Conditions applies.

Your rights

(s) Right to cancel

You are entitled to cancel the consumer credit contract by giving notice to the creditor.

Time limits for cancellation

- If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 5 working days after you receive the documents.
- If the disclosure documents are sent to you by electronic means (for example, email) you must give notice that you intend to cancel within 7 working days after the electronic communication is sent.
- If the documents are posted to you, you must give the notice within 9 working days after they were posted.

Saturdays, Sundays, and national public holidays are not counted as working days.

How to cancel

To cancel, you must give the creditor written notice that you intend to cancel the contract by-

- giving notice to the creditor or an employee or agent of the creditor; or
- posting the notice to the creditor or an agent of the creditor; or
- emailing the notice to the creditor's email address (if specified on the front of this disclosure statement); or
- sending the notice to the creditor's fax number (if specified on the front of this disclosure statement).

You must also, within the same time, return to the creditor any advance and any other property received by you under the contract.

What you may have to pay if you cancel

If you cancel the contract, the creditor can charge you the amount of any reasonable expenses the creditor had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc). If you cancel the contract the creditor can also charge you interest for the period from the day you received the advance until the day you repay the advance.

(sa) Right to apply for relief in grounds of unforeseen hardship

If you are unable to reasonably keep up your payments or other obligations because of illness, injury or loss of employment, the end of a relationship, or other reasonable cause, you may be able to apply to the creditor for a hardship variation.

To apply for a hardship variation, you need to:

- a) make an application in writing; and

- b) explain your reason(s) for the application; and
- c) request one of the following:
 - (i) an extension of the term of the contract (which will reduce the amount of each payment due under the contract); or
 - (ii) a postponement of the dates on which the payments are due under the contract (specify the period for which you want this to apply); or
 - (iii) both of the above; and
- d) give the application to the creditor.

Do this as soon as possible. If you leave it too long, the creditor may not have to consider your application.

Statements of account and additional information

(t) Regular statements

Unless section 21 of the Credit Contracts and Consumer Finance Act 2003 applies, we will give you the statements relating to this contract that we are required to give you by law at intervals of not more than six months or such shorter intervals (if any) set out in Table K of the Annexure Schedule.

(u) Consent to electronic communications

If we are able to give you notices in electronic form and if you have consented to receive notices in electronic form, a statement to this effect will be included in Table L of the Annexure Schedule.

(ua) dispute resolution

If the lender is required to be a member of a dispute resolution scheme, the name and contact details of the scheme of which the lender is a member are set out at the start of this Term Loan Agreement.

(ub) registration under the Financial Service Providers (Registration and Dispute resolution) Act 2008

Our registration number under the register of financial service providers is set out at the start of this Term Loan Agreement

(uc) registered name under the Financial Service Providers (Registration and Dispute resolution) Act 2008

The name under which we are registered under the register of financial service providers is set out at the start of this Term Loan Agreement

(v) Statutory information and warnings / additional information

If we are required by law to give you any additional information or warning and it is not printed in this section, it will be contained in the Annexure Schedule.

The Annexure Schedule:

- (a) contains any additional information or warning that we may be required to give you by law that is not printed in the Loan Conditions;
- (b) sets out any provisions relating to this contract that differ from those set out above; and
- (c) may continue over several pages of annexure schedules.

PART 2 LOAN CONDITIONS

3. INTERPRETATION – GENERAL

- (a) **Inclusion in contracts:** The words **"this contract"** mean the Term Loan Agreement which includes the Annexure Schedule, these Loan Conditions, each security interest and any document that contains a provision incorporating into that document any or all of the provisions set out in these Loan Conditions as amended, added or varied specifically by the terms of any annexure or schedule attached to that document.
- (b) **Construction of terms:** In this contract, unless inconsistent with the context:
- (i) any expression that corresponds to a heading in a Table means and includes the information and particulars inserted against that heading; and
 - (ii) the word **"you"** includes all persons executing this contract regardless of how they may be described in this contract and the covenants contained and implied in this contract will bind each of you jointly and severally as the principal party in this contract;
 - (iii) a reference to a person (whether by name or position) extends to and includes the executors, administrators and assigns of that person; and
 - (iv) **"us"**, **"we"** or the **"lender"** means the party named as such in this contract;
 - (v) the singular includes the plural and vice versa; and
 - (vi) a reference in any provision of this contract to any law is a reference to that law as at 1 January 2008 unless the provision requires you to comply with that law and that law is changed in which case the requirement to comply with the relevant law is a requirement to comply with the amended law.

In this contract, clause and paragraph headings are included to assist with navigation through the Loan Conditions and do not affect the content of the clause or paragraph.

- (c) **Meaning of certain words:** In this contract, unless inconsistent with the context:

"default interest rate" means the annual interest rate set out opposite the words "default interest rate" in Table A of the Annexure Schedule;

"effective date" means the date set out opposite the words "effective date" on the front page of the Term Loan Agreement;

"fixed-rate component" means any component of the moneys owing in respect of which we have agreed that the interest rate is fixed for an agreed period for the whole or part of the unpaid balance of that component.

"interest commencement date" means the date set out opposite the words "interest commencement date" in Table E of the Annexure Schedule;

"interest dates" means the dates set out opposite the words "interest dates" in Table E of the Annexure Schedule and refers to the dates on which interest is debited by us to the loan account;

"land" and **"mortgage"** have the meanings set out in the Land Transfer Act 1952;

"law" and **"laws"** means any Act of Parliament, regulation, Order in Council or local authority by-law;

"moneys owing" means all moneys owing to the lender at any time under this contract;

"ordinary interest rate" means the annual interest rate set out opposite the words "ordinary interest rate" in Table A of the Annexure Schedule;

"person" includes a company or other body corporate;

"principal sum" means the principal sum specified in Table A of the Annexure Schedule;

"schedule" refers to one or more of them as the context requires;

"security interest"

- (i) in relation to land, means an interest in land under a mortgage and includes any unregistered charge on any land and any interest in any land granted or created for securing money or the payment or performance of an obligation;
- (ii) in relation to personal property, has the meaning set out in section 17 of the Personal Property Securities Act 1999; and
- (iii) in relation to other property, means any interest in that property that has been created for the purpose of securing money or moneys worth;

"taxpayer's paying rate" has the meaning set out in section 120C of the Tax Administration Act 1994 or any amendment or replacement of that section;

"term expiry date" means the date set out opposite the words "term expiry date" in Table A of the Annexure Schedule; and

"upon demand" means upon demand by notice in writing signed by or on behalf of the lender.

- (d) **Relationship with laws:** If any provision in this contract conflicts with, varies or is contrary to the provisions of any law or any provisions implied in contracts by any law then:
- (i) if the provisions of or implied by that law may be varied or negated, the provisions of this contract will take precedence and the provisions of or implied by that law will be deemed not to apply to this contract or to apply only as varied by the provisions of this contract;
 - (ii) if the provisions of or implied by that law may not be varied or negated, then the provisions of this contract must be read subject to the provisions of or implied by that law.

The provisions in this contract are not exclusive and all laws that would otherwise apply to this contract continue to apply unless they have been varied or negated by the provisions of this contract.

4. COVENANT TO PAY AND TO COMPLY WITH OBLIGATIONS

- (a) **Pay and comply:** You must:
- (i) pay the principal sum to us at the times and in the manner set out in Table I of the Annexure Schedule and, to the extent that there is no such agreement in respect of payment of any other part of the moneys owing, then upon demand;
 - (ii) comply with all of the obligations contained in the contract; and
 - (iii) comply with the terms of every other security interest at any time held by the lender for the moneys owing.
- (b) **Pay interest:** You must pay interest:
- (i) on the principal sum in the manner and at the times set out in item (k) of the Initial Disclosure Statement or as set out in the Annexure Schedule; and
 - (ii) on that part of the principal sum in respect of which there is no agreement between the relevant parties as to liability for payment of interest (whether or not demand has been made) on the last day of each month at 2% per annum above the taxpayer's paying rate as prescribed from time to time, calculated with daily rests from the date on which the moneys become owing.
- (c) **Default interest:** If any moneys payable under this contract are not paid on the due date, default interest accrues daily on the amount unpaid at the default interest rate from the date the payment was due until the date the default is remedied. The default will not be remedied until the lender has been paid:
- (i) the amount of the payment in default; and
 - (ii) the amount of default interest that has accrued on the payment in default.

5. RIGHT TO PREPAY THE PRINCIPAL SUM

- (a) **Full prepayment:** You may repay the principal sum in full, but not in part, at any time prior to the term expiry date by payment of:
- (i) the full amount of the principal sum then outstanding;
 - (ii) interest at the ordinary interest rate to the date of repayment in full;
 - (iii) all discharge and other fees payable to the lender or the solicitor for the lender relating to any discharge of any security interest taken in conjunction with this contract;
 - (iv) the administrative costs incurred by the lender arising from the full prepayment;
 - (v) the amount of the reasonable estimate of the lender's loss arising from the full prepayment.
- (b) **Part prepayment:** Unless the Annexure Schedule specifies otherwise, you may not repay the principal sum in part prior to the term expiry date. If the Annexure Schedule specifies that you may prepay the principal sum in part, or if the lender elects to accept a prepayment in part, the amount prepaid will be applied in the following order towards:
- (i) interest on the amount prepaid at the ordinary interest rate to the date of repayment;
 - (ii) the administrative costs incurred by the lender arising from the part prepayment;
 - (iii) the amount of the reasonable estimate of the lender's loss arising from the part prepayment of a fixed-rate component; then
 - (iv) reduction of the principal sum then outstanding.
- (c) Unless the Annexure Schedule provides otherwise:
- (i) if the ordinary interest rate is fixed for the whole term of the contract, the reasonable estimate of the lender's loss on full or part prepayment will be determined in accordance with the formula set out in regulation 9 of the Credit Contracts and Consumer Finance Regulations 2004 as amended from time to time.

- (ii) if the ordinary interest rate is fixed for a portion of the term of this contract and not the whole term, the reasonable estimate of the lender's loss on full or part prepayment will be determined in accordance with the formula set out in regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004 as amended from time to time.

6. REPRESENTATIONS AND WARRANTIES

You represent and warrant to the lender that:

- (a) **properly authorised and valid binding and enforceable:** this contract is granted in accordance with:
 - (i) the resolutions of the directors and shareholders (where applicable) or of the partners, as the case may be; and
 - (ii) (if applicable) the Companies Act 1993,and that all other matters and things have been done and performed so as to authorise and make the execution and delivery of this contract, and your performance under this contract legal, valid and binding;
- (b) **inclusion of all other representations and warranties:** all representations and warranties given by you under this contract form representations and warranties of this contract and it must be read and construed to include such representations and warranties;
- (c) **default:** no event of default has occurred and you have no knowledge that an event of default is about to occur nor do you reasonably suspect that an event of default will occur;
- (d) **solvency:** if all or any one of you are a company, that you are solvent according to the meaning of the term in section 4 of the Companies Act 1993;
- (e) **information:** the information provided by you in connection with this contract is true and accurate and remains true to the date of this contract and there are no facts or circumstances that have not been disclosed to the lender which would make any information untrue, inaccurate or misleading; and
- (f) **continuation:** each representation and warranty in this contract is deemed to continue for as long as this contract is in effect by reference to the facts and circumstances as they exist, except that each reference to financial statements must be construed as a reference to the latest available financial statements of the relevant person.

7. WHEN DEFAULT OCCURS

Default occurs if:

- (a) **breach of obligation to pay money:** any of you fail to pay any moneys due in accordance with clause 4;
- (b) **breach of non-monetary obligation:**
 - (i) you fail to comply with any of the other obligations set out in clause 4(a)(ii) and 4(a)(iii) and, unless the agreement or arrangement relating to the obligation provides otherwise, where such failure is capable of remedy, the failure continues for a period of seven (7) days after the lender has served on you, a notice requiring you to remedy such failure; or
 - (ii) a default (however described) occurs in any agreement, deed or document under which you have obligations to the lender (other than an agreement or arrangement referred to in clause 7(b)(i)) and, unless the agreement, deed or document under which that default occurs provides otherwise, where such default is capable of remedy, the default continues for a period of seven (7) days after the lender has served on you a notice requiring you to remedy such failure;
- (c) **change to a natural person granting the security:** any of you are a natural person and you die, change your name without the written consent of the lender, become bankrupt or in the opinion of the lender it appears from any balance sheet or other record that you have committed an act of bankruptcy;
- (d) **liability:** you act so that you contravene any law or incur legal liability or if you contravene any part of this contract including any collateral guarantee or agreement or if litigation, arbitration or administrative proceeding is current, pending or to your knowledge is threatened.

8. RIGHTS AND POWERS OF LENDER ON DEFAULT

- (a) **Rights and powers generally:** If default occurs, the lender may at any time or times thereafter, in addition to any rights, remedies or powers otherwise conferred upon the lender by law, exercise all or any of the following rights and powers separately or concurrently:
 - (i) call up the balance of the moneys owing in accordance with clause 9; or
 - (ii) obtain judgment and enforce such judgment against you (and if more than one of you, all or any one of you) for all of the moneys owing or if the amount realised from the exercise of any of the lender's rights and powers in any security interest is not sufficient to pay the moneys owing in full, the amount of such deficiency.

- (b) **Delay does not affect exercise of powers:** The lender's rights under this contract will not be affected by any delay in exercising them (whether or not the lender knows that they have become exercisable). The lender may only be held to have acquiesced in or waived any matter in relation to this clause if and to the extent that the acquiescence or waiver is expressed in writing.
- (c) **When notice required:** Except as required by law or the terms of this contract, the lender need not give any notice before exercising all or any of its rights and powers following a default.
- (d) **Persons dealing with lender:** No person dealing with the lender exercising any of these rights and powers will be:
- (i) **not answerable for any loss:** answerable for the loss, misapplication or non-application of any money paid to the lender, or be obliged or concerned to see to its application; or
 - (ii) **not obliged to enquire:** obliged or concerned to enquire whether any default has been made, whether any notice has been given, whether the right or power has been exercised has become exercisable or otherwise as to the necessity, expediency, regularity or propriety for or of the action taken by the lender or the receiver or be affected by notice that no such default has been made, that no notice has been given, that the right or power has not become exercisable or that the exercise of that right or power is otherwise unnecessary, inexpedient, irregular or improper.
- (e) **Rights once acquired are not lost:** Once acquired, a lender will not lose a right or power unless the lender agrees in writing to waive or release it.
- (f) **Costs of default are payable:** All sums expended by the lender in the exercise of the lender's rights and powers following a default or in exercising or enforcing or attempting to exercise or enforce any power, right or remedy contained or implied in this contract are payable by you to the lender upon demand. This clause does not limit any other term of this contract relating to costs; nor is it limited by any other such term.

9. ACCELERATING PAYMENT OF THE MONEYS OWING ON DEFAULT

If default occurs, the moneys owing will become due and payable upon demand or, to the extent any notice is required by law to be given before the secured moneys become payable, immediately on expiry of the relevant notice period, without the need for any further notice or demand. Notwithstanding the acceleration of payment under this clause 9, default interest on the amount accelerated as a result of default is not payable and interest continues to accrue on that amount at the ordinary interest rate.

10. PAYMENT OF MONEYS BY LENDER

If you fail to do any thing or pay any sum which you have agreed to do or pay, the lender may (but is not obliged to) do such thing or pay such sum, in whole or in part which, in the lender's opinion, is necessary or expedient to rectify the consequences of the default. Any payment by the lender is without prejudice to the rights and powers of the lender under any other provision in this contract or any agreement between you and the lender.

11. TRANSFER BY LENDER

The lender may without notice at any time assign or transfer or grant a security interest in this contract. You agree that the assignee or transferee will have all the rights and remedies available under this contract and further agree that you will not assert any right of set-off or enter a claim which you have or acquire against the lender and will pay the moneys owing as they come due to the assignee or transferee as the case may be.

12. SERVICE OF NOTICES

You agree that any demand or notice required or authorised to be served on you under or in relation to this contract may be signed by the lender or by the lender's agent and the following provisions apply:

- (a) **method of service:** the notice may be served:
- (i) by delivering it to each of you personally; or
 - (ii) by posting it by registered letter addressed to you at your place of residence or place of business last known to the lender; or
 - (iii) if any or all of you are a company, by leaving it at your registered office or by posting it by registered letter addressed to you at your registered office or addressed to you at your place of business last known to the lender or by delivering it to any person who is named on the public register as a director or secretary of the company;
- (b) **when service effected:** a demand or notice posted by registered letter is deemed served at the time when the registered letter would in the ordinary course of postal delivery have been delivered;
- (c) **service valid when effected:** any service effected in accordance with this clause will be valid and effectual notwithstanding that at the date of service, you, whether to the knowledge of the lender or not, are dead, mentally incapable, bankrupt, in liquidation or absent from New Zealand or do not receive the demand or notice and notwithstanding any other matter or event whatsoever;
- (d) **other modes of service:** the modes of service provided by this clause do not limit any other sufficient and lawful modes of service and are subject to any mandatory provisions in any statute;

- (e) **actual receipt is valid notice:** where a demand or notice is not served in accordance with any of the foregoing methods, it will nevertheless be sufficiently served if actually received by you.

13. COSTS

- (a) **Costs payable by you:** You must pay to the lender upon demand, the lender's legal costs (as between solicitor and client) for:
- (i) **documentation:** the arranging and preparation of this contract and registration of any security interest taken in conjunction with this contract and any variation or discharge or transfer in lieu of discharge of any security interest;
 - (ii) **costs on default:** legal services arising from or relating to any default under this contract or the enforcement or exercise or attempted enforcement or exercise of any of the lender's rights, remedies and powers under this contract (including the giving or attempted giving of any notice under the Property Law Act 2007 or any enactment in substitution for that Act, the inspection and valuation of the land and, if the lender is a solicitor's nominee company, the cost of compliance by the relevant solicitor with the Solicitors Nominee Company Rules 1996 or any similar rules in relation to the matters mentioned in this paragraph (ii));
 - (iii) **costs of variation, waiver or change demand:** dealing with any of your requests for a variation of or waiver, change demand or other concession in relation to this contract;
 - (iv) **legal costs of lender:** legal services relating to the protection of the lender's security interest taken in conjunction with this contract (including the investigation of any claim relating to the land which might affect that interest).
- (b) **Costs payable despite nature of lender:** This clause applies notwithstanding that the lender may be a solicitor or a solicitor's nominee company.

14. GUARANTOR

Any person executing this contract as a guarantor, covenants with the lender that:

- (a) **covenant to pay and comply:** the guarantor will pay all the obligations and will comply with all covenants and terms on your part contained or implied in this contract;
- (b) **covenantor not a surety:** although as between you and the guarantor, the guarantor may be a surety only, the Guarantor will in relation to the lender be deemed a principal party of this contract and may be so treated in all respects by the lender;
- (c) **events that do not release guarantor:** neither your liquidation nor the giving of time or any indulgence by the lender to you, nor the exercise or non-exercise by the lender of any of the lender's powers, nor any release or partial release or variation of any contract or security interest or arrangement with you, without (in any of the above cases) the consent of the borrower, will release the guarantor from liability to the lender; and
- (d) **not released if a surety would be released:** nor will the guarantor be released by any other act or omission of the lender or any other act, matter or thing which might release one liable as a surety only.

15. TRUSTEES

- (a) **Representations by trustees:** If any of you are entering into this contract as the trustee of a trust then you represent and warrant to the lender that:
- (i) **powers:** you have the power under the instrument under which you hold property on trust to enter into this contract;
 - (ii) **proper purposes:** the entry into this contract is for a proper purpose and for the benefit of the trust under which you hold the property;
 - (iii) **right to be indemnified:** you have the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any of your actions including the entry into this contract; and
 - (iv) **all trustees approve or assent:** all of the persons who are trustees of the relevant trust have approved and have signed or assented to this contract.
- (b) **Trustees have full and unlimited personal liability:** Unless you have been named in this contract as a limited liability trustee (in which case the provisions of clause 15(c) will apply) all of you have full and unlimited personal liability for the repayment of the moneys owing and the compliance with all obligations in this contract.
- (c) **Limited liability trustees:** If you have been named in this contract as a limited liability trustee then your liability is not personal and unlimited but will be limited to an amount equal to the value of the assets of the trust under which you have entered into this contract as a trustee that are (or, but for default would be) available to satisfy your liability for the moneys owing (the "limited amount") unless your right as a trustee to be indemnified from the assets of the trust has been lost and, as a result, the lender is unable to recover from you the limited amount.

SAMPLE



AUCKLAND DISTRICT LAW SOCIETY INC
INDEPENDENT VOICE OF LAW

Auckland District Law Society Incorporated
PO Box 58, Shortland Street, Auckland 1140
DX CP 24001
Ph: (09) 303 5270
Fax: (09) 309 3726
www.adls.org.nz

Law Firm Acting:

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