



**Industrial and Commercial Bank of China (New Zealand)  
Limited**

**Commercial Loan General Terms and Conditions**

Effective October 2020

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## TERMS AND CONDITIONS

### 1. GENERAL INFORMATION

1.1 The terms and conditions that apply to your Loan are set out in:

- these Terms and Conditions;
- your Loan Agreement;
- any Security documents;
- any document which we give you which changes the terms and conditions of your Loan; and
- any other Loan Document relating to your Loan.

Other terms not included in the documents listed above may also be implied by New Zealand law.

1.2 These Terms and Conditions are subject to any specific terms set out in your Loan Agreement or Security documents (which will override the relevant part of these Terms and Conditions if they conflict with them). You agree to be bound by these Terms and Conditions and any other terms which apply to your Loan when you sign your Loan Agreement.

1.3 The terms and conditions governing your general banking relationship with us, including the operation of your Specified Account and other banking services we provide to you, are set out in the General Terms. If there is any conflict between any part of the General Terms and these Terms and Conditions, these Terms and Conditions will apply.

### 2. DEFINITIONS

2.1 Words in these Terms and Conditions which are capitalised are words with specific meanings, as set out in clause 2.2 below. In addition:

- "**you**" means each person named in the Loan Agreement as the "Borrower" and where any person is named as a trustee or partner means that person in, as applicable, his/her/its capacity as trustee or his/her capacity as a partner. If there is more than one person named as "Borrower", it means each person jointly and severally (unless the context requires otherwise), and includes their successors and permitted assignees. "**Your**" has a corresponding meaning;
- "**we**" or "**ICBCNZ**" means Industrial and Commercial Bank of China (New Zealand) Limited and our successors, assignees and authorised agents. "**Our**" and "**us**" have corresponding meanings;
- a reference to any document or agreement includes that document or agreement as amended, supplemented or replaced from time to time;
- a reference to any statute or a provision of a statute includes that statute or provision as amended, modified, substituted or re-enacted from time to time and any regulations and other instruments issued or made under that statute from time to time;
- a reference to "**costs**" includes costs, losses, fees, charges, claims, judgments, damages, penalties, interest and all liabilities, including the costs of any legal advisers (on a solicitor client basis);

- a reference to "**loss**" or "**losses**" includes any costs, loss (whether direct or indirect) of profits, business, opportunity or anticipated savings or any other direct, indirect or consequential loss however incurred;
- a reference to a "**security interest**" includes a "security interest" (as defined in section 17 of the Personal Property Securities Act 1999), a mortgage, encumbrance, pledge, charge (whether fixed or floating), lien, finance lease, deferred purchase, sale and repurchase, flawed asset, sale and leaseback, title retention, assignment by way of security, trust, hypothecation, and any other security agreement or arrangement of whatsoever nature (however described) that in substance secures payment or performance of an obligation without regard to the form of the transaction and the identity of the parties;
- a reference to an Event of Default "**continuing**" means it has not been waived in writing by us;
- a reference to something having a "**material adverse effect**" is a reference to it having a material adverse effect on you (or any Guarantor, as applicable), your (or any Guarantor's) business, assets or financial condition, or your (or any Guarantor's) ability to comply with your (or their) obligations under the Loan Documents or our ability to exercise our rights under any Loan Document, and "material adverse change" will be construed accordingly;
- a reference to a "**directive**" means any order, regulation, direction, requirement, request, notification, condition of registration or standard (whether or not it has the force of law) imposed by the Reserve Bank of New Zealand, the government or a government authority in New Zealand, or a similar body in another country. Examples include: tax regulations, reserve requirements, prudential or liquidity requirements, special deposit requirements, borrowing limitations, gearing constraints and capital adequacy rules and requirements;
- a reference to "**disposing**" of any assets or property includes to sell, lend, lease, discount, factor, subordinate, give, assign, transfer or otherwise part or deal with those assets or that property in any way;
- a "**distribution**" includes:
  - (a) a distribution within the meaning of that term under section 2 of the Companies Act 1993 (and as if 'company' includes any person);
  - (b) a distribution as defined in section 39 of the Limited Partnerships Act 2008;
  - (c) a distribution of trust assets to a beneficiary of that trust;
  - (d) a distribution of partnership assets to a partner of that partner, and
  - (e) any other payment to a related party, including a loan, a payment of interest or principal, a guarantee, financial assistance, officer's salaries or fees, or any similar payment or financial accommodation;
- a reference to a "**person**" includes any individual, firm, company, partnership, limited partnership, corporation, trust, joint venture, organisation or governmental agency (in each case whether or not having separate legal personality);

- a reference to "\$" means New Zealand currency unless your loan is in another currency other than New Zealand currency, then your applicable loan currency;
- where we refer to something being specified or set out in your Loan Agreement, this also includes circumstances where your Loan Agreement sets out how that thing will be determined, or we may provide you with the relevant information after your Loan Agreement has been entered into. For example, if you have an amortising loan and your Interest Rate changes after you enter into your Loan Agreement, we may provide you with an updated schedule of repayments that you'll need to make;
- derivatives of any defined term will have a corresponding meaning;
- a reference to us giving you notice means public notice, press release, notices in our branches or on our website, mail to the most recent address you have advised to us or such other method as we see fit; and
- a reference to our website means to [www.icbcnz.com](http://www.icbcnz.com).

2.2 In these Terms and Conditions and in each Loan Document (unless the context requires otherwise):

**"Amounts Owing"** means, at any time, the total principal and interest outstanding under your Loan plus all fees, costs and other amounts you owe under the Loan Documents at such time.

**"Base Rate"** means, at any time, in relation to an Interest Period:

- in respect of an amount drawn in New Zealand currency, BKBM; or
- any other screen rate designated by us in the Loan Agreement to apply in relation to the applicable Loan.

**"BKBM"** means:

- in relation to an Interest Period of less than one month or of more than one month that is not one, two, three or six months, the rate per annum (expressed on a percentage yield basis and rounded up to the nearest four decimal places) determined by us on the Quotation Day to be our cost of funding the relevant Drawing for that period; or
- in relation to an Interest Period of one, two, three or six months:
  - the rate per annum (expressed on a percentage yield basis and rounded up to the nearest four decimal places) determined by us on the Quotation Day to be the New Zealand bank bill reference rate (bid) administered by the New Zealand Financial Markets Association (or any other person who takes over administration of such rate) for a tenor of, or of about, that Interest Period as displayed at the Specified Time on that day on page BKBM (or its successor page) of the Thomson Reuters Screen or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, we may specify another page or service displaying the relevant rate after consultation with you; or
  - if no such rate is available then BKBM will be the Reference Rate for the relevant currency and period equivalent to the Interest Period,

provided that if, in any case, that rate is less than zero, then BKBM shall be deemed to be zero.

**"Break Costs"** means the amount (if any) by which:

- (a) the interest which we should have received for the period from the date of receipt of all or any part of a Drawing or Unpaid Sum to the last day of the current Interest Period or the last day of the relevant Default Interest Period (as applicable) in respect of that Drawing or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of the current Interest Period or on the last day of the Default Interest Period, respectively;

exceeds:

- (b) the amount which we would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by us on deposit with a leading bank in the relevant interbank market or acquiring a bill of exchange accepted by a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period or Default Interest Period (as applicable).

**"Business Day"** means any day other than a Saturday or Sunday or public holiday on which banks are open for normal banking business in Auckland and, in relation to any date for payment or purchase of a currency other than New Zealand currency, the principal financial centre of the country of that currency.

**"Construction Loan"** means, if your Loan Agreement describes your Loan as a Construction Loan, your Loan or, as the context requires, the outstanding balance under your Construction Loan at any time.

**"Credit Limit"** means, in respect of a Revolving Loan, the amount specified in your Loan Agreement as the maximum amount that may from time to time be outstanding under the Revolving Loan.

**"Default Interest Period"** has the meaning given in clause 20.

**"Default Rate"** means, at any time, the rate specified in your Loan Agreement to be our default rate applying to the relevant Loan.

**"Drawing"** means each drawing made, to be made or deemed to be made by you under your Loan;

**"Event of Default"** means any of the events specified in clause 19 (Events of Default) and any other event specified as a default or an event of default in any Loan Document.

**"Fees and Charges Brochure"** means our fee and charges brochure, including any schedules (as changed, updated or replaced from time to time), copies of which are available at our branches and on our website.

**"Fixed Rate Period"** means, where the Loan Documents provide that a fixed Interest Rate is to apply to your Loan, the length of time that the fixed Interest Rate is to remain the same.

**"GAAP"** means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013.

**"General Terms"** means our General Terms and Conditions (as changed, updated or replaced from time to time), which are available at our branches and on our website.

**"Guarantor"** means any person named as a guarantor in any guarantee given to us in connection with your obligations under the Loan Document, and includes each person (if any) who has given or gives us any Security for your obligations to us under your Loan Documents.

**"Interest Payment Date"** means:

- (a) the last day of the relevant Interest Period for a Drawing and, where any Interest Period exceeds three months, also means each day falling at three monthly intervals during that Interest Period; or
- (b) the scheduled dates for payment of interest as set out in your Loan Agreement;

**"Interest Period"** means the 'interest period' specified in (or determined in accordance with) your Loan Agreement provided that:

- (a) an Interest Period (expressed in months or years) which commences on a day for which there is no numerically corresponding day in the month when that Interest Period expires is to end on the last Business Day of that month;
- (b) if an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period is to be extended to end on the next Business Day, unless the result of that extension would be to carry the Interest Period over into the next calendar month, in which event it is to expire on the immediately preceding Business Day;
- (c) if you fail to nominate the length of an Interest Period, we shall determine its length and that determination will be binding on you; and
- (d) if an Interest Period would extend beyond the relevant Term, it shall be shortened so that it ends on the last day of the Term.

**"Interest Rate"** means, in relation to a Loan, at any time (and subject to the terms of your Loan Agreement):

- (a) where the Loan Documents provide that a fixed interest rate is to apply to your Loan, the annual interest rate specified in your Loan Agreement; or
- (b) where the Loan Documents provide that a Variable Interest Rate is to apply to your Loan, the Variable Interest Rate (subject to application of clause 10).

**"Investigator"** means any person (whether an officer of ICBCNZ or not) appointed to investigate your business, financial condition and operations pursuant to clause 22 (Investigator).

**"Loan"** means a loan made available by us to you under a Loan Agreement and where two or more loans are specified in your Loan Agreement, each loan or the relevant loan (as the case may be).

**"Loan Agreement"** means in respect of any Loan, the document setting out the commercial terms of that Loan between you and us in relation to a Loan.

**"Loan Amount"** means (except in the case of Revolving Loans) the amount specified as such in your Loan Agreement, being the maximum amount of your Loan.

**"Loan Documents"** means:

- (a) these Terms and Conditions;
- (b) each Loan Agreement;
- (c) any document evidencing a Security;
- (d) any document setting out an amendment to the terms of your Loan;
- (e) any specific terms and conditions which apply to your Loan;
- (f) Our Fees and Charges Brochure;
- (g) each agreement under which you enter into a markets transaction (such as interest rate hedging or currency transactions) with us;
- (h) any document setting out priority, postponement, tripartite or intercreditor arrangements relating to your obligations under your Loan; and
- (i) any other document specified by us as a "Loan Document".

**"Margin"** means, in relation to a Variable Interest Rate Loan, the rate specified as the 'Margin' in your Loan Agreement (or that otherwise applies to your Loan in accordance with your Loan Agreement).

**"Market Disruption Event"** means, in relation to a Variable Interest Rate Loan, any of the following events:

- (a) at or about noon on the Quotation Day for the relevant Interest Period, the applicable Screen Rate is not available and none or only one of the Reference Banks supplies a rate to us to determine the Reference Rate for the relevant Interest Period; or
- (b) before 5.00 pm Auckland time (where the Base Rate is BKBM), or the time-zone of the relevant principal financial centre (where the Base Rate is not BKBM), on the Business Day after the applicable Quotation Day, we notify you that, as a result of market circumstances not limited to us (whether or not those circumstances, or their effect on our cost of funds, subsisted on the date of your Loan Agreement), the cost to us of funding the Loan or part of it (from whatever source we reasonably select) is or would be in excess of the relevant Base Rate.

**"Mortgage"** means any mortgage specified in your Loan Agreement or otherwise provided to us from time to time which secures your obligations to us under your Loan Documents.

**"Quotation Day"** means, in relation to any Interest Period, the first day of the Interest Period unless market practice differs in the relevant interbank market for the currency in which the relevant Drawing is denominated, in which case we will determine the Quotation Day for the currency acting reasonably and in good faith in accordance with market practice in the relevant interbank market (and if quotations would normally be given by leading banks in the relevant interbank market on more than one day, the Quotation Day will be the last of those days).

**"Reference Banks"** means:

- (a) in relation to a Drawing in a currency other than New Zealand currency, no less than three leading banks selected by us who operate in the relevant interbank market; or



(b) in relation to a Drawing in New Zealand currency, no less than three New Zealand registered banks selected by us.

**"Reference Rate"** means, in relation to a Drawing and an Interest Period, the rate per annum determined by us at or about the Specified Time on the relevant Quotation Day to be the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to us at our request by the Reference Banks as the rate at which the relevant Reference Bank could raise funds in the relevant currency for the relevant period in the wholesale market.

**"Revolving Loan"** means, if your Loan Agreement describes your Loan as a Revolving Loan, your loan or, as the context requires, the outstanding balance under your Revolving Loan at any time.

**"Screen Rate"** means:

- (a) the rate specified in paragraph (b)(i) of the definition of BKBM; or
- (b) the screen rate designated by us in the Loan Agreement to apply in relation to the applicable Loan.

**"Security"** means each security interest provided to us from time to time in connection with your obligations to us and includes any Mortgage, debenture, general security agreement, specific security agreement, trust, pledge, lien, or other security interest and any guarantee given by any third party and any security interest given in connection with such guarantee, and includes any substitute guarantee or security interest.

**"Specified Account"** means the account from which we will deduct Amounts Owing, as specified in your Loan Agreement.

**"Specified Time"** means:

- (a) in relation to BKBM, 10.45 am New Zealand time; and
- (b) in relation to any other Screen Rate designated by us in your Loan Agreement, the time determined by us in accordance with the market practice in the interbank market to which the Screen Rate relates.

**"Term"** means the term of your Loan, as specified in your Loan Agreement.

**"Term Loan"** means, if your Loan Agreement describes your Loan as a Term Loan, your loan or, as the context requires, the outstanding balance under your Term Loan at any time.

**"Termination Date"** means the date specified as such in your Loan Agreement, being the final date on which you can borrow your Loan (or a part of it).

**"Unpaid Sum"** has the meaning given in clause 12.

**"Variable Interest Rate"** means, at any time, in relation to an Interest Period, the sum of the applicable Base Rate and the Margin.

### **3. CHANGES TO THE TERMS OF YOUR LOAN**

We may change these Terms and Conditions or any other term applying to your Loan at any time without having to obtain your agreement, by giving 14 days' prior notice of the change to you.

Without limiting our rights, this includes:

- (a) changing when, how often and how you'll pay interest, fees or charges under a Loan;
- (b) introducing new fees or charges that apply to a Loan;
- (c) changing the fees or charges that apply to a Loan; and
- (d) changing the interest rate that applies to a Loan (this includes changing any reference rate — for example, BKBM — that your Interest Rate may be based on, or any back-up rate that we can charge in its place). If we do this, we may also make other changes to any Loan Document that we consider necessary to reflect the relevant change.

Unless stated elsewhere in your Loan Documents, changes will not however be made to any fixed Interest Rate, the Loan Amount or Credit Limit, the timing for payment of any principal amounts payable to us or the Term of any Loan, unless made by agreement between us and you. For the avoidance of doubt, this does not affect our rights to change the terms of a Loan or require repayment if any Event of Default arises, our rights in relation to any Loan that is an on demand loan (in other words, one that we can cancel at any time), or any other rights we may have to change the terms of the Loan under the terms of any Loan Document.

To give you notice of the change, we can choose to contact you in one of the ways set out under "Communications" below, or by public notice, press release, on our website, or by display in our branches, or such other method as we see fit.

At times, we may also need to change these Terms and Conditions or any other term applying to your Loan because of a change in law or a practice that affects everyone who provides the same type of loan, or that we are making to protect the security of our systems. We will try and tell you about these changes before they happen but it might not always be possible for us to do.

### **4. CONDITIONS PRECEDENT**

Subject to the other terms of the Loan Documents, your Loan shall be available if we have received (in form and substance satisfactory to us):

- (a) a signed copy of each Loan Document;
- (b) any certificates from authorised persons, your officers (such as trustees, partners or directors) and/or your solicitors that we request;
- (c) payment of all fees and costs;
- (d) all information, documents and other evidence we need to meet our anti-money laundering and 'know your customer' or similar identification procedures under all applicable laws and regulations;

- (e) if any Guarantor is an individual, a waiver of independent legal advice or a certificate from a solicitor confirming that the Guarantor has received independent legal advice;
- (f) evidence that all of our insurance requirements have been met; and
- (g) evidence that any other conditions set out in the Loan Agreement or any related document have been met.

We will also have to be satisfied that no Event of Default is continuing, and no material adverse change has taken place at the time the Loan is to be borrowed.

## **5. PROCEDURE FOR BORROWING**

Unless otherwise specified in these Terms and Conditions or in your Loan Agreement, you may request that your Loan (or, if your Loan Agreement allows for progressive drawdowns, an advance under your Loan) is drawn down on any Business Day and in the amounts you request, as long as we are satisfied that no Event of Default is continuing or is likely to occur.

Unless your Loan Agreement specifies when your Loan must be drawn down, you must give us written notice of the date on which you want to borrow your Loan and in what amount before 10:00 am on the proposed drawdown date (or where the Loan is in a currency other than New Zealand currency, two Business Days prior to the proposed drawdown date) and details of your bank account or solicitor's trust account for the Loan to be deposited into.

If your Loan Agreement states that your Loan must be drawn down on a specified date (or dates) and your Loan is not drawn down on such date(s), this will constitute a breach of the Loan Documents and will also entitle us to recover our costs under clause 25 (Indemnities).

Unless your Loan Agreement provides otherwise, you may only borrow your Loan in one lump sum. This does not apply to any Construction Loan or Revolving Loan, which may be drawn down in stages.

For Loans other than Revolving Loans, any amount borrowed must not exceed your Loan Amount when added to all principal amounts outstanding under the same Loan.

If your Loan is a Revolving Loan, then notwithstanding the above and subject to any restrictions in your Loan Agreement, you may draw down the Loan at any time and in any amounts by any method we authorise, provided always that:

- (a) any amount borrowed under your Revolving Loan must not exceed your Credit Limit when added to all Drawings outstanding under your Revolving Loan;
- (b) the maximum aggregate number of Drawings outstanding at any one time during the Term shall be 10 unless we, in our absolute discretion, agree in writing otherwise; and
- (c) the Drawing is:
  - (i) for an amount of not less than \$50,000 or (if less) the maximum amount you are permitted to borrow under (a) above; and

- (ii) an integral multiple of \$50,000 or the maximum amount you are permitted to borrow under (a) above (as applicable).

## **6. INSURANCE**

Your Loan Agreement and any Mortgage or other Security document will specify what insurance is required. You must keep all insurance in place until you have repaid the Loan and all other Amounts Owing. If we ask for it, you must give us a copy of your certificate of insurance. If we require it, the proceeds of any insurance claim must be used to repay the Amounts Owing. We may ask the insurance company to pay any proceeds directly to us.

## **7. TYPES OF LOANS**

The type of commercial Loan you have will be specified in your Loan Agreement. Loan types are described below. Your Loan may be a combination of these types.

### **Fixed Rate Loans**

Loans where the Interest Rate is fixed for a defined period. On the expiry of that period, the Interest Rate will automatically change to a Variable Interest Rate, unless you arrange otherwise with us. The period during which the Interest Rate is fixed is noted in your Loan Agreement. Fixed rate Loans must be drawn down in one lump sum, rather than in stages.

### **Variable Rate Loans**

Loans which are subject to the Variable Interest Rate noted in your Loan Agreement. Variable Interest Rates vary during the Term of a Loan because of changes to the underlying rates or margins used to determine them.

### **Amortising Loans**

If your Loan Agreement specifies that your Loan is an amortising loan, the Loan Amount shall reduce on each date and by the amounts specified in your Loan Agreement. You'll need to make the relevant repayments on those dates and in those amounts.

### **Term Loans**

Under a Term Loan, you must draw down your Loan in one lump sum, and (if your Loan is an amortising loan) make fixed, regular repayments of principal together with payments of interest on the outstanding balance or (if your Loan is a non-amortising loan) make fixed, regular repayments of interest on the outstanding balance and repay all of the principal in one lump sum on the last day of the Term. Under a Term Loan, amounts that you repay cannot be reborrowed.

### **Revolving Loans**

Under a Revolving Loan amounts can be repaid and reborrowed at any time (subject to the other terms of the Loan Documents, including complying with the procedure for borrowing set out in clause 5). Fixed Interest Rates are not available on a Revolving Loan – Variable Interest Rates will apply.

### **Construction Loans**

Construction Loans are provided to meet the costs of a construction project. Drawdowns of the Loan will be made in stages, based on the costs of the works. If you have a Construction Loan, it will be subject to a Variable Interest Rate and the initial period of the Loan will be interest-only, unless you request otherwise.

When you borrow a Construction Loan, your Loan Agreement may specify some additional conditions that you'll need to meet.

## **8. PAYMENTS**

If your Loan is amortising, payments of principal must be made in the amounts and on the dates specified in your Loan Agreement (repayment amounts may get updated from time to time if you make prepayments, or your Interest Rate changes for example). You must also make regular payments of interest calculated in accordance with your Loan Agreement on each Interest Payment Date.

If your Loan is not amortising, you won't have to make repayments of principal during the Term but you must make regular payments of interest calculated in accordance with your Loan Agreement on each Interest Payment Date.

If your Loan Agreement says that you have a Revolving Loan, then (subject to anything in your Loan Agreement), you shall repay each Drawing in cleared funds by no later than 2.00 pm on the last day of the Interest Period for the Drawing. These drawings can be repaid by rollover Drawings (in other words, a further Drawing will be deemed to be drawn down on the payment date, subject to the other terms of the Loan Documents being complied with including that no Event of Default is continuing on that day, and the proceeds of the deemed Drawing will be applied in repayment of the original Drawing). Unless you request a specific Interest Period for a rollover Drawing, or we've agreed with you that a specific length of Interest Period will apply to your Loan throughout the Term, we will set the length of each Interest Period applying to a rollover Drawing.

For all Loans, all Amounts Owing must be paid in full in cleared funds no later than 2.00 pm on the last day of the Term. Payments shall be made to the account that we specify.

Except where your Loan is specified in your Loan Agreement as a Revolving Loan (or your Loan Agreement specifies otherwise), amounts repaid or prepaid in respect of a Loan cannot be reborrowed, and the Loan Amount will be reduced by the amount of principal that's repaid.

## **9. INTEREST**

Interest on your Loan will accrue daily on the outstanding balance of your Loan (or the outstanding balance of a Drawing, if applicable) at the Interest Rate. It will be calculated on the basis of a year of 365 days or 360 days (depending on the practice of the relevant interbank market applicable to the currency of your Loan) and the actual number of days elapsed.

Interest Periods will either be as specified in your Loan Agreement or as we agree with you (if the length of Interest Periods is to remain fixed for the Term) or (if we've agreed that the length of Interest Periods can vary) as you select from time to time (before the relevant Interest Period starts). If the length of an Interest Period is not set out in your Loan Agreement or agreed between us and you don't request one, it will be the period set by us.

Interest is payable on each Interest Payment Date, with a final payment due on the last day of the Term.

Unless your Loan Agreement provides otherwise, we'll debit your Specified Account with the amount of interest you owe on each Interest Payment Date (provided you have sufficient funds in that account).

However, interest which is otherwise due and payable on each Interest Payment Date may, if you request and we agree (at our sole discretion), be capitalised to the Loan. Interest will then be charged on that capitalised interest, on the basis that the amount of capitalised interest is deemed to be an additional amount borrowed under your Loan.

#### **Fixed Interest Rates**

If your Loan is subject to a fixed Interest Rate, the initial period during which the fixed Interest Rate will stay the same will be specified in your Loan Agreement. The fixed rate which applies to your Loan will not change during the Fixed Rate Period (unless you fail to pay any amount to us when it is due, in which case default interest will be payable).

If you do not make alternative arrangements with us at least two Business Days before the end of the Fixed Rate Period, we will review your Interest Rate and may change it to a Variable Interest Rate (which may be higher than the Interest Rate which applied to your Loan during the Fixed Rate Period) when the Fixed Rate Period ends.

#### **Variable Interest Rates**

If your Loan is subject to a Variable Interest Rate, you will be advised of the Margin and the applicable Base Rate when we offer the Loan to you (or when your Loan becomes subject to a Variable Interest Rate (as the case may be)).

#### **Progressive draw down**

Where your Loan Agreement provides that you can draw down your Loan (or part of your Loan) progressively (that is, in stages rather than in one lump sum):

- (a) interest will be calculated on each Drawing (a different Interest Rate might apply to each Drawing, depending on the relevant Base Rate at the time of it is drawn down) and payable on each Interest Payment Date; and
- (b) at the end of the interest only period (if one applies to your Loan – this will be set out in your Loan Agreement), you will continue to make regular interest payments and will then start making principal repayments in the amounts and dates specified in your Loan Agreement. The regular principal repayments specified in your Loan Agreement may be adjusted to reflect the actual amounts drawn down under your Loan, following consultation with you.

If you have a fixed rate Loan or a Term Loan then you may not draw down your Loan progressively.

### **10. MARKET DISRUPTION**

#### **Determination of rate**

If the Base Rate for an Interest Period is to be determined by reference to the Reference Banks, but a Reference Bank does not supply a quotation by the Specified Time on the relevant Quotation Day for the relevant Interest Period, we will calculate the applicable Base Rate on the basis of the quotations received from the remaining Reference Banks.

Subject to any substitute basis for determining the rate of interest agreed under this clause 10, if we determine that a Market Disruption Event has occurred in relation to a Loan or Drawing for any Interest Period, then we shall promptly notify you, and the Interest Rate for that Interest Period shall be the rate per annum which is the sum (rounded up to the nearest four decimal places) of:

- (a) the applicable Margin; and
- (b) the rate notified by us as soon as practicable and in any event no later than the Business Day before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum to be our cost of funding the Loan or that Drawing from whatever source or sources we may reasonably select (if that rate is less than zero, then the rate shall be deemed to be zero).

#### **Alternative basis of interest or funding**

If a Market Disruption Event occurs and you or we so require, we shall enter into negotiations with you (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the applicable Interest Rate. Any substitute basis so agreed shall only apply with your and our prior consent. In the event that no substitute basis is agreed at the end of the 30 day period, then the applicable Interest Rate shall continue to be determined in accordance with this clause 10.

#### **Confidentiality:**

- (a) Subject to sub-clause (b) below, you shall (and shall ensure that your officers and employees shall) keep confidential and not disclose to any other person any information described in, or arising from any negotiations under this clause 10.
- (b) However, you or your officers or employees may disclose such information:
  - (i) to the extent required by any applicable law or regulation or listing rules;
  - (ii) to your directors, employees or contractors who need to know the information for the purpose of your Loan Agreement, or your professional advisers for a proper purpose, provided that you ensure that each such person to whom you disclose such information complies with the restrictions in this clause 10 as if such person were a party to your Loan Agreement; or
  - (iii) to the extent you reasonably deem necessary in connection with any actual or contemplated proceedings or a claim with respect to this clause 10.

### **11. HOW TO MAKE PAYMENTS**

All Amounts Owing under your Loan will be deducted by direct debit from your Specified Account at the relevant due date for payment, or may be paid by any other method that we have confirmed is acceptable to us. Without prejudice to clause 23 (Set-off), if any Loan Document so provides, or if you have not made any payment on its due date, then we may debit any amount due to us from any account that you hold with us.

Where a Loan Document does not specify the date for payment of any amount, it will be payable on demand. You authorise us to deduct from your Specified Account all amounts required to be paid to us at the relevant due date for payment.

All payments are to be made in cleared funds without set-off or counter claim and free of any deduction or withholding, except to the extent required by law. If you or we are legally obliged to deduct or withhold an amount from any payment due to be paid to us under the Loan Documents, then that payment will be increased so that we receive and retain, free from liability, a net amount equal to the amount that we would have received and retained if no deduction or withholding had been made.

Payments received by us will go towards payment of outstanding fees and costs under the Loan Documents and/or the General Terms, then towards interest and then towards payment of principal and other Amounts Owing (though we may change this order at our discretion). We can also hold any money you pay us in a separate account until we're satisfied that the Amounts Owing have been paid in full.

If an amount is due on a day which is not a Business Day, you agree to pay it to us on the next Business Day unless the next Business Day falls in the following calendar month, in which case you agree to pay it to us on the previous Business Day. If applicable, any amount due will be adjusted accordingly.

## **12. EARLY REPAYMENT**

### **Procedure for early repayment**

You may prepay your Loan in full, or in part (in an amount of \$5,000 or higher) if you have given us at least 10 Business Days' irrevocable notice in writing of the date and amount of that prepayment. You will also have to pay any interest owing on the amount prepaid and may have to pay Break Costs and an administration fee.

If you prepay a Loan and it has a fixed Interest Rate, the Break Costs may be significant. If you are considering making an early repayment, we recommend that you contact us for details of any Break Costs and other fees which may be payable.

You may also be required to pay Break Costs and an administration fee if you change your Loan to a different type of Loan or to a different type of Interest Rate.

### **Break Costs**

You shall pay us our Break Costs attributable to all or any part of your Loan or any sum due and payable but unpaid by you under the Loan Documents ("**Unpaid Sum**") being paid by you on a day other than the applicable due date or the last day of the applicable Default Interest Period for that Unpaid Sum.

Any Break Costs will be payable on the date that the full or part prepayment takes place or when you change your Loan to a different type of Loan or to a different type of Interest Rate. You may also have to pay our administrative costs arising from the early repayment.

Break Costs are an amount payable in lieu of interest which would otherwise have been paid.



### 13. REPRESENTATION AND WARRANTIES

At all times, you represent and warrant to us (by reference to the facts and circumstances at the relevant time) that:

- (a) (if you are a company or other corporate body) you are a legal entity validly existing under the laws of your jurisdiction of incorporation, capable of suing and being sued, and have the power and authority to own your assets and carry on your business as it is being conducted;
- (b) (if you are a company or other corporate body) you have the power, and all necessary action (including passing all resolutions) has been taken to authorise you, to enter into, execute, exercise your rights and perform your obligations under each Loan Document;
- (c) (if you are a company or other corporate body) you have no holding company or subsidiaries other than any holding company or subsidiaries previously disclosed in writing to, and accepted by, us;
- (d) your entry into, and the exercise of your rights and performance of obligations under, the Loan Documents and any other documents contemplated in connection with the Loan Documents does not and will not conflict with or contravene any applicable law or (if applicable) your constitutive documents or any other document which is binding upon you or any of your assets;
- (e) your obligations under each Loan Document are legal, valid, binding and enforceable against you in accordance with their terms;
- (f) all consents, acts, conditions and things required to be obtained, done, fulfilled and performed in order to:
  - (i) enable you to lawfully to enter into, exercise your rights and perform your obligations under the Loan Documents;
  - (ii) ensure that your obligations under the Loan Documents are legal, valid, binding and enforceable against you; and
  - (iii) make the Loan Documents admissible in evidence,have been obtained, done, fulfilled and performed and remain in full force and effect;
- (g) you are not in default under any agreement relating to indebtedness, or under any other agreement to an extent or in a manner which might (in our view) have a material adverse effect, and no event has occurred or circumstance exists which, with the giving of notice or passing of time, could constitute such a default;
- (h) no Event of Default has occurred and is continuing;
- (i) no legal proceedings, arbitration, action or administrative proceeding of, or before, any court, tribunal or governmental agency has commenced or to the best of your knowledge and belief is pending or threatened against you or any of your assets which, if adversely determined, might have a material adverse effect;

- (j) no action or step has been taken or legal proceedings been started or (to the best of your knowledge and belief) threatened to adjudicate you bankrupt or for your liquidation, dissolution or reorganisation, or for the appointment of a receiver, manager, receiver and manager, inspector, trustee, statutory manager, administrator or similar officer in respect of you or any of your assets;
- (k) you are solvent and are able to pay your debts as they become due in the normal course of business;
- (l) all information, including accounts and other financial information, provided by you or on your behalf, to us in connection with the Loan Documents is true, complete and accurate in all material respects and has, in the case of financial information, been prepared in accordance with GAAP and gives a true and fair view of your financial condition and operations for the period to which it relates;
- (m) you are not aware of any material facts or circumstances which have not been disclosed to us and which could affect our decision to provide the Loan to you;
- (n) you are, and at all times will be, the sole legal and (unless you are acting as a trustee of a trust disclosed in writing to us) beneficial owner of all of your assets and no security interest exists over any of your assets (except as expressly permitted by these Terms and Conditions or with our prior written consent); and
- (o) (if you are a company or other corporate body) no action or step has been taken or proceedings been started to remove you from any official company or corporations register.

You acknowledge that we have relied on the representations and warranties contained in this clause and in clauses 16 (Trustees) and 17 (Limited Partnerships) (and on any representations and warranties contained in any other Loan Document) in making the Loan available to you.

#### **14. COVENANTS**

You covenant with and undertake to us that you will (and in the case of a company or limited partnership, will ensure that any subsidiary will):

- (a) immediately notify us of any Event of Default, or any other event which, with the giving of notice or passing of time, could constitute an Event of Default, providing us with full details of it and of any steps to be taken as a result;
- (b) comply with all directives and laws applicable to you and obtain, maintain and comply with all consents and other authorisations (including those required under the Building Act 2004 and Resource Management Act 1991) which, if not maintained or complied with, might adversely affect our rights under a Loan Document or your ability to comply with your obligations under any Loan Document;
- (c) on reasonable request and within any time periods reasonably specified by us, deliver to us any information relating to you and/or to any Guarantor and/or to your business, financial condition or operations (or those of any Guarantor);
- (d) keep proper accounts, prepared in accordance with GAAP, giving a true and fair view of your financial condition and operations at the relevant time and for the relevant period;

- (e) ensure that your payment obligations under each Loan Document rank at all times at least equally with all of your other debt except debt preferred by law or secured by a security interest permitted under clause 15(a) (Negative covenants); and
- (f) deliver to us, copies of your constitutional documents (if any), and, within 14 days of their taking effect, copies of any documents amending or replacing such constitutional documents, in each case certified as true and up-to-date by a duly authorised officer. This clause does not prejudice your obligations under clause 15(d) (Negative covenants).

## 15. NEGATIVE COVENANTS

You will not (and in the case of a company or limited partnership, will ensure that any subsidiary will not) without our prior written consent:

- (a) create or allow to be created or permit to exist any security interest over any property in which you have rights (whether now or in the future) except:
  - (i) any security interest created in our favour;
  - (ii) a lien or charge arising by operation of law; or
  - (iii) any purchase money security interest (as that term is defined in the Personal Property Securities Act 1999) in goods arising only because of the normal trade terms of the supplier of those goods,and in the case of a security interest permitted under sub-clause (ii) or (iii), that security interest secures obligations that are not overdue and results from a transaction in the ordinary course, and for the purpose, of your ordinary business;
- (b) materially change the nature or scope of your business or move your principal place of business;
- (c) dispose of or agree to dispose of any material part of your assets, other than in the ordinary course of business on normal commercial terms and at arm's length, and otherwise in accordance with the Loan Documents;
- (d) make any changes in any of your constitutive documents, other than an administrative or technical change;
- (e) lend or provide any financial accommodation to, give any guarantee in respect of, take on any debt of or provide any financial assistance to, any person;
- (f) incur any debt relating to financial accommodation unless that debt is subordinated to our satisfaction, or incur any other debt unless it is incurred in the ordinary course of business on normal commercial terms and at arm's length;
- (g) (if you are a company or other corporate body) acquire your own shares, issue shares redeemable at the option of the holder of the shares or on a date specified in your constitutive documents or exercise any option to redeem your shares;
- (h) make any distribution;

- (i) (if you are a company or other corporate body) amalgamate with any other company or corporate body;
- (j) (if you are a company or other corporate body) enter into any major transaction (as defined in section 129 of the Companies Act 1993);
- (k) (if you are a company or other corporate body) form or acquire a subsidiary;
- (l) (if you are a company or other corporate body) give financial assistance to any person in connection with the purchase of shares issued or to be issued by you or your holding company; or
- (m) change your name, address, fax number or email address without first giving us 10 Business Days' written notice of what your new name, address, fax number or email address will be.

## **16. TRUSTEES**

16.1 If you have entered into the Loan Documents in your capacity as the trustee of a trust, the provisions of this clause 16 (Trustees) apply.

16.2 At all times, you represent and warrant to us (by reference to the facts and circumstances at the relevant time) that:

- (a) the person(s) named in the Loan Documents as trustee(s) of the trust is the sole trustee/are all of the trustees of the trust, and have been validly appointed and have the power and authority to hold the trust assets and carry on the trust's business;
- (b) you have the power under the trust deed, and have been duly authorised, to enter into the Loan Documents and transactions under them;
- (c) if we request, you will provide us with a copy of the trust deed constituting the trust and all other documents setting out the terms applying to the trust;
- (d) you have the right to be fully indemnified out of the trust assets in priority to the beneficiaries in respect of all of your obligations under the Loan Documents, and we are entitled to be subrogated to that right;
- (e) at the date of the Loan Agreement, the trust assets are (or will be) sufficient to satisfy all obligations in which you have a right of indemnity (including your obligations under the Loan Documents);
- (f) you are not in breach of the terms of the trust deed;
- (g) no action has been taken or proposed to wind-up, terminate or liquidate the trust;
- (h) no distribution or event for vesting of trust assets has been made or has occurred without our prior written consent;
- (i) you and your directors and other officers (if any) have complied with all your or their obligations in connection with the trust;
- (j) so far as you are aware, none of the trust assets have been mixed with other property; and

(k) our rights under the Loan Documents rank in priority to the interests of the beneficiaries of the trust.

16.3 You will:

- (a) notify us immediately if any of the trustees change or if the trust deed changes, and you must ensure that any new trustees agree to be bound by the Loan Documents. This clause does not prejudice your obligations under clause 15(d) (Negative covenants);
- (b) ensure that any of the assets of the trust are kept separate from the assets of the trustees and identified as assets of the trust to the greatest extent possible;
- (c) at our request, exercise your right of indemnity against the trust assets or any beneficiary for our benefit. This right is in addition to all other rights we have under the Loan Documents;
- (d) not permit any restriction, limitation, set-off, counterclaim or other defence to or against:
  - (i) your rights of indemnity out of the trust assets;
  - (ii) any right of indemnity that may arise in your favour from a beneficiary; or
  - (iii) our right of subrogation to either indemnity referred to above; and
- (e) not repay any debt owing to any settlor or to any beneficiary of the trust.

16.4 If you are an independent trustee then your liability under the Loan Documents is limited to the assets of the trust, except in respect of any indebtedness which we are unable to recover from the assets of the trust as a result of any:

- wilful default, dishonesty or negligent breach of trust by you as an independent trustee, whether alone or with others; or
- breach of any of the representations as to authority to act set out in this clause 16.

In those cases, we can recover the indebtedness from you personally. An "independent trustee" is a trustee who is neither a settlor nor a beneficiary of the trust and we're satisfied has no interest in the trust other than as a trustee.

16.5 You will remain liable under each Loan Document to which you are party after you cease to be a trustee until we provide you with a release in writing. We will release you from your liabilities under a Loan Document when we are satisfied that everything required to be done to vest trust property in the continuing trustees has been done and that all new and remaining trustees are liable under that Loan Document.

## **17. LIMITED PARTNERSHIPS**

17.1 If you have entered into the Loan Documents as a partner of a limited partnership, this clause 17 (Limited partnerships) applies.

17.2 At all times, you represent and warrant to us (by reference to the facts and circumstances at the relevant time) that:

- (a) the person(s) named in any Loan Document as the general partner(s) of the limited partnership is the sole general partner/are all the general partners of the limited partnership;
- (b) the limited partnership is a legal entity validly existing under the laws of its jurisdiction of formation and capable of suing and being sued, and has the power and authority to own its assets and carry on its business as it is now being conducted;
- (c) you have the power, and all necessary action (including passing all resolutions) has been taken to authorise you, to enter into, execute, exercise your rights and perform your obligations under each Loan Document;
- (d) the limited partnership has no subsidiaries other than any subsidiaries previously disclosed in writing to, and accepted by us;
- (e) no terminating event (or event analogous thereto) has occurred under the provisions of the limited partnership agreement nor the Limited Partnership Act 2008 (or under the laws of the limited partnership's jurisdiction of formation); and
- (f) no limited partner or general partner is in default under the limited partnership agreement.

17.3 You will:

- (a) notify us of the occurrence of any event of default (however described) under the limited partnership agreement or any circumstances that may constitute, or give rise to, a terminating event (under the Limited Partnership Act 2008 or the terms of the limited partnership agreement) or an event analogous thereto (under the laws of the limited partnership's jurisdiction of formation);
- (b) upon our request and in accordance with the terms of that request, require payment of any unpaid capital contribution;
- (c) promptly deliver to us a copy of any document that amends, supplements or replaces the limited partnership agreement. This clause does not prejudice your obligations under clause 15(d) (Negative covenants);
- (d) comply with your obligations under the Limited Partnerships Act 2008, any analogous legislation of the limited partnership's jurisdiction of formation and the limited partnership agreement;
- (e) ensure that any of the assets of the limited partnership which are in the possession or control of the general partner(s) of the limited partnership are kept separate from the assets of the general partner(s) and identified as assets of the limited partnership to the greatest extent possible;
- (f) not take any steps, or permit any steps to be taken by the limited partnership, the general partner(s) or the limited partner(s), to limit the joint and several liability of the general partner(s) for any debt or liability of the limited partnership under sections 26, 27 and 28 of the Limited Partnerships Act 2008 (or any analogous provisions under the laws of the limited partnership's jurisdiction of formation);
- (g) not make any distribution or pay any interest on, or repay any principal in relation to, any funds provided to the limited partnership by any general partner or any limited partner of that limited partnership (or any associated person (as defined in the Financial Markets Conduct Act 2013) of that

limited partnership) or pay any income or capital to any general partner or any limited partner of that limited partnership (provided always that this clause shall not apply to any payment by the limited partnership to any general partner to reimburse that general partner for the day to day running costs of the limited partnership, so long as such costs were incurred in the ordinary course of business on normal commercial terms and at arm's length);

- (h) not enter into a transaction, whether contingent or not, which has the effect of the limited partnership acquiring rights, interests or assets or incurring obligations or liabilities, including contingent liabilities, or disposing of assets the value of which is more than half the value of the limited partnership's assets before the transaction; and
- (i) not form or acquire a subsidiary.

## **18. PARTNERSHIPS**

If you have entered into the Loan Documents as a partner of a partnership, you acknowledge and agree that:

- (a) you will continue to be bound by the Loan Documents despite any changes which may take place from time to time in the partnership, including death, retirement or incapacity of any partner (including the fact that you may no longer be a member of the partnership) or the admission of any new partner or the fact that the partnership no longer carries on business; and
- (b) as well as being jointly liable, you are individually liable for all obligations of the partnership under the Loan Documents, so that we may have recourse to your personal assets on the same basis as any other personal creditor.

You must notify us immediately if there is any alteration or change to the composition of your partnership, and you must ensure that any new partners agree to be bound by the Loan Documents. Any leaving partner will continue to be liable under the Loan Documents to which it is party until released by us in writing.

## **19. EVENTS OF DEFAULT**

Our rights on default do not restrict our rights under any Loan that is described as being 'on demand' in your Loan Agreement. Our right to ask you at any time to repay any of these Loans in full or in part, reduce the limit and to cancel the relevant Loan, overrides the provisions relating to default.

We may require you to repay immediately the whole of your Loan and all other Amounts Owing and/or we may cancel your Loan or any undrawn portion of your Loan and/or claim under any guarantee and enforce any Security we hold for your obligations under the Loan and/or we may exercise any of our rights under any Loan Document and at law, if any of the following situations occur (whether or not such situation is beyond your control):

- (a) you do not pay when due any Amounts Owing, or any other amount owing under any other agreement with us;
- (b) you or any Guarantor fails to comply with any of the other terms of your Loan Documents or our General Terms (or any other Event of Default occurs under those documents);
- (c) the Loan is used for a purpose other than that for which it was granted;

- (d) a representation, warranty or statement made by you or on your behalf in connection with a Loan Document or in any certificate or notice delivered under any Loan Document was untrue, incomplete or inaccurate, in any material respect, when made;
- (e) you are adjudicated bankrupt, are unable to pay, or do not pay, your debts as they become due and payable, or become insolvent, or take steps to benefit any of your creditors or to adjust or reschedule a material part of your debts, or in our view your financial position otherwise changes adversely to a material extent (or any of these events or circumstances occurs or applies to any Guarantor);
- (f) (if you are a company or other corporate body) any action or step is taken for your dissolution or liquidation or to remove you from any official company or corporations register (or such action or step is taken in respect of any Guarantor);
- (g) any person with a security interest in your property takes possession of those assets, or a receiver, manager, receiver and manager, inspector, trustee, statutory manager, administrator or similar officer is appointed in respect of you or any of your assets (or such appointment is applied for), or a judgment, distress, attachment or execution for an amount exceeding \$5,000 is levied, issued or enforced against you or any of your assets (or any of these events occurs in respect of a Guarantor);
- (h) you die or become legally incapacitated (or any Guarantor does) (if you're a trust or a partnership, this also includes a trustee or a partner dying or becoming legally incapacitated);
- (i) an investigator, inspector or similar person is appointed under any law to investigate your business or any aspect of it (except for an Investigator appointed by us under the Loan Documents);
- (j) in our view, there is a material adverse change or there is the existence of circumstances that could reasonably be expected to result in a material adverse change;
- (k) we reasonably believe you or another person has acted fraudulently in connection with any Loan Document or any other agreement you have with us;
- (l) any consent required in connection with any Loan Document is cancelled, withdrawn or modified in a way which is unacceptable to us or ceases to be in full force and effect or any condition relating to that consent is not complied with;
- (m) any of your assets become subject to a restraining order or a clean up notice under any environmental law (including the Building Act 2004 and Resource Management Act 1991);
- (n) (if you are a company or other corporate body) there is any change in the legal or beneficial shareholding or ownership interest (other than the pro rata issue of ordinary shares or ownership interest to existing shareholders or owners) or in effective control (in each case, in respect of you);
- (o) any debt owed by you to any person is not paid when due or is declared (or is capable of being declared) due and payable or is placed on demand before its maturity because of any default (however described), or any security interest provided in respect of any such debt becomes enforceable by the relevant creditor;
- (p) (if you enter into the Loan Documents as a trustee of a trust):



- (i) without our prior written consent, any action is taken or proposed to terminate the trust; or
- (ii) the trust assets and/or any trustee's right of indemnity from the trust assets are insufficient to fully satisfy the trustee's obligations under the Loan Documents;
- (q) (if you enter into the Loan Documents as a partner of a limited partnership):
  - (i) there is no general partner of the limited partnership at any time;
  - (ii) any partner of the limited partnership ceases to be a limited partner or reduces their interest in the limited partnership without our consent; or
  - (iii) any event described in clauses 19(e) - (g) (Events of Default) (inclusive) occurs in relation to any general partner; or
- (r) all or any part of any Loan Document is terminated, repudiated or becomes illegal, invalid or unenforceable or of limited force and effect; or
- (s) any event which has a similar effect to any of the above events occurs under the law of any place outside New Zealand.

Your Loan Documents may describe other events (which may be described as 'events of default' or similar) in addition to the above which will allow us to require early repayment of the Loan or to exercise our other rights under the Loan Documents or at law.

## **20. DEFAULT INTEREST AND FEES**

If you fail to pay any amount under the Loan Documents when it is due we will charge you interest at the Default Rate on the overdue amount from the due date until the overdue amount is fully repaid (before and after judgment). Default interest will accrue daily and be calculated by reference to successive periods of such length as we determine (each a "**Default Interest Period**"). Default interest will be debited from the Specified Account or any other account you hold with us on the last day of each Default Interest Period. We may also from time to time (at our discretion) add any default interest due but unpaid to the principal amount of your Loan.

We may also charge you a default fee if any Event of Default arises.

## **21. FEES AND COSTS**

Fees and charges that apply to your Loan may be listed in your Loan Agreement. In addition, a list of the fees and charges we may charge (which may change from time to time) is set out in our Fees and Charges Brochure – copies of this are available from any of our branches. This information is also available on our website. If you want to do something that is not described in our Fees and Charges Brochures, we may charge a fee for this too. Wherever possible, we will tell you what this fee will be before you have to pay it.

Fees and charges applicable to your Loan will be deducted from your Specified Account (or paid in such other manner which we confirm is acceptable to us).

If we incur any costs in connection with the Loan Documents, you agree to reimburse us for those costs on demand. We may deduct those costs from your Specified Account or any other account. If we make any

such deduction, we may give you written notice that we have done so (but any failure to do so will not relieve you of your obligation to pay our costs).

## **22. INVESTIGATOR**

If we believe that you might be in default under the Loan Documents, we may appoint an Investigator. The Investigator will have the power to investigate and enquire into your business, financial condition and operations. You agree to cooperate with the Investigator and comply with their reasonable requests. You also agree to pay the costs to us of appointing an Investigator and the costs of their investigation. We may appoint more than one Investigator in which case the appointment will be joint or several. Each Investigator will be your agent and you will be responsible for their acts and defaults.

## **23. SET-OFF**

- 23.1 We may at any time, without notice to you, set-off against amounts we owe to you (regardless of the terms on which such amounts are owing or the currency of such amounts) any unpaid amount you may owe us under the Loan Documents, and may debit any account you have with us in order to effect such set-off. We may exercise this right even if the amount debited takes the debit balance over any approved limit, in which case we may charge interest and fees on the new debit balance. We may undertake any currency exchanges that we consider necessary to effect such set-off at your cost in accordance with our usual practice, and may also break any term deposit. If any amount is contingently due to us or is not quantified, we may retain and withhold repayment of any amounts owing by us to you until the relevant amount becomes due and/or quantified and is paid.
- 23.2 The rights in this clause 23 (Set-off) are contractual rights and do not create any security interest for the purposes of the Personal Property Securities Act 1999, nor do they affect any other right of set-off, combination of accounts, lien or other right to which we are entitled, whether by law or contract.

## **24. CHANGE IN CIRCUMSTANCES**

- 24.1 If at any time we determine that it will become unlawful or contrary to any directive to make available, fund or continue to provide your Loan, or to perform any of our obligations or exercise any of our rights under the Loan Documents, we will notify you and your Loan will be cancelled. You must then repay all Amounts Owing on the date we specify in the notice. If this happens, we'll give you as much notice as the law allows.
- 24.2 If as a direct or indirect result of any new law or directive or any change to an existing law or directive or to the interpretation or application of any law or directive, made or introduced after the date of your Loan Agreement:
- (a) the cost to us of making the Loan available to you or continuing to provide the Loan, or of performing our obligations or exercising our rights under the Loan Documents, is increased;
  - (b) there is a reduction in our rate of return (including on our overall capital), including as a result of having to hold more capital, that in our opinion is connected to us providing or maintaining the Loan or entering into any Loan Document;

- (c) any amount received or receivable by us under any Loan Document is reduced (except on account of tax on our overall income); or
- (d) we make any payment (except for tax on our overall income) or forgo any return on, or calculated by reference to, any amount received or receivable by us under any Loan Document,

we will notify you and you will be required to indemnify us against such increased cost, reduced return, payment made or forgone return by paying us on demand the amount that we advise is required to compensate us. The amount you'll need to pay to us will be calculated by us from the day when we first incurred the cost or suffered the reduction.

- 24.3 If there's a change to accounting standards during the Term of your Loan, we will review whether that affects the way we calculate financial covenants or other provisions in your Loan Agreement. If it does, we'll consult with you about any changes.

## **25. INDEMNITIES**

You irrevocably agree to indemnify us (and any receiver appointed) on demand (by paying us or any receiver, as applicable, the amount required to compensate us or the receiver for the relevant costs) against:

- (a) all costs incurred by us due to all or any part of your Loan not being advanced on the required day (except through our fault);
- (b) all costs incurred by us due to the occurrence of an Event of Default (or due to us investigating whether or not an Event of Default has occurred);
- (c) all costs incurred by us or any receiver due to any failure by you to comply with any environmental law, or any obligation under any environmental law being imposed on us, or if we or any receiver has to act to ensure that you comply with any environmental law;
- (d) all costs incurred by us or any receiver exercising, enforcing or protecting (or considering or attempting to exercise, enforce or protect) our rights under any Loan Document or law;
- (e) all costs incurred by us or any receiver in connection with any claim against us or a receiver relating to any of your assets;
- (f) all costs incurred by us in connection with preparing, negotiating, executing, registering, changing, releasing and/or replacing any Loan Document;
- (g) all costs incurred by us in converting any payment received by us in a currency other than the currency in which it is due, into the relevant currency; and
- (h) all stamp duty, registration costs and other taxes that apply to a Loan Document or any payment under a Loan Document.

## **26. PRIVACY**

**Your information will be collected, held and used in accordance with our privacy policies**

You authorise us to collect, hold, use and share information about you in accordance with our Privacy Policy.

Set out below is a summary of our full Privacy Policy, which can be found on our website or you can request a copy by contacting us (see "How to contact us" below).

### **Our purpose for collecting, holding, using and sharing your information**

We may collect personal information from you so that we can communicate with you and provide or offer our services to you, including assessing/processing any loan application or quotation enquiry you submit, managing and administering your Loan, and maintaining our credit records.

### **Personal information we collect**

We may collect from you information that could identify you, such as your name and contact information, your credit history, personal finances and credit requirements (called "personal information"). We may also collect your personal information from, and share your personal information with, other organisations. These include our related companies, credit reporting agencies, government agencies and other third parties. We may also use internet technologies (i.e. "cookies") to collect data from our website for a number of purposes, including to improve our services and enhance your online experience with us.

It is important that we keep our information about you up-to-date. Please contact us as soon as possible if any of your contact details or other information you've given us changes.

If you give us, or authorise us to collect, personal information about another person (such as a Guarantor), you confirm that you have their authority to provide us with their personal information and you have informed them of their rights to access and request correction of their personal information.

### **Your rights**

It is your decision whether you wish to provide your personal information to us, however, if you do not provide such information we may not be able to process your loan application, or offer all of our products or services to you. You can unsubscribe from any marketing communications from us by following the instructions on any communications we send to you, or by calling us on +64 9 374 7266. In addition, you may at any time request a copy of your personal information and correct that information if you think it is incorrect by contacting us (see "How to contact us" below).

## **27. ASSIGNMENT**

We may assign or transfer our rights and obligations under the Loan Documents to any other person and may disclose personal information about you to a potential assignee or transferee. In the event of any assignment or transfer by us, you irrevocably undertake to us to do all such acts and to execute all agreements as we may reasonably require to effect or perfect such assignment or transfer.

You are not permitted to assign or transfer your rights or obligations under the Loan Documents unless we agree in writing.

## **28. COMMUNICATIONS**

- 28.1 Each notice and other communication to be given under a Loan Document is to be in writing and may be sent by personal delivery, post or fax, or in the case of notices or communications from us only (unless we agree otherwise in any Loan Document), by email.

Each communication must be sent to the address, fax number or email address of the relevant party set out in the relevant Loan Document or any other address, fax number or email address advised by at least five Business Days' prior notice.

A communication to us will be effective only when we actually receive it. A communication to you will be effective when received, and will be deemed to have been received:

- (a) in the case of personal delivery, when delivered to the specified address;
- (b) if posted, three Business Days after the day of posting;
- (c) if faxed, on production of a transmission report by the sender's fax machine of transmission in full to your fax machine; and
- (d) if emailed, at the time the notifying party receives an acknowledgement of receipt of delivery from the recipient's email address or (if earlier) at the end of two Business Days after the day the email was sent (unless the notifying party receives a notice of non-delivery),

provided that any communication received after 5.00 pm on a Business Day or on a day which is not a Business Day will be deemed to have been received on the next Business Day.

28.2 We can, in our sole discretion, accept instructions from (or which appear on their face to be from) you by facsimile or email and you authorise us to act on any such instructions.

If we do act on any instruction provided by facsimile or email, then so long as we believe the instruction to be genuine:

- (a) we don't have to verify the identity of the person giving the instruction or check whether the instruction has been authorised by you. We may take steps to verify that the instruction is authorised, but entirely at our discretion;
- (b) we are not responsible for any loss you or anybody else suffers as a result of us doing so, including if there is any mistake or misinterpretation of the instruction, or if the instruction turns out to be unauthorised, fraudulent or forged; and
- (c) you will indemnify us on demand against any loss we suffer directly or indirectly as a result of relying on any such instruction.

28.3 If you are made up of more than one person (such as trustees of a trust), we can communicate about your accounts with any one of those people. If we do communicate with one person, each other person agrees that we can assume they've received that information too.

28.4 If you are located outside New Zealand, any document or notice in connection with the Loan Documents may be served on you by delivering it to an agent who is authorised by you to receive such documents or notices and who has been notified to us or, if no such agent has been notified, any document or notice in relation to proceedings under or in connection with the Loan Documents may be served on you by delivering it to any other of your addresses for service in New Zealand as notified in writing to us. Please advise us if you are located outside New Zealand or are not entitled to be permanently resident in New Zealand.

## 29. GENERAL

- (a) The illegality, invalidity or unenforceability of any provision of any Loan Document will not affect the legality, validity or enforceability of any other provision of that Loan Document.
- (b) At our request and at your expense, you will promptly complete, execute and otherwise perfect all agreements and do all acts and things that we consider necessary or desirable to protect our interests under any Security document or other Loan Document, and you irrevocably appoint us as your attorney to do anything which may be done by you, or which you are required to do, under any Loan Document. You agree to ratify and confirm anything we do under this power of attorney.
- (c) Subject to any limitations expressly set out in the Security, all Security will secure the Amounts Owed. You consent to each Guarantor or third party referred to in the Security receiving a copy of the Loan Documents and any information about your financial position that is in our possession.
- (d) No failure by us to exercise or delay in exercising any right or remedy available under the Loan Documents or at law will waive that right or remedy, nor will a partial exercise of any right or remedy preclude any further exercise of that right or remedy or any other right or remedy.
- (e) Unless expressly agreed otherwise in a Loan Document, no amendment to a Loan Document will be effective unless we agree in writing.
- (f) The indemnities in clauses 24 (Change of circumstances) and 25 (Indemnities) shall survive repayment of your Loan and termination of the Loan Documents.
- (g) Each Loan Document (unless required otherwise by a registry or similar office where such document is to be submitted) may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), all of which when taken together shall constitute one and the same instrument, and each of the parties to a Loan Document may execute a Loan Document by signing any such counterpart.
- (h) You acknowledge that you have entered into each Loan Document for a business purpose and accordingly nothing in the Consumer Guarantees Act 1993 will apply to the Loan.
- (i) A certificate from us regarding any amount relating to your Loan will, in the absence of a manifest error, be conclusive evidence of that amount.
- (j) The provisions of the Loan Documents will be governed by and interpreted in accordance with New Zealand law. Any legal action or proceeding arising out of or in connection with the Loan Documents may be brought in the courts of New Zealand and you unconditionally submit to the non-exclusive jurisdiction of such courts.

## 30. HOW TO CONTACT US

You can contact us:

- on +64 9 374 7288

(customer services are open Monday to Friday 9.00 am – 5.00 pm)

- by post to:

Level 11  
188 Quay Street  
Auckland

PO Box 106656  
Auckland 1143

- by email to [\*\*info@nz.icbc.com.cn\*\*](mailto:info@nz.icbc.com.cn)
- via our website: [www.icbcnz.com](http://www.icbcnz.com)

You can also deliver instructions in writing about your account to us at 2 Queen Street, Auckland Central.