



GENERAL TERMS AND CONDITIONS LOAN AND CREDIT FACILITIES

1. INTRODUCTION

1.1 Application

- (a) These Terms apply generally to our Loan and Credit Facilities which explicitly adopt these Terms.
- (b) In the event of any disparity between any particular Facility Agreement and these Terms, the terms of the Facility Agreement shall take precedence.

1.2 Definitions:

In these General Terms and in any Facility Agreement, the following defined words and phrases have the following meanings unless the context requires otherwise:

“**Act of Bankruptcy**” has the meaning ascribed to it by the Insolvency Act 2006;

“**Amount Owing**” means the sum of the principal amount outstanding under a Facility and all other money payable by you to us under the Facility and outstanding from time to time including accrued interest (including default interest), fees, indemnities, costs and expenses (and “**Amounts Owing**” shall have a corresponding meaning);

“**Bank**” means Bank of Baroda (New Zealand) Limited and its successors, assigns, and transferees and is also referred to in these Terms as “we”, “us” and “our”;

“**Bank’s Base Lending Rate**” means, in relation to a Facility, the interest rate specified in the applicable Schedule as the Bank’s Base Lending Rate and such other rates which we specify as our Base Lending Rate from time to time, as determined by us in our sole discretion;

“**Beneficiary**” means a party to whom we have agreed to pay a certain amount upon satisfaction of certain conditions pursuant either to a Letter of Credit or to a Bank Guarantee;

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

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

“**Capped Rate**” means an Interest Rate capped at the interest rate specified in the applicable Schedule;

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

“Conditions Precedent” mean, in addition to any conditions precedent specified in a particular Facility Agreement, those matters referred to in clause 3.1 (and **“Condition Precedent”** shall have a corresponding meaning);

“Default Interest Rate” means the interest rate determined by us from time to time as our **“Default Interest Rate;”**

“Dishonest Act” means, in respect of an Obligor, the making of any statement, warranty, representation, or the provision of information by that Obligor in relation to a Facility or Document that is or becomes untrue, inaccurate, or misleading in any material respect;

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

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

“Event of Default” means any of the events specified in clause 7.2 and any other event or circumstance which would ordinarily directly result in an occurrence of any of the events specified in clause 7.2;

“Facility” means any credit facility or loan facility or any other facility for financial accommodation which we provide or have agreed to provide to you;

“Facility Account” means the bank account provided by us which, among other things, records the Amount Owing by you to us from time to time and against which any monies which may become due to us under any Document may be charged;

“Facility Agreement” means the Facility Agreement entered into between you and us incorporating these Terms and one or more Schedules and, where the context requires, references to a Facility Agreement includes references to the Schedules attached to that Facility Agreement;

“Facility Amount” means the principal amount we advance to you under a Facility;

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

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

“Instalment” means any payment of principal, interest or any other payment due under the Facility Agreement or any Document;

“Interest Only Period” has the meaning given to that term in clause 9.2;

“Interest Rate” is the rate of interest applicable to any Facility from time to time as recorded in a Schedule;

“Letter of Credit” means a Letter of Credit issued by us in a form set out in a Letter of Credit Facility Agreement on the terms and subject to the conditions contained in such Letter of Credit Facility Agreement and upon the presentation of which by the Beneficiary we shall pay a specified amount to that Beneficiary;

“Letter of Credit Facility” means a Facility where we agree to issue Letters of Credit at your request to the benefit of a certain specified Beneficiary, provided that, inter alia, our maximum aggregate liability does not exceed your Limit;

“Limit” means, at any time, the maximum amount that you may draw down on your Facility Account at that time;

“**Limited Liability Trustee**” has the meaning set out in clause 8.7(c);

“**Material Adverse Change**” means something or some event having, in our opinion, a material adverse effect on a person’s commercial or financial prospects including a deterioration in that person’s creditworthiness or on its ability to comply with its obligations under a Security Document, or, as the context may require, on our ability to recover any amount payable by you under any Security Document or to enforce performance of that person’s obligations under the Security Documents;

“**Multiple Tranche Facility**” means a Facility (whether a Term Loan or Revolving Credit Facility) for which the Schedule provides for the Facility to be drawn down in more than one tranche;

“**Nominated Account**” is the account specified in the Schedule from which we will deduct the Instalments;

“**Obligor**” means you and any other party to the Documents and includes, without limitation, the Borrower and Guarantor (and for the avoidance of doubt does not include us);

“**Prepayment Fee**” means the administration fee payable by you in the event of us agreeing to early prepayment of the Facility in accordance with clause 10.1;

“**Progress Payments**” means the payment of a Facility by us by way of a series of payments rather than in one sum, if specified in a Facility Agreement;

“**Rate Change**” means, in relation to a Facility, the amendment or change of the Interest Rate applicable to all or part of that Facility to another Interest Rate;

“**Reducing Limit**” means, in respect of a Revolving Credit Facility, the Limit applicable to that Facility which reduces in accordance with the applicable Schedule;

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

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

“**Secured Property**” means property (whether real property or personal property) that you or any Obligor have mortgaged or otherwise charged to us under any Security Document or otherwise to secure your obligations under the Facility Agreement;

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

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

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

“**Terms**” means these General Terms and Conditions.

1.3 Interpretation

In these Terms, unless the context otherwise requires:

the provision or making available of “**accommodation**” means the provision of any banking or financial services;

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

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

a “**credit default event**” occurs if:

- (i) you commit an Act of Bankruptcy; or
- (ii) you are insolvent and are unable to pay your debts as they fall due or legal proceedings are commenced (and not dismissed within 30 days); or
- (iii) you are a company, an order is made or any step is taken toward dissolution or a receiver, liquidator, trustee, administrator, or similar officer is appointed in respect of you or any of your assets;

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

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

something having a “**material adverse effect**” on a person means something that has, in our reasonable opinion, a material adverse effect on the person’s commercial or financial status including a deterioration in that person’s creditworthiness or on that person’s ability to comply with their obligations under a Security Document, or, as the context may require, on our ability to recover any amount payable by either you or that person under any Security Document or to enforce performance of that person’s obligations under the Security Documents and references to “**material adverse change**” shall be construed accordingly;

a “**person**” includes an individual, firm, company, corporation, an association of persons (whether corporate or not), a trust, or governmental agency and any other entity (in each case, whether or not having a separate legal personality).

a “**solicitor**” means a practitioner as that term is defined in the Lawyers and Conveyancers Act 2006;

“**taxes**” includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature or whatever called (including interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed; and

“**trust deed**” means the trust deed constituting the relevant trust,

1.4 **Construction of Certain References:** In these Terms unless the context otherwise requires:

If more than one person is named as the **Borrower**, each reference to the Borrower, “you” or “your”, is a reference to each Borrower and each of you separately and to all Borrowers and you all together;

If more than one person is named as the **Guarantor**, each reference to the Guarantor is a reference to each Guarantor separately and to all Guarantors together;

the **headings** to clauses shall be ignored in construing these Terms;

a reference to any **legislation** is a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders-in-council and other instruments from time to time issued or made under, that legislation and, unless otherwise stated, is a reference to New Zealand legislation;

a **party** to any Document, if an individual, includes that person's executors and administrators and, in the case of a body corporate or any other person, its successors and permitted assignees and transferees, and in our case our transferees and assigns; and

the **singular** includes the **plural** and vice versa.

2. SECURITY AND INSURANCE

2.1 Securities

You will provide to us or, as the case may be, obtain for us from the relevant Obligor, the securities specified in the Facility Agreement prior to Drawdown of the Facility. You will also provide to or obtain for us any securities we require in the future to further secure your indebtedness to us. All securities are to be first in priority unless we agree otherwise. All existing and future securities granted by you or any other person as security for your indebtedness or performance of your obligations to us also secure your indebtedness to us for all Amounts Owing.

2.2 Valuation and Financial Information

At any time we request, you will at your own expense provide to us a current registered valuation of any Secured Property and any other financial information required to verify your current income or servicing requirements as soon as possible and no later than ten working days after the date of our request.

2.3 Insurance

You must insure all of the Secured Property for the Facility for its full insurable value in accordance with our insurance requirements as advised to you from time to time. Our interest as mortgagee or chargeholder must be noted on each policy. You must keep the Secured Property insured for the full term of the Facility. If we request, you must produce the original of such policy to us as soon as possible and no later than ten working days of the date of our request.

3. BEFORE YOU DRAW DOWN YOUR FACILITY

3.1 Conditions Precedent

We are not obliged to make a Facility available to you until we have received and found the following satisfactory at our sole and absolute discretion:

- (a) the Documents, or a completed solicitor's certificate from your solicitor and our solicitor (as applicable) in relation to the Documents;
- (b) details of your insurance in accordance with our requirements;
- (c) payment of any fees or other amounts payable in relation to the Facility; and
- (d) any other conditions precedent recorded in the Facility Agreement.

3.2 Draw Down (Term Loan)

If you have a Term Loan then upon satisfaction of the Conditions Precedent and any other requirements that we may specify, the Facility may be drawn in such amounts as specified in the Facility Agreement on request by you or your solicitor. If your Facility Agreement provides for "Progress Payments," the Facility may be drawn down in no more than four instalments upon giving us at least 5 Business Days notice. If we have instructed your solicitor, you authorise and direct us to pay the balance of the drawing to your solicitor's trust account. If a solicitor has not been instructed, the balance of the drawing will be paid to your Nominated Account.

3.3 **Draw Down (Revolving Credit)**

If you have a Revolving Credit Facility then upon satisfaction of the Conditions Precedent and any other requirements that we may specify, the Facility may be drawn from time to time during the Term by debiting your Facility Account, provided that such drawing does not cause the Amount Owing to exceed your Facility Limit at that time. Any amount repaid may be redrawn by you up to your Facility Limit or Reducing Limit, as applicable. Debits to your Facility Account by us for interest, fees and bank charges will be deemed to be drawings under the Facility. If your Facility Agreement provides for "Progress Payments," the Facility Amount will be made available in your Facility Account on request by you or your solicitor by no more than four Progress Payments (unless we agree otherwise). If we have instructed your solicitor, you authorise and direct us to make the first drawdown by debiting the Facility Account and issuing funds to your solicitor's trust account. If a solicitor has not been instructed, the Facility Amount will be made available in your Facility Account.

3.4 **Letter of Credit Facility**

If you have a Letter of Credit Facility then upon satisfaction of the Conditions Precedent and any other requirements specified in the Facility Agreement, we will issue a Letter of Credit for the benefit of the Beneficiary specified by you and on such terms set out in the Facility Agreement.

Upon our payment of any funds required by such Letter of Credit, we shall charge such amounts to your Nominated Account and such amounts shall be immediately payable by you and shall immediately accrue interest in accordance with the relevant Facility Agreement.

3.5 **Multiple Tranche Facility**

If your Facility Agreement is a Multiple Tranche Facility and is for the purposes of financing the construction of a building then, notwithstanding anything in clauses 3.2 and 3.3, and unless we have agreed otherwise in writing, the amount of any drawing will be determined by us in our absolute discretion taking into account the value of the land on which the buildings are being constructed and the cost to complete such buildings as certified to us by a registered valuer or such other person as we may agree. The undrawn principal amount of the Facility following such drawing (other than the final drawing) must be equal to or greater than the amount it will cost to complete the buildings in accordance with the plans and specifications for the construction. Prior to the final Drawdown we require confirmation that a Code Compliance Certificate has been issued for the works by the relevant building consent authority pursuant to the Building Act 2004.

3.6 **Application of Facility**

We reserve the right upon Drawdown of any Facility to apply some or all of the funds to:

- (a) the payment of any fees payable under the Facility Agreement; and

- (b) the repayment of any outstanding indebtedness required as a Condition Precedent or Condition Subsequent in the relevant Schedule.

3.7 **Conditions Subsequent**

If we have specified any condition subsequent in your Facility Agreement, you agree to comply with those conditions subsequent.

3.8 **Purpose of the Facility**

You agree to use each Facility for the purpose (if any) set out in the relevant Schedule.

4. **CHANGES THAT MAY AFFECT YOUR FACILITY**

4.1 **Our Right to Change Your Interest Rate**

We may increase or reduce the Interest Rate applicable to your Facility at any time and from time to time without prior notice to you (including at any time prior to a Facility being advanced) unless we have agreed otherwise in writing. We may give notice of any change in such form as we deem appropriate in our sole and absolute discretion.

4.2 **Your Right to Request a Rate Change**

You may at any time request, and we may in our sole discretion agree to, a Rate Change in respect of a Facility for such Interest Periods as we may agree. If the Facility is not repaid in full on the last day of the final Interest Period to which the Rate Change applies, the Interest Rate applicable to that Facility will automatically revert to our standard variable interest rate as at that date unless we have agreed that a different Interest Rate will apply.

4.3 **Interest Only Period**

You may at any time request, and we may at our sole discretion agree, to suspend the principal Instalments payable in respect of that Facility for such Interest Periods as we may agree (the "Interest Only Period"). Unless otherwise agreed by us, at the completion of the Interest Only Period, the amount of the remaining principal Instalments payable in respect of the Facility will be increased as necessary to ensure repayment of that Facility in full by the last day of the Term.

4.4 **Notification of Guarantor**

In the event of any change under clauses 4.1 or 4.3, we will give all the Obligors in respect of your Facility written confirmation of the Rate Change or Interest Only Period (as the case may be).

4.5 **Acknowledgement**

You acknowledge and agree that:

- (a) if more than one person is named as the Borrower, any one of you may request for a Rate Change or Interest Only Period and, if agreed to by us, any such Rate Change or Interest Only Period will bind all of you, subject to clause 8.6(d);
- (b) we may charge a fee to effect a Rate Change or Interest Only Period to your Nominated Account or Facility Account or which, if we agree, may be added to the Amount Owning;
- (c) if any of you request a Rate Change to a fixed interest rate, the provisions of clause 4.1 will apply to your Facility Agreement. This means that if you repay the Facility Amount early in full or in part during that Fixed Rate Period, you agree to pay to us a Prepayment Fee calculated in accordance with clause 6.5;

- (d) if any of you request a Rate Change or an Interest Only Period to take effect during a Fixed Rate Period, you may also be liable to pay the ERA; and
- (e) in the event of a Rate Change or an Interest Only Period under clauses 4.1, 4.2 or 4.3 the terms of the Facility Agreement will continue to apply in all other respects.

4.6 **Illegality**

If, at any time, we reasonably believe that it is or may become illegal to provide a Facility (or any part thereof) or allow all or part of the Amount Owing to remain outstanding, or to receive interest or to comply with any of our obligations or exercise any of our rights under any Document then we will not be obliged to provide or to continue to provide that Facility and we may, at any time, by notice to you:

- (a) cancel each Facility: and/or
- (b) declare all or any part of the Amount Owing to be due and payable and you shall immediately repay such Amount Owing.

4.7 **Change in Law or Directive**

If, as a result of a change in law or a change in its interpretation, application or administration or compliance by us with a directive, we reasonably believe that:

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

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

5. **INTEREST**

5.1 **Interest**

Interest will accrue on a daily basis on the Amount Owing from time to time and will be calculated at the Interest Rate from the date of advance of the Facility, provided that during any Capped Rate Period (if applicable) interest will be calculated at either the Interest Rate or the Capped Rate, whichever is lesser from time to time. Interest due and payable will be charged to your Facility Account or Nominated Account, as the case may be, on the interest payment dates specified in the Facility Agreement. All interest will be calculated on the basis of the number of days elapsed and a 365 day year. We may alter the method of calculating interest at any time with prior notice.

5.2 **Interest Periods**

Any Fixed Rate Period or Capped Rate Period will, in respect of the initial Drawdown of the Facility, commence on the date of Drawdown and any subsequent Fixed Rate Period or Capped Rate Period will commence on the date agreed by us.

6. **REPAYING YOUR FACILITY**

6.1 **Payment of Instalments**

By paying each Instalment (which may change as Interest Rates change), you will repay the Facility Amount (together with interest) over the Term. Unless you have a Revolving Credit Facility or unless otherwise agreed with us, any amount repaid under a Facility Agreement will not be available for re-borrowing.

6.2 **Payments in Excess of Required Instalments**

If you pay an Instalment to your Facility Account in excess of your required Instalment this will further reduce the Amount Owing under the Facility. This additional payment does not reduce the required Instalments but, if you are not in default, it does entitle you if your Facility is a Revolving Credit Facility to redraw on your Facility Account (to the extent set out in clause 6.3).

6.3 **Revolving Credit Facilities**

If you have a Revolving Credit Facility and your Facility Account balance (excluding uncleared funds) is less than the amount which would be owing at that time if all required Instalments from the commencement date of the Facility have been paid on the due date, you may redraw the difference. Payments made to and from your Facility Account after the last day of the monthly statement will change the redraw amount available from time to time. Notwithstanding the above, the ability to redraw funds under your Facility is not available to you during any Fixed Rate Period of the Facility.

6.4 **Charges to Your Facility Account are Advances**

Any amounts charged to your Facility Account in accordance with your Facility Agreement or any other Document, including but not limited to any redraws on your Facility Account made in accordance with the redraw provisions in clause 6.3, are deemed to be advanced by and owing to us and are secured by each Security Document.

6.5 **Prepayment**

Subject to the following terms of this clause 6.5, in addition to your Instalments, you may prepay the Facility in full or in part at any time provided that::

- (a) any amount repaid will be applied first in payment of outstanding Interest and other sums owing to us and secondly in payment of principal;
- (b) a part payment during any Fixed Rate Period must be a minimum of \$2,000.00;
- (c) an amount prepaid during any Fixed Rate Period will not be available for re-borrowing;
- (d) if you prepay the Facility in part or in full during any Fixed Rate Period, then you may be required to pay a Prepayment Fee to compensate us for any loss resulting from the prepayment. We may have suffered a loss if our current interest rate for a similar loan for a fixed interest rate period closest to your unexpired Fixed Rate Period is lower than the fixed interest rate applying to your Facility. You may also have to pay our administration costs relating to the prepayment;
- (e) the amount you may have to pay to compensate us for the loss resulting from a prepayment of the Facility in full during a Fixed Rate Period is calculated using the formula prescribed in the Credit Contracts and Consumer Finance Regulations 2004. You may request a copy of this formula from us;
- (f) the Prepayment Fee will be charged to the Nominated Account or Facility Account, as applicable; and

- (g) if the Facility is prepaid during a Fixed Rate Period as a result of us exercising our rights as mortgagee, we may charge a Prepayment Fee as if prepayment was made by you.

6.6 **Mode of Payments**

Each payment due to us under any Document is to be made at the time specified in the relevant Document or, if no time is specified, during normal banking hours, in each such case on the due date, in immediately available freely transferable cleared funds (in New Zealand dollars) and to the bank account which we specify from time to time.

6.7 **Business Days**

Subject to the provisions of each Facility Agreement, if any payment is due to be made under any Document on a day which is not a Business Day, that payment shall be made on the next succeeding Business Day and any interest will be adjusted accordingly.

6.8 **Payments to be Free and Clear**

Each payment under any Document shall be unconditional and free and clear of any restriction, and shall be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim, charges or otherwise) unless such deduction or withholding is required by law.

6.9 **Reinstatement**

If any payment to us under any Document is avoided by law, your obligation to make such payment will be deemed not to be affected or discharged and you shall on demand indemnify us against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by us as a result of us being required for any reason to refund all or part of any amount received or recovered in respect of such payment and in any event pay to us on demand the amount so refunded. In any such case we each will be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights we respectively would have had, if that payment had not been made.

6.10 **Payments of Principal and Interest**

Unless otherwise agreed in writing (including without limitation, under a Facility Agreement), the Facility is repayable on demand by us. Subject to the foregoing, demand may be made by us at any time at our absolute discretion. Until such demand is made, you agree to pay the Instalments and any other amounts owing (including interest) as detailed in the relevant Schedule or as otherwise agreed by us. The Facility and all accrued interest also becomes immediately due and payable if a credit default event happens or an Event of Default occurs. Because the Facility is repayable on demand, the number of payments to be made may differ from those detailed in the Facility Agreement.

6.11 **Fees and Charges**

You must pay us the fees and charges included in the relevant Schedule, together with all other fees and charges for incidental services provided by us to you relating to the Facility or the Documents, including default fees, in the amounts notified by us to you from time to time.

6.12 **Authority to Charge**

Your Facility Account, Nominated Account or any bank account you have with us, may be charged with any amount due and payable under a Facility, including but not limited to, any Instalment, any default interest payable under clause 7.1, and any costs for which we are entitled to be indemnified or reimbursed either under a Facility Agreement, any Document

or any other agreed terms and conditions, Such amounts may be charged immediately to your Facility Account, Nominated Account or other account (and will be due and payable from that date) and interest will accrue on those amounts from that date in accordance with clause 7.1, This may occur even if the amount charged exceeds the Facility Amount or takes the balance of your Facility Account, Nominated Account or other account over any permitted limit.

6.13 **Nominated Account**

You may not close your Nominated Account during the Term of your Facility unless you nominate, and we agree to your nomination of, a replacement Nominated Account.

7. **DEFAULT**

7.1 **Default Interest**

If at any time:

- (a) you breach any term or any of your obligations under any of the Documents; or
- (b) your Nominated Account is overdrawn in excess of your Limit; or
- (c) the balance owing under your Facility Account exceeds your Limit or Reducing Limit (as the case may be); and
- (d) you fail to repay such overdraft or excess or fail to remedy such breach,

then you shall pay interest calculated on a daily basis on that overdrawn amount or excess at the Default Interest Rate until the overdraft or excess is repaid in full or until the breach is remedied to our satisfaction (as the case may be). Any such overdrawn or excess amount shall be regarded as remaining due and payable under the relevant Facility Agreement until the amount has been paid or satisfied in full. This obligation to pay default interest shall arise without the need for notice or demand.

7.2 **Events of Default**

If at any time and for any reason, regardless of whether it is your fault or not:

- (a) you fail to pay us any amount payable on its due date under any Document; or
- (b) you fail to comply with any of your obligations under any Document; or
- (c) you or any other Obligor have committed a Dishonest Act; or
- (d) a credit default event occurs; or
- (e) you use your Facility for any purpose other than that specified in the Facility Agreement (if any), or
- (f) a receiver, trustee, official assignee, statutory manager, administrator or similar officer is appointed in respect of you or any of your assets; or
- (g) in our reasonable opinion, a material adverse change occurs to you; or
- (h) you die or become in any way legally incapacitated; or
- (i) it becomes impossible, for any reason, for you to perform any of your obligations under any Document to which you are a party; or
- (j) any Document or Security or Security Document becomes or is claimed to be invalid or unenforceable in whole or in part or is claimed to have effect otherwise than in accordance with its terms or is withdrawn, revoked, or becomes defective; or

- (k) an event of default or termination event (however described) occurs under any Document; or
- (l) unless otherwise agreed by us in writing, if you are a trustee of a trust, you cease to be a trustee of that trust, or a resolution is passed by the trustees or beneficiaries of that trust, or any other action is taken, to wind up that trust; or
- (m) any of the above events in this clause 7.2 occurs with respect to any other Obligor under your Facility Agreement,

then an Event of Default is deemed to have occurred and we may, at any time, by notice to you:

- (n) cancel each or any Facility;
- (o) declare any or all of the Amount Owing to be due and payable either immediately or at such later date as we may specify whereupon that indebtedness will become so due and payable; and
- (p) exercise all or any of our rights under any Security Document.

8. GENERAL TERMS

8.1 Indemnity

You agree to indemnify and hold us harmless against any loss, expense and liability sustained or incurred by us (including any loss of profit) as a result of:

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

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

8.2 Set-Off

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

8.3 Contingent Liabilities

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

8.4 Bank's Rights

For the purposes set out in clause 8.3, we:

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

8.5 **Disclosure**

You authorise us to disclose and discuss your financial statements and financial affairs at any time with:

- (a) our and your accountants, auditors, legal and financial advisers;
- (b) any Obligor; and
- (c) our parent, subsidiaries or related companies.

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

8.6 **Two or More Borrowers**

If more than one person is named as the Borrower, then:

- (a) each of you is jointly and severally liable for all obligations under a Facility Agreement and the Documents including without limitation for the amount of any redraw;
- (b) in the event of a dispute arising between any of you and/or any Guarantors we may, at our own discretion, refuse to allow the Facility Account or Nominated Account to be operated until agreement has been reached between the disputing parties and notified to us by all of you;
- (c) we may, in our sole and absolute discretion, release any one or more of you from your obligations under a Facility Agreement provided that:
 - (i) no release shall be of any effect unless it is in writing and signed by us;
 - (ii) the rest of you shall not be discharged, nor shall your obligations be affected by such release; and
 - (iii) we shall not be under any obligation to any of you in respect of such release even though your rights in subrogation, contribution or otherwise may be prejudiced as a result;
- (d) subject to sub-clause (e), until we receive written notice from any one of you to the contrary, we may act on instructions received from any one of you as if that instruction had been given by all of you; and
- (e) we may only act on instructions received from one of you for the purposes of clauses 4.1 and 4.2 if you have all previously confirmed that we may do so in writing.

8.7 **Trustee**

In relation to any Document to which you are a party if you are described as a trustee of a trust:

- (a) You warrant and undertake to us that:

- (i) your entry into the Documents is authorised by the trust deed and the Trustee Act 1956;
 - (ii) the trust is properly constituted and validly existing under the applicable law, the trust is solely constituted by the trust deed and you are all of the trustees of the trust; and
 - (iii) there is no litigation in which the trust is involved, or is pending against the trust.
- (b) In enforcing any of our rights under or in respect of the Documents, we:
- (i) may have full recourse to the assets of the trust and will be subrogated to each trustee's right to be indemnified from those assets or by any other person (including any beneficiary of the trust); and
 - (ii) except as provided in clause 8.7(c), may have full recourse to the personal assets of any trustee; and
- (c) If we have agreed in writing that a trustee is a "Limited Liability Trustee" in respect of the trust, then the personal liability of that trustee is limited to the assets of the trust. However, this limitation of personal liability will not apply if the Limited Liability Trustee:
- (i) has acted dishonestly or is in wilful breach of trust; or
 - (ii) lacks the power or authority to sign the Agreement or the Security Documents in the capacity as a trustee; or
 - (iii) commits a Dishonest Act; or
 - (iv) is in breach of any of the obligations specified in this clause 8.7;
- and in such circumstances the Limited Liability Trustee will have full personal liability under and in respect of the Documents.
- (d) Each trustee confirms and undertakes that the retirement of a trustee shall be effected in terms of section 45 of the Trustee Act 1956 and that it will notify us in writing that a trustee intends to retire in accordance with those provisions. Each trustee remains liable under and in respect of a Document after ceasing to be a trustee until released in writing by us. We will release a trustee (in his her or its capacity as trustee and not, if applicable, in his her or its personal capacity) when we are satisfied that all things required to vest the Secured Property in the continuing or new trustee(s) have been executed and done.

8.8 Partnership

Where you have entered into a Facility Agreement as a partnership, each of you acknowledges that:

- (a) distinct from your joint liability as a partner, you have separate personal liability for all the obligations of the partnership so that we may have recourse to your personal assets on the same basis as any other personal creditor; and
- (b) you will notify us immediately upon the appointment of each new partner and the retirement or death of any partner.

8.9 Your Warranties, Representations and Undertakings

You acknowledge, represent and warrant to us that:

- (a) you have the power to enter into and perform the Facility Agreement(s) and all other Documents to which you are a party and have taken all the necessary actions to authorise the execution, performance, and delivery of the Facility Agreement(s), these Terms, and all other Documents in accordance with their respective terms;
- (b) these Terms and the Documents constitute legal, binding and valid obligations enforceable in accordance with their respective terms; and
- (c) your entry into the Facility Agreement(s) and the Documents will not violate any provision of any law or regulation or any order of any governmental, judicial, or public body or authority of New Zealand.

8.10 **Company**

If you are a company, you acknowledge, represent and warrant to us that:

- (a) you are duly incorporated under New Zealand law and have the corporate power to own your own property and assets and carry on your business as it is now being conducted;
- (b) your entry into the Facility Agreement(s) and the Documents will not violate any provision of your constitution (if any) or articles of association (if any); and
- (c) all consents, approvals, licences, filings, registrations, and any and all other requirements of governmental and regulatory bodies required in connection with the execution, performance, validity and enforcement of the Facility Agreement(s) and Document(s) have been obtained and are in full force and effect.

9. **OUR DISCRETION TO CANCEL OR AMEND YOUR FACILITY**

9.1 **Accommodation**

We may choose not to make a Facility available if:

- (a) we have not received, or we are not satisfied in all respects with, the Documents or any evidence or ancillary documentation we require prior to Drawdown;
- (b) we are not satisfied that any condition we require has been fulfilled;
- (c) an Event of Default has occurred, or is likely to occur as a result of the accommodation being provided;
- (d) any Obligor has committed a Dishonest Act;
- (e) a material adverse change has occurred to any Obligor; or
- (f) it is unlawful to make the Facility available.

9.2 **Termination of Offer**

If you do not draw down the Facility by the “Termination of Offer Date” specified in the relevant Schedule, we may in our absolute discretion cancel all or part of the Facility either immediately or at any time afterwards and retain any fee charged in relation to it. For Multiple Tranche Facilities we may in our absolute discretion cancel all or part of the Facility either immediately or at any time from the Termination of Offer Date and retain any fees charged, if you do not return to us your signed Facility Agreement by the Termination of Offer Date.

9.3 **Review of Your Facility**

We may periodically review your Facility and have the right to cancel, reduce or amend your Facility in our absolute discretion. Without limitation, where we are not satisfied:

- (a) with the operation of the Facility Account; or
- (b) with the value of any Secured Property; or
- (c) that your current income levels satisfy our Facility servicing requirements,

then we retain the right to amend the terms and conditions of any Facility Agreement including the right to require you to repay all or part of any outstanding principal, interest and fees. We will give you notice of any such decision as we consider appropriate.

10. STATEMENT OF RIGHT TO CANCEL

10.1 Right to Cancel

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

10.2 How to Cancel

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

10.3 Time Limits for Cancellation

If the disclosure documents are handed to you directly, you must give notice that you intend to cancel within 3 Business 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 5 Business Days after the electronic communication is sent.

If the disclosure documents are mailed to you, you must give notice that you intend to cancel within 7 Business Days after the date of posting.

10.4 What You May Have to Pay if You Cancel

If you cancel the contract we may charge you:

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

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

11. MISCELLANEOUS

11.1 Certificate Conclusive

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

11.2 Assignment

We may assign or transfer any of our rights or obligations under a Facility or any Document without your consent. You may not assign or transfer any of your rights or obligations under a Facility or any Document without our prior written consent,

11.3 Disclosure of Information

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

11.4 **Amendments**

Except as otherwise provided in these Terms, no amendment to any Document will be effective unless it is in writing signed by all the parties to that Document,

11.5 **Time of the Essence**

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

11.6 **Waivers**

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

11.7 **Notices**

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

11.8 **Expenses**

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

11.9 **Survival of Covenants**

Your payment and indemnity obligations under these Terms, including, without limitation, under clauses 6.9, 8.1 and 11.8, shall be separate and independent obligations giving rise to independent causes of action and will survive the termination of any Facility and payment of all other indebtedness under any Document,

11.10 **Partial Invalidity**

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

11.11 **Counterparts**

Any Facility Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute any Facility Agreement by signing any such counterpart.

11.12 **Conflict**

If there is any conflict between any Facility Agreement and the Terms, the terms of the Facility Agreement shall prevail. Furthermore, if there is any conflict between any Facility

Agreement and a Schedule, the terms of that Schedule shall prevail over the Facility Agreement.

11.13 **Governing Law**

This Agreement is governed by and to be construed in accordance with New Zealand law and each of the parties submit to the exclusive jurisdiction of the courts of New Zealand.

FEES GUIDE FOR INCIDENTAL SERVICES RELATING TO YOUR FACILITY

This Fees Guide is intended as a guide. If you require any amendments over the life of your Facility the corresponding fee set out below will apply. Over the term of your Facility none of these fees may be applicable; however under current legislation we must disclose these in case any do arise due to a change in circumstances.

Release or substitution of security.

Transfer with new mortgage required.

Land title changes with new mortgage required	\$250.00
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Settlement statements.

Change parties to Facility agreement or owners to title.

Registrations affecting land titles.

Priorities.	\$100.00*
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*urgent requests for settlement statements

or changes to Facility arrangements will incur an additional fee of	\$30.00
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Release of repaid mortgage.	\$50.00
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Prepayment Fee	\$50.00
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Local body rates demand notice	\$100.00
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plus additional charge if we have to make rates payment	\$50.00
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Facility default enforcement letter fee	\$100.00
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These fees are current at the time of print but may change from time to time.

Current fees may be viewed on our website www.barodanzltd.co.nz