

CONSUMER LOAN & SECURITY AGREEMENT



COMMERCIAL TERMS

Approval No. _____

Agreed Drawdown Date being the
Effective Date of the Agreement _____

Under this document MARAC (a division of Heartland Bank Limited, hereinafter referred to as the **Lender**) agrees to make a loan to you, and as security for payment of amounts due by you to the Lender, you grant to the Lender a security interest in the goods described below and all your rights in the Goods. This document constitutes a disclosure statement for the purposes of the Credit Contracts and Consumer Finance Act 2003. These terms, the Schedule of Payments, the Trustee Provisions (if applicable) and the attached Fee Schedule shall be read together with, and form part of, the General Terms attached, all of which are together referred to as the Agreement. You acknowledge receiving copy of the **Agreement**. **IMPORTANT** – This document contains key information about your credit contract, which is required to be disclosed to you under section 17 of the Credit Contracts and Consumer Finance Act 2003. **If you do not understand anything in this document, you should seek independent advice.** You should keep a copy of this document in a safe place. The lender may also be required to provide you with continuing disclosure. If required, statements containing such disclosure will be provided at least every six months

LENDER (This is the person providing you the credit)

Name MARAC

Address Heartland House

35 Teed Street

PO Box 9919

Newmarket

Auckland 1149

Fax (09) 927 9319

Email info@heartland.co.nz

DEBTOR (Also referred to as you & your)

Name _____ Date of Birth _____

Address _____ Phone No. (hm) _____

Phone No. (wk) _____

Email _____ Phone No. (mobile) _____

GOODS

Make or manufacturer _____ VIN No. _____

Model _____ Reg No. _____ Insurer _____

Year of manufacture _____ Chassis/Serial No. _____

together with all accessories and replacements that are at any time supplied or attached to those goods.

In accordance with clause 4 of the General Terms, you agree to grant to the Lender a security interest in all Goods to secure performance of your obligations under the Agreement, or the payment of money payable under the Agreement. **If you fail to meet your commitments under the Agreement then the Lender may be entitled to repossess or sell the Goods.**

PARTICULARS OF INSURANCE

Company _____

Branch/Broker _____ Expiry date _____

C/N or Policy No. _____ Amount \$ _____

CREDIT DETAILS

Initial Unpaid Balance (this is the amount you owe as at the effective date of this Agreement, including any fees charged by the Lender) \$13,565.00 made up of:

LOAN (this amount will be provided to you in a single advance)

PPSR Fee \$10.00

Establishment Fee * \$375.00

Other Fees (see “Credit Fees and Charges” below for more information)

Insurance

AMOUNT OF CREDIT

* The Establishment Fee of \$375.00 includes a Dealer / Broker / Intermediary fee of up to \$150.00

SCHEDULE OF PAYMENTS

Number of Term Payments

Payment Dates – each date falling at weekly intervals from the effective date of this Agreement

First Payment Date

Final Payment Date

Total Payments

Total Interest Payable (assuming no change in the Annual Interest Rate specified below)

ANNUAL INTEREST RATE

Interest is charged at a rate of : per annum (this interest rate will apply unless varied in accordance with clause 3.4 of the General Terms). Our method of charging interest is described in clause 3.1 of the General Terms.

CREDIT FEES AND CHARGES

All credit fee(s) and charge(s) (including default charges) that will, or may become, payable under, or in connection with this Agreement are listed in the attached Fee Schedule. Further information on default interest charges can be found in clause 3.3 of the General Terms. Note that credit fees and charges may be varied from time to time in accordance with clause 3.4 of the General Terms.

FULL PREPAYMENT

In accordance with clause 3.5 of the General Terms, you may prepay the Loan in full at any time by payment to the Lender of the Full Prepayment Amount (as defined in the General Terms).

The Full Prepayment Amount includes an amount equal to the Lender’s reasonable estimate of its loss arising from full prepayment. This loss will be calculated using the formula prescribed in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004.

STATEMENT OF RIGHT TO CANCEL

The Credit Contracts and Consumer Finance Act 2003 gives you the right for a short time after the terms of this Agreement have been disclosed to you to cancel the Agreement.

How to cancel

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

Time limits for cancellation

If this Agreement is handed to you directly, you must give notice that you intend to cancel within 3 working days after you receive a signed copy of this Agreement. If this Agreement is sent to you by electronic means (for example, email) you must give notice that you intend to cancel within 5 working days after the electronic communication is sent. If this Agreement is mailed to you, you must give the notice within 7 working days after it was posted. Saturdays, Sundays and national public holidays are not counted as working days.

What you may have to pay if you cancel

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

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 Credit Contracts and Consumer Finance Act 2003 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.

ELECTRONIC COMMUNICATION

By signing this Agreement, you consent to notices and other communications relating to this Agreement (including disclosures required by the Credit Contracts and Consumer Finance Act 2003) being sent to you, or made available, via email or other electronic means.

IMPORTANT: The Credit Contracts and Consumer Finance Act 2003 requires the creditor to disclose certain key information applicable to this credit contract. Detailed below is where to find key information about your loan.

Name and address of creditor:	The address details for MARAC are provided in the LENDER section on the front page.	Interest Free Period:	There is no interest free period under this credit contract.
Initial Unpaid Balance:	This is the Initial Unpaid Balance under the CREDIT DETAILS section specified earlier in this Agreement.	Credit Fees and Charges:	The credit fees and charges that are or may be payable are described in the CREDIT FEES AND CHARGES section and can be found in the FEE SCHEDULE noted later in this Agreement.
Subsequent Advances:	There are no subsequent advances under this credit contract.	Payments Required:	The details of payments to be made are set out in the SCHEDULE OF PAYMENTS section specified earlier in this Agreement.
Total Advances:	The total advances is the Amount of Credit specified in the CREDIT DETAILS section specified earlier in this Agreement.	Full Prepayment:	The Full Prepayment Amount includes an amount equal to the Lender’s reasonable estimate of its loss arising from full prepayment. This information can be found in the FULL PREPAYMENT section specified earlier in this Agreement.
Credit Limit:	The Amount of Credit under the CREDIT DETAILS section specified earlier in this Agreement.	Security Interest:	This is set out in clause 4 of the General Terms.
Annual Interest Rate:	This is the interest rate indicated in the ANNUAL INTEREST RATE section specified earlier in this Agreement. This is the only rate that applies unless you are in default. There is no fixed rate period for this loan. The interest rate can be changed according to the method set out in clause 3.4 of the General Terms.	Default Interest Charges and Default Fees:	Information on default interest charges can be found in clause 3.3 of the General Terms. Default Fees are set out in the FEE SCHEDULE noted later in this Agreement.
Method of Charging Interest:	This is detailed in clause 3.1 of the General Terms.	Debtor’s Right to Cancel:	A statement about your right to cancel this Agreement pursuant to the Credit Contracts and Consumer Finance Act 2003 as noted earlier in this Agreement.
Total Interest Charges:	The total amount of interest charges payable under the credit contract is set out in the SCHEDULE OF PAYMENTS section specified earlier in this Agreement.	Continuing Disclosure Statements:	We will provide you with regular statements of account at least every six months if required.

EXECUTION

EXECUTED as a Deed

**Date of Agreement being the Effective Date
of this Agreement**

DEBTOR'S SIGNATURE

WITNESS SIGNATURE

Signed by each Debtor in the presence of

Witness

Name

Address

Occupation

INSTALMENT SCHEDULE

Instalment Amount	No. of Instalments	Payment Frequency	First Instalment	Last Instalment	Total Amount of Instalments

FEE SCHEDULE

The following fees may be varied from time to time in accordance with clause 3.4 of the General Terms

Establishment Fees**Establishment Fee**

A fee of up to \$375.00 (including a Dealer / Broker / Intermediary fee of up to \$150.00) is charged for the processing of a new loan application via an intermediary, including approval and acceptance and added to the contract when the loan is actually drawn.

Direct Establishment Fee \$425.00
Charged for processing a Direct loan application, including approval and acceptance and added to the contract when the loan is actually drawn.

Other Credit Fees

PPSR \$10.00
Charged to the contract when drawn for registration of our security with the Personal Property Security Register.

Refund \$16.00
Debited from the account when an overpayment is received and a refund is made to the client.

Settlement \$150.00
Debited to an account when a loan is settled in full before its final payment date.

Statement \$5.00
Debited to the account when an additional statement is requested and supplied (outside of the six monthly statement which is provided free of charge).

Assignments \$425.00
Charged when assigning an Agreement from one purchaser/s and or guarantor's name to another purchaser/s and or guarantor's name.

Caveat Fee \$163.00
For a loan and mortgage agreement we will register a caveat over the property, caveat registration and release cost will be charged to a loan to a maximum of \$163 for each property.

Mortgage Fee \$401.50
For any loan agreement where we will register a mortgage over a property, mortgage registration costs will be charged to a loan to a maximum of \$401.50 for each property.

Credit Card Transaction Fee 3.50 %
Charged when a payment is made by Credit Card. (Payment amount + 3.50% merchant fee)

Contract Variation \$150.00
Charged when the goods described in the Agreement are to be changed or the loan is to be restructured following an unscheduled part prepayment

Refinance \$425.00
Charged when we restructure an existing account to assist a customer who may be experiencing difficulty in maintaining the current payments or wishes to restructure the term.

Default Fees

Pre-Possession Notice \$55.00
Debited to a loan account when a pre-possession notice is issued. This is generally 12-15 days after a breach of terms (e.g., overdue instalment).

Telegram \$3.00
Debited to a loan account when a telegram is sent. Telegrams are generally sent after expiry of pre-possession notices when the Lender is having difficulty contacting customers, asking them to contact the creditor to avoid further "enforcement action".

Dishonoured payment \$5.00
Debited to a loan account in the event a payment tendered to an account is dishonoured by the customer's bank.

Issuance of Repossession Warrant \$75.00
Debited to a loan account when it is necessary to issue a repossession warrant as a result of serious default (e.g., overdue instalments). This amount along with the arrears and any agent's costs are due and payable immediately to avoid repossession.

Repossession Fee \$200.00
Debited to a loan account after the Lender (or its agent) effects repossession of goods.

Reposessed Vehicle Sales Fee \$870.00
Debited to a loan account after we sell a reposessed motor vehicle via our Registered Motor Vehicle Trader outlet

Recovery Costs
Costs incurred by a third party (e.g., Repossession Agent, Legal Provider, Repairer) will be debited to a loan account for the invoiced amount. Copies of the invoice are available on request.

GENERAL TERMS

1. Interpretation

1.1 Definitions In this Agreement, terms defined in the Commercial Terms have the same meaning and:

Act means the Credit Contracts and Consumer Finance Act 2003;

Collateral Security means each security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any Secured Indebtedness;

Commercial Terms means the terms set out under the heading “Commercial Terms” at the beginning of this Agreement;

Date of Advance means the date the Loan is advanced, or, if the Loan is advanced by instalments, the date the first instalment is advanced;

Default Interest Rate means a rate equal to the higher of:

- (a) 6 per cent per annum above the Annual Interest Rate at the time of default ; and
- (b) 18 per cent per annum,

as amended pursuant to clause 3.4;

Event of Default means any event specified in clause 9.1 and any other circumstance that, with the giving of notice, lapse of time or fulfilment of another requirement, is likely to constitute such an event;

Full Prepayment Amount means the sum of:

- (a) the unpaid balance of the Loan together with accrued and unpaid interest and costs;
- (b) the Lender’s administrative costs arising from the full prepayment; and
- (c) an amount equal to the Lender’s reasonable estimate of its loss arising from the full prepayment;

less any Premium Rebate;

General Terms means the terms of this Agreement set out under the heading “General Terms” above;

Goods means all of the present and after-acquired Goods as specified in the Commercial Terms, together with all of your present and future right, title and interest (legal and equitable) in, all documents of title relating to, and all proceeds of, the Goods;

Guaranteed Indebtedness means, in relation to the Guarantor, all indebtedness of the Debtor (and, if there is more than one Guarantor, all indebtedness of each other Guarantor) to the Lender;

Part Prepayment Fee means the sum of:

- (a) the Lender’s administrative costs arising from the Part Prepayment; and
- (b) an amount equal to the Lender’s reasonable estimate of its loss arising from the Part Prepayment;

PPSA means the Personal Property Securities Act 1999;

Premium Rebate means an amount equal to a proportionate rebate of any premium paid by you to the Lender under any consumer credit insurance (as defined in the Act) arranged by the Lender and financed under this Agreement;

Relevant Documents means this Agreement, each Collateral Security and each other agreement (present or future) evidencing or relating to Secured Indebtedness;

Secured Indebtedness means the Loan, together with interest and costs, and all of your other indebtedness to the Lender (including, for the purposes of sections 71 and 72 of the PPSA, future advances).

1.2 Construction of certain references

In this Agreement:

a **business day** means a day (other than a Saturday or Sunday) on which registered banks are opened for general banking business in Auckland;

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

a **disposal** of property includes assigning, leasing, lending, subordinating, varying the terms of, parting with possession of, granting an option in respect of or otherwise dealing with that property;

indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money; the **liquidation** of a person includes the dissolution, winding-up and bankruptcy of that person;

a **person** includes any entity, whether or not having separate legal personality;

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

a **security interest** includes:

- (a) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (b) a “security interest” as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor, but does not include a lien arising solely by operation of law;

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

an Event of Default is **continuing** until it has been waived in writing by, or remedied to the satisfaction of, the Lender;

a **gender** includes each other gender;

the singular includes the plural and vice versa;

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and a party to this Agreement or another agreement includes its successors and its permitted assignees and transferees.

If the Lender considers that an amount paid by the Debtor or a Guarantor under a Relevant Document is capable of being avoided or otherwise set aside on the liquidation of the Debtor or a Guarantor or otherwise, then that amount shall not be considered to have been paid for the purposes of the Relevant Documents.

Headings are to be ignored in construing this Agreement.

1.3 Multiple Debtors and Guarantors

- (a) Where there is more than one Debtor, the liability of, and obligations on, each Debtor are joint and several.
- (b) Where there is more than one Guarantor, the liability of, and obligations on, each Guarantor are joint and several.

1.4 PPSA

The terms **attach, document of title, financing statement, debtor, future advance, and proceeds** have the meanings given to them in, or in the context of, the PPSA.

1.5 No postponement of attachment or subordination

Nothing in this Agreement is to be construed as an agreement that a security interest under this Agreement attaches at a later time than the time specified in section 40(1) of the PPSA or an agreement to subordinate a security interest under this Agreement in favour of any person.

2. Making the Loan

- (a) Subject to paragraph (b) below, the Lender will make the Loan available to you after you have signed, and it is satisfied with, this Agreement and any documents or information requested from you.
- (b) Instead of making the Loan available to you directly, the Lender may, at its option, make the Loan available to a person who you have advised the Lender the Loan has been borrowed to pay.

3. Repayment of Loan and Interest

3.1 Repayment

- (a) You will repay the Loan, together with interest calculated at the applicable Annual Interest Rate, by payment of the Term Payments on each Payment Date commencing on the First Payment Date and ending on the Final Payment Date and otherwise according to the Schedule of Payments set out in the Commercial Terms.
- (b) Interest is payable in arrears on each Payment Date.
- (c) Interest charges are calculated and charged on each Payment Date by multiplying the average unpaid daily balance for the period ending on that Payment Date (and starting on the day immediately after the preceding Payment Date) by an interest rate for that period. The interest rate for that period is calculated by dividing the Annual Interest Rate by 12 (in respect of a monthly period), 26 (in respect of a fortnightly period) or 52 (in respect of a weekly period).

3.2 Time for payments

- (a) You will pay all amounts to the Lender without any set-off or deduction not later than 3.00 pm on the relevant Payment Date by direct debit authority to the account the Lender advises to you, or by such other method as the Lender agrees from time to time.
- (b) If any Payment Date is not a business day, you will make the payment on the next business day.

3.3 Consequences of failure to pay on Payment Dates

If you fail to make any payment according to clauses 3.1 and 3.2, you will pay interest at the Default Interest Rate on the amount due and unpaid.

If, at any time, the Lender declares all or part of the Loan to be due and payable in accordance with clause 9.2 and you fail to pay that amount when due, you will pay interest at the Default Interest Rate on the total amount declared due and unpaid.

Default interest will accrue daily, both before and after judgment for the period from the due date for payment until the actual date of payment.

3.4 Alteration of rates of interest, Term Payments and fees

The Lender may change:

- (a) the Annual Interest Rate;
- (b) the Default Interest Rate;
- (c) any Term Payment(s) due; or
- (d) any fee or charge payable by you

at any time. Notice to you of any such change will be made within 5 business days of the change taking effect by letter or email to you at the address specified in the Commercial Terms or, in the case of a change to the Annual Interest Rate, the Default Interest Rate or a fee or charge, by advertisement on the Lender’s website, in newspapers in regions specified by regulations made under the Act and at the Lender’s places of business.

3.5 Prepayment

(a) Full prepayment

You may prepay the Loan at any time by payment to the Lender of the Full Prepayment Amount.

(b) Part prepayment

If you make a payment to the Lender (other than a Term Payment on a Payment Date) and the payment is not equal to the Full Prepayment Amount (a **Part Prepayment**) the Lender may, at its option:

- (i) decline to accept the Part Prepayment and refund it to you as soon as practicable following receipt; or

- (ii) accept the Part Prepayment, and the following shall apply:

- (A) the Lender may charge you a Part Prepayment Fee, which will be added to, and form part of, the amount of the Loan outstanding;
- (B) the Part Prepayment will be held by the Lender and applied against the Term Payment due on the next Payment Date, according to the Schedule of Payments set out in the Commercial Terms (which, for the purposes of section 46 of the Act, is the specified schedule of payments);
- (C) any residual amount of the Part Prepayment remaining after making the payment in sub-paragraph (B) above shall be applied against the Term Payment due on the following Payment Date. This process shall be repeated on each successive Payment Date until the Part Prepayment has been applied in full;
- (D) each Part Prepayment received shall be dealt with in accordance with sub-paragraphs (B) and (C) above, in order of receipt; and
- (E) if, on a Payment Date, a Part Prepayment is to be applied and a Term Payment is also made then:

- (aa) the Part Prepayment shall be applied first; and
- (bb) the surplus Term Payment shall be retained by the Lender and treated as a Part Prepayment and refunded or applied on subsequent Payment Dates in accordance with this clause.

All Part Prepayments (including any Term Payments treated as Part Prepayments) made and not applied on Payment Dates will accrue until such time as the total amount of all unapplied Part Prepayments equals the Full Prepayment Amount, at which time the unapplied Part Prepayments and Term Payments will be applied by the Lender in full prepayment of the Loan.

No interest will accrue on amounts of Part Prepayments (including any Term Payments treated as Part Prepayments) held by the Lender pending their application in accordance with this clause.

4. Security

4.1 Security

To secure due payment of the Secured Indebtedness, you grant to the Lender a security interest in the Goods.

4.2 Continuing security

This Agreement and each security interest created under this Agreement is a continuing security, notwithstanding intermediate payments or anything else and is in addition to, and not to be merged in, any Collateral Security.

4.3 Unconditionality of security

No security interest created under this Agreement is discharged, nor are your obligations affected, by any amendment to, or the validity or enforceability of, or failure to enforce, a Relevant Document, or anything else whatever that, but for this clause, may have discharged this Agreement or affected your obligations under this Agreement. The Lender is not liable to you in relation to any of these matters, even though your rights in subrogation or otherwise may be prejudiced as a result.

4.4 Further assurance

On the request of the Lender, you must, at your own cost, promptly execute and deliver to the Lender all documents, and do anything else that the Lender deems appropriate, to secure the Lender the full benefit of its intended rights under this Agreement or a Collateral Security.

4.5 Collateral Security

You acknowledge that each Collateral Security entered into by you and/or the Guarantors with the Lender shall secure all obligations under this Agreement and vice versa. The Lender may exercise any of its rights under this Agreement and any such other Collateral Security separately or concurrently.

4.6 PPSA

- (a) **Part 9** To the extent permitted by law, you waive your rights set out in Part 9 of the PPSA and, where the Lender has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.
- (b) **Verification statement** You waive your right to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Lender.

5. Guarantee and Indemnity

5.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Lender due payment by the Debtor of the Guaranteed Indebtedness.

5.2 Payment

The Guarantor undertakes that if the Debtor does not pay to the Lender when due any Guaranteed Indebtedness, it will pay the relevant amount to the Lender immediately on demand.

5.3 Unenforceability of obligations

As a separate and continuing undertaking, the Guarantor unconditionally and irrevocably undertakes to the Lender that, should any Guaranteed Indebtedness not be recoverable from the Debtor under any Relevant Document for any reason, the Guarantor will, as a sole and independent obligation, pay to the Lender on demand the amount that the Lender would otherwise have been able to recover (on a full indemnity basis).

5.4 Liability as sole principal debtor

The Guarantor is liable under this Agreement in relation to the Guaranteed Indebtedness as a sole and principal debtor and not as a surety.

5.5 No discharge

The Guarantor is not discharged, nor are its obligations affected, by any amendment to, or the validity or enforceability of, or failure to enforce, a Relevant Document, or anything else whatever that, but for this clause, may have discharged this Agreement or affected the Guarantor's or the Debtor's obligations under this Agreement. The Lender is not liable to the Guarantor in respect of any of these matters, even though the Guarantor's rights in subrogation or otherwise may be prejudiced as a result.

5.6 Continuing guarantee

This Agreement and each of the Guarantor's obligations under this Agreement is to remain in full force and effect until the execution by the Lender of an unconditional discharge of the obligations of the Guarantor under this Agreement.

6. Representations

6.1 Representations relating to the Goods

You represent that:

(a) No foreign property

the Goods are in your possession and are situated in New Zealand;

(b) Sole owner

from the date of this Agreement you will be the sole legal and beneficial owner of the Goods; and

(c) No security interests

no security interest exists over or affects the Goods except as created or permitted by this Agreement or a Collateral Security.

6.2 Representations continuing

Each of the representations in this clause 6 will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing.

7. Undertakings

7.1 Undertakings relating to the Goods

You undertake that you will:

(a) Disposals

not dispose of the Goods;

(b) No security interests

not create or permit to exist any security interest over or affecting the Goods;

(c) No prejudicial actions or omissions

not do, omit to do, or allow to occur, anything that might cause or contribute to a deterioration in the value of the Goods or otherwise adversely affect the security of the Lender under any Relevant Document; and

(d) Change of your name

not change your name without giving at least 14 days prior written notice to the Lender.

7.2 Reporting undertakings

The Debtor and each Guarantor undertakes that it will promptly deliver to the Lender details of all security interests affecting it and any other information that the Lender reasonably requests with respect to its business or financial condition.

8. Insurance

8.1 Insurance

You undertake to the Lender that you will:

(a) insure and keep insured the Goods against all risks that should prudently be insured against in accordance with best practice, in each case for the full replacement value or such lesser amount as the Lender agrees in writing; and

(b) ensure that each insurance policy is noted to record the Lender's interest in the Goods.

8.2 Lender may arrange insurance

In the event that you fail to obtain and keep insurance over the Goods in accordance with clause 8.1, the Lender may arrange such insurance at your expense as your agent under, and in accordance with, clause 19.2.

8.3 Application of insurance proceeds

(a) Money recoverable under any insurance on the Goods is to be applied, at the Lender's request, in reduction of the Secured Indebtedness.

(b) Any such money released to or received by you is to be held by you on trust for the Lender until applied in the manner required by this clause 8.2.

9. Enforcement

9.1 Events of Default

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

(a) Non-payment

the Debtor or a Guarantor fails to pay on its due date any Secured Indebtedness; or

(b) Breach of obligations

the Debtor or a Guarantor does not comply with any of its obligations under a Relevant Document and that failure is not remedied to the Lender's satisfaction within 5 business days after notice of that failure has been given to it by the Lender; or

(c) Breach of representation

any representation or statement by the Debtor or a Guarantor in or in connection with a Relevant Document is or was misleading or not true in all material respects; or

(d) Avoidance or repudiation

a Relevant Document ceases to be in full force and effect or its validity or enforceability is contested by any person (other than the Lender); or

(e) Insolvency

in the reasonable opinion of the Lender, the Debtor or a Guarantor is insolvent or unable to pay its indebtedness as it falls due or is deemed to be so under any law; or

(f) Enforcement

a distress, attachment, execution or other legal process is levied against the Debtor's or a Guarantor's property and is not discharged or stayed within five days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of the Debtor or a Guarantor or any of its property; or

(g) Goods at risk

in the reasonable opinion of the Lender, the Goods are at risk of being seized, becoming subject to a security interest or otherwise being dealt with in contravention of this Agreement; or

(h) Relevant Documents

an event of default or termination event (however described) occurs under another Relevant Document.

9.2 Rights of the Lender following default

To the extent permitted by law, if an Event of Default occurs:

(a) each security interest created under this Agreement or under any Collateral Security will become immediately enforceable;

(b) the Lender may, at any time, by notice to you, declare all or any part of the Secured Indebtedness to be due and payable immediately, upon demand or at a later date as the Lender may specify; and

(c) the Lender:

(i) may take possession of and sell the Goods;

(ii) may, in your name or otherwise, at any time, do anything that you could do in relation to the Goods;

(iii) has all the rights of a natural person in relation to the Goods; and

(iv) has all other rights conferred by law.

10. Liability for the Goods

10.1 Liabilities and obligations

The Lender does not (and will not be deemed to) undertake any of your obligations in respect of the Goods by virtue of this Agreement or a Collateral Security.

10.2 Performance of your obligations by the Lender

Notwithstanding clause 10.1, and in default of you doing so, the Lender may (without being obliged to do so) perform any of your obligations in respect of the Goods. Each amount spent for that purpose (including costs) must be reimbursed by you on demand by the Lender.

11. Protection provisions

11.1 Exercise of powers

Subject to any mandatory law, the Lender will not be liable:

(a) in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the Lender of its rights under this Agreement or conferred by law; or

(b) to account as a mortgagee in possession in respect of the Goods if it or any person on its behalf takes possession of the Goods.

11.2 Indemnity

Subject to any mandatory law, the Debtor and each Guarantor will indemnify the Lender against each cost or liability sustained or incurred by it as a result of:

(a) the occurrence or continuance of an Event of Default; or

(b) an amount payable under a Relevant Document:

(i) not being paid when due, whether by prepayment, acceleration or otherwise; or

(ii) being paid or becoming payable otherwise than on a Payment Date; or

(c) anything done or omitted by it in the exercise of its rights under this Agreement or conferred by law (whether or not arising by reason of mistake, oversight, negligence or error of judgment),

by payment to it on demand of the amount and in the currency that it certifies is required to compensate it for that cost.

11.3 Indemnity irrevocable

The above indemnity is unconditional and irrevocable and is to survive both termination of this Agreement and payment of all other indebtedness.

12. No obligation to marshal

The Lender is not required to marshal, enforce or apply under:

(a) any security interest, guarantee or other entitlement held at any time by it; or

(b) any money or property that it at any time holds or is entitled to receive.

13. Set off

13.1 Debtor

You authorise the Lender to apply any credit balance on your accounts with the Lender in or towards satisfaction of any indebtedness then due to the Lender under a Relevant Document and unpaid.

13.2 Guarantor

Each Guarantor authorises the Lender to apply any credit balance on its accounts with the Lender in or towards satisfaction of any indebtedness then due to the Lender under a Relevant Document and unpaid.

14. Assignment

14.1 The Lender

The Creditor and Lender may assign or transfer any of its rights or obligations under this Agreement without your or any Guarantor's

consent. Each assignee or transferee is to have the same rights against you and each Guarantor under this Agreement as if named in this Agreement as the Lender.

14.2 The Debtor and each Guarantor

Neither the Debtor nor any Guarantor may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender.

15. Collection and disclosure of information

As authorised in the Privacy Act 1993 declaration, the Debtor and each Guarantor authorises the Lender to obtain any information about it that the Lender may reasonably require in relation to this Agreement (or any other agreement) from any third party and further authorises the relevant third party to disclose such information to the Lender. The Debtor and each Guarantor also authorises the Lender to disclose any information it holds about the Debtor and each Guarantor to any third party.

16. Notices

16.1 Addresses and references

Each notice or other communication under this Agreement is to be made in writing and sent by email, facsimile, personal delivery or by post. The initial email address, facsimile number, address and relevant person or office holder of each party is set out under its name in the Commercial Terms (or such other address notified from time to time).

16.2 Deemed delivery

No communication will be effective until received. A communication to you or a Guarantor is, however, deemed to be received:

(a) in the case of a letter, on the third business day after posting; and

(b) in the case of an email or a facsimile, on the business day on which it is despatched, or, if despatched after 5.00pm (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of despatch.

17. Costs and fees

You will pay each cost properly incurred by the Lender, together with each fee charged by the Lender, in connection with the entry into, each amendment to, each disclosure in connection with, and the exercise, protection or enforcement of the Lender's rights under a Relevant Document, in each case on demand and on a full indemnity basis. Details of the Lender's fees and charges for the time being are set out in the Commercial Terms but are subject to change by the Lender at any time. A schedule of the Lender's fees and charges for the time being is available from the Lender on request.

18. Remedies and waivers

18.1 Exercise of rights and waivers

Time is of the essence in respect of all dates and times for compliance by you and each Guarantor with your and its obligations under this Agreement. However, no failure to exercise, and no delay in exercising, a right of the Lender under a Relevant Document will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Lender of its rights under a Relevant Document is effective unless it is in writing signed by the Lender.

18.2 Remedies cumulative

The rights of the Lender under the Relevant Documents are cumulative and not exclusive of any rights provided by law.

19. Miscellaneous

19.1 Amendments

Other than any unilateral amendments made by the Lender according to this Agreement, no amendment to this Agreement is effective unless it is in writing signed by all the parties.

19.2 The Lender your agent

You irrevocably appoint the Lender as your agent to do (at your expense) any act that ought to be done by you under this Agreement or that the Lender considers necessary to protect its interest in the Goods or its rights under this Agreement and you ratify anything the Lender does as your agent under this Agreement.

19.3 Partial invalidity

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

19.4 Certificates conclusive

A certificate by the Lender of any amount payable under this Agreement is, in the absence of manifest error, conclusive evidence for all purposes, including for any proceedings.

19.5 Enforcement by the Lender

For the purposes of the Contracts (Privity) Act 1982, the Debtor and each Guarantor acknowledges and accepts that its obligations under the Relevant Documents shall be enforceable by the Lender notwithstanding the Lender may not sign this Agreement.

20. Governing law

This Agreement is governed by and is to be construed in accordance with New Zealand law.