

Asset Finance Terms and Conditions

Effective date: 1 July 2023

A INTRODUCTION

These Asset Finance Terms and Conditions (these Terms) apply to the Loan identified in the Asset Finance Term Loan Agreement executed by the Borrower and the Guarantor(s) (if any) and are deemed to be incorporated into the Asset Finance Term Loan Agreement.

These Terms are divided into a number of sections:

- A. This Introduction.
- B. Interpretation.
- C. Terms and Operation of Loan.
- D. Payments.
- E. Representations and Warranties; Undertakings; Events of Default.
- F. Guarantee and Indemnity.
- G. Security.
- H. Miscellaneous.

B INTERPRETATION

1. How Words are Defined

Terms defined in the Asset Finance Term Loan Agreement (including Approved Purpose, Default Interest Rate, Drawdown Date, Interest Rate, Loan and Payment Date) have the same meaning when used in these Terms. In addition:

This Agreement means the Asset Finance Term Loan Agreement and these Terms.

Borrower means the person or persons specified as Borrower in the Asset Finance Term Loan Agreement, and referred to in Sections A to F and H of these Terms as you, your or yours. For the avoidance of doubt, the terms you, your and yours have a different meaning in Section G (as defined in that section).

Business Day means any day other than a Saturday, Sunday, or national public holiday in New Zealand.

Asset Finance Term Loan Agreement means each asset finance term loan agreement executed by the Borrower and any Guarantor specified in it and which sets out the key details relating to the Loan, including the amount of the Loan, the interest rates and Instalments payable in relation to the Loan, together with certain other information relating to, amongst other things, the Securities and any conditions, and where there is more than one asset finance term loan agreement current between you and us "Asset Finance Term Loan Agreement" shall be construed individually in relation to each such asset finance term loan agreement.

Customer means all or any of the Borrower and each Guarantor.

Event of Default means any of the events specified in clause 11.1 of these Terms.

Fees means the fees specified in clause 1(b) of the Asset Finance Term Loan Agreement or clause 6.1 of these Terms, and all other reasonable fees and charges for incidental services provided by us to you relating to the Loan or this Agreement or the Securities, in the amounts notified by us to you from time to time.

Guarantor means the person or persons specified as Guarantor in the Asset Finance Term Loan Agreement.

Instalments means the payments specified in clause 6 of the Asset Finance Term Loan Agreement or, if we give you notice that the amount of your Instalments has changed in accordance with clause 4, the payments specified in that notice.

Lender means Kiwbank Limited, or any transferee or assignee of this Agreement and the Securities, and referred to in these Terms as we, us or our.

Receiver means a receiver, manager, or receiver and manager, of all or any part of the Secured Property appointed by the Lender under this Agreement.

Secured Indebtedness means all present or future indebtedness which a Security Provider is now or at any other time actually or contingently liable to pay to us on any account whatsoever, including under this Agreement.

Secured Obligations means all present and future obligations of whatever nature which a Security Provider has to us, including those under this Agreement, but does not include the Secured Indebtedness.

Secured Property means all Personal Property and Other Property (as those terms are defined in clause 13.1) which are subject to a Security.

Securities means the securities specified in clause 8 of the Asset Finance Term Loan Agreement (if any) and Security has the corresponding meaning.

Security Provider means each person who has granted a Security.

C TERMS AND OPERATIONS OF LOAN

2. Purpose

You agree to use the Loan only for the Approved Purpose.

3. Loan

3.1 Agreement to Lend Money

We agree to lend you the Loan on the terms contained in this Agreement. The Loan will be advanced to you in one amount and not multiple advances.

3.2 Agreement to Repay

You agree that you will repay the Loan to us together with interest, Fees, any default interest and all enforcement expenses and costs and other charges which we are entitled to receive under this Agreement and the Securities, at the times and in the manner set out in this Agreement.

3.3 Conditions

Before we advance the Loan to you, we must be satisfied that:

- (a) this Agreement and the Securities have been properly signed by all required parties;
- (b) any conditions required to be satisfied before we advance the Loan have been met; and
- (c) no Event of Default can have occurred or be likely to occur.

3.4 Drawdown Procedures

- (a) You agree that the net advance referred to in clause 1 of the Asset Finance Term Loan Agreement will be paid on the Drawdown Date. We will not advance the Loan until such time as clause 3.3 above has been met. You need not provide any written request that we advance the Loan unless we specifically require.

- (b) The proceeds of the Loan shall be paid to your bank account nominated by you or, if requested by you or required by us, to such other account as may be necessary in order to refinance any existing indebtedness or to purchase an asset in accordance with the Approved Purpose. Payment to any such account shall be treated as receipt by you of the full amount of the Loan.

4. Interest

4.1 Interest Rate

Interest shall accrue on the principal amount of the Loan at the Interest Rate, calculated on a daily basis from the Drawdown Date until the Loan is repaid in full. The initial Interest Rate is either a fixed rate or a floating rate as specified in clause 2 of the Asset Finance Term Loan Agreement. Interest payable by you is included in the amount of each Instalment. Your obligation to make interest payments will be met if you pay each Instalment on each Payment Date.

4.2 Fixed Rate Option

- (a) You shall have the right by notice to us to request at any time that the Interest Rate, where it is a floating rate, change from a floating rate to a fixed rate for the balance of the term of the loan, and we shall endeavour to accommodate that request. We shall provide you with a quote of the fixed interest rate which we propose, and if you accept that then from such date as we specify, the Interest Rate applicable to the Loan shall be the rate specified in that quote. If you do not accept, the Interest Rate will remain unchanged.
- (b) Where the Interest Rate changes, whether as a result of the switching of the Interest Rate from a floating to a fixed rate in accordance with clause 4.2(a) or a variation of the Interest Rate pursuant to clause 4.3, we may, by notice to you, change the amount of your Instalments in order to meet your principal and interest obligations within the remaining term of the Loan.
- (c) You shall have no right to request that the Interest Rate change from a fixed rate to a floating rate.

4.3 Variation of Interest Rate

We may, from time to time, vary the Interest Rate where the Interest Rate is a floating rate, by giving you at least seven (7) Business Days prior written notice specifying the new Interest Rate. The new Interest Rate shall take effect from the date the next Instalment is due. We will exercise our rights under this clause 4.3 to vary the Interest Rate only in certain circumstances (which we shall notify you at the time we vary the Interest Rate), as follows:

- (a) to reflect changes in the Lender's cost of funding (either generally or in respect of the Loan);
- (b) to reflect changes in general economic circumstances; or
- (c) to reflect our view of the credit risk associated with the Loan and/or the Customer.

4.4 Default Interest

If you fail to pay any amount due to us under this Agreement on its due date, interest will accrue on the unpaid amount from the due date up to the date of actual payment at the Default Interest Rate. Any interest accruing under this clause will be immediately due and payable by you without the need for us to demand payment. Usually we will notify you within 15 days of the due date to request payment of the unpaid amount, plus any accrued default interest. If the unpaid amount and accrued default interest is not paid within 30 days of the due date then the accrued default interest will be added to the unpaid amount and will itself bear interest at the Default Interest Rate.

4.5 Calculation of Interest

All interest under this Agreement shall accrue on a daily basis and shall be calculated on the basis of days elapsed on a year of 365 days.

5. Repayments of Principal

5.1 Monthly Instalments

- (a) As at the date of the Asset Finance Term Loan Agreement the Instalments have been calculated on the basis that, assuming no changes to the Interest Rate and no early repayments, the full principal amount of the Loan together with all interest accrued thereon at the Interest Rate will be repaid by way of the Instalments.
- (b) You must pay each Instalment on each Payment Date(s). You must repay to us on the last Payment Date all outstanding principal hereunder together with accrued interest and all other Fees, costs and charges owing under this Agreement.

5.2 Repayments of Principal

You may at any time repay the whole or any part of the Loan at any time prior to the last Payment Date. Any early repayment of part only of the Loan shall be in such minimum amount as we may agree. If you do repay the Loan or any part of it for any reason, including where the Loan is accelerated under clause 11.3, you must pay:

- (a) all or that portion of the Loan then outstanding as you shall have indicated you wish to repay early;
- (b) interest on the amount repaid at the Interest Rate to the date of repayment;
- (c) all discharge and other fees payable to us relating to the discharge of any of the Securities (if applicable);
- (d) an early repayment fee (if applicable);
- (e) all other moneys then owing to us under this Agreement, where we reasonably require such payment (by reference to the facts and circumstances at the time); and
- (f) such additional amount in relation to the amount repaid as we may require to be paid in our discretion, taking into account the nature and circumstances of the repayment and any Securities.

6. Fees and Costs

6.1 Fees

You must pay us the Fees in the amounts and at the times specified in the Asset Finance Term Loan Agreement or, for those Fees not specified in the Asset Finance Term Loan Agreement but payable under this Agreement, in the amounts and at the times as we may specify from time to time. For the avoidance of doubt we shall be entitled to increase or decrease the amount of any Fees, and introduce new Fees, from time to time. Where the Customer has been introduced to us by a third party introducer then you acknowledge that we may have to pay a fee or other remuneration to the introducer for their services and that the amount of that fee or remuneration may in whole or in part be included in any of the Fees or in the Interest Rate. If the Loan is repaid early (in part or in full) for any reason, we will charge you an early repayment fee of up to six (6) months' interest on the amount repaid.

6.2	Legal and Other Costs	You must pay to us, upon demand, our legal costs (as between lawyer and client) and other costs incurred by us for:
		(a) the negotiation, arrangement and preparation of this Agreement and the Securities and registration of any security interest taken in conjunction with the Securities and any variation, discharge or transfer of any security interest; (b) legal services arising from or relating to any default under this Agreement and/ or the Securities, and the enforcement or exercise or contemplated or attempted enforcement or exercise of any of our rights; and (c) dealing with any of your requests for a variation or waiver.
D	PAYMENTS	
7.	Payments	
7.1	Time and Place for Payment	(a) Any amount that falls due for payment on the 29th, 30th or 31st of a month that does not have such a date shall be due and payable on the first Business Day of the following month. In all other cases, payments shall be paid to us on the day on which payment is due or (where the day for payment is not a Business Day) on the immediately succeeding Business Day. Any payment not received by us by 4.00pm on any given day shall be deemed to have been paid on the next Business Day. (b) All payments shall be paid to us by credit to our nominated bank account as directed by us, including but not limited to payment by automatic bank transfer or direct debit. If we ask, you shall immediately execute and deliver to us a bank automatic payment authority or direct debit form.
7.2	Application for Payments	We may apply payments received under this Agreement to reduce any amounts due and payable under this Agreement in whatever manner and order, and against which payments, as we may decide.
7.3	Avoidance	If a payment received from a Customer by us is later avoided or is recovered from us, then the Customer will be deemed to have not made that payment.
7.4	Deduction	All payments that you make to us have to be: (a) without any conditions; and (b) without any deductions or set-offs except as agreed to by us. If there are any deductions from your payment required by tax or any other law, then you will increase the amount you pay us so that we receive the full amount of the payment.
7.5	Set-Off	We shall have the right from time to time to set off any amount owing by us to you on any account against any amount due from the Customer under this Agreement.
7.6	Indemnity	Each Customer will indemnify us against each loss (including loss of profit), expense and liability we incur as a result of: (a) the occurrence or continuation of an Event of Default; (b) the Loan not being drawn on the intended Drawdown Date; and (c) anything done or omitted to be done by us or a Receiver in the exercise of our or their rights under this Agreement or any Securities or at law (other than any loss, expense or liability arising as a result of our or a Receiver's mistake, fraud, wilful misconduct or negligence).
E	REPRESENTATIONS AND WARRANTIES; UNDERTAKINGS; EVENTS OF DEFAULT	
8.	Representations and Warranties	
8.1	On the date each Customer signs the Asset Finance Term Loan Agreement, upon drawdown of the Loan, and on the first day of each interest period, each Customer represents and warrants to us (by reference to the facts and circumstances at the time) as follows:	(a) Performance - All acts, consents and things required by its constitutive documents (if any) or any applicable law in order to ensure that its obligations under this Agreement and the Securities are legal, valid, binding and enforceable have been done, fulfilled and obtained and are in full force and effect. (b) No legal proceedings - No action or administrative proceeding or arbitration in or before any Court or agency or arbitrator which might have a material adverse effect on its business, assets or financial condition has been started or is threatened. (c) Information True - All information provided to us by it or any of its employees or agents in connection with this Agreement and the Securities is true, complete and accurate in all material respects, and it is not aware of any facts or circumstances which would or might, if disclosed, materially and adversely affect the decision of a lender considering whether or not to provide finance to the Borrower. In the case of financial information, it has been prepared in accordance with all legal requirements and gives a true and fair view of its financial condition and operations at the relevant time and for the relevant period. (d) Solvency - No action has been taken or threatened against it for its dissolution or bankruptcy or for the appointment of a receiver, manager, liquidator, trustee, official assignee, statutory manager, administrator or similar person. It is able to pay its debts when they become due in the ordinary course of business. (e) Event of Default - No Event of Default has occurred or is continuing or will or is likely to occur.
9.	Positive Undertakings	
9.1	Supply of Information	Each Customer will supply to us promptly and fully (and in any event within five (5) Business Days after our request, unless we've agreed another reasonable time period with the relevant Customer) any information regarding its financial circumstances, business, assets and operations or any other information as we may reasonably request to ensure our credit risk is as expected, the Security is satisfactory, the Customer has complied with any other terms or conditions agreed with us, or to satisfy our legal or regulatory requirements.
9.2	Update	Each Customer will notify us as soon as practicable if the Customer becomes aware that it is unable to represent or warrant any of the matters in clause 8 due to a change in the Customer's circumstances.

10.	Negative Undertakings	
10.1	Transactions with Related Persons and Third Parties	Each Customer will not provide services or otherwise transact with, or for the benefit of, a related person (as defined in the Companies Act 1993) or any third party except on arm's length commercial terms in the ordinary course of its business.
10.2	Change of Core Business	Each Customer will not without our prior written consent materially change the nature or scope of its core business from that carried on at the date of the Asset Finance Term Loan Agreement.
10.3	Change of Name	Each Customer shall not change its legal name without giving us at least ten (10) Business Days prior written notice.
10.4	Creation of Security Interest	Each Customer will not without our prior written consent create or grant any security interest over any of the Secured Property in favour of any other person.
11.	Default	
11.1	When Default Occurs	An Event of Default will occur if: (a) any Customer fails to pay any moneys due to us under this Agreement; (b) any Customer fails to comply with any of its other obligations set out in this Agreement or the Securities; (c) a default (however described or defined) occurs under any Security; (d) any obligation (whether owed to the Lender or a third party) in relation to any borrowed money that a Customer has becomes due and payable, or capable of being declared due and payable, before its stated maturity (this does not include where it does so at the Customer's option); (e) a Customer is a natural person and dies or becomes legally incapacitated, changes their name without our prior written consent, becomes bankrupt or commits an act of bankruptcy; (f) a Customer has a receiver, administrator, manager, liquidator, trustee, official assignee, statutory manager, administrator or other similar person appointed or any application is made for such appointment to control its assets and this gives rise to (or could reasonably be expected to give rise to) a material credit risk for the Lender; (g) a Customer is unable to pay its debts when due; (h) without our prior written consent, the effective management and/or control of any non-individual Customer changes (whether by transfer of shares or partnership interests or otherwise) after the date of this Agreement; (i) a material change occurs or any other circumstance arises which in our opinion is reasonably likely to have an adverse effect on the value of the Secured Property or on a Customer's ability to perform their obligations in this Agreement; (j) any representation, warranty or statement made by or on behalf of a Customer in connection with this Agreement or the Securities was untrue, incomplete, misleading or inaccurate, in any material respect and we would not have provided the Loan, or would only have provided the Loan on different terms, if we had known the correct information when made or deemed to be repeated; or (k) if a Customer is a trustee of a trust: (i) without our prior written consent, any action is taken or proposed to terminate the trust; or (ii) the trust assets and/or the trustees' right of indemnity from the trust assets are insufficient to fully satisfy the trustees' obligations under this Agreement or any Security.
11.2	Default Capable of Remedy	When an Event of Default occurs that can be remedied by the Customer, prior to exercising any right under clause 11.3, we will give the Customer a notice setting out the Event of Default and how long the Customer has to remedy it. The time period for remedying an Event of Default must be reasonable. In determining a reasonable time period we will consider if there is a need to manage any material or immediate risk, the Customer's circumstances, whether any past (or continuing) Events of Default exist and anything else relevant to the Event of Default, which may include any Security. If the Event of Default is remedied in accordance with the notice, we will not exercise any right under clause 11.3.
11.3	Our Rights and Powers on Default	Subject to clause 11.2, if an Event of Default occurs, we may by notice to the relevant Customer: (a) cancel our obligation to make the Loan if we have not lent it to you already; (b) in accordance with clause 11.4 call up the balance of all of the money that you owe us under this Agreement; and/or (c) exercise any of our rights, remedies or powers under this Agreement and any of the Securities and at law.
11.4	Acceleration	If an Event of Default occurs, that is either not capable of remedy or the Customer fails to remedy in accordance with any notice given under clause 11.2, the Loan will become due and payable upon demand, but if any notice is required to be given by law, the Loan shall become due and payable immediately on expiry of the relevant notice period without the need for any further notice or demand (unless the Event of Default is waived by us in writing).
11.5	Notification of Default	Each Customer will notify us of any Event of Default or any event which may become an Event of Default and the steps, if any, being taken to remedy the relevant default promptly upon becoming aware of its occurrence.
11.6	No Implied Waiver	Our rights under this Agreement and the Securities will not be affected by any delay in exercising them (whether or not we know that they have become exercisable). We may only be held to have waived our rights if we expressly waive our rights in writing to the relevant Customers.

F GUARANTEE AND INDEMNITY

12. Guarantee and Indemnity

12.1 All Obligations Guarantee

Each Guarantor irrevocably and unconditionally guarantees to us the payment by the Borrower of the Secured Indebtedness and the performance by the Borrower of the Secured Obligations. Each Guarantor will pay amounts due from it on demand.

12.2 Joint and Several Liability

If there is more than one Guarantor, the respective obligations of each Guarantor pursuant to this clause 12 are their joint and several unlimited obligations.

12.3 Liability as Sole Principal Borrower

As between each Guarantor and us (but without affecting the Borrower's obligations), that Guarantor is liable under this Agreement as a sole and principal debtor and not as a surety.

12.4 No Discharge

Each Guarantor is not discharged, nor are its obligations affected, by anything which, but for this clause, would or might have discharged that Guarantor or affected that Guarantor's obligations, including:

- time, indulgence, waiver or consent whenever given to the Borrower, a Guarantor or any other person;
- an amendment to any security interest, guarantee, indemnity or other agreement (whether or not that amendment might increase that Guarantor's liability under this Agreement or otherwise);
- the making of, or failure to make, a demand on the Borrower, the Guarantor or any other person for payment;
- the failure to obtain a security interest (or a particular priority ranking of that security interest), or the failure of a person to execute or otherwise be bound by a security interest, guarantee, indemnity or other agreement (including without limitation, the failure of any person named as the Guarantor to execute this Agreement);
- the enforcement of, or failure to enforce, this Agreement or any other security interest, guarantee, indemnity or other agreement;
- the release of the Borrower, the Guarantor or any other person from this Agreement or any other security interest, guarantee, indemnity or other agreement (except where we agree in writing to terminate the Guarantor's guarantee to us, in accordance with clause 12.5); or
- the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of the Borrower, the Guarantor or any other person (or the commencement of steps to effect the same).

12.5 Continuing Guarantee

Each Guarantor's obligations under this Agreement are in addition to, are not to be merged in and are without prejudice to, any security interest, guarantee, indemnity or other agreement. This guarantee is a continuing guarantee to us for the whole of the Secured Indebtedness and Secured Obligations, and shall only be terminated upon our agreeing to such termination in writing. Each Guarantor's liability under this guarantee will not be considered as wholly or partially satisfied, discharged or affected by any intermediate payment or settlement of account or other matter or thing whatsoever.

12.6 No Competition

At our request, acting reasonably, each Guarantor will not take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property in respect of any amount due to it (whether actually or contingently) from the Borrower.

12.7 Indemnity

As a separate and additional liability, each Guarantor indemnifies us in respect of any loss or damage suffered by us if the Secured Indebtedness or the Secured Obligations are not recoverable from, or performable by, or are reasonably assessed by us as not likely to be recoverable from, or performable by, the Borrower under this Agreement.

12.8 Two or More Guarantors

If there is more than one Guarantor, then we may, in our discretion, release any one or more of the Guarantors, provided that:

- no release shall be of any effect unless it is in writing and signed on our behalf;
- no other Guarantor shall be discharged, nor shall their obligations be affected, by such release; and
- we shall be under no obligation to any other Guarantor in respect of such release even though that Guarantor's rights in subrogation, contribution or otherwise may be prejudiced as a result.

12.9 Assignment

If we transfer or assign any of our rights or obligations under this Agreement or the Securities, each Guarantor agrees that the assignee or transferee will have all the rights and remedies available to them that we do.

12.10 Consideration for Guarantee and Indemnity

Each Guarantor confirms that the guarantee and indemnity given in this clause 12 is in consideration for our making or agreeing to make, or continuing to make, the Loan available to the Borrower.

G SECURITY

13. Interpretation

13.1 Defined Terms

In this Section G of these Terms, 'you', 'your' and 'yours' mean each Security Provider. In addition, when used in this Section G the following terms have the following meanings:

Collateral Security means each security held at any time by us in respect of the Secured Indebtedness or the Secured Obligations, other than the security interest created by this Agreement.

General Security means general security (if any) described in the Asset Finance Term Loan Agreement.

Other Property means all of your present and future interests in, and all of your present and future rights in relation to, any land and any other property (other than any Personal Property).

Personal Property means all your present and after-acquired personal property (whether situated in New Zealand or elsewhere), and all of your present and future rights in relation to personal property (whether situated in New Zealand or elsewhere), in each case to which the PPSA applies.

PLA means the Property Law Act 2007.

PPSA means the Personal Property Securities Act 1999 as amended or replaced from time to time.

PPSR means the Personal Property Securities Register established under the PPSA.

13.2 PPSA Terms

The following terms have the meaning given to them in the PPSA: accession, account receivable, advance, after-acquired property, at risk, collateral, financing statement, financing change statement, inventory, investment securities, motor vehicle, perfection, personal property, purchase money security interest, security agreement, serial numbered goods, transfer and verification statement.

14. Creation of Security Interest

14.1 Secured Property

To secure the payment of the Secured Indebtedness and the performance of the Secured Obligations, you:

- grant to us a charge in and over the Secured Property;
- in addition to the security granted under clause 14.1(a), assign by way of security to us all Secured Property which constitutes present or future rights or things in action (but not including any interest in land); and
- where you are granting a General Security, in addition to the security granted under clause 14.1(a), you agree to mortgage to us all Secured Property which constitutes present and future interests in any land.

14.2 Fixed Charge Over Secured Property

The charge created by this Agreement is a fixed charge in relation to the Secured Property.

14.3 Further Assurances

On our request, you must, at your own cost, promptly execute and deliver to us all assignments, transfers, security agreements and other agreements and documents, and do anything else which we may reasonably deem necessary to:

- perfect our or your title to any Secured Property;
- perfect, preserve or otherwise protect the Secured Property or the security interest intended to be created under and by this Agreement, and the priority of that security interest required by us; or
- remove any financing statement which is registered against you in relation to any security interest which is not permitted by this Agreement or otherwise consented to by us in writing.

15. Priority of Secured Interest

15.1 Priority of Charge Over Secured Property

The security interest created under and by this Agreement has priority in point of both security and payment over all security whenever created over the Secured Property except those to which we have consented.

15.2 No Consent or Agreement to Subordination, Attachment, or Accessions

Nothing in this Agreement shall be construed as:

- an agreement by us to subordinate the security interest created under and by this Agreement in favour of any person;
- consent by us to any other security interest attaching to or being created in any Secured Property; or
- consent by us to any Personal Property that is not Secured Property becoming an accession to any Secured Property.

15.3 Future Advances

For the purposes of sections 71 and 72 of the PPSA, future advances may be made on the security of this Agreement, and are included in Secured Indebtedness.

15.4 Property Law Act 2007

Where General Security is being granted, for the purposes of sections 91, 92 and 93 of the PLA:

- you acknowledge that this Agreement secures further advances (if any) by way of financial accommodation (within the meaning of those sections) up to a stated priority limit; and
- the maximum amount for which this Agreement has priority, in relation to any subsequent mortgage (within the meaning of the PLA) is the sum referred to in clause 8 of the Asset Finance Term Loan Agreement, or such other sum as may be agreed in writing (and accordingly such amount is the stated priority limit, within the meaning of the PLA).

This clause is included solely to assist our priority.

16. Performance of Borrower's or Security Provider's Obligations by Lender

Whenever the Borrower or Security Provider fails to perform or comply with any obligation under this Agreement we will be entitled to take any action necessary in the circumstances to remedy that failure or to protect the security created by this Agreement. Such entitlement is without prejudice to our other rights and does not create:

- any obligation on us to take any such action; or
- any liability on us for any total or partial failure to take such action.

17. Representations and Warranties

17.1 Representations and Warranties

In addition to the representations and warranties set out in clause 8.1, you represent and warrant that:

- Existing Secured Property: in respect of all existing Secured Property:
 - you have good title to, and are the sole legal and beneficial owner of,
 - all existing Secured Property (including assets which would be Secured Property but for any defect in title);
 - no security interest exists over or affects any of the existing Secured Property except as we may have permitted;
 - you are lawfully entitled to create, in our favour, a security interest over all the Secured Property with the ranking required by us under this Agreement; and
- Future Secured Property: whenever any Secured Property comes into existence after the date of this Agreement, you represent and warrant (by reference to the facts and circumstances at that time), in respect of that Secured Property, each of the representations and warranties made in respect of existing Secured Property.

18. Undertakings

18.1 You Shall:

- Non-Disposal of Secured Property: not lease, licence, part with possession of or dispose of any of the Secured Property (or permit the same to occur), except with our prior written consent;

- (b) Maintain and Repair Secured Property:
 - (i) maintain the Secured Property in a good state of repair and in good working order and condition; and
 - (ii) at our request, remedy any defects in the repair, order or condition of any of the Secured Property;
- (c) No Accessions: not allow any Secured Property to become an accession or a fixture to any property that is not Secured Property. You must promptly notify us if any Secured Property becomes a fixture or if any property which is not Secured Property and which is subject to a security interest which has attached becomes an accession to any Secured Property;
- (d) Payment of Outgoings on Secured Property: promptly pay all outgoings (including taxes) payable in respect of the Secured Property, and provide to us on request a receipt in respect of each such payment;
- (e) Preservation and Protection of Secured Property: not do, allow to occur, or omit to do, anything which might adversely affect our security interests under this Agreement;
- (f) Access to Secured Property: ensure that we have full and uninterrupted access at all reasonable times to inspect the Secured Property;
- (g) Authorisations: keep in force and renew (and comply with) all consents, licences, leases or other agreements which are necessary for the ownership or use of the Secured Property;
- (h) Possession:
 - (i) allow us to hold and retain all documents of title relating to the Secured Property and take possession (as defined in section 18 of the PPSA) of any Secured Property that is an investment security or a negotiable instrument, or otherwise take possession of any Secured Property that is chattel paper; and
 - (ii) if we so require, take all steps available to you to ensure that our security interest in any investment security or negotiable instrument is recorded by any relevant clearing house or securities depository and, in the case of an investment security, on the records maintained by the relevant issuer or on that issuer's behalf, or in the case of an investment security that is held by a nominee or agent, on the records of that nominee or agent; and
- (i) Location of Secured Property: ensure that the Secured Property remains at all times within New Zealand (including New Zealand airspace and waters).

19. Enforcement

19.1 When Security Interest Enforceable

The security interest created under and by this Agreement will become immediately enforceable by us on an Event of Default occurring.

19.2 Consequence of Enforcement

Subject to clause 11.2 (relating to Events of Default capable of remedy), if an Event of Default occurs we may, without notice, whether or not a Receiver has been appointed, immediately exercise all or any rights which are provided by law or in this Agreement (including those referred to in clause 20.6 (as if references to the Receiver were references to us)).

20. Receiver

20.1 Appointment of Receiver

We may appoint a Receiver in respect of all or any of the Secured Property whenever:

- (a) any Event of Default occurs, whether or not it is continuing (subject always to clause 11.2 relating to Events of Default capable of remedy);
- (b) you so request; or
- (c) any of the Secured Property appears to us to be at risk of being taken by any creditor, affected by any process of law, or being jeopardised in any way.

20.2 Capacity to Act as a Receiver

We may appoint as a Receiver any person not prohibited from appointment by the Receiverships Act 1993 or any other relevant legislation, and may appoint two or more persons jointly, severally, or jointly and severally.

20.3 Additional Powers in Respect of Receiver

We may at any time on or following the appointment of any Receiver:

- (a) determine, or vary, the terms of appointment of the Receiver;
- (b) require any Receiver to give a security or an indemnity for the due performance of the Receiver's duties;
- (c) remove any Receiver; or
- (d) appoint another Receiver in addition to, or in place of, any Receiver.

20.4 Remuneration

We may, subject to the Receiverships Act 1993 and any other applicable laws, determine or vary the remuneration of any Receiver. Such remuneration:

- (a) may be, or may include, a commission;
- (b) is payable by you;
- (c) will form part of the Secured Indebtedness; and
- (d) will be secured by the security interest created by the Securities.

20.5 Receiver Agent of Borrower

Every Receiver is your agent and you are solely responsible for each Receiver's actions and defaults.

20.6 Receiver's Powers

In addition to any powers granted by law, and subject to the specific terms of appointment of each Receiver, each Receiver has the power in respect of the Secured Property to do anything (whether alone or with any other person) whatsoever that you could do.

20.7 Exercise of Receiver's Powers

Every Receiver will exercise its powers in compliance with any directions issued by us, and otherwise on such terms and conditions as the Receiver thinks fit.

20.8 Withdrawal

We may at any time give up possession of any Secured Property and may at any time discontinue any receivership.

21. Proceeds of Enforcement

21.1 Sequence of Application

All moneys received or recovered by a Receiver or by us under or by virtue of this Agreement will (subject to payment of or provision for any debts or liabilities having priority to the Secured Indebtedness) be held and applied:

First (subject to any order made by any Court) in payment or retention of all costs charges expenses and liabilities incurred and payments made by or on behalf of us or any Receiver under this Agreement or any Collateral Security and of all remuneration payable to any Receiver;

Secondly, in or towards payment to us of the Secured Indebtedness owing whether actually or contingently to us; and

Thirdly, subject to the rights of any subsequent encumbrancers, in payment of any surplus to you or such other person or persons as a Court may direct.

22. Protection of Lender and Receiver

22.1 No Liability

Neither we nor any Receiver will be, to the fullest extent permitted by law:

- (a) liable to account for any proceeds of enforcement other than those proceeds actually received;
- (b) liable in respect of any conduct or delay in the exercise, manner of exercise, attempted exercise, or non-exercise of any power; or
- (c) liable for any loss resulting or arising from (a) or (b) above, except to the extent expressly provided otherwise in this Agreement.

22.2 No Marshalling

We will not be required, prior to enforcing this Agreement, to marshal, enforce, apply, appropriate, recover or exercise any security interest or other entitlement held by us or any moneys or assets which we hold or are entitled to receive.

22.3 No Enquiry

No person dealing, and no party entering into a transaction, with us, any Receiver, or any agent or attorney of us or any Receiver, is obliged to enquire whether:

- (a) this Agreement or the security interest created by it has become enforceable;
- (b) any Receiver, attorney or agent has been properly appointed;
- (c) the Secured Indebtedness is due and payable (or the amount of it); or
- (d) the relevant powers were exercised or are exercisable.

23. General Provisions Relating to Security

23.1 Security Continuing and Independent

This Agreement, each security interest created under this Agreement, and each Collateral Security, is:

- (a) Continuing: a continuing security, notwithstanding any intermediate payments, settlements of account, exercise of powers or other matter or circumstance;
- (b) Independent:
 - (i) in addition to;
 - (ii) independent of;
 - (iii) not in substitution for;
 - (iv) (subject to clause 23.2(a)) not to affect or be affected by;
 - (v) not to be merged in; and
 - (vi) enforceable independently of;
 in each case, any other security interest, guarantee, indemnity or collateral security; and
- (c) Release: to remain in full force and effect until we execute an unconditional release of your obligations under this Agreement, and each Collateral Security.

23.2 Collateral Securities

This Agreement is collateral to each other Security held at any time by us in respect of the Secured Indebtedness. This Agreement and each Collateral Security will be read and construed together so that:

- (a) a default under one of them will be deemed to be a default under each of them; and
- (b) we may exercise any of our powers under any one or more of them separately or concurrently or not at all, and in such order as we choose.

23.3 Partial Release of Security:

We are entitled, but not obliged, to execute at any time a partial release of any Secured Property from the security interest created by this Agreement.

23.4 Unconditional Release of Security:

We will not be obliged to execute or deliver any unconditional release of this Agreement, or the security interest created by it, unless:

- (a) you have paid all the Secured Indebtedness; and
- (b) we are satisfied that no payment made or to be made by you or any other person to us in respect of the Secured Indebtedness might be avoided, or required to be repaid by us, under any law relating to insolvency.

24. Personal Property Securities Act 1999 (PPSA)

24.1 Registration of Financing Statements

We may register at your cost one or more financing statements on the Personal Property Securities Register to perfect the Securities in accordance with the Personal Property Securities Act.

24.2 Rights

You waive any rights to receive a copy of a verification statement under the PPSA and agree, to the extent permitted by law, that in respect of any arrangement between you and us:

- (a) sections 114(1)(a) and 133 of the PPSA shall not apply;
- (b) you waive your right to receive a statement of account on sale of any collateral in terms of section 116 of the PPSA;
- (c) you waive your right to object to our proposed retention of any collateral in terms of section 121 of the PPSA;
- (d) you waive your right to not have goods damaged in terms of section 125 of the PPSA when we remove an accession;
- (e) you waive your right to receive notice of the removal of an accession in terms of section 129 of the PPSA;
- (f) you waive your right to seek an order of the Court concerning the removal of an accession in terms of section 131 of the PPSA;
- (g) the provisions of Part 9 of the PPSA which are for your benefit, or place obligations on us, shall apply only to the extent that either they are mandatory or we have agreed in writing to their application; and
- (h) where we have rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

25. Insurance

- 25.1** Each relevant Customer will insure and keep insured all of the Secured Property:
- (a) against loss or damage by fire, earthquake, theft, burglary, weather damage, marine risks and other risks relevant to the Secured Property;
 - (b) in its name as well as ours (as co-insured and secured party) for our respective rights and interests as loss payee for all claims in respect of any insurance policy;
 - (c) with an insurer acceptable to us and on terms acceptable to us;
 - (d) for its full replacement value and against liability on account of injury or damage suffered by the public and against other risks relevant to the Secured Property (including risks to the environment); and
 - (e) as specifically required by us from time to time (acting reasonably and having regard to the particular circumstances) and, in the absence of specific requirements, in accordance with the best commercial practice.

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26. General

26.1 Assignment

- (a) No Customer may transfer or assign any of its rights or obligations under this Agreement or the Securities without our prior written consent.
- (b) We may:
 - (i) transfer or assign any of our rights or obligations under this Agreement or the Securities or grant a security interest in this Agreement or the Securities without any Customer's consent; and
 - (ii) disclose to any potential assignee or transferee such information about any Customer, the Loan and the Securities we reasonably consider appropriate in the circumstances and each Customer irrevocably authorises us for this purpose.
- (c) If we transfer or assign any of our rights or obligations under this Agreement or the Securities, each Customer agrees that the assignee or transferee will have all the rights and remedies available to them that we do.

26.2 Notices

- (a) Method: Each Customer agrees that any demand or notice required or authorised to be served on it under or in relation to this Agreement and the Securities may be signed or transmitted by us or by our agent and served on the Customer by one or more of the following methods:
 - (i) by delivering it to the relevant Customer(s) personally (including by courier);
 - (ii) by posting it to the relevant Customer(s) at its place of residence or place of business last known to us;
 - (iii) if the relevant Customer is a company or a partnership, by delivering it to its registered office or by posting it to it at its registered office or place of business last known to us or by delivering it to any person who is named on the public register as a director or secretary of the company; or
 - (iv) by email or other electronic message system, to the address notified by the relevant Customer at the time of entry into of the applicable Asset Finance Term Loan Agreement or as subsequently notified to us.
- (b) Deemed Receipt: A demand or notice is deemed received:
 - (i) if delivered (including by courier), upon delivery;
 - (ii) if posted, three (3) Business Days after posting;
 - (iii) if sent by email, no later than one (1) Business Day after the time of dispatch from the sender's email server, unless within that time the sender's email server receives a notification that the email has not been delivered, or an automated "out of office";
 - (iv) if, at any time, the relevant Customer(s) confirms receipt of the demand or notice.
- (c) Preferred Communication: Email is the preferred mode of written communication between us and the Customer, except where the law requires written notices to be delivered or served by another method. The Customer agrees to notify us promptly if its email address changes.

26.3 Partial Invalidity

The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision.

26.4 Amendment

No amendment to this Agreement or a Security will be effective unless we agree to it in writing.

26.5 Governing Law

This Agreement is governed by the laws of New Zealand.

26.6 Withholding Taxes

Our IRD number is 079-167-495 and we certify that we have RWT-exempt status (as defined in section YA 1 of the Income Tax Act 2007).

26.7 Trustees

If a Customer is described as a trustee of a trust:

- (a) it warrants to us that:
 - (i) the person or persons named in this Agreement and the Securities is/are the sole trustee/are all the trustees of that trust, each of whom (so far as it is aware in respect of any trustees other than itself) has been validly appointed and has the power and authority to hold on trust the assets of that trust and to carry on the business of that trust;
 - (ii) the entry into and performance of this Agreement and the Securities (as Borrower or Guarantor) is authorised by the relevant trust deed and/or by the Trusts Act 2019 (or any replacement legislation);
 - (iii) it has the right to be fully indemnified from the assets of the trust in priority to the interests of the beneficiaries in respect of all obligations incurred by it under this Agreement and the Securities and we are entitled to be subrogated to that right (in each case without restriction, limitation, set-off or counterclaim) in respect of its obligations under this Agreement and the Securities and that right has not been lost or impaired by any of the trustees' actions, including entry into this Agreement and the Securities;
 - (iv) at the date the obligations are incurred, the trust assets are sufficient to fully satisfy all obligations in respect of which it has a right of indemnity (including its obligations under this Agreement and the Securities);
 - (v) no event for vesting of trust assets has been made or occurred without our prior written approval;
 - (vi) no action has been taken or proposed to terminate, wind-up or liquidate the trust, that it has not notified to us immediately upon becoming aware of it;
 - (vii) it is not in default under or in breach of the trust deed;
 - (viii) so far as it is aware, none of the trust assets have been mixed with other property;

- and
- (ix) all of the persons who are trustees of the relevant trust have approved and have signed the Asset Finance Term Loan Agreement and the Securities.
- (b) it undertakes to us that:
 - (i) without limiting any of our other rights under this Agreement or the Securities or at law generally, at our request, it will exercise its rights of indemnity against the trust assets or any beneficiary of the trust for our benefit;
 - (ii) it will not, without our prior written consent, repay any debt owing to any settlor or beneficiary of the trust; and
 - (iii) the trust deed will not be amended without our prior written consent.
- (c) it acknowledges that we shall have recourse to its personal assets in relation to the Secured Indebtedness unless it is a trustee that does not have any interest or right in relation to the assets of the trust (including as a beneficiary) other than as a trustee of the trust (a Limited Liability Trustee); and
- (d) if it is a Limited Liability Trustee, its personal liability will be limited to the assets of the trust unless:
 - (i) any of the warranties or undertakings set out in clause 26.7(a) or (b) is incorrect or has been breached (as the case may be); or
 - (ii) it has acted dishonestly or it is in wilful default or breach of trust or it has shown misconduct in respect of its obligations under this Agreement or the Securities.

26.8 Conflict

If there is any conflict between the provisions of this Agreement and any Security or other agreement, the terms of this Agreement will prevail.

26.9 Joint and Several

Where a Customer consists of more than one person, this Agreement binds and refers to each of them (as applicable) jointly and severally.

26.10 Counterparts

This Agreement may be executed in any number of counterparts (including scanned PDF counterpart, or digitally), all of which when taken together shall constitute one and the same instrument, and any of the parties to this Agreement may execute it by so signing any such counterpart.