

**This document includes certain key information that is required to be set out in a disclosure statement by the Credit Contracts and Consumer Finance Act 2003.**

## ASSET FINANCE

### GENERAL TERMS (CCCFA)

#### 1. DEFINITIONS

##### Use of Defined Terms:

1.1 In this Agreement:

"**Agreement**" means this Asset Finance Agreement, including the Commercial Terms, the Financial Summary and these General Terms.

"**Amount Outstanding**" means, at any time:

- (a) the outstanding principal amount of the Loan;
- (b) all accrued and unpaid interest and fees; and
- (c) all costs and other amounts then due and payable by you to us under this Agreement.

"**Asset**" has the meaning given to that term in the Commercial Terms. It includes any things you add or improvements you make to the asset. It also includes the money or other value you get if you sell the Asset.

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) on which we are open for general banking business in Auckland or Wellington.

"**Commercial Terms**" means the terms set out under the heading "Commercial Terms".

"**Confirmation**" means any written confirmation from us to you of the terms of a Loan or this Agreement.

"**Cut-Off Date**" has the meaning set out in the Financial Summary.

"**Default Interest Rate**" means, at any time, the current Interest Rate for the Loan plus the Default Margin.

"**Default Margin**" is set out in the Financial Summary.

"**Discharge Fee**" means the fee set out in the Financial Summary.

A "**disposal**" includes any sale, exchange, transfer, loan, lease, surrender, licence, release, dealing, parting with possession, or the granting of any option, right or other interest whatever, or any agreement to do any of those things, and "**dispose**" means to make a disposal.

"**Early Repayment Fee**" see clause 4.

"**Event of Default**" see clause 13.

"**Final Repayment Date**" is set out in the Commercial Terms.

"**Financial Summary**" means the financial terms and conditions that apply to the Loan as set out under the heading "Financial Summary" of the Commercial Terms.

"**General Terms**" means these General Terms.

"**Guarantee**" means a promise given by someone other than you to meet any of your obligations to us or to make good a loss we incur under or in relation to this Agreement. It includes an indemnity.

A "**Guarantor**" is a person who enters into a Guarantee for our benefit.

"**Insolvent**" means insolvent, bankrupt, in voluntary administration, in liquidation, in receivership, in statutory management, wound up, dissolved, removed from the register, subject to any arrangement or composition with creditors or unable to pay debts as they fall due.

"**Instalment**" means each scheduled payment you must pay in respect of the Amount Outstanding. The Instalments are set out in the Financial Summary but may be changed in the manner set out in clauses 4.5 to 4.7.

**"Instalment Date"** means a date you are required to pay an Instalment. The first Instalment Date is one Payment Cycle after the Loan Date. Each date that falls one Payment Cycle after the previous Instalment Date will also be an Instalment Date. If an Instalment Date falls on a day that is not a Business Day, it will be taken to be the next Business Day.

**"Interest Rate"** means the interest rate set out in the section headed "Interest Rate Details" in the Financial Summary. All interest rates are annual interest rates.

**"Loan"** means the advance of up to the Loan Amount made or to be made by us under this Agreement.

**"Loan Amount"** is set out in the Commercial Terms.

**"Loan Date"** means the date on which the Loan is made to you.

**"Loss"** includes any direct or indirect loss or profit, business or opportunity and any related expense or liability.

**"Payment Account"** means the bank account advised by you to us for the purposes of clause 3.4.

**"Payment Cycle"** means the period between the date each Instalment amount is due. The Payment Cycle is set out in the Financial Summary.

**"Personal Information"** means your personal information (information that identifies you), confidential information, tax related information, transaction information and any related information and that of your Related Persons.

**"PLA"** means the Property Law Act 2007.

**"PPSA"** means the Personal Property Securities Act 1999.

**"Related Company"** has the same meaning as set out in section 2(3) of the Companies Act 1993, as if 'company' includes a company or other body corporate incorporated or established in New Zealand or any other jurisdiction.

**"Related Person"** has the meaning set out in clause 21.3.

**"Scheduled Borrowing Date"** has the meaning set out in the Commercial Terms.

**"Security"** means any mortgage, charge, trust, encumbrance, lien or other security interest (however described) and includes any "security interest" under the PPSA.

**"Term"** means the period from the Loan Date until the Final Repayment Date.

**"we", "us" and "our"** mean Bank of New Zealand.

**"you" and "your"** mean the person or persons named in this Agreement as the Borrower. You are the **"Borrower"**. If more than one person is named as the borrower in this Agreement "you" means each of those persons alone and all of them together.

## 1.2 General:

- (a) Headings do not affect the meaning of any clause.
- (b) References to any person include that person's executors, administrators, successors, permitted assignees and permitted transferees.
- (c) Examples do not limit what else may be included.
- (d) Unless the context requires otherwise:
  - (i) the singular includes the plural, and the plural includes the singular;
  - (ii) references to a "person" include companies, corporations, trusts, partnerships and other entities;
  - (iii) a reference to any legislation includes reference to that legislation as amended, re-enacted or substituted and any regulations under that legislation; and
  - (iv) a reference to any document includes that document as amended, varied, replaced or substituted from time to time.

## 1.3

**Multiple Assets:** where you are using the Loan to buy more than one Asset or the Loan is secured by more than one Asset, each reference in this Agreement to "the Asset" means each Asset.

## 2. LOAN

### 2.1

We will make the Loan available to you when you ask us to if you have given us the following documents and evidence:

- (a) a signed copy of this Agreement;
- (b) a fully completed and signed direct debit authority for the Payment Account (see clause 3.4);

- (c) if we have agreed that the Loan is to be used to purchase the Asset, an invoice for the purchase of the Asset addressed to you or an agreement for sale and purchase for the Asset under which you are the purchaser;
- (d) a valuation of the Asset addressed to you;
- (e) a certificate of insurance for the Asset which satisfies the requirements of clause 12, including that it records our interest as a secured party in relation to the Asset; and
- (f) any other document or information that we may request from you.

All documents and evidence provided to us under this clause must be in a form approved by us in our sole discretion.

- 2.2 Unless otherwise agreed with us, you must use the proceeds of the Loan. We may (at our option) make the payment to the third party that is selling you the Asset instead of making the Loan available to you directly.
- 2.3 If you have not borrowed the Loan by the Cut-Off Date, this Agreement will terminate and have no further effect.

### 3. AMOUNTS YOU MUST PAY TO US

- 3.1 You must pay to us:
  - (a) the Instalments on the Instalment Dates;
  - (b) all fees and other amounts that make up the Amount Outstanding on the dates and in the amounts set out in this Agreement; and
  - (c) the Amount Outstanding in full on the Final Repayment Date.
- 3.2 Whenever you owe us money, you must pay the full amount that is due to us.
- 3.3 If any money you owe to us is due to be paid on a day which is not a Business Day, the payment will be due on the first Business Day after that day. All payments must be made by 7.00 pm on the date on which they are due to be paid unless we have agreed that you can pay us at a later time.
- 3.4 You must issue a direct debit authority to the bank the Payment Account is held with. You must not cancel that authority during the Term.

3.5 If a law requires you to make a deduction or withholding, you must increase the amount you pay to us so that the net amount we receive after any deduction or withholding, is equal to the full amount we would have received if no deduction or withholding had been made.

3.6 You may not argue that amounts we might owe to you (for example, money in any account you have with us) can be or have been used to make a payment to us or that any set-off has occurred. You waive any rights of set-off that you might have. For example, a right of set-off may arise if you hold money in a bank account with us at the same time as owing us money (for example the Amount Outstanding). In the example, because you have waived your rights of set-off, you are not entitled to claim that any amount you hold in a bank account with us reduces the amount you owe us under this Agreement or any other agreement you have with us.

3.7 If you owe us money, we can exercise rights of set-off, take money from any account you have with us and use that to pay the money you owe us.

## 4. EARLY REPAYMENT

**Clauses 4 and 5 contain key information required by the Credit Contracts and Consumer Finance Act 2003.**

**We recommend you get independent advice if you do not understand these sections.**

### Early Repayment (in full or part)

- 4.1 You may pay all or any part of the Amount Outstanding before it falls due for payment on an Instalment Date or the Final Repayment Date.
- 4.2 Where you receive insurance money we can require that money to be used to reduce the Amount Outstanding.
- 4.3 Where any payment is made under clause 4.1, 4.2 or as a consequence of an Event of Default, that is called an "**early repayment**".
- 4.4 If you decide to or are required to make a full or partial early repayment of the Amount Outstanding, we may charge you an Early Repayment Fee (see clause 5).
- 4.5 We will apply early repayments to reduce the Amount Outstanding. When you contact us to inform us you are making an early repayment, you can tell us whether you would like to:

- (a) pay your Loan off faster by continuing to pay the Instalments set out in the Financial Summary. We will tell you the revised Final Repayment Date which will be earlier; or
- (b) pay your Loan off over the same Term but reduce the amount of each Instalment. We will tell you what the new Instalment amounts are.

#### **Increases in minimum payments**

- 4.6 For the purposes of clauses 4 and 5, an early repayment also includes any increase in the Instalment amounts during the Term. In this case, the date of your early repayment will be the date we give effect to the increase in your Instalment amounts.
- 4.7 An increase in an Instalment amount may occur if you ask to increase your Instalment amount or you miss an Instalment payment and need to make catch up payments on subsequent Instalment Dates.

#### **Payment of fees in relation to early repayment**

- 4.8 You must pay the Early Repayment Fee (see clause 5) on the same day you make an early repayment (including any early repayment made with insurance money or where we demand early repayment under clause 13.2).

#### **Charges available on request**

- 4.9 You should contact us if you plan to make an early repayment of part or all of the Amount Outstanding under this Agreement or increase your Instalment amounts. We will give you an indication of any Early Repayment Fee that you may have to pay. If you then decide to make an early repayment we can, before you make the early repayment, give you a full calculation of the Early Repayment Fee on request. If you decide to repay the Amount Outstanding in full, you can also ask us to give you a full settlement statement.

### **5. EARLY REPAYMENT FEES**

**Clauses 4 and 5 contain key information required by the Credit Contracts and Consumer Finance Act 2003.**

**We recommend you get independent advice if you do not understand these sections.**

#### **Why an Early Repayment Fee may be payable**

5.1 We borrow money from third parties to lend to our customers. In clauses 5.1 to 5.9, we refer to these contracts under which we borrow money as "**BNZ borrowing contracts**". We pay interest under our BNZ borrowing contracts. We charge you an early repayment charge because, when we give fixed rate loans to our customers, we also enter into "wholesale hedging contracts" with other banks and large institutions. These wholesale hedging contracts are meant to protect us if the interest we receive from our customers under fixed rate loans is less than the interest we have to pay under our BNZ borrowing contracts. This protection is known as "hedging".

5.2 The price of our wholesale hedging contracts depends, in part, on "wholesale interest rates". We refer to these wholesale interest rates as "**wholesale hedging rates**" in clauses 5.1 to 5.9.

5.3 When you repay all or part of your loan early, we still need to meet our obligations under our BNZ borrowing contracts. We may also need to adjust our wholesale hedging contracts. In doing so, we will incur a loss if the relevant wholesale hedging rate at the start of your Term is higher than the relevant wholesale hedging rate that applies to the remainder of your Term on the date of your early repayment.

5.4 Although we enter into our BNZ borrowing contracts and wholesale hedging contracts in relation to the total of all our fixed rate loans rather than on a loan-by-loan basis, a reasonable way for us to estimate our loss, if any, arising from your early repayment is by calculating the Early Repayment Fee as if we had hedged your individual Loan.

#### **Reasonable estimate of loss**

5.5 The Early Repayment Fee represents a reasonable estimate of our loss arising from your early repayment. The way we calculate the Early Repayment Fee is set out in clause 5.9. We do not use the calculation procedure set out in the Credit Contracts and Consumer Finance Regulations 2004.

#### **5% threshold**

5.6 Unless the Financial Summary says otherwise, we will not charge you an Early Repayment Fee if the effect of all early repayments you make in any consecutive 12 month period within the Term is less than or equal to the "5% threshold". The first 12 month period starts on the Loan Date.

5.7 In addition, the Early Repayment Fee is only payable to the extent that the effect of the early repayments is more than the 5% threshold.

5.8 We calculate the 5% threshold on the date you make an early repayment based on the Amount Outstanding at the start of the Term and taking into account:

- (a) any previous early repayments you have made during the Term; and
- (b) the effect that those early repayments may have on the Amount Outstanding at the end of the Term.

For example, if you have a 3 year Term and you make an early repayment by increasing your Instalment amounts 6 months into the Term and make a further lump sum early repayment at month 11, the 5% threshold we apply at the time you make your lump sum early repayment will take into account the total effect that the increased Instalment amounts will have on your Amount Outstanding at the end of the Term.

## Calculation

5.9 We calculate the Early Repayment Fee as follows:

(a) **Step 1:** We determine (i) to (iv) below as at each Instalment Date occurring from the date of your early repayment until, and including, the Final Repayment Date:

(i) The difference between what your opening Loan Amount outstanding would have been on the Instalment Date if you had not made the early repayment ("**scheduled loan amount outstanding**") and what the opening Loan Amount outstanding will be on the Instalment Date after you have made your early repayment ("**revised scheduled loan amount outstanding**");

(ii) The amount by which the relevant wholesale hedging rate on the Loan Date ("**original wholesale hedging rate**") is higher than the wholesale hedging rate that applies to the remainder of the Term on the date of your early repayment ("**amended wholesale hedging rate**"). If the original wholesale hedging rate is lower than the amended wholesale hedging rate, (ii) will be zero;

(iii) The number of days since the previous Instalment Date (or the date of your early repayment where this is not an Instalment Date) ("**calculation period**") divided by 365 (days per year); and

(iv) A factor to reduce the Early Repayment Fee that would otherwise be payable, which factor reflects the value to us of receiving your Early Repayment Fee now, rather than your Instalments when they were due in the future ("discount factor"). We select the discount factor based on market rates at the time of your early repayment.

(b) **Step 2:** We multiply (i), (ii), (iii) and (iv) together for each Instalment Date. The formula that we use for Steps 1 and 2 is:

Loss at each Instalment Date = (scheduled Loan Amount outstanding – revised scheduled Loan Amount outstanding) x (original wholesale hedging rate – amended wholesale hedging rate) x (calculation period / 365) x discount factor

(c) **Step 3:** We add up the results of Steps 1 and 2 for each Instalment Date occurring from the date of your early repayment until, and including, the Final Repayment Date. We will not charge you an Early Repayment Fee if the result of Steps 1 to 3 is zero or negative.

(d) **Step 4:** If the result is positive, we take into account the 5% threshold referred to in clauses 5.6, 5.7 and 5.8 to determine the Early Repayment Fee.

## 6. INTEREST

6.1 Your Loan has a fixed Interest Rate that will apply for the Term of the Loan. The Interest Rate set out in the Financial Summary is only available if you borrow the Loan on or before the Cut-Off Date. You may ask for a revised Interest Rate on multiple occasions before the date you borrow the Loan.

6.2 Interest is calculated by multiplying the Interest Rate with the outstanding principal amount of the Loan at the end of each day. The daily Interest Rate is calculated by dividing the Interest Rate by 365.

## 7. FEES

7.1 You agree to pay to us any fees which become payable at any time under, or in connection with, this Agreement as set out in the Financial Summary.

7.2 We will charge you a fee to cover the administrative costs we incur when you repay the Loan in full (whether on or before the Final Repayment Date). This amount is called the Discharge Fee.

7.3 Fees are payable on the dates set out in the Commercial Terms. If the Commercial Terms does not say when a fee must be paid, you must pay it when we make demand on you.

## 8. DEFAULT INTEREST

8.1 If you do not pay an amount to us when it is due for payment, we will charge you default interest on that amount at the Default Interest Rate. Default interest will be calculated on a daily basis on the overdue amount from the date that the amount became due until the date you actually pay it to us. The default interest will be immediately due and payable.

## 9. SECURITY YOU MUST PROVIDE TO US

9.1 You grant us a security interest over the Asset to secure your promise to pay the Amount Outstanding to us. It operates irrespective of any payments you make to us, whether or not your accounts with us are in credit at any time, any settlement we reach with you and any other matters that might impact your liability to us.

9.2 If you do not meet your commitments under this Agreement, we may repossess and/or sell the Asset and exercise our other rights under this Agreement. If the amount recovered on a sale of the Asset is less than the Amount Outstanding, you will remain responsible for the shortfall.

9.3 This Agreement will remain in full force and the security granted under it will continue until we give you a notice of final discharge.

9.4 Our rights under this Agreement are additional to (and will not merge with) the rights we have against you or any other person under the any other agreement we have with you or any promissory note or other negotiable instrument. We can enforce our rights under any of the agreements we have with you in any order we choose.

9.5 We will register our security interest on the Personal Property Securities Register in accordance with the PPSA.

## 10. GENERAL UNDERTAKINGS

### Things you promise to do

10.1 You must:

- (a) obtain and maintain in full effect all other consents necessary to enable you to perform or comply with your obligations under this Agreement;
- (b) immediately give us notice if an Event Default occurs together with full details of the event concerned and the steps, if any, being taken to remedy it;
- (c) comply with all consents and obligations binding on you by law, contract or otherwise (including in relation to the use, operation, possession and location of the Asset);
- (d) insure the Asset as required by clause 12;
- (e) keep the Asset properly serviced in accordance with manufacturer's instructions and in good order and condition;
- (f) make sure the Asset is used only as set out in the manufacturer's recommendations and instructions;
- (g) make sure the Asset is located in New Zealand at all times unless we agree that you can take it outside New Zealand;
- (h) promptly repair any part of the Asset that is damaged;
- (i) replace any part of the Asset that is destroyed or no longer exists with another Asset of first class quality and of at least equal value as soon as possible and make sure that no Security exists in any replacement Asset;
- (j) pay all taxes, registration, licence and other fees payable in connection with the Asset or its operation under any law;
- (k) pay any rents, rates, taxes and charges in respect of the property where the Asset is located and give us receipts for those payments if we ask for them;

- (l) tell us immediately:
  - (i) if you intend to change your name (at least 5 Business Days before the change) with details of your new name;
  - (ii) of any change of your address;
  - (iii) if the Asset is removed, seized or taken out of your possession. You will also need to tell us the address where the Asset is kept and the name and address of the person who removed or took the Asset;
  - (iv) if there is any loss or damage to the Asset or if there are repairs required to the Asset; and
  - (v) if you become aware of any possible claim in respect of any damage to a person or property caused, or claimed to be caused, by the Asset or by any driver or operator of the Asset;
- (m) give us any financial or other information about you or the Asset that we reasonably ask for during the Term;
- (n) if we ask you, give us proof that you have done the things listed above and, as applicable, in clause 11.3; and
- (o) at your own cost and as soon as possible, sign and send to us all documents, and do anything else that we ask to protect our rights under this Agreement.

**Things you promise to not do**

10.2 You must not:

- (a) move the Asset (except in the ordinary course of using the Asset) from the address set out in the Commercial Terms;
- (b) dispose (or agree to dispose) of the Asset;
- (c) allow any Security to exist over or affect the Asset;
- (d) state or imply that we will pay for any repairs to the Asset;

- (e) allow the Asset to become part of any other property (for example, you must not allow the Asset to be fixed to a building or to land) unless we hold a mortgage over that property and agree to you doing so;
- (f) put the Asset anywhere where it may be at risk of being seized or at risk of you ceasing to have possession of it;
- (g) allow the Asset to be used in a way that would entitle the insurer to claim it is not liable under any insurance policy; or
- (h) do, omit to do, or allow anything to occur that might:
  - (i) cause or contribute to a decrease in value of any Asset; or
  - (ii) affect our rights under this Agreement.

**11. UNDERTAKINGS FOR SPECIFIC TYPES OF ASSET**

- 11.1 If the Asset is a motor vehicle, boat or trailer, clauses 11.3 and 11.4 apply.
- 11.2 If the Asset is an aircraft ("**Aircraft**"), you must do all things set out in the Aircraft Schedule set out at the end of these General Terms.

**Things you promise to do**

- 11.3 You must in relation to the Asset:
  - (a) if we ask, send us a copy of all documents relating to its registration and ownership;
  - (b) if any person makes a claim on us in relation to any use of the Asset, pay to us, on demand, any money that we are required to pay to that person;
  - (c) comply with all provisions of the Land Transport Act 1998 (if it applies to the Asset) and all other laws and regulations affecting the use of it;
  - (d) keep it duly registered and not change its registration number without giving us at least 5 Business Days' notice of the new registration number;
  - (e) if a vehicle identification number has not already been allocated to it, tell us the new vehicle identification number as soon as it is allocated;

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| (f)   | make sure that a current warrant of fitness is always displayed on it;              | 12.7  | If we ask, you must provide evidence of a valid certificate of insurance to us.   |
| (g)   | pay all fines, taxes and other charges payable in respect of it; and                | 12.8  | You must pay all premiums and other amounts required under the insurance policy when they fall due for payment. If you do not, we can pay those amounts on your behalf and require you to reimburse us by making demand on you. |
| (h)   | if we ask, show us a copy of:   |       |   |
| (i)   | any certificate of registration for the Asset;                                      | 12.9  | You must let us know immediately if the insurance is cancelled or a new insurance company is appointed.   |
| (ii)  | any licence to operate and/or drive the Asset; and                                  |       |   |
| (iii) | receipts for all rents, taxes, licences and fees paid in connection with the Asset. | 12.10 | You must tell us immediately if something happens which may lead to a claim being made under your insurance policy and if you make a claim under the insurance policy.  |

**Things you promise to not do**

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| 11.4 | You must not:  | 12.11 | You must tell your insurance company to make payments to us unless we agree you can use the payments to meet repair or replacement costs. If payment of the insurance moneys is made to us, we may in our sole discretion, apply those insurance moneys: |
| (a)  | allow the Asset to be used by a person who is not licensed or fit to operate it;   |       | (a) to replace or repair the Asset; or   |
| (b)  | allow the Asset be used in any way that would entitle the insurer to claim it is not liable under any insurance policy; or |       | (b) towards payment of the Amount Outstanding and other moneys payable to us under this Agreement.   |
| (c)  | make any material changes to the Asset.  |       |  |

**12. YOU MUST HAVE INSURANCE**

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| 12.1 | You must obtain insurance for the Asset against loss or damage by accident, theft, fire, flood, storm, earthquake, natural disaster and any other risk required by us. The terms of the insurance policy must be consistent with standard, comprehensive insurance policies entered into in New Zealand and must not exclude anything material. | 12.12 | You must not settle or agree any insurance claim with your insurance company or waive any right you have under the insurance policy without our prior written consent. You authorise us to agree any insurance settlement or payment arrangements on your behalf. |
| 12.2 | Your insurance must be with an insurance company acceptable to us.  |       |   |
| 12.3 | You must comply with the terms of the insurance policy at all times.  |       |   |
| 12.4 | You must maintain insurance for a sum insured which is not less than the full replacement cost of the Asset at all times.   |       |   |
| 12.5 | You must review your insurance annually and whenever you undertake any modifications or repairs.  |       |   |
| 12.6 | The insurance policy must be in your name as owner and have our interest as secured party noted on it.  |       |   |

**13. DEFAULT**

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| 13.1 | An Event of Default will occur under this Agreement if:  |
| (a)  | you breach any clause of this Agreement or any other agreement you have with us;   |
| (b)  | you fail to pay any money due to us under this Agreement or any other agreement you have with us at the time it is due;    |
| (c)  | you are or become Insolvent;   |
| (d)  | your circumstances have changed in a way we reasonably believe justifies us demanding repayment of the Amount Outstanding; |

- (e) we reasonably believe that you or another person acts (or has acted) fraudulently in connection with this Agreement or any other agreement you have with us;
  - (f) we reasonably believe that our ability to continue making the Loan available to you has been negatively affected;
  - (g) you do not give us information we ask for from you or you do not consent (or you withdraw your consent) to us collecting, holding, using or sharing your personal information as set out in clause 21; or
  - (h) any equivalent event occurs in relation to a Guarantor, Guarantee or any Security provided to us by a Guarantor.
- (c) search for, remove and take possession of the Asset without being liable to you or to anyone claiming on your behalf for doing so.

We will only exercise these rights if an Event of Default has occurred and we reasonably consider it necessary.

13.4 If any Asset is repossessed:

- (a) all moneys payable by you to us under this Agreement will, to the extent not already due and payable, immediately become due and payable together with all costs and expenses incurred in repossessing or attempting to repossess any Asset; and
- (b) all your rights under this Agreement will terminate absolutely.

13.2 If an Event of Default occurs:

- (a) we can, without prior notice, take any or all of the following actions:
  - (i) demand payment of the Amount Outstanding, even if that amount is not due at that time; and/or
  - (ii) cancel this Agreement; and
- (b) the Security created under this Agreement will become immediately enforceable (without notice to, or the consent of, you or any other person) and we can:
  - (i) dispose of the Asset;
  - (ii) take possession of the Asset;
  - (iii) use or operate the Asset as if we owned it; and/or
  - (iv) do all things and pay any amount necessary or appropriate to remedy the Event of Default to our satisfaction,

in each case in any way we decide to.

13.3 You authorise us to:

- (a) enter into and if necessary, break into any land, buildings, or premises occupied by you where the Asset may be to repossess the Asset;
- (b) as your agent, enter any other land, buildings or premises which you are allowed to enter where the Asset may be to repossess the Asset; and

**14. POWER OF ATTORNEY**

14.1 You appoint us as your attorney for the purpose of:

- (a) applying at any time for a new certificate of registration or signing any transfer or other agreement in connection with the registration or transfer of the Asset;
- (b) recovering and settling any claim for loss or damage under any insurance required by clause 12;
- (c) giving valid releases and receipts for insurance claims; and
- (d) doing anything you agree to do under this Agreement (if you have not done it).

14.2 You cannot revoke this appointment until we have given you a notice of final discharge.

14.3 We can delegate our powers (including this power of delegation) to any person for any purpose and may revoke any delegation made by us.

14.4 If you are asked to do so, you must confirm that anything done by an attorney under this clause is done on your behalf and with your approval.

**15. COSTS**

15.1	You must pay and reimburse us for all costs, charges and expenses (including legal costs on a solicitor/client basis and insurance premiums paid by us) we pay or incur in relation to:	<b>18. INSTRUCTING US AND COMMUNICATION</b>	
	<ul style="list-style-type: none"> <li>(a) the entry into, operation, discharge, attempted enforcement and enforcement of our rights under this Agreement; and</li> <li>(b) any claim which may arise in respect of the Asset (including in respect of any distress, execution or seizure) or its use or operation by you or any other person.</li> </ul>	<b>How you give instructions to us</b>	
15.2	The obligation in clause 15.1 is unconditional and irrevocable and survive both termination of this Agreement and payment of the Amount Outstanding.	18.1	We can, in our discretion, accept instructions from you (or someone acting on your behalf) by: <ul style="list-style-type: none"> <li>(a) post;</li> <li>(b) telephone;</li> <li>(c) facsimile;</li> <li>(d) email;</li> <li>(e) secure messaging via BNZ internet banking; or</li> <li>(f) any other means.</li> </ul>
<b>16. CHANGES TO THIS AGREEMENT AND YOUR LOAN</b>		18.2	You acknowledge that we will rely on your instructions and authorise us to act on them. We accept communications in electronic form and by means of electronic communication for this purpose.
16.1	If you and we agree to change the terms of this Agreement or your Loan after you have signed this Agreement, we will give you a Confirmation of the new terms. You and we will be bound by the new terms from the effective date set out in the Confirmation.	18.3	We can decline to act on your instructions where we consider that we have a good reason to do so (for example, where acting on your instructions might result in a breach of the law, your instructions are unclear or contradictory, or we suspect that the instructions are unauthorised, forged or fraudulent).
<b>17. TRANSFER OF RIGHTS UNDER THIS AGREEMENT</b>		18.4	We are not required to ask about or confirm any instructions with you, but we might choose to do so.
17.1	You may not assign or transfer any of your rights or obligations under this Agreement to any other person.	18.5	A power of attorney gives someone the right to sign documents or enter into agreements for you. We do not have to agree to let a person with a power of attorney enter into any document or give us instructions in relation to this Agreement on your behalf. If a power of attorney is used, you or your attorney will need to provide us with a copy of the power of attorney and we might ask you to confirm any instructions your attorney gives. Your attorney will need to provide us with a certificate of non-revocation when the power of attorney is used.
17.2	We can at any time assign or transfer any of our rights and obligations under this Agreement to another person. We do not need your consent to do this. If we do so, the person who we transfer our rights to will be able to exercise those rights instead of us.	18.6	We will not be liable for any Loss you incur if: <ul style="list-style-type: none"> <li>(a) we act in accordance with your instructions;</li> <li>(b) we act on instructions that are unauthorised, forged or fraudulent, where we could not reasonably have detected that from the instructions; or</li> </ul>
17.3	If we assign or transfer any of our rights or obligations under this Agreement, all references to "we", "us" or "our" in this Agreement will mean: <ul style="list-style-type: none"> <li>(a) in relation to rights or obligations not assigned or transferred by us, Bank of New Zealand; and</li> <li>(b) in relation to the rights or obligations assigned or transferred by us, the person we have assigned or transferred those rights or obligations to.</li> </ul>		

(c) we do not act on instructions we consider to be unclear, illegible or contradictory.	20.1	Part 2 of Schedule 2 to the PLA imposes obligations on persons providing security over goods (which would include the Asset).
<b>How we make demand on you and give notices and consents</b>	20.2	Clauses 3(2), 6(2) and 12 of Part 2 of Schedule 2 to the PLA do not apply to this Agreement. All other clauses in Part 2 of Schedule 2 do apply. Those clauses address general matters including:
18.7 We can deliver demands and notices to you by letter or email to the address you have provided to us. You will be deemed to receive letters from us on the third Business Day after we post them and emails at the time they leave our information system.		<ul style="list-style-type: none"> <li>(a) your obligation to: <ul style="list-style-type: none"> <li>(i) pay to us all Instalment amounts when they fall due;</li> <li>(ii) keep the Asset insured;</li> <li>(iii) repair and replace the Asset;</li> <li>(iv) do all the things you have promised to do in any prior-ranking security; and</li> <li>(v) pay certain costs and expenses;</li> </ul> </li> <li>(b) our right to: <ul style="list-style-type: none"> <li>(i) inspect the Asset at all reasonable times;</li> <li>(ii) remedy any default that you might make under this Agreement or any prior ranking security;</li> <li>(iii) demand payment of the Amount Outstanding if certain events occur; and</li> <li>(iv) take possession and sell the Asset if there has been an event of default;</li> </ul> </li> </ul>
18.8 If you ask us for any consent or approval under this Agreement and we agree to that, our consent or approval will only be effective if it is in writing. An email is "in writing" for this purpose and all other purposes. If we tell you we agree to something over the phone or in person, it will not be effective until we confirm it in writing.		
<b>19. PPSA</b>		
19.1 Nothing in this deed shall be read as: <ul style="list-style-type: none"> <li>(a) an agreement to subordinate the Security created by this deed in favour of any person; or</li> <li>(b) our consent to any other Security attaching (as that term is used in the context of the PPSA) to, or any other Security existing over, the Asset.</li> </ul>		
19.2 You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA applies to this Agreement, or the Security created by this Agreement.		
19.3 You waive your right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the Security created by this Agreement.		
19.4 You waive your right to: <ul style="list-style-type: none"> <li>(a) receive a statement of account under section 116 of the PPSA;</li> <li>(b) receive notice of any proposal from us to retain personal property under section 120(2) of the PPSA; and</li> <li>(c) object to any proposal from us to retain the Asset under section 121 of the PPSA.</li> </ul>	20.3	If there is any conflict between this Agreement and Part 2 of Schedule 2 to the PLA, the terms of this Agreement will apply.
<b>20. PROPERTY LAW ACT</b>		<b>21. HOW WE RECEIVE AND USE INFORMATION ABOUT YOU</b>
		In this section we obtain your consent to the way we use and share your Personal Information
		<b>How we collect, use and share your Personal Information</b>

- 21.1 **Interpretation:** In this clause 21:
- (a) "we", "us" or "our" is a reference to BNZ and its Related Companies (including any of each of our successors or assignees).
  - (b) "Related Persons" has the meaning given to it in clause 21.3.
- 21.2 **Using your Personal Information:** We take your privacy seriously and comply with all relevant privacy laws. This section explains how we use your Personal Information (and that of your Related Persons). By accepting our offer to provide you with this Agreement you are permitting us to collect, hold, use and share your Personal Information as set out in this clause 21.
- 21.3 **Using Related Persons' Personal Information:** When you, or someone else on your behalf, gives us Personal Information that relates to other people or organisations ("Related Persons"), and that Personal Information is relevant to your relationship with us, you confirm that the Related Person consents to us collecting, holding, using and sharing that Personal Information for the purposes set out in clauses 21.6, 21.7 and 21.16, and any additional purposes for which you, or they, gave us the Personal Information. If we intend to collect, hold, use or share their Personal Information for other purposes we will obtain their consent first.
- 21.4 **How we can contact you:** We can contact you and any Related Persons via email, text message, an online facility (without an online unsubscribe facility) telephone or post for the purposes described in this clause 21 (and more specifically clauses 21.6, 21.7 and 21.16 for Related Persons).
- 21.5 **Accuracy of information and asking for or correcting Personal Information:** We try to make sure that any Personal Information we hold is accurate. To help us do this, please let us know as soon as you can about any changes in your personal details (including your residential or email address, or telephone or facsimile numbers). The Privacy Act 1993 gives individuals a right to access and correct information, so you or your Related Persons can ask us to correct information (if you are individuals). Please call us on 0800 275 269 or +64 4 924 4903 if you or they would like to access or correct Personal Information.
- 21.6 **Managing and administering our relationship with you:** Your, and your Related Persons', Personal Information can be used to maintain our relationship with you, including identifying you or your Related Persons, approving your applications for any BNZ product/service and managing and administering any BNZ product/service (including the Agreement) we provide to you. For example, we can use that Personal Information to:
- (a) meet our internal operational requirements, such as credit and risk management, our funding requirements, system or product development and planning, insurance, audit and administrative purposes (for example, providing credit cards and statements or conducting credit checks on guarantors);
  - (b) collect any money owed by you (for example, providing credit agencies with information about an Event of Default);
  - (c) enforce or defend our rights; or
  - (d) as part of our investment services, provide you with custodial services or register investments in your own name with either a registry or fund manager if you choose to transfer your investments out of custody.
- 21.7 **Complying with laws and regulations:** You agree to give us information we ask for to help us comply with laws, rules or regulations in New Zealand or overseas. We can use your Personal Information to:
- (a) help us comply with laws, rules or regulations in New Zealand or overseas, or any New Zealand or overseas governmental or regulatory requests; or
  - (b) monitor your accounts and any BNZ product/service (including this Agreement) you use for the purpose of preventing misuse or unauthorised use of any BNZ product/service, detecting any fraud or crime, or preventing or detecting money laundering or the financing of terrorism in New Zealand or overseas.
- 21.8 **Market research:** We can:
- (a) collect, hold, use and share your Personal Information, where it is combined with other information and in a form that does not identify you, to conduct market research;

**Our purposes for collecting, using and sharing your Personal Information**

- (b) use and share your contact information to obtain your views of any BNZ product/service and to help us to identify how we might better address our customers' needs, both while you are a customer and for a reasonable time afterwards; and
- (c) use third party information and link it to your Personal Information to identify how we might better address our customers' needs.
- 21.9 **Marketing and promotion:** We can use your Personal Information to contact you about, and offer you, any BNZ product/service that might be of interest to you, both while you are a customer and for a reasonable time afterwards. We can also use and share your Personal Information to enable information to be provided to you, which we reasonably believe might be of interest to you, about:
- (a) events, fundraising or organisations that we support; or
- (b) third party offers, products and services from persons or organisations that we have partnered with (we only partner with organisations that meet our high standards).
- 21.10 **Right to ask for Personal Information not to be used for marketing or promotion:** You have a right to ask us not to use your Personal Information to conduct market research (clause 21.8) or contact you with marketing or promotional messages (whether related to any BNZ product/service or otherwise) (clause 21.9). Please call us on 0800 275 269 or +64 4 924 4903. We will still need to contact you with messages relating to the management and maintenance of your relationship with us and any mandatory messages (for example, those required to be sent to you by law).
- 21.11 **Credit records and credit reporting agencies:** In respect of applications for and reviews of this Agreement, you authorise us to make credit reference checks and other enquiries within our normal procedures. For this purpose, we can seek information about you from any source.
- 21.12 **Sharing information with credit reporting agencies:** You also authorise us to share all information relevant to this Agreement with any credit reporting agency. Credit reporting agencies may use information disclosed by us to update their credit reporting database, and disclose any information that they hold about you to their own customers as permitted under the Credit Reporting Privacy Code 2004. In addition, we may use any service provided by our credit reporting agencies to receive updates of the information they hold about you.
- 21.13 **Use of Personal Information if there is an Event of Default:** If an Event of Default occurs, we can disclose your Personal Information to, and for the use by, credit reporting agencies, debt collection agencies and law firms.
- 21.14 **Recording telephone calls:** We can monitor, record and retain any telephone calls with you, including to:
- (a) make sure we have carried out your instructions correctly;
- (b) help improve our service;
- (c) make sure we comply with our regulatory obligations; and
- (d) help detect or prevent fraud or other crimes.
- 21.15 **Who we can share your Personal Information with:** We can share your, and your Related Persons', Personal Information with:
- (a) any other Related Companies, their employees, agents and contractors;
- (b) any agents or third parties that provide services to or for us (whether in New Zealand or otherwise), including banks, law firms, custodians, fund managers, debt collection agencies, credit reporting agencies or credit providers, credit rating agencies, credit card providers, loyalty schemes, market research firms and insurers, who have agreed with us to only collect, hold, use and share your Personal Information for the purposes for which it has been given to them;
- (c) the police, any governmental body or agency or regulator in New Zealand or overseas (including any tax authorities);

- (d) other banks (including overseas banks), agents, registrars, contractors or other entities assisting with transactions;
- (e) any previous or current employer (to verify your identity, employment status or income (as applicable)); and
- (f) any other person or organisation authorised by you.
- 21.16 **Sharing your Personal Information with assignees:** We can also share your, and your Related Persons', Personal Information with any person to whom we may assign or transfer any of our rights and obligations under this Agreement.
- 21.17 **Your Personal Information and overseas entities:** You accept, and you confirm that your Related Persons accept, that overseas governments, banks, agents, contractors or other entities will need to comply with overseas laws and those laws might require them to share your, or your Related Persons', Personal Information for the purposes of complying with those laws.
- 21.18 **What will happen if we cannot collect, hold, use or share information:** If you do not give us information we ask for from you or you do not consent (or withdraw your consent) to us collecting, holding, using (subject to clause 21.10) or sharing your Personal Information, we might:
- (a) be unable to provide new, or continue to provide all or part of, any BNZ product or service (including this Agreement) to you, demand repayment of any Amount Outstanding (or any part of it), cancel or reduce your Loan or Loan Amount (see clause 13.1(g)) and can end our relationship with you; and
- (b) take any actions we need to meet our legal or regulatory obligations.
- 21.19 **Storing your Personal Information:** Your Personal Information can be held physically or electronically, including in any offshore facilities, by us or by any third party contracted to store it for us. As required by the Privacy Act 1993, we will use reasonable security safeguards to protect your Personal Information against loss, access, modification, disclosure and other misuse.
- 21.20 **Providing information to Guarantors:** We can provide a copy of this Agreement, and any information about your financial position that we hold, to any Guarantor.
22. **IF MORE THAN ONE PERSON IS THE BORROWER**
- 22.1 If more than one person is named as the "Borrower" in this Agreement:
- (a) each person is responsible to us alone and together. We may ask any of you to pay any or all the Amount Outstanding. We do not need to ask all of you to pay or contribute to any or all the Amount Outstanding;
- (b) any one of you can give us instructions about the Loan and this Agreement. Instructions can relate to important changes to the Loan and/or this Agreement, including changes to the Payment Cycle, Instalments and Instalment Dates. If any one of you gives us instructions about the Loan and/or this Agreement, you must have obtained the agreement of each other person named as the "Borrower" in this Agreement before doing so. By instructing us, you represent to us that you have obtained that agreement. We may act on those instructions. We do not need to confirm whether you obtained the agreement of each other person named as the "Borrower" in this Agreement before we do so. We will not be liable for any Loss any person incurs because you did not obtain their agreement, or because we did not confirm you had their agreement before we acted on your instructions;
- (c) unless the law says otherwise, if we send a notice to one of you, it will count as a notice to all of you;
- (d) we can give information about the Loan and this Agreement to any one of you and can act on any information about any one of you that any other of you gives us (for example, where you die or become bankrupt); and
- (e) if a dispute occurs between any of you in connection with the facility, you must tell us as soon as you can.
23. **MISCELLANEOUS**
- 23.1 **Our Certificates as to amounts owing to us are conclusive:** Our certificate as to any amount or fact relating to this Agreement will be conclusive evidence (unless there is an obvious error or you prove that the certificate is incorrect) of that amount or fact. If we make an error in a certificate:

- (a) we will notify you; and
- (b) that error will not restrict our right to recover all amounts owing to us.

23.2 **Execution as a deed:**

- (a) This Agreement is intended to take effect as a deed. It will be enforceable even if we do not sign it (or if we sign other than in the form of a deed).
- (b) For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, this Agreement will be delivered by you immediately on the earlier of:
  - (i) physical delivery of an original of this Agreement, signed by you, to us or our solicitors; or
  - (ii) you or your solicitors (or any other person authorised in writing by you) sending a facsimile, photocopied or scanned copy of an original of this Agreement, signed by you, to us or our solicitors.

23.3 **Other Laws:** Some compulsory laws apply to this Agreement, including some which restrict how we can exercise our rights under this Agreement. We must comply with those laws. They prevail over the terms of this Agreement.

23.4 **Governing law:**

- (a) This Agreement is governed by New Zealand law.
- (b) Any disputes about this Agreement will be determined by the New Zealand courts.
- (c) You agree that you will not object to any action in relation to this Agreement being brought in the courts of New Zealand.
- (d) If you reside outside New Zealand, any document in relation to proceedings under or in connection with this Agreement may be served on you by delivering it during normal working hours to your address for service in New Zealand (or any other physical or email address you advise to us in writing).
- (e) If you borrow (or guarantee) the Loan for the purposes of a business, nothing in the Consumer Guarantees Act 1993 will apply to this deed.

## Aircraft Schedule

1. This Aircraft Schedule applies to an Asset that is an Aircraft.
2. You must, in relation to the Aircraft:
  - (a) at all times hold a valid certificate of registration under Part 47 of the Civil Aviation Rules;
  - (b) immediately provide us with a certified true and correct copy of any new or replacement certificate of registration issued by the Director of Civil Aviation;
  - (c) at all times hold a current airworthiness certificate issued under Part 21 of the Civil Aviation Rules;
  - (d) make sure all airworthiness directives issued under Part 39 of the Civil Aviation Rules are complied with;
  - (e) obtain and keep current an air operator certificate for any air operations for which the Aircraft is used;
  - (f) make sure that Parts 43 and 91 of the Civil Aviation Rules (and any maintenance schedules and mandatory operational modifications from time to time required by the manufacturers of the Aircraft and the United States Federal Aviation Administration), are complied with;
  - (g) maintain it in an airworthy condition;
  - (h) pay all rents, landing and other fees, levies, taxes and charges payable in respect of the Aircraft or its operation;
  - (i) notify us of any damage to the Aircraft for which repair by a licensed aircraft maintenance engineer is required;
  - (j) make sure all aviation documents and certificates necessary or desirable for the operation of the Aircraft are obtained, kept current and are not suspended;
  - (k) immediately notify us of any change to the aircraft class, registration mark, nationality mark or serial number provided by the manufacturer; and
  - (l) if we ask you, give us proof that you have done the things listed above.
3. You must not:
  - (a) allow the Aircraft to be flown by a person who cannot lawfully fly it under Parts 61 and 67 of the Civil Aviation Rules;
  - (b) allow the Aircraft to be used in any way that would entitle the insurer to claim it is not liable under any insurance policy;
  - (c) allow the Aircraft to be operated except as required by the Civil Aviation Rules, all provisions of the Civil Aviation Act 1990, and all other laws, consents and directions relating to the registration, control, operation and use of aircraft in New Zealand;
  - (d) allow the Aircraft to be used for any commercial or agricultural aircraft operations;
  - (e) part with possession or control of the Aircraft;
  - (f) allow the Aircraft to be chartered or leased; or
  - (g) allow any material changes to be made to the Aircraft.