

PEPPER NEW ZEALAND LIMITED (PEPPER)

General Terms & Conditions

May 2019 Version

IMPORTANT NOTE

This document does not contain all the information required to be given to you

You must read this document together with your *loan agreement* (including the disclosure statement). If there is any conflict between your *loan agreement* and this document, the terms of the *loan agreement* prevail. If there is any conflict between any provisions of any security or guarantee and this document and the *loan agreement*, the terms of this document and the *loan agreement* prevail.

Is there anything else you need to read and comply with?

You must read and comply with:

- (a) your *loan agreement* (including the disclosure statement);
- (b) these Terms & Conditions;
- (c) the terms of the security interest for the *mortgaged property*;
- (d) any terms and conditions regarding access to your *loan account*; and
- (e) any other conditions reasonably imposed by us.

Take particular notice of the things you must do, and must not do with the *mortgaged property*, and when your payments are due. If you are unsure, please contact us.

When is there a binding legal agreement between you and us?

- 1.1 There is no binding legal agreement for us to lend until the *settlement date* or such earlier date as we decide.
- 1.2 Until the *settlement date* we have the right to change the terms of this *loan agreement*.
- 1.3 Acting reasonably, if we determine that any of the following apply, we may withdraw this *loan agreement* and decline to make an advance of funds to you. Each provision below is a distinct and separate term.
 - (a) You do not satisfy any condition of your *loan agreement*.
 - (b) You do not provide us with any information that we request.
 - (c) You are in default of this *loan agreement*.

- (d) You are in default of any other agreement you have with us.
- (e) You are in default in respect of any other loan contract you have with any one else.
- (f) Any information you provide to us is found to be false, misleading or fraudulent.
- (g) There is a change to your financial circumstances.
- (h) There is a change to the *mortgaged property*.
- (i) There is any market disruption, liquidity crisis, change to the regulatory or legislative environment affecting our ability to lend.
- (j) There is any other type of disruption to our funding.
- (k) Anything else happens which in our opinion makes funding this loan undesirable.

- 1.4 We will not make an advance of funds until we are satisfied that all relevant conditions are fulfilled. You may be liable for costs even if we decide not to proceed.

Switching

You may with our approval from time to time split an account into two or more accounts or switch account types under your *loan agreement*. You may request a switch prior to the initial advance being made to you, in which case the switch takes effect from the *settlement date*. Where a new account is created, separate *repayment dates* and interest debit dates may apply to that new account.

If you switch from a fixed rate loan to a variable rate loan during the *fixed rate period*, a break cost and/or a switch/split administration fee may be payable - see your *loan agreement*.

- 3.1 If an account is split into two or more accounts, or if you switch between types

of interest rate, you may be required to pay interest on the amount switched or split to the date on which the switch or split occurs.

Effect of having more than one account

- 4.1 If you have more than one account with us:
- (a) we can apply any payment or other credit to any amount you owe us in any order we determine;
 - (b) if you make a payment without telling us in writing how the payment is to be applied, we can apply it to any one or more of the accounts in any way we think fit;
 - (c) if any of those accounts is in arrears while any other account has available funds, you irrevocably request and authorise us to withdraw an amount up to the available funds and apply that money towards payment of the arrears; and
 - (d) each account will have its own balance and we will send you separate statements for each account.

Interest charges

- 5.1 Interest charges are calculated by applying the interest rate to the unpaid balance of the *loan amount* owing to us at the end of each day. The interest rate applied each day is equal to the annual percentage rate applicable to the loan at the time divided by 365 (subject to clause 6.10 below). In addition to debiting interest to your *loan account* as specified below, we may debit interest:
- (a) whenever the loan is in default;
 - (b) on any repayment of the loan;

- (c) if there is any principal increase or variation in your *loan agreement*, or any variation of your loan;
- (d) immediately before we credit to your *loan account* a payment that equals or exceeds the balance at that time; and
- (e) on the day the last repayment is due.

5.2 Interest charges are debited to your *loan account* monthly in arrears on the same day each month as the *settlement date*. If the date does not exist in a month (for example 31 April), interest will be debited on the last day of the month. If the day is not a *business day*, interest will be debited on the next *business day*.

5.3 Any interest charges debited to your *loan account* become part of the *amount owing* on which interest charges are calculated.

5.4 In the case of the first debit of interest charges, the amount debited will be the sum of the interest charges calculated for each day in the period starting on the *settlement date* and ending on the day before the interest charges are debited (including each of those days).

For each later debit of interest charges, the amount debited will be the sum of the interest charges calculated for each day in the period starting on the day interest charges were last debited and ending on the day before interest charges are next debited (including each of those days).

5.5 The charging of interest on arrears of interest and fees and charges does not mean that they are part of the principal sum or the *loan amount*. These amounts only become part of the principal sum or *loan amount* if we elect to convert them to principal.

5.6 If more than one interest rate applies to your accounts, we will apply the applicable daily percentage rate to the relevant portion of the amount you owe us.

What you must pay and when

What you must pay

- 6.1 You must make all payments specified in your *loan agreement*. In addition on the date on which your loan ends you must pay us the amount you owe us, together with any fees or other costs arising on repayment. The date on which your loan ends is the date set out in your *loan agreement*, or such other date which we agree with you. The amount you owe us means, in respect of each account, the total amount outstanding from time to time and includes all interest, fees, taxes and charges.
- 6.2 You must make all payments and pay all credit fees and charges as specified in your *loan agreement*. Payments will be credited to your *loan account* only when actually received by us. All payments must be made in full when they fall due, without setting off any amounts you believe we owe you.

Repayments

The repayments set out in your *loan agreement* are examples which assume that payments will be made on time, and that the annual percentage rate(s) and fees and charges will not change after the *disclosure date*.

- 6.3 If the interest rate changes, the amounts of your repayments will change. You will be notified of any change to repayments in writing in accordance with applicable laws on or before the day the change takes effect.
- 6.4 If:
- (a) the annual percentage rate changes (including because you change interest rate options); or
 - (b) you convert from one repayment option to another; or

- (c) your *amount owing* changes because we lend you more money; or
- (d) you repay an amount early; or
- (e) amounts are debited or credited to your *loan account* that have not been taken into account in our calculation of your repayment amount,

we can reflect this by either changing your repayment amount or the *loan term*.

- 6.5 You can also ask us in writing to change your repayment amount. We will reasonably consider the request. Please see your *loan agreement* for further details in the case of unforeseen hardship.

When and how you pay

- 6.6 If a repayment is due on the 29th, 30th or 31st day of the month, but a month does not have that many days, you must pay that month's repayment on the last day of the month.
- 6.7 If a repayment would otherwise be due on a day which is not a *business day*, you must pay on the next *business day*.
- 6.8 If we ask for a direct debit authority as a condition of your loan you must not cancel the direct debit authorisation or close the account referred to in the direct debit authority. You must also ensure there is enough money in the relevant account to meet repayments under the *loan agreement*.
- 6.9 If any direct debit or cheque used for repayment is dishonoured, the repayment will be treated as not having been made, and interest will continue to accrue on the unpaid daily balance until actual payment is received by us.

6.10 Interest only periods

During any interest only period, each of your monthly repayments is one twelfth of the applicable annual interest rate applied to the average unpaid daily balance of the *loan account*. We can

also calculate your monthly repayment to include any credit fees and charges that are payable on your *loan account* during the interest only period, but we need not do so.

- 6.11 We may use any payment we receive in connection with the *loan agreement* to reduce the *amount owing* in any order we choose unless you have told us how payments are to be allocated.
- 6.12 Payments are to be made:
- (a) by direct debit from an account at a bank or financial institution approved by us unless we agree to some other method of payment with you;
 - (b) in New Zealand dollars; and
 - (c) to us or as we may direct.
- 6.13 You must make each payment (including under the *loan agreement* and each security interest for a *mortgaged property*) without deduction, withholding, counterclaim or set-off for any reason.

Early Repayment

- 7.1 You may make additional payments or repay your loan in full or part at any time. Fees may be payable on early repayment as specified in your *loan agreement*.
- 7.2 If you have a fixed rate for a *loan account* and, during the *fixed rate period*:
- (a) you repay the whole of the fixed rate *loan account*;
 - (b) you make additional repayments to the fixed rate loan account and the total amount repaid ahead of the scheduled repayments exceeds \$10,000 in each 12 month period commencing from the *settlement date*, or
 - (c) you request to change the whole or part of your fixed rate *loan*

account to another fixed or variable annual percentage rate.

we may charge you break costs.

What are break costs?

7.3 When we agree to lend money to you for a *fixed rate period* at a fixed rate, we enter into wholesale funding arrangements with other banks and financial institutions (called 'interest rate swaps'), to protect us if the interest we receive from our customers under fixed interest rate loans is less than the interest we have to pay under funding arrangements.

7.4 If you repay all or part of your fixed rate loan before the end of the *fixed rate period*, we may still be obliged to pay the bank or financial institution under our own wholesale funding arrangements. This may result in a loss to us (commonly known as break costs), if the relevant wholesale swap interest rate at the start of your fixed rate term is higher than the relevant wholesale swap interest rate that applies to the remainder of your fixed rate term on the date of your early repayment. Normally we will pass on this break cost to you.

7.5 Although we enter into our wholesale funding and interest rate swaps in relation to pools of our fixed rate loans rather than for a single loan, a reasonable way for us to estimate our loss arising from your early repayment is by calculating the break costs charged as if we had entered into an interest rate swap for your fixed rate *loan account*.

7.6 The method we use to calculate the break cost due to us in respect of a fixed interest rate *loan account* is set out below.

Break Cost Calculation Method

- (a) The method we use to calculate break costs is not the formula prescribed by the Credit Contracts and Consumer Finance Regulations 2004.
- (b) We calculate the terms of a theoretical wholesale interest

rate swap that, if entered into at the start of your *fixed rate period*, would have offset our risk of changing interest rates on that fixed interest rate *loan account* (“Initial Swap Rate”). The terms of the Initial Swap Rate are calculated using wholesale swap interest rates as they were at the start of your *fixed rate period*.

(c) We then calculate the terms of a theoretical wholesale interest rate swap entered into on the date of the early repayment, and that applies for the remaining part of the *fixed rate period* (“Ending Swap Rate”).

(d) In order to calculate the break cost applicable to your fixed rate *loan account*, we consider:

- i. the difference between the Initial Swap Rate and the Ending Swap Rate;
- ii. subject to paragraph 7.2(b), the amount of the additional or early repayment, or where you request to change the whole or part of your fixed rate *loan*, the balance of your loan account;
- iii. the number of months remaining in the *fixed rate period* at the time the break cost is incurred by us;
- iv. the discount rate to reflect the time value of money.

(e) If there is a fee payable to our counterparty, as calculated pursuant to paragraph 7.7(c), we will charge you a break cost equal to the amount of that loss. If there is no fee payable to our counterparty, then there is no break cost payable by you.

7.8 We will act reasonably when determining break costs and will charge no more than a reasonable estimate of our loss. In addition to break costs, on early repayment of your loan, you may be also required to pay us the special attendance fee and discharge administration fee (if applicable).

7.9 **WARNING: If a fixed rate loan or any part of it is terminated early, break costs could be substantial. This is particularly true if market interest rates have reduced during your fixed rate period. Ask for an estimate of break costs before you arrange to repay a fixed rate loan early.**

7.10 Once you have notified us of your decision to repay, if you change your mind and decide not to repay, you may still be liable to pay our reasonable administrative and processing costs for arranging for your loan to be repaid. We will advise you of these costs in writing. You authorise us to debit these amounts to your loan account.

Other amounts

Warning

Enforcement expenses may become payable under the *loan agreement* or any mortgage or other *security* in the event of a breach. Enforcement expenses may be debited to your account at the time they are incurred.

Other amounts to be paid

8.1 You must pay us and we may debit your account with:

- (a) all fees and charges in the circumstances indicated in the *loan agreement* and any changed or new fee or charge notified to you;
- (b) an amount equal to any government charges and duties on receipts or withdrawals under the *loan agreement*; and

(c) reasonable enforcement expenses if you default and our costs in connection with any exercise or non exercise of rights arising from any default, including:

i. legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is higher;

ii. our internal costs.

If your loan is regulated by the CCCFA or similar laws, these costs will not exceed our reasonable enforcement costs including internal costs.

Representations and warranties

9.1 You represent and warrant that all information you have given us regarding your financial and personal affairs, and any *mortgaged property* is to the best of your knowledge and the knowledge of any representative acting for you (for example your lawyers or conveyancer) true and correct. You also represent and warrant that other than as disclosed to us in writing prior to the *settlement date*:

- (a) there are no unpaid rates or taxes owing in respect of the *mortgaged property*;
- (b) there are no mortgages or other encumbrances affecting the *mortgaged property* other than those mortgages and encumbrances lodged or recorded at the land title register;
- (c) apart from any interests or rights already lodged or recorded at the land title register, no one else has any interest in, or rights over the *mortgaged property*;

(d) there is no breach of building or planning laws in respect of the *mortgaged property*;

(e) no one has a right to remove any chattels, fixtures or fittings on the *mortgaged property*;

(f) the *mortgaged property* is zoned for residential or rural residential purposes and is not used for any commercial purposes;

(g) there are no restrictions on occupancy of the *mortgaged property*;

(h) there are no current or proposed road works which will affect the *mortgaged property*;

(i) the *mortgaged property* is not subject to flooding and its use has not been restricted because of potential liability to flooding;

(j) there is no discrepancy between the measurements of the *mortgaged property* as fenced and those shown on the record of title;

(k) no proceedings have been commenced, and no orders obtained, pursuant to the Property (Relationships) Act 1976 that affect or may affect the *mortgaged property*;

(l) there has not been any breach of any covenants, encumbrances or easements affecting the *mortgaged property*;

(m) there will be no overdue rates, taxes and charges at *settlement*;

(n) the *mortgaged property* is not affected by pollution or contamination;

(o) the *mortgaged property* will be occupied by you unless we have agreed that the property is leased;

- (p) there are no notices or proposals from any government or other authority adversely affecting the *mortgaged property*;
- (q) there are no defects or disputes relating to the *mortgaged property*; and
- (r) there are no structural alterations or improvements on the *mortgaged property* which require approval by the council or any other authority which have not been approved.

have been received. We may reduce the amount otherwise available to you to redraw by an amount approximately equal to the payments due for the next month.

You must keep the method of making redraws from your accounts (including any *offset sub-account*) confidential to ensure there are no unauthorised transactions or other dealings with your account(s).

Redraw

Redrawing amounts (if applicable)

10.1 If redraw facilities are available (as described below), a redraw of funds can be made by methods authorised by us from time to time. We may review, suspend or cancel the redraw facility at any time. Redraws will be processed as we decide from time to time. If you request a redraw we have full discretion whether to approve or refuse your request. While you have one or more split loans, any re-borrowing will be made from the account specified by you, or if no account is specified, the account determined by us.

10.3 Despite clause 10.2, if you have a fixed rate loan, redraw may be available at our discretion during the *fixed rate period* on the fixed rate portion of your loan but can only be completed by contacting us. If you request a redraw during the *fixed rate period*, we have full discretion whether to approve or refuse your request.

10.4 If you make your request for redraw manually you must allow at least two *business days* for your redraw to be processed.

10.5 If you attempt to redraw more than your available funds limit, we may (but are not obliged to) stop or prevent the payment including by not processing a direct transfer from your account.

You must make sure that the amount you owe us does not go over your credit limit. However, if it does go over the credit limit, you must repay the excess immediately.

10.2 If you have prepaid amounts under the *loan agreement* you may, at our discretion, redraw (or re-borrow) any amount prepaid (above a minimum amount set by us) provided:

10.6 If you have more than one account, and one account has available redraw while another account is in default, you irrevocably request and authorise us to re-lend to you, without notice, an amount up to the available redraw and apply that amount towards repayment of the *amount owing* on the account in default.

- you have not defaulted under your *loan agreement*;
- the interest rate applying to the account to which the extra payments were made is a variable interest rate; and
- no other redraw restrictions are set out in your *loan agreement*.

10.7 If you have more than one *loan agreement* with us, and you have an account under this *loan agreement* with available redraw while an account under another *loan agreement* you have with us is in default, you irrevocably request and authorise us to re-lend to you, without notice, an amount up to the available redraw and apply the amount

The amount you redraw must not be less than the minimum amount specified by us from time to time, and must not be more than the total amount you have repaid early and for which cleared funds

of the redraw towards repayment of the *amount owing* on the account in default.

- 10.8 If you make any other credit to your account during a month, those amounts (to the extent not redrawn) will be applied to cover your repayments for that month. If the amount credited is insufficient to cover your repayment when it is due, you will need to deposit further funds to your account to cover your repayment. If the amount credited equals or exceeds your minimum monthly payment (and has not been redrawn at the time your payment is due), no further amount needs to be credited to your account for that month only. Any amount credited in excess of your payment will not be applied to your payment for the next month and you will still be required to credit further funds to the account to cover your next month's repayment.
- 10.9 We may also withhold funds and make them unavailable for redraw in order to apply them to your next payment.
- 10.10 If you request a redraw, and for that account your existing repayments are not sufficient to repay the balance over the remaining term, we may recalculate your future repayments for that account.

Default

Default rate

- 11.1 Acting reasonably, we may change the default rate at any time without your consent. You will be notified of any changes in the default rate in the same way any variations to the interest rate are notified to you.
- 11.2 If any amount due by you is not paid on the due date, you must pay default interest on the amount in default until it is paid. You may also be liable for default fees as specified in your *loan agreement*.
- 11.3 Default interest accrues daily calculated by applying the daily default rate to the amount in default at the end of each day while the default continues. The daily default rate is the annual default rate

divided by 365. Default interest is debited to your *loan account* at the same time and in the same manner as ordinary interest.

When will you be in default?

- 11.4 If any one or more of the following events occur, we may provide you with 14 days' notice to rectify the matter. If the matter is not rectified within this time frame, or if the matter is not capable of being rectified, we may decide an event of default has occurred. You must ensure no event of default occurs.
- (a) You fail to pay any amount owing under your *loan agreement*.
 - (b) You fail to pay any person (including us and/or other lenders) any money by the due date and that person commences action to recover the amount you owe them.
 - (c) You deal with the *mortgaged property* in a way that is unlawful or improper (for example you use the *mortgaged property* for a use for which it is not approved) or you use the *mortgaged property* in a way that is not approved by us and that use of the *mortgaged property* in such a way either reduces the value of the *mortgaged property* or is illegal.
 - (d) Any representations or warranties made by you or on your behalf to us or our agents that would have impacted our decision to enter the *loan agreement*, or adversely impacts the value of the *mortgaged property* or our ability to enforce any security interest, prove to be untrue or misleading.
 - (e) You breach any material undertaking given at any time to us and that breach would have impacted our decision to enter the *loan agreement*,

- adversely impacts the value of the *mortgaged property* or our ability to enforce any security interest.
- (f) You become *insolvent* or are jailed, or six months from your death your loan has not been repaid in full.
 - (g) You do not maintain appropriate fire and general insurance over all *mortgaged property* on terms acceptable to us.
 - (h) You fail to provide us any information we require relating to your business, assets, and financial affairs.
 - (i) You use any amount advanced under your *loan agreement* for a purpose other than the purpose provided in your *loan agreement*.
 - (j) If you are a company and there is any change in ownership or control of you or any company of which you are a subsidiary without our consent which will not unreasonably be withheld.
 - (k) If you have a guarantor in relation to the *loan agreement*, our ability to enforce the relevant guarantee is adversely impacted.

What can we do when you are in default?

- 11.5 At any time after default occurs, we can take any of the following action after giving any notice required by law.
- (a) Demand and require immediate payment of any money due under your *loan agreement*.
 - (b) Call up the loan and require payment of the entire balance owing under your *loan agreement*.
 - (c) Exercise any right, power, or privilege conferred by any law, your *loan agreement*, or any *mortgaged property*.

- (d) Use any money of yours in any account with us to reduce the amount you owe us.

11.6 We can take action even if we do not do so promptly after the default occurs. We do not lose any rights or forgive any defaults unless we do so in writing.

11.7 We can exercise these rights with or without taking possession of any *mortgaged property*. If we hold more than one *mortgaged property*, we can enforce any one of the securities first or all of them at the same time.

11.8 Our rights and remedies under the *loan agreement* may be exercised by any of our employees or any other person we authorise.

11.9 We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies, except where such loss arises from fraud, negligence or wilful misconduct by us, our employees or a receiver we appoint. Nothing in this clause 11.9 or this document limits any rights you may have under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986.

11.10 Set-off

In addition to any other right of set-off we have, after a default occurs we may without notice combine, consolidate or merge any or all of your accounts conducted with us, and may set-off the debt against them.

If you assign, transfer, create a security interest over, or otherwise deal with, any of your rights in any money now or in the future credited to any of your accounts with us, we are deemed to have exercised our rights of set-off immediately before the assignment, transfer or dealing occurs.

General Matters

12.1 Account statements

Statements of account will be sent to you at least once every six months or

more frequently if required by law. We may not send account statements if not required by law.

12.2 CCCFA

This clause applies to the extent that the CCCFA applies to the *loan agreement*.

If:

- (a) the CCCFA would otherwise make a provision of the *loan agreement* illegal, void or unenforceable; or
- (b) a provision of the *loan agreement* would otherwise contravene a requirement of the CCCFA or impose an obligation or liability which is prohibited by the CCCFA,

the *loan agreement* is to be read as if that provision were varied to the extent necessary to comply with that Code or, if necessary, omitted.

12.3 Establishing your *loan account* and accounting for transactions

- (a) You authorise us to open a *loan account* in your name and to debit to it each part of the amount you borrow on the date we lend it and any amount which you must pay under the *loan agreement* on or after the date it becomes due, without first notifying you.
- (b) Acting reasonably, we may assign any date we consider appropriate to a debit or credit to the *loan account* (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs).

However, we credit payments to your *loan account* as soon as practicable after we actually receive them. This is not necessarily the same day that you pay.

- (c) Acting reasonably, we may subsequently adjust debits and credits to the *loan account*, so as to accurately reflect the legal obligations of you and us (for example, because of an error or because a direct debit authority is dishonoured). If we do this, we may make consequential changes (including to interest charges).

12.4 Consents

You must comply with all reasonable conditions and requirements in any consent we give.

12.5 Judgment interest

If any amount you must pay under this document together with your *loan agreement*, becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest is payable from the date we first ask you for the amount until that amount is paid. This obligation is not affected by the court order. The rate is the higher of the rate in the court order and the default rate. Further, if any obligation you owe under this document together with your *loan agreement* becomes merged in a court order, you owe us that obligation as a separate obligation and that obligation is not affected by the court order.

12.6 What is lender's mortgage insurance

If there is *lender's mortgage insurance* for this loan, you acknowledge that the insurance protects us and not you. If you default under the *loan agreement* or any mortgage *security* resulting in a need to sell the *mortgaged property* and the sale proceeds are insufficient to fully repay your loan, we may incur a loss. We may recover this loss under any lender's mortgage insurance policy. However, you become legally responsible for repaying to the insurer the amount outstanding under the agreement or *security* because you are not protected by the *lender's mortgage insurance*.

Therefore, the only advantage you receive from paying for any *lender's mortgage insurance* is the ability to borrow more than we would permit if we did not have that insurance.

12.7 Valuations

We may obtain, at your cost, independent valuations or other reports concerning any *mortgaged property*:

- (a) when you apply for a loan with us;
- (b) if the valuation obtained at the time of loan approval can no longer be relied on, and your loan has not yet settled;
- (c) when you apply for an increase in your *loan amount*;
- (d) prior to sale of the *mortgaged property* by us after default by you;
- (e) if the *mortgaged property* is being used by you as security for another loan;
- (f) when there are any dealings impacting the title to the *mortgaged property* (for example, any subsequent mortgage, request for release of related security, request for sub-division of the *mortgaged property*);
- (g) if required any regulatory or legislative requirement from time to time;
- (h) in any other reasonable circumstance.

Any property valuation is for our use only and we have no obligation to disclose the valuation to you or of anything adverse contained in these reports.

If the contents of any of these documents become known to you, we accept no responsibility if you rely on them. You should obtain your own

valuation in respect of any mortgaged property.

12.8 How we may exercise our rights

- (a) Acting reasonably, we may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing conditions.
- (b) If we do not exercise a right or remedy fully or at a given time, we can still exercise it later, provided that any default by you is still existing.
- (c) Our rights and remedies under the *loan agreement* are in addition to other rights and remedies provided by law independently of it.
- (d) Our rights and remedies may be exercised on our behalf by:
 - any of our employees whose job title includes the word “manager”; or
 - any other person we authorise.
- (e) We are not liable for loss caused by the exercise or attempted exercise of, the failure to exercise, or delay in exercising, a right or remedy except where such loss arises from fraud, negligence or wilful misconduct by us, our employees or a receiver we appoint.

12.9 Government charges

You must pay us on request any government duties, taxes and other charges on receipts, debits or withdrawals that apply to your loan. This includes (but is not limited to):

- income tax payable by you (if the Inland Revenue Department requires us to deduct this from your account);

- withholding tax; and
- goods and services tax (GST).

You must pay these duties, taxes and charges whether or not someone else is liable to pay them and whether or not the loan is made. We may debit these duties, taxes and charges to your *loan account* as and when they become payable. We do not need to tell you first.

12.10 **Blanks**

You agree that we may fill in any blanks in any document related to the *loan agreement* (such as an acknowledgment) consistently with the commercial intent of the parties.

12.11 **Our certificates**

We may give you a certificate or formal statement about a matter or about an amount (including break costs) payable in connection with the *loan agreement*. This is conclusive and binding on you in the absence of a manifest error. In making any decision, we will act reasonably.

12.12 **Assignment**

- (a) We may assign, novate or otherwise deal with our rights (including any of our discretions) under the *loan agreement*, any *mortgaged property*, and any document or agreement entered into or provided under or in connection with your *loan agreement* in any way we wish, including in relation to any securitisation transaction. You agree that we may disclose any information (including personal information) or documents we consider desirable to help us exercise this right. You also agree that we may disclose information or documents at any time to a person to whom we assign our rights under the *loan agreement*. We may also utilise one or more agents or sub-contractors to perform or

exercise any of our rights as described above. You must sign anything and do anything we reasonably require to enable any dealing with your *loan agreement*, any *mortgaged property*, and any document or agreement entered into or provided under or in connection with your *loan agreement*. Of course, any dealing with our rights does not change your obligations under your *loan agreement*, any *mortgaged property*, and any document or agreement entered into or provided under or in connection with your *loan agreement* in any way.

- (b) You may not assign, novate, or otherwise deal with your rights or obligations under your *loan agreement*, any *mortgaged property*, and any document or agreement entered into or provided under or in connection with your *loan agreement*.

12.13 **Insurance**

You must take out and maintain appropriate fire and general insurance with respect to the *mortgaged property*. The insurance must be with an insurer acceptable to us. If you do not take out and maintain that insurance, we may take out that insurance and the amount we pay for this will be an enforcement expense under this *loan agreement*.

12.14 **Notices, other communications and service of documents and verbal confirmations and taping of conversations**

- (a) If an email address is specified for you in the *loan agreement*, you nominate that email address (or such other email address as you may notify to us) as the information system to which any CCCFA disclosure statements or other communications may be sent (at our discretion). We are not obliged to send notices to you by email.

- (b) Subject to any applicable laws, we may give you a notice by personal delivery, pre-paid ordinary post, or email. We may also give a notice in any other way authorised by law.
- (c) The notice may be signed by any employee, solicitor, or agent on behalf of us.
- (d) You must notify us in writing of any change in your addresses, or if you think there is any information that we should be aware of about your ability to comply with your *loan agreement*.
- (e) You agree that a verbal instruction, agreement or confirmation by any one or more of you pursuant to the *loan agreement* is binding on you. This includes any instruction, agreement or confirmation by any one or more of you over the telephone.
- (f) You consent to us:
- i. taping any conversation (including over the telephone) between you and us, or any of our contractors; and
 - ii. using that tape as proof of your verbal instruction, agreement or confirmation.
- (g) If there is more than one of you, then:
- i. this contract applies to and binds each of you separately and all of you as a group; and
 - ii. each of you will be jointly and severally liable for all transactions initiated by any one or more of you (or by any person authorised by any of you to access an account), including without limitation transactions effected by any one or more of you (or by any person authorised by any of you to access an account) by means of any of the following (as applicable to your account):
 - (A) Loan Service Line access;
 - (B) Loan Service Net access;
 - (C) transfer of funds from or to an account; or
 - (D) any other access to an account we authorise from time to time.
- (h) Where you are provided with a password and access number for security:
- i. the Terms and Conditions for the Loan Service Line and the Loan Service Net require you to use reasonable precautions to safeguard your password and access numbers; and
 - ii. if you (or any person authorised by you to access an account) do not use such precautions, you will be responsible for all transactions on your account whether or not they are authorised by you and such transactions will be deemed to have been authorised by you.

12.15 Variations

- (a) Acting reasonably, we can change or vary a term to accommodate:
- i. a change in the pricing of your facility (including fees and interest rates);
 - ii. a change in the day you make repayments or we debit interest to your *loan account*;
 - iii. a change in law or market practice;
 - iv. a change that is beyond our control;
 - v. a change in technology or other ways of communication;
 - vi. a change in payment methods;
 - vii. withdrawal of redraw features
 - viii. a change in the frequency that statements are issued (so long as any such change remains compliant with the law);
 - ix. any other reasonable change.

- (b) We can make the changes above by giving you 5 working days' written notice of the change, or if the law prescribes a longer notice period, we will provide you with that longer notice period.

However, if the change will reduce your obligations or extend the time for any payment, we can make the change immediately, and notify you in your next statement.

12.16 Applicable law

The *loan agreement* is governed by and interpreted in accordance with the New Zealand law.

12.17 If you are a trustee

If you are at any time trustee of any trust, you are liable under the *loan agreement* in your own right and as trustee of the trust. Accordingly, we can recover against the trust assets as well as you. Default occurs if there is a change of trustee, a termination of the trust, or any change to the terms of the trust without our consent which will not unreasonably be withheld.

12.18 Joint borrowers

If there are two or more of you, each of you is individually liable, and all of you are jointly liable. This means we may sue any one of you for all the amount outstanding. You agree that each borrower can bind each other borrower. For example, any one of the borrowers can authorise a redraw, a split into one or more sub-loans, or any other activity in respect of your loan. Each other borrower and any guarantor will be liable even though they did not know about or did not agree to the transaction.

WARNING. This means that each one of you can be required to pay the whole *amount owing* even though you may have some other arrangement among yourselves or not all of you benefit equally.

Despite this clause, we may require all borrowers and guarantors to authorise any activity with respect to your loan.

If a borrower or guarantor dies, we may require the loan to be repaid in full within six months of the borrower's death. Alternatively, where there is more than one borrower, if a borrower or guarantor dies or is released from *the loan agreement* or guarantee for any reason, we may allow the remaining borrower(s) or guarantor(s) to become the borrower(s) or guarantor(s) under *the loan agreement*. If we do not agree to the remaining borrower(s) becoming

the borrower(s) under the *loan agreement* we may call up the loan even though further advances have been made after the death or release of a borrower or guarantor.

12.19 **What happens if you have a guarantor?**

You agree to allow us to disclose the following documents to each guarantor named in your *loan agreement*:

- a copy of any notice, including correspondence, to us or to you;
- any credit report received in relation to you;
- any financial statements you have given us;
- any notice of demand, or information regarding a dishonour, on any loan with us;
- information on any excess or overdrawing;
- a copy of your *loan account* statement; and
- any other information about you and your accounts with us.

12.20 **Must you provide information to us?**

Within 14 days of our request, you must provide to us any information we require relating to your business, assets, and financial affairs. We may require this information to be certified or audited.

12.21 **What happens if your account has a credit balance?**

If you repay us more than the total amount outstanding, we may place the excess funds into a suspense account, deposit it with a bank or pay it to you. We will not pay you interest on that amount.

12.22 **What about any relevant legislation or statutes?**

If any of the provisions of your *loan agreement* are illegal or become illegal at any time, the affected provisions will cease to have effect, but the balance of your *loan agreement* will remain in full force and effect, and we may by notice vary your *loan agreement* so that the provision is no longer illegal.

Meaning of words

These meanings apply in the *loan agreement*:

amount owing means, at any time, the balance owing on your *loan account* at that time, plus all accrued interest charges, default interest charges and other amounts which you must pay under the *loan agreement* but which have not been debited to your *loan account* at that time.

business day means a day other than a Saturday or Sunday, or a public holiday in Auckland.

CCCFA means the Credit Contracts and Consumer Finance Act 2003 and any regulations under it.

disclosure date is stated in the *loan agreement*.

insolvent means being bankrupt, having a controller appointed, being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, or otherwise unable to pay debts when they fall due.

loan account means an account we establish in your name for recording transactions in connection with the *loan agreement*.

loan agreement means the loan agreement and disclosure statement incorporating these terms and conditions.

loan amount is set out in the *loan agreement*.

loan term is the period beginning when we lend to you and expiring on the date for final repayment.

mortgaged property means each property or (as the context requires) security interest described in the *loan agreement* under “Security”, and any substitute or additional security given in connection with the *loan agreement*.

repayment date means each date you are scheduled to make a repayment under the *loan agreement*.

settlement date means the date you tell us to lend you the *loan amount* (even though the actual date we lend you the *loan amount* may be a later date).

you means the person or persons named in the *loan agreement* as “Borrower” and each of them separately and jointly. If there is more than one borrower, any one borrower can bind any other,

you includes your successors and assigns.

A reference in this document to:

- any thing includes the whole and each part of it;
- the singular includes the plural and vice versa;
- a document includes any variation or replacement of it;
- use of examples is illustrative of the context only and does not limit the natural meaning of the terms of your *loan agreement*; and
- the word person includes an individual, a firm, a body corporate, an unincorporated association or an authority.

Headings are for convenience only and do not affect the interpretation of the *loan agreement*.

