



General Terms and Conditions

For General and Specific
Security Agreements and
Agreements to Mortgage

October 2021

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APPLICATION OF TERMS AND CONDITIONS TO CERTAIN SECURITIES

PART ONE: GENERAL

- 1.1 Definitions:** The terms in quotation marks in this Part are subsequently defined in the relevant Parts of these terms and conditions as apply to the particular security in issue.
- 1.2 Agreement to mortgage:** Nothing in Parts Two to Five (inclusive) of these terms and conditions shall apply to any Agreement to Mortgage that forms part of the security interest granted by a "Mortgagor" in favour of the "Securityholder" pursuant to clause 4 of the "Security Agreement" or any "Agreement to Mortgage". An Agreement to Mortgage shall be governed solely by the provisions set out in Parts Six to Eleven (inclusive) of these terms and conditions.
- 1.3 Mortgage over land:** Where pursuant to clause 4 of the Security Agreement, the "Securitygiver" has mortgaged some or all of the Securitygiver's present and future interests and rights in any land, such mortgage shall be governed by the Auckland District Law Society Memorandum of General Terms and Conditions (Memorandum Number 2007/4238). In all other respects, these terms and conditions shall apply to the security interest granted by the Securitygiver in favour of the Securityholder pursuant to the Security Agreement.
- 1.4 Other securities:** Subject to the limitations set out in clauses 1.2 and 1.3 above, the provisions contained in these terms and conditions apply to every security interest granted by the Securitygiver in favour of the Securityholder pursuant to the Security Agreement. Where certain terms and conditions only apply to security interests granted pursuant to a General Security Agreement and not to security interests granted pursuant to a Specific Security Agreement, the terms and conditions that apply only to security interests granted pursuant to a General Security Agreement are identified in these terms and conditions.

SECURITY AGREEMENTS

PART TWO: INTERPRETATION

- 2.1 Definitions:** In the Security Agreement and in Parts Two to Five (inclusive) of these terms and conditions, unless the context otherwise requires:
- "Account Receivable"** has that meaning given it in the PPSA, and includes all proceeds of, and the Securitygiver's present and future rights in relation to, that account receivable, and any document of title relating to that account receivable;
- "Agreement"** means any agreement or arrangement between the Securitygiver and the Securityholder (whether or not other persons are parties to the agreement or arrangement) that relates to the whole or any part of the Moneys Secured;
- "Business Day"** means a day on which registered banks are generally open for business in New Zealand;
- "Collateral"** means the collateral specified in the Security Agreement. It may include Personal Property and Non PPSA Property but does not include goods to which Section 83ZN of the Credit Contracts and Consumer Finance Act 2003 applies. A reference to "Collateral" includes any part of it;
- "Event of Default"** means any of the events specified in clause 5.19;
- "Guarantor"** means any person or legal entity that has signed the Security Agreement as Guarantor;
- "Investigator"** means any person (whether an officer of the Securitygiver or not) appointed to act as an investigator of the Securitygiver's affairs;

"Investment Securities" has that meaning given it in the PPSA and all of the Securitygiver's present and future rights in relation to or arising out of those investment securities, rights, proceeds and documents of title;

"Manager" means every director, officer or authorised agent of the Securityholder, and every employee of the Securityholder whose title includes the word "manager";

"Moneys Secured" means all moneys (of whatever nature, including future advances) that the Securitygiver (whether alone or with any other person) currently is, or at any time becomes, actually or contingently liable to pay to the Securityholder (whether alone or with any other person) pursuant to the Security Agreement, or any other Relevant Document, or otherwise howsoever;

"Non-PPSA Property" means any land, property or asset other than Personal Property to which the Personal Property Securities Act 1999 applies;

"Personal Property" has the meaning given to that term in the PPSA and a reference to "Personal Property" includes any part of it;

"Potential Event of Default" means the occurrence of any event which is, or which with the passing of time or the giving of notice or both may become, an Event of Default;

"PPSA" means the Personal Property Securities Act 1999;

"Receiver" means a receiver, or receiver and manager, appointed by the Securityholder pursuant to the Security Agreement;

"Relevant Documents" means the Security Agreement, each Agreement, and each security issued, granted or given at any time by any person, whether directly or indirectly, in respect of or in relation to the Moneys Secured or any part of the Moneys Secured;

"Relevant Person" means a person (other than the Securitygiver or the Securityholder) who is a party to any Relevant Document, and any assignee or successor of such a person, and where a company includes a Subsidiary and a related company;

"Rights" means all:

(a) distributions;

(b) options or rights to take up any securities of any nature; and

(c) all other rights, money or securities (as defined in the Securities Act 1978) of any nature, attributable to, or arising from, any Investment Securities, and includes all proceeds and documents of title relating to any Rights;

"Security Agreement" means the General Security Agreement and/or the Specific Security Agreement signed by the Securitygiver and Guarantor (as appropriate), and reference to the Security Agreement shall include reference to these terms and conditions incorporated by the Security Agreement;

"Securitygiver" means:

(a) the person or legal entity that has signed the Security Agreement as the Securitygiver;

(b) includes any reference to "Debtor" (if any) in the Security Agreement;

(c) includes the successors of the Securitygiver; and

(d) means "debtor" for the purposes of the PPSA;

"Securityholder" means:

(a) Xceda Finance Limited or its nominee;

(b) includes any reference to "Creditor" (if any) in the Security Agreement;

(c) includes the successors and assigns of the Securityholder; and

(d) means "secured party" for the purposes of the PPSA;

"Subsidiary" means any Securitygiver or other corporation that is:

(a) subsidiary (within the meaning of section 5 of the Companies Act 1993) of the Securitygiver;

or

(b) in accordance with any statement of standard accounting practice from time to time approved by the New Zealand Society of Accountants considered to be an in-substance subsidiary of the Securitygiver; or

(c) controlled by the Securitygiver;

"Transfer" means, in relation to any Investment Securities or Rights, a change or transfer of ownership form duly signed by the Securitygiver with the name of the transferee, date and consideration left blank, but otherwise, if appropriate, in proper form for registration by the relevant issuer of the Investment Securities or Rights;

2.2 References: In the Security Agreement, unless the context otherwise requires:

"Assets" of any person includes all present and future assets, undertakings, revenues (including any right to receive revenues), rights, benefits, choses in action, and if applicable, uncalled capital;

"Associated Securitygiver" means any Securitygiver or other corporation that, in accordance with any statement of standard accounting practice from time to time approved by the New Zealand Society of Accountants, is considered to be an associate Securitygiver of the Securitygiver;

An **"authorisation"** includes:

(a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency; or

(b) in relation to anything that will be proscribed or restricted in whole or part by law if a governmental agency intervenes or acts in any way within a specified period after lodgment, filing, registration or notification, the expiry of such period without such intervention or action;

"Borrowed money" includes any indebtedness for or in respect of money borrowed or raised (whether or not for cash consideration) by whatever means (including the drawing, acceptance, endorsement or discounting of bills of exchange), or for the deferred purchase price of assets or services, and any liability under any financial lease or under any interest rate or currency swap, futures contract, option contract, forward exchange contract, or forward rate agreement;

"Capital" in respect of a company includes any share premium;

"Clause" or **"schedule"** is a reference to a clause of or a schedule to the Security Agreement;

One person being **"controlled"** by another means that another person (whether directly or indirectly and whether by ownership of share capital, the ability to exercise voting power, control, or otherwise) has the power to appoint or remove the majority of the members of the governing body of that person, or otherwise controls or has the power to control the affairs of that person;

"Control" shall be construed accordingly;

"Default" includes breach, failure to comply, or failure to do, however caused, whether voluntary or involuntary and whether within or beyond any person's control;

"Disposal" includes any sale, assignment, exchange, transfer, bailment, loan, lease, licence, waiver, compromise, release, or surrender of any right or interest, and includes parting with possession, or the granting of any option, right or interest whatever. **"Dispose"** means to make a disposal;

The **"dissolution"** of any person includes the bankruptcy or liquidation of that person, and any equivalent procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business, or has assets;

"Governmental agency" includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law;

"Indebtedness" includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money;

"Land" includes all estates and interests, whether freehold or leasehold or other, in real property;

"Laws" means all applicable statutes, regulations, bylaws, orders in council, judgments and

decrees. It includes common or customary law, of any relevant jurisdiction and any other measure that has the force of law. It also includes any environmental and building law;

"Material adverse effect" means something that has a material adverse effect on a person's financial condition or a person's ability to conform or comply with its obligations under the Security Agreement or any of the Relevant Documents.

"Person" includes an individual, firm, company, corporation, unincorporated body of persons, organisation or trust, and any state, government or governmental agency, in each case whether or not having separate legal personality;

"Related company" means a company within the meaning of section 2(3) of the Companies Act 1993;

"Security" includes a guarantee or indemnity, a security interest, any interest in any land of a security nature, and a mortgage, charge, lien or pledge;

"Tax" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any governmental agency, together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing;

"Taxation" shall be construed accordingly;

"Upon demand" means upon demand in writing signed by the Securityholder, any Manager, or any solicitor of the Securityholder;

"Written" and **"in writing"** include all means of reproducing words in a tangible and permanently visible form;

2.3 General: Unless otherwise stated or the context requires otherwise, the Security Agreement shall be construed as follows:

the headings in the Security Agreement appear for convenience only and do not affect the interpretation of the Security Agreement; singular words include the plural and vice versa. Words referring to any gender include the other genders. Words referring to individuals include companies and other corporations and vice versa;

references to a statute, regulation, order, bylaw or other legislation are references to that statute, regulation, order, bylaw or other legislation as amended, consolidated, re-enacted, substituted or extended from time to time. References to a statute include a reference to all regulations as may be passed under that statute; references to a document, including any Relevant Document, shall include references to that document as amended, novated, or substituted from time to time;

the expressions **"accession"**, **"after acquired property"**, **"attach"**, **"consumer goods"**, **"documents of title"**, **"equipment"**, **"future advance"**, **"goods"**, **"intangible"**, **"inventory"**, **"financing change statement"**, **"financing statement"**, **"proceeds"**, **"purchase money security interest"**, **"risk"**, **"security interest"**, **"transfer"** and **"value"** have the respective meanings given to them under, or in the context of, the PPSA.

PART THREE: MONEYS SECURED

- 3.1 Payment:** The Securitygiver shall pay the Moneys Secured to the Securityholder in the manner and at the times agreed upon between the Securitygiver and the Securityholder as provided for in an Agreement or, failing agreement, upon demand. Except to the extent otherwise provided in any Relevant Document, each part of the Moneys Secured shall be paid in the currency in which it is for the time being denominated. Each part of the Moneys Secured shall be paid free and clear of any restriction or condition and (except to the extent required by law) without any deduction or withholding on account of any tax and any other amount, whether by way of set-off, counterclaim, or otherwise.
- 3.2 Interest:** The Securitygiver shall pay to the Securityholder interest on the Moneys Secured at the rate or rates and at the times as provided for in any Agreement.
- 3.3 Default Interest:** In the event of a default in payment of any part of the Moneys Secured by the Securitygiver, the Securitygiver shall pay to the Securityholder interest on that unpaid amount from

the due date until it is actually paid calculated on a daily basis at the Default Rate provided for in any agreement.. Such interest shall accrue after as well as before judgment and up to and including the date of actual payment. The obligation to pay default interest shall arise without the need for notice or demand.

- 3.4 Due Date:** Except to the extent otherwise provided in any Agreement, each part of the Moneys Secured shall be paid to the Securityholder no later than 3.00 pm on the due date for payment or, if that date is not a Business Day, on the Business Day immediately before it. Any payment received later than 3.00 pm on any day shall be deemed to have been made on the next following Business Day.
- 3.5 Gross-Up:** If the Securitygiver is required by law to make any deduction or withholding from any amount paid or payable by it to the Securityholder, or the Securityholder is required by law to make any payment on account of tax (other than tax on overall net income of the Securityholder) or otherwise on any part of the Moneys Secured, then except as otherwise provided in any Agreement:
- (a) the Securitygiver shall ensure that any such deduction or withholding does not exceed the legal minimum and shall pay any such tax or other amount to the relevant taxation or other authority before the penalty date for non-payment;
 - (b) the amount payable by the Securitygiver for which that deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that the Securityholder receives and retains a net amount equal to the amount that it would have received and so retained had no such deduction, withholding or payment been made;
 - (c) the Securitygiver shall deliver to the Securityholder, within 30 days after each deduction or withholding is required by law to be made, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made.
- 3.6 Currency Indemnity:** If (due to the consequence of any law, the enforcement of a judgment or order of a court or tribunal in any jurisdiction against the Securitygiver, the dissolution of the Securitygiver, or for any other reason) any payment under or in connection with the Security Agreement is made, recovered or received in a currency ("Other Currency") other than that in which it is due ("Required Currency"), then, to the extent that the payment (when converted at the Rate of Exchange on the date of payment or, in the case of a dissolution, the latest date for the determination of liabilities permitted by law or, in each case if it is not practicable for the Securityholder to make that conversion on that date, at the Rate of Exchange as soon afterwards as it is practicable for it do so) actually received by the Securityholder falls short of the amount due under the Security Agreement, the Securitygiver shall indemnify the Securityholder against the amount of the shortfall. For the purposes of this clause "Rate of Exchange" means the rate at which the Securityholder is able on the relevant date to purchase the Required Currency with the Other Currency and shall take into account any premium and any of the costs of exchange.
- 3.7 Application of Moneys:** Notwithstanding any rule of law, or any appropriation or purported appropriation made by the Securitygiver or any other person, or any other matter or circumstance, the Securityholder may appropriate all moneys paid to the Securityholder in reduction of the Moneys Secured as between principal, interest and other amounts due to the Securityholder as the Securityholder determines.

PART FOUR: PROVISIONS APPLYING ONLY TO GENERAL SECURITY AGREEMENTS

- 4.1 Nature of Charge over Non-PPSA Property:** Any charge under the Security Agreement is a fixed charge in relation to all Non-PPSA Property, except where, but only to the extent that, the charge is not legally and fully effective as a fixed charge, in which event that charge will be a floating charge.
- 4.2 Conversion:** Any floating charge will become a fixed charge automatically and immediately in relation to all Non-PPSA Property subject to that floating charge:
- (a) without the need for any notice or act by the Securityholder, if an Event of Default occurs;
 - (b) in relation to any Non-PPSA Property specified in any notice which may be given by the Securityholder to the Securitygiver at any time if, in the opinion of the Securityholder, that Non-PPSA Property is at risk, including the risk of being damaged, destroyed, seized, taken or becoming subject to any security.

- 4.3 Priority maximum amount:** For the purposes of section 92 of the Property Law Act 2007, the maximum amount up to which the sum owing under the Security Agreement will rank in priority to any subsequent instrument, charge or security interest is the priority sum recorded in the Security Agreement, together with all interest (whether capitalised or not) and costs of enforcement.
- 4.4 Maximum amount neither waiver or representation:** Stating a maximum amount for the purposes of section 92 of the Property Law Act 2007 does not act:
- (a) as a waiver of the Securityholder's security under the Security Agreement for so much of the Moneys Secured as may exceed the priority sum; nor
 - (b) as a representation of the total amount of Moneys Secured to be provided by the Securityholder or intended to be secured by the Security Agreement.
- 4.5 Positive Covenants:** The Securitygiver shall:
- (a) **Notify acquisition of consumer goods:** immediately notify the Securityholder when the Securitygiver acquires any future goods primarily for personal, domestic or household purposes (not being goods to which Section 83ZN of the Credit Contracts and Consumer Finance Act 2003 applies) and give all details of such goods as required by the Securityholder, and the Debtor shall also on the request of the Securityholder sign a written statement declaring that such goods shall form part of the Collateral; and
 - (b) **Land:** where the security interest under the Security Agreement includes security over any land, promptly give notice to the Securityholder of particulars of any land acquired by the Securitygiver;

PART FIVE: PROVISIONS APPLYING TO GENERAL & SPECIFIC SECURITY AGREEMENTS

SECURITY

- 5.1 Grant of Security Interest:** The Securitygiver as security for the payment of the Moneys Secured, and the performance by the Securitygiver of all the Securitygiver's other obligations to the Securityholder at any time under the Relevant Documents grants the security interest detailed in clause 4 of the Security Agreement.
- 5.2 Accounts Receivable:** The security interest granted under clause 5.1 shall so far as concerns all the Securitygiver's present and future Accounts Receivable, and all of the Securitygiver's present and future rights in relation to any Accounts Receivable, in consideration of the ongoing provision of the Moneys Owed, take effect as and shall be deemed a transfer.
- 5.3 Continuing Security:** The Security Agreement shall operate as a continuing security between the Securityholder and the Securitygiver, irrespective of any sum or sums that may be paid to the credit of any account of the Securitygiver with the Securityholder, and notwithstanding:
- (a) the appointment, retirement or removal, at any time, of a Receiver;
 - (b) the exercise by the Securityholder or a Receiver of any power conferred by the Security Agreement, by any other Relevant Document, or by law; or
 - (c) any settlement of account or any other matter or thing whatever;
- and shall remain in full force and effect and extend to cover all of the Moneys Secured until a final release has been executed by the Securityholder.
- 5.4 No Other Financing Statements:** The Securitygiver shall:
- (a) not consent (where consent is required) to any person other than the Securityholder filing a financing statement against the Securitygiver or against any of the Collateral without the prior written consent of the Securityholder;
 - (b) notify the Securityholder immediately if it becomes aware of any person taking any steps to file a financing statement against the Securitygiver or the Collateral.

- 5.5 Priority:** The security interest granted in Personal Property under the Security Agreement has the same priority in relation to all Moneys Secured including future advances.
- 5.6 Ordinary Course of Business:** Unless otherwise restricted by any Relevant Document or by written notice to the Securitygiver at any time given by the Securityholder, the Securitygiver may, in the ordinary course of business of the Securitygiver, without the consent of the Securityholder, sell or purchase, or lease (whether as lessor or lessee), inventory and collect Accounts Receivable which are the proceeds of inventory.
- 5.7 Security not exclusive:** The Security Agreement and the security interest witnessed by it are in addition to and not in substitution for any other security interest now or in future held by the Securityholder from the party granting the security, or from any other person.
- 5.8 No intention to delay attachment:** By entering into the Security Agreement, the parties agree that there is no intention to delay the time of attachment and that the security interest created by the Security Agreement will attach at the earliest time permissible under the laws governing the security.

INSURANCE

- 5.9 Obligation to Insure:** The Securitygiver shall:

- (a) insure and keep insured in its name (and jointly in the name of the Securityholder, and the Securitygiver if required by the Securityholder), the Collateral against loss or damage by fire, earthquake, theft, burglary, weather damage, marine transit and freight risks, such other risks as reasonably necessary for the protection of the legitimate interests of the Securityholder to insure against, in each case for the full insurable value, and on such policy terms as required by the Securityholder;
- (b) take out and maintain such other insurance against liability on account of injury or damage suffered by the public, and against such other risks as reasonably necessary for the protection of the legitimate interests of the Securityholder to insure against;
- (c) effect all such insurance with insurers approved by the Securityholder, and upon request provide the Securityholder with particulars of all such insurance and, if required by the Securityholder, copies of the policies;
- (d) duly and punctually pay all amounts necessary to maintain all such insurance and, if so required by the Securityholder, deliver to the Securityholder receipts for those amounts;
- (e) not do or permit to be done or to occur anything that prejudices or may prejudice any insurance over the Collateral; and
- (f) deliver to the Securityholder at the time of execution of the Security Agreement, annually thereafter, and at such other times as the Securityholder may require, a certificate from the relevant insurers listing all insurance affecting the Collateral, confirming that the provisions of this clause 5.9 have been complied with in full and giving such details in respect of such insurance as the Securityholder may require.

- 5.10 Application of Insurance Proceeds:** Any moneys recoverable under any insurance on the Collateral or any part thereof shall be applied at the option of the Securityholder either in or towards replacement or reinstatement of the Collateral, or in or towards satisfaction of the Moneys Secured.

FINANCIAL INFORMATION

- 5.11 Disclosure of Financial Information:** The Securitygiver shall: without limiting the obligations of the Securitygiver under any Agreement, deliver to the Securityholder:
- (a) a copy of its current constitution (if any) immediately after entering into the Security Agreement, and thereafter send to the Securityholder a copy of any new constitution adopted by it, any alteration or revocation of its existing constitution or any court order altering its

constitution (if any), in each case no later than the date on which notice of the same is delivered to the Registrar of Companies for registration;

(b) as soon as practicable after the last day of each of its financial years (and in any event within 90 days), the balance sheet and profit and loss account of the Securitygiver, and (if applicable) the consolidated balance sheet and profit and loss account of the Securitygiver and the Subsidiaries, each duly audited (unless the Securityholder agrees that they need not be audited), and the cash flow forecasts of the Securitygiver and (if applicable) the Subsidiaries, in each case made up as at the last day of that financial year;

(c) as soon as practicable after the last day of the first half of each of its financial years (and in any event within 60 days), the unaudited balance sheet and profit and loss account of the Securitygiver, and (if applicable) the unaudited consolidated balance sheet and profit and loss account of the Securitygiver and the Subsidiaries, in each case made up as at the last day of that half year;

(d) from time to time, within 7 days after request by the Securityholder, such information about the business, assets and financial condition of the Securitygiver and (if applicable) the Subsidiaries, as the Securityholder may require; and

(e) promptly, copies of all notices and related documents issued by the Securitygiver to its shareholders (if applicable).

5.12 Accounting Principles: The Securitygiver shall ensure that the financial information provided under clause 5.11 is prepared in accordance with accounting principles and practice generally accepted in New Zealand, consistently applied except to the extent disclosed in those accounts, and gives a true and fair view of the financial position of the Securitygiver and (if applicable) the Subsidiaries for the period ending on the date to which those accounts are prepared. Where required by the Securityholder, the financial information shall be certified as correct by a director, trustee, manager or authorised representation, as applicable.

COVENANTS

5.13 Positive Covenants: The Securitygiver shall:

(a) Maintain Collateral: maintain and keep the Collateral in good working order and condition and protected against theft, loss or damage, and promptly rectify defects in the Collateral;

(b) Comply with Terms: comply with the terms of all leases, licences or other agreements affecting the Collateral;

(c) Location of Collateral: notify the Securityholder of the location of the Collateral and any part of it when requested by the Securityholder;

(d) Notify Event of Default: on becoming aware of an Event of Default or Potential Event of Default, notify the Securityholder promptly;

(e) Laws: promptly comply with and observe all laws and all requirements and orders of any authority (statutory or otherwise) non-compliance with which might impose some security or liability upon any part of the Collateral or prejudicially affect the security created by this Security Agreement, and promptly apply for and obtain renewals of all leases, licences and authorities which may be necessary or expedient for the carrying on of its business;

(f) Pay Debts: promptly pay and discharge when due all rates, taxes, assessments and outgoings levied, charged, assessed upon or payable in respect of any part of the Collateral, and promptly pay all other debts and liabilities of the Securitygiver when due;

(g) Proceedings: promptly give notice to the Securityholder of the service of any notice adversely affecting any part of the Collateral, or of the commencement of any proceedings adversely affecting any part of the Collateral;

(h) Proceeds: pay all proceeds to the Securityholder in reduction of the Moneys Secured, and must pay or deal with the proceeds in accordance with the directions of the Securityholder;

(i) Deposit Documents: if required by the Securityholder, deposit with the Securityholder:

(i) all documents of title relating to any part of the Collateral, including Investment Securities and Rights;

(ii) a Transfer in relation to Investment Securities or Rights; and

(iii) any document or thing given to secure the payment of money to the Securitygiver;

(j) Entry: permit the Securityholder at all reasonable times by its agents, servants and officers to enter upon any land or premises owned or occupied by the Securitygiver to view and inspect the assets of the Securitygiver and take inventories of those assets, and to inspect and take copies of or extracts from all accounting records and other documents relating in any way to the business of the Securitygiver;

(k) Business: carry on and conduct any business of the Securitygiver in a lawful, proper and efficient manner, and not, without the prior written consent of the Securityholder, change or discontinue the nature of any such business carried on by the Securitygiver.

5.14 Negative Covenants: The Securitygiver shall not:

(a) Relevant Person: make any loan or provide any other financial assistance to any Relevant Person, or enter into any guarantee, indemnity or any other obligation (of whatever nature and whatever called) in respect of the obligations of a Relevant Person, or enter into any transaction with or for the benefit of a Relevant Person except on proper commercial terms that would apply between parties dealing at arm's length;

(b) No Disposal and Charges: except as may be permitted by clause 5.6, sell, lease or dispose of, or permit the sale, lease or disposal of, any Collateral, or permit to subsist any other security in relation to any Collateral (other than, in relation to Personal Property, a purchase money security interest);

(c) No Accession: allow any Collateral to become an accession to any property that is not Collateral, or to be affixed to any land;

(d) No Name Change: change the Securitygiver's name without first notifying the Securityholder of the new name not less than 7 days before the change takes effect;

(e) Not Remove Collateral: move, or permit the removal of, any of the Collateral outside New Zealand, except for inventory sold or leased pursuant to clause 5.6;

(f) No Set-off on Accounts Receivable: allow any Accounts Receivable to be subject to any right of set-off, deduction or combination of accounts (other than rights that arise solely by operation of law).

5.15 Securitygiver a Company: The Securitygiver, where a company, shall:

(a) Capital: not reduce the Securitygiver's paid-up capital without the prior written consent of the Securityholder;

(b) Uncalled Capital: upon demand, procure any uncalled capital of the Securitygiver to be called up by such instalments as the Securityholder directs and to be applied in or towards payment of the Moneys Secured or such other manner as the Securityholder may in writing agree, and not call up or allow to be called up or paid any part of its uncalled or unpaid capital without the prior written consent of the Securityholder;

(c) No Reduction of Liability: not, without the prior written consent of the Securityholder, permit or allow the liability of any shareholders in the Securitygiver to be reduced or released, or for any funds, reserves or property of the Securitygiver to be applied or used directly or indirectly in reduction or extinction of any such liability;

(d) Subsidiaries: following execution of the Security Agreement in respect of any Subsidiary in existence at the date of the Security Agreement, and following the acquisition or formation of any Subsidiary, on demand by the Securityholder forthwith procure that Subsidiary to:

(i) execute and deliver to the Securityholder a guarantee in such form as the Securityholder may require, guaranteeing payment by the Securitygiver of the Moneys Secured;

- (ii) execute and deliver to the Securityholder a debenture in the same form (with all necessary modifications) as the Security Agreement; and
- (iii) deliver to the Securityholder such resolutions, documents, or other evidence as the Securityholder may require in order to be satisfied as to the validity of that guarantee and debenture;
- (e) Acquisition of Subsidiary:** promptly give notice to the Securityholder of the acquisition or formation of any Subsidiary, and any change in the shareholding of a Subsidiary, that effects or may effect a change in its control or cause it to cease to be a Subsidiary;
- (f) Constitution:** not change its constitution without the prior written consent of the Securityholder; or
- (g) Control on Certain Transactions:** not, without the prior written consent of the Securityholder:
 - (i) enter into a major transaction as defined in section 129 of the Companies Act 1993;
 - (ii) purchase or otherwise acquire shares issued by the Securitygiver;
 - (iii) exercise any option to redeem shares issued by the Securitygiver;
 - (iv) provide financial assistance to any person directly or indirectly, in connection with the purchase of shares issued by the Securitygiver or by its holding company (as defined in section 5 of the Companies Act 1993);
 - (v) amalgamate with any other company; or
 - (vi) declare or authorise any dividend or make any advance or distribution to its shareholders or directors.

REPRESENTATIONS AND WARRANTIES

5.16 Representations and Warranties: The Securitygiver represents and warrants to the Securityholder that:

- (a) it is a Securitygiver duly and validly existing under the laws of New Zealand, capable of suing and being sued, and has the power and authority to own its assets and to conduct its business as at present;
- (b) it has the power to enter into, exercise its rights and perform and comply with its obligations under the Security Agreement and the Relevant Documents;
- (c) it has taken all necessary action to authorise the entry into, execution and delivery of the Security Agreement and the Relevant Documents and the performance of all obligations expressed in the Security Agreement and the Relevant Documents to be binding on it;
- (d) the Security Agreement and the Relevant Documents constitute its legal, valid and binding obligations, enforceable in accordance with their terms;
- (e) neither the execution and delivery of the Security Agreement and the Relevant Documents nor the performance or observance by it of its obligations under the Security Agreement and the Relevant Documents violates, conflicts with, or results in a breach of, any terms, conditions or provisions of, or constitutes a default under, any law or court order by which it is bound, or any agreement to which it is a party;
- (f) all consents required in terms of any applicable law, document or agreement to the granting of the Security Agreement and Relevant Documents have been obtained;
- (g) it is not party to any litigation or arbitration, nor subject to any administrative proceeding or investigation, the outcome of which might have a material adverse effect on its business, nor is any such litigation, arbitration or administrative proceeding or investigation threatened;
- (h) all financial information given, or to be given, to the Securityholder in respect of it and each Subsidiary does, and will, fairly and accurately represent their financial position at the date as of which such financial information is given;

- (i) it is the lawful and sole owner of the Collateral;
- (j) except as disclosed to and agreed to by the Securityholder, there are no other security interests over or in relation to the Collateral; and
- (k) no other Event of Default or Potential Event of Default has occurred.

5.17 Repetition: Each of the representations and warranties in this clause 5.16 will be deemed to be repeated as at the first day of each and every month as though made on, and as of, each such date.

PERFORM SECURITYGIVER'S OBLIGATIONS

5.18 Securityholder May Perform Securitygiver's Obligations If:

(a) the Securitygiver fails to perform any of its obligations contained or implied in the Security Agreement; or

(b) the Securityholder considers it necessary or desirable to perform any obligation, pay any money, incur any expense or take any action (whether in the course of taking possession of or selling or preserving or protecting the Collateral, or in the discharge of the Securitygiver's obligations under the Security Agreement, or otherwise) in order to protect its interests under the Security Agreement (which includes the lodging of a caveat against land);

then the Securityholder may do so at its discretion. The money paid or expense incurred by the Securityholder, together with any other liability or expense incurred by the Securityholder in relation to the Collateral, shall be repayable by the Securitygiver to the Securityholder upon demand and shall bear interest from the time when the money was paid or the expense incurred at the default interest rate specified in the applicable Agreement.

EVENTS OF DEFAULT

5.19 The Moneys Secured (even though all or any part of it may be represented by any instrument, whether negotiable or otherwise, that is not yet due) will become immediately due and payable and the Securityholder may exercise its powers of enforcement of the Security Agreement on the occurrence of any of the following events:

(a) **Pay Moneys Secured:** the Securitygiver fails to pay all or part of the Moneys Secured on its due date for payment or upon demand, if payable upon demand; or

(b) **Breach of Obligations:** the Securitygiver commits any breach of, or defaults in the due performance or observance of, any of the Securitygiver's obligations contained or implied in the Security Agreement or in any Relevant Document, other agreement, guarantee or obligation between the Securityholder and the Securitygiver and such breach or omission remains unremedied for more than seven (7) days; or

(c) **Other Indebtedness:** any other indebtedness of the Securitygiver or of any Relevant Person is not paid when due or becomes (or becomes capable of) being rendered due and payable prior to its stated maturity by reason of a breach or event of default (however described); or

(d) **Relevant Documents:** there is any breach of, or default in, the due performance or observance of any obligation of any person (other than the Securityholder) contained or implied in any Relevant Document; or

(e) **Guarantee:** any guarantor of the Securitygiver's liability to the Securityholder for all or part of the Moneys Secured gives notice determining or reducing that guarantor's liability; or

(f) **Distress:** a distress, execution, attachment or other legal process is claimed, levied or issued against any part of the Collateral, or a judgment of any court against the Securitygiver remains unsatisfied for more than seven (7) days; or

(g) **Receiver:** the Securitygiver requests the Securityholder to appoint a Receiver over any of the Collateral or a Receiver is appointed over, or an encumbrancer takes possession of or exercises its powers of enforcement in respect of, any of the Collateral, or if a liquidator, provisional liquidator, trustee, inspector appointed under any companies or securities legislation or similar

officer, is appointed in respect of the Collateral or any part of any other assets of the Securitygiver or of any Relevant Person or application is made for the appointment of any of the officials referred to in this subclause; or

(h) Insolvent: the Securitygiver or any Relevant Person is declared or becomes bankrupt or insolvent, is unable to, or is deemed or presumed unable to pay its debts when due; or calls a meeting of, or enters into dealings with any of, its creditors with a view to avoiding, or in expectation of, insolvency; or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors; or stops or suspends or threatens to stop or suspend payments to its creditors or proposes a reorganisation, moratorium or other administration involving any of them; or

(i) Change in Control, Statutory Manager, Dissolution: if the Securitygiver is not a natural person;

(i) without the prior written consent of the Securityholder, there is a change in the control of the Securitygiver or any Relevant Person; or

(ii) any step is taken to appoint, or with a view to appointing, a statutory manager (including the making of any recommendation in such regard by the Securities Commission) under the Corporations (Investigation and Management) Act 1989 in respect of the Securitygiver or any Relevant Person; or the Securitygiver, any Relevant Person or any associated person (as that term is defined in that Act) of any of them, is declared at risk pursuant to the provisions of that Act; or

(iii) an application is made, or proceedings are commenced, or a petition is presented, or a resolution passed, or an order made, for the dissolution of the Securitygiver or any Relevant Person, or if any meeting is convened for the purpose of considering any such petition, resolution or order; or

(j) Other Liability: an order is made requiring the Securitygiver, or any Relevant Person, to pay the whole or part of any or all of the debts of another person or of any claim made in the liquidation of another person; or

(k) Misrepresentation: any representation, warranty or statement made, deemed to be made, or repeated by or on behalf of the Securitygiver in or pursuant to the Security Agreement, or any Relevant Document or otherwise, or any information, or accounts delivered pursuant to clauses 5.11 and 5.12 is or was untrue or incorrect in any material respect when made, deemed made, repeated or delivered; or

(l) Enforcement of Security: any security over any property of the Securitygiver or any Relevant Person is enforced or becomes enforceable; or

(m) Unlawful to Perform: it is or will become unlawful for the Securitygiver or any other person to perform or comply with all or any of its obligations under the Security Agreement or any Relevant Document, or any of them become invalid or unenforceable in whole or in part; or

(n) Insurance: any insurance policy in respect of the Collateral is cancelled by the Securitygiver (without the prior written consent of the Securityholder) or by the insurer; or

(o) Withdrawal of any Authorisation: any authorisation at any time necessary in connection with the Security Agreement, any Relevant Document or the operation of the business of the Securitygiver expires or is revoked, cancelled, withdrawn or modified in a manner unacceptable to the Securityholder or otherwise ceases to remain in full force and effect, and is not replaced by an authorisation acceptable to the Securityholder.

ENFORCEMENT

5.20 Powers: At any time after the occurrence of an Event of Default the Securityholder may (without it being necessary to appoint a Receiver under the Security Agreement or give any prior notice to the Securitygiver, and without prejudice to any other rights, powers or remedies it may have under the Security Agreement or by law):

(a) declare the whole of the Moneys Secured to be due and payable, whereupon they shall immediately become due and payable;

(b) enter upon and take and keep possession of all or part of the Collateral and:

(i) receive and give receipts for the rents and profits of such Collateral until such is sold under the power of sale conferred by this clause or the Moneys Secured have been fully paid;

(ii) carry on any business with the whole or part of the Collateral, for which purpose the Securityholder may, on such terms and in such manner as it thinks fit, employ any persons or acquire any further property or rights (which upon acquisition shall be deemed to become part of the Collateral), or do anything concerning the Collateral which it could do if it were the absolute owner of the Collateral, without being responsible for any loss or damage that may arise or occur as a consequence of such actions;

(iii) pay and discharge the expenses incurred in the exercise of any of such powers, or otherwise in respect of the provisions of the Security Agreement, out of the revenue from or proceeds of the Collateral; and

(iv) raise or borrow any moneys which the Securityholder thinks fit and secure the same with interest by any form of security in priority to, or equally with, or subsequent to, the Moneys Secured, or otherwise;

either with or without taking possession:

(v) sell, call in, collect, and convert into money the whole or any part of the Collateral in such manner and for such consideration as the Securityholder thinks fit. Upon any such sale the Securityholder may sell any part of the Collateral by public auction or tender, or private contract, on such terms as the Securityholder thinks fit, for immediate or deferred consideration, and may buy in or rescind or vary any contract of sale and may re-sell without being responsible for any loss occasioned; or

(vi) lease, licence, bail or otherwise dispose of the whole or any part of the Collateral for such term, at such rental or consideration, and upon and subject to such terms and conditions, as the Securityholder thinks fit;

(vii) collect any unpaid capital, and call up any uncalled capital, of the Securitygiver, where a company;

(viii) as a secured party, cause itself to be the registered holder of any Investment Securities or person entitled to Rights and complete and present any Transfer; and

(ix) compromise and effect compositions.

5.21 Acts Valid: All sales and things authorised by clause 5.20 will be as valid and effective as if done by the Securitygiver itself. Further, the Securityholder will be accountable for only so much of the money as is actually received by the Securityholder resulting from any sale or disposition. The Securitygiver will remain liable for any Moneys Secured in excess of the amount of money actually received by the Securityholder.

5.22 Securityholder or Manager: The power of sale and other rights, powers and remedies conferred upon the Securityholder or any Receiver by the Security Agreement or by law may be exercised or enforced by the Securityholder, or by any Manager or authorised person on behalf of the Securityholder.

APPOINTMENT OF RECEIVER

5.23 Power to Appoint Receiver: At any time after the occurrence of an Event of Default the Securityholder may (whether or not it has exercised any other power) appoint in writing any person or persons (whether an officer or officers of the Securityholder or the Securitygiver or not) to be Receiver of the whole or any part of the Collateral. A Receiver shall be the agent of the Securitygiver, and the Securitygiver alone shall be responsible for the acts and defaults of the Receiver. The Securityholder may remove any Receiver and may appoint a new Receiver in place of a Receiver who has been removed, retired or died, or in addition to a Receiver already appointed.

5.24 Joint and Several: If the Securityholder appoints two or more persons as Receiver, then unless the appointment expressly states otherwise, those persons shall be deemed to have been appointed, and be entitled to act, jointly and severally.

5.25 Powers: Every Receiver so appointed will (in addition to statutory powers vested in him by law) have power, subject to any limitations contained in such appointment, to do all or any of the following things:

- (a) take immediate possession of the Collateral (subject only, for land, to sections 118 and 119 of the Property Law Act 2007);
- (b) carry on any business of the Securitygiver and, if necessary, borrow any money that the Receiver may require for that purpose and secure that money with interest by mortgage or charge in priority to, *pari passu* with or subsequent to the Moneys Secured;
- (c) carry out all repairs and complete all insurances and do all other acts that the Securitygiver might do in the ordinary course of its business, including the protection and improvement of the Collateral;
- (d) appoint, discharge, and if thought fit, reappoint managers, officers and agents at such remuneration and on such terms as the Receiver thinks fit;
- (e) sell any part of the Collateral in such manner and on such terms as the Receiver thinks fit;
- (f) let or bail all or any part of the Collateral for such term, at such rent and on such other terms as the Receiver thinks fit, and vary and surrender leases of any part of the Collateral;
- (g) collect all or any Accounts Receivable, and exercise all powers of the Securitygiver under any agreement entered into by the Securitygiver, or in respect of which the Securitygiver has any benefit or rights, in relation to any Account Receivable;
- (h) compromise, settle or submit to arbitration any disputes or other matters which may arise in connection with the business of the Securitygiver or the Collateral;
- (i) bring, take, prosecute, defend or compromise such proceedings as the Receiver considers necessary or expedient in relation to the Collateral or the business of the Securitygiver, and use the name of the Securitygiver in those proceedings;
- (j) give valid receipts for all money and execute and do all assurances, instruments, acts and all other matters and things that the Receiver thinks proper for realising all or any part of the Collateral;
- (k) execute in the name and on behalf of the Securitygiver all mortgages, transfers, deeds and other assurances and documents necessary to vest in any purchaser, mortgagee or other person the whole or any of the Collateral and enter into all documents in relation to the powers given to the Receiver as are necessary or expedient in the opinion of the Receiver;
- (l) use the common seal (if applicable) or name of the Securitygiver for all or any of the purposes set out in the Security Agreement (including those in clauses 5.23 – 5.31) or in any legal proceeding, and assent to any modification of any subsisting contract or arrangement in respect of the Securitygiver's business or the Collateral;
- (m) make calls upon the shareholders and contributories of the Securitygiver, where a company;
- (n) delegate, with the prior written consent of the Securityholder, to any person by way of power of attorney or other instrument, all or any of the powers and discretions vested in the Receiver by virtue of the Security Agreement or by law, and remove and discharge that delegate and appoint another;
- (o) act as a joint or common Receiver with any other receiver appointed by any other Securityholder in relation to the Securitygiver or any part of the Collateral;
- (p) obtain, transfer and deal with any licence relating to the Collateral or the business of the Securitygiver;
- (q) generally do, and cause to be done, any act, matter or thing affecting the business and the Collateral that the Receiver might do or cause to be done if the Receiver had the absolute beneficial ownership of the Collateral and carried on the business of the Securitygiver for the Receiver's own benefit without being answerable for any loss or damage.

5.26 Third Party: No person dealing with the Securityholder or any Receiver or agent of any Receiver will be concerned to enquire:

- (a) whether or not the security granted to the Securityholder has become enforceable;
- (b) whether the powers that the Securityholder or the Receiver or its agents are purporting to exercise have become exercisable;
- (c) whether any Moneys Secured remains due or unpaid;
- (d) as to the necessity for, or regularity of, any terms or conditions upon which any sale, lease, mortgage, or other transaction is made;
- (e) as to the application of any money paid to the Securityholder, any Receiver or agent of any Receiver.

The remedy of the Securitygiver in respect of any actionable impropriety or irregularity in connection with the powers of the Securityholder or any Receiver or agent of any Receiver will be in damages only.

5.27 Possession: The Securityholder may at any time give up possession of all or any of the Collateral.

5.28 Not Liable: Neither the Securityholder nor any Receiver will be liable to account:

- (a) as mortgagee in possession or for anything except actual receipts or be liable for any loss on realisation or for any loss or accident occurring in any business or operation carried on, or for any negligence, default or omission for which a mortgagee in possession might be liable;
- (b) for any loss that may occur in or as a result of the exercise, purported exercise or non-exercise of any of their rights, powers or remedies. Any loss will, where borne by the Securityholder or a Receiver, form part of the Moneys Secured.

5.29 Application of Proceeds: All moneys received by the Securityholder or a Receiver, whether in the exercise of the powers of the Securityholder or the Receiver or otherwise in relation to Personal Property, shall be applied in accordance with the provisions of the PPSA. All moneys received by the Securityholder or Receiver, whether in the exercise of the powers of the Securityholder or the Receiver or otherwise in relation to Non-PPSA Property, shall (subject to the claims of all secured and unsecured (including preferential) creditors (if any) ranking in priority over the Non-PPSA Property) be applied:

- (a) firstly, in payment of all costs, charges and expenses (including all legal costs as between solicitor and client) of and incidental to the exercise of the powers of the Securityholder or the Receiver (including the remuneration of the Receiver, but subject to any direction made by any court in that respect);
- (b) secondly, in payment to the Securityholder of the Moneys Secured in such manner and order as the Securityholder determines;
- (c) lastly, (but subject to clause 5.49) in payment of any surplus to the Securitygiver or other person entitled to that surplus.

5.30 Contingent Liabilities: If any part of the Moneys Secured is contingently owing or not yet owing at the time of an application of money under clause 5.20 or clause 5.29, the Securityholder may deposit an amount not exceeding that part in an interest-bearing deposit account on such terms and conditions as the Securityholder thinks fit with any person (including the Securityholder or any of its related companies) until that part becomes actually payable or ceases to be contingently owing. At that time the Securityholder may retain for its own account the amount that is then actually payable to it and deal with any balance in accordance with clause 5.20 or clause 5.29, as the case may be.

5.31 Remuneration of Receiver: The Securityholder may fix the remuneration of a Receiver at an amount, or on a basis, agreed between the Securityholder and the Receiver or, failing agreement, at an amount, or on a basis, determined by the Securityholder.

APPOINTMENT OF INVESTIGATING AGENT

- 5.32 Appointment:** At any time while any Moneys Secured are outstanding under the Security Agreement, the Securityholder may appoint, in writing signed by the Securityholder or the Securityholder's representative, an Investigator.
- 5.33 Terms of Appointment:** Every Investigator will be appointed for such period and at such remuneration (to be paid by the Securitygiver) as the Securityholder determines. In addition, the Securityholder may in the same manner remove any Investigator so appointed and appoint another or others in substitution. Where the Securityholder elects to appoint more than one person as Investigator, that appointment may, at the discretion of the Securityholder, be either joint or joint and several.
- 5.34 As Agent:** Every Investigator will be the agent of the Securitygiver and will not be deemed to be a manager, director or officer of the Securitygiver and the Securitygiver alone will be responsible for the Investigator's acts and defaults.
- 5.35 Powers:** Every Investigator will have the power (subject to any limitation contained in the terms of appointment) to investigate and inquire into the financial and business position of the Securitygiver, including:
- (a) without notice, to enter upon any land, buildings or property occupied by the Securitygiver or forming part of the Collateral, to inspect their state and condition, and to take inventories of all or part of the Collateral and to inspect and take copies or extracts from the records of the Securitygiver and any other documents relating in any way to the business transactions or financial position of the Securitygiver;
 - (b) to make inquiries from any director, officer or employee of the Securitygiver concerning any business, financial or other matter or thing whatever regarding the Securitygiver and the Collateral and to make inquiries from all contractors, sub-contractors, customers, debtors, creditors or any other business associate of the Securitygiver regarding the Securitygiver's business and financial position;
 - (c) to make inquiries from the Securitygiver's solicitors, accountants, sharebrokers or other consultants or advisers relating to the Securitygiver and to inspect and take copies of or extracts from any file, contract, document or other matter held by such advisers or consultants relating in any way to the Securitygiver;
 - (d) to investigate and make such other inquiry as the Investigator thinks necessary to ascertain whether the Securitygiver is in, or is about to go into, default of any of its obligations or covenants under the Security Agreement, any Relevant Document, or under any other security given by the Securitygiver.
- 5.36 Securitygiver Obligations:** The Securitygiver must procure and ensure that the Securitygiver and all persons having possession or control of records of the Securitygiver or of any other information relating to the Collateral or of the Securitygiver's business transactions and financial affairs fully co-operates with and provides the Investigator with proper access to such Securitygiver records and other information. The Securitygiver must in particular:
- (a) ensure that all of the foregoing is delivered to the Investigator immediately upon request;
 - (b) complete any authorities that the Investigator may require in the exercise of the Investigator's powers so as to permit the Investigator to make the fullest investigation regarding the affairs of the Securitygiver without restriction; and
 - (c) ensure that the Investigator has full access to any land, building or property occupied by the Securitygiver, or forming part of the Collateral, on which any part of the Collateral is kept.
- 5.37 Reports:** The Securitygiver authorises the Securityholder to require the Investigator to provide to the Securityholder any reports or information requested by the Securityholder.

SET-OFF

5.38 Authority to Set Off: The Securitygiver authorises the Securityholder to apply (without any prior notice or demand) any moneys owed or to become owing by the Securityholder to the Securitygiver in or towards satisfaction of the Moneys Secured. If at any time any amount is contingently due or any amount due is not quantified, the Securityholder may retain and withhold payment of any such amount owed to the Securitygiver, and the payment of any interest or other moneys thereon, pending that amount becoming due and/or being quantified. The Securityholder may set off the maximum liability that may at any time be or become owing to it by the Securitygiver, or partly the one and partly the other, and in each case without any prior notice or demand. For the purposes of this clause the Securityholder is authorised to break any term deposit and to use all or any part of any such amount owed to the Securitygiver to buy such other currencies as may be necessary to effect those applications. The Securityholder shall not be obliged to exercise any of its rights under this clause, which shall be without prejudice and in addition to any other rights under any Relevant Document and any right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by law, contract or otherwise).

FURTHER ASSURANCE AND ATTORNEY

5.39 Further Assurances: The Securitygiver shall execute and deliver to the Securityholder all such transfers, assignments, securities, instruments, and other deeds or documents, and shall do all such things, as may be necessary or as the Securityholder may require to:

- (a) perfect the Securitygiver's title to the Collateral in whole or part; or
- (b) perfect the security intended to be created by the Security Agreement, including permitting the Securityholder to take possession of the Collateral for that purpose; or
- (c) more satisfactorily secure to the Securityholder the Moneys Secured, including the granting of fixed or specific securities (including a mortgage of any land) in such form and on terms as required by the Securityholder; or
- (d) transfer to or vest in the Securityholder (or any purchaser from the Securityholder or a Receiver) the whole or any part of the Collateral; or
- (e) facilitate the realisation of the whole or any part of the Collateral; or
- (f) exercise all or any of the rights, powers and remedies conferred on the Securityholder or a Receiver; or
- (g) secure to the Securityholder the full benefit of the provisions of the Security Agreement.

5.40 Appointment of Attorney: The Securitygiver irrevocably appoints the Securityholder, every Manager and every Receiver, severally to be the attorney of the Securitygiver (each an "Attorney") to in the name of and as the act of the Securitygiver and at its expense in all things, do anything which the Securitygiver agrees to do under the provisions of the Security Agreement or which, in the Attorney's opinion, is necessary or expedient to give effect to any right, power or remedy conferred on the Securityholder or a Receiver by the Security Agreement, by law or otherwise (including executing deeds and instituting, conducting and defending legal proceedings). Each Attorney may:

- (a) delegate its powers (including this power of delegation) to any person for any period, and revoke a delegation; and
- (b) exercise or concur in exercising its powers even if the Attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.

5.41 Ratification: The Securitygiver hereby ratifies and agrees to ratify anything done by its Attorney or any delegate in accordance with this clause.

ASSIGNMENT

5.42 Securityholder May Assign: Subject to any provision to the contrary in any Relevant Document that is expressed to override this clause, the Securityholder may assign and transfer all or any of its rights and obligations under the Security Agreement to any person or persons and may disclose to a potential assignee or any other person with whom it may wish to enter into contractual relations in connection with the Security Agreement or any Relevant Document, such information about the Securitygiver and its Subsidiaries as shall have been made available to the Securityholder generally.

5.43 Securitygiver Cannot Assign: The Securitygiver may not assign and transfer any of its rights and obligations under the Security Agreement without the prior written consent of the Securityholder.

NOTICES

5.44 In Writing: Each notice, request, demand or other communication to be given or made to either party under the Security Agreement or these terms and conditions shall:

- (a) be given or made in writing;
- (b) be signed by the sender or an authorised officer of the sender;
- (c) served upon or delivered to the recipient personally, or sent by post to the recipient at the recipient's last known place of residence, place of business, or in the case of a company to its registered office, and marked for the attention of the person (if any) from time to time designated by that party to the other for the purposes of the Security Agreement.

5.45 No electronic service of notices: The following provisions apply in respect of electronic service of notices:

- (a) The Securityholder does not consent to receive notices under the Security Agreement or pursuant to ss 189 and 188 of the PPSA or the Credit Contracts and Consumer Finance Act 2003 in electronic form or by means of electronic communication (including facsimiles and e-mail).
- (b) The Securitygiver and Guarantor consent to receive notices under the Security Agreement in electronic form or by means of electronic communication. The Securitygiver and Guarantor also consent to disclosure required by the Credit Contracts and Consumer Finance Act 2003 being made by the Securityholder in electronic form or by means of electronic communication as provided in any Agreement.

5.46 Receipt of Notice: A notice, request, demand or other communication shall be deemed to have been received:

- (a) in the case of personal delivery, on the date of that delivery;
- (b) in the case of a letter posted by mail, on the second Business Day after posting.

INDEMNITIES/NO MARSHALLING

5.47 Indemnity: The Securitygiver indemnifies the Securityholder and each Receiver on demand to the fullest extent permitted by law, against any cost, loss, expense (including all legal expenses on a solicitor and own client basis), other liability (including loss of profit or of margin) and any penalty (including any fine or statutory impost) that the Securityholder certifies as having been sustained or incurred as a result of or in connection with:

- (a) the occurrence or continuance of any Event of Default;
- (b) anything done or omitted or purported to be done or omitted by the Securityholder or a Receiver in the exercise or purported exercise of its rights under the Security Agreement or at law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment),

- (c) a defect of the Securitygiver's title to any property that is, or that appears to be, Collateral;
- (d) any claim, demand, action or legal proceeding made or taken by any person (including the Securitygiver) against the Securityholder or a Receiver that in any way relates to the whole or any part of the Collateral (including, without limitation, the legal costs incurred by the Securityholder or a Receiver (on a solicitor and own client basis) in defending any such claim, demand, action or legal proceeding);
- (e) any amount payable by the Securitygiver to the Securityholder not being paid when due (whether by acceleration or otherwise), or being received or recovered by the Securityholder other than on its due date;
- (f) any failure on the part of the Securitygiver to utilise any financial accommodation (in whole or in part) on the date designated for its utilisation;
- (g) any bill of exchange drawn or accepted for the accommodation of the Securitygiver, to which the Securityholder is party;
- (h) any bond, guarantee, letter of credit or analogous assurance or undertaking issued by the Securityholder at the request of the Securitygiver;
- (i) the Securityholder giving credit or performing any other service for the Securitygiver; and
- (j) any breach of any obligation by the Securitygiver or a Relevant Person under the Security Agreement or a Relevant Document or any law.

5.48 No Marshalling: The Securityholder is not required to marshal, enforce or apply under or appropriate, recover or exercise:

- (a) any security interest, guarantee or other entitlement held at any time by it; or
- (b) any moneys or assets which it at any time holds or is entitled to receive, before the Security Agreement is enforced.

CONTRACTING OUT OF PPSA RIGHTS

5.49 To the extent permitted by law, the Securitygiver:

- (a) Agrees that if, at any relevant time, the Securityholder does not at that time have priority over all other secured parties in relation to any Personal Property, then the Securitygiver and the Securityholder will, for purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section. Nothing in this clause 5.49(a) shall have the effect of limiting the Securityholder's rights under clause 5.20;
- (b) Agrees that nothing in sections 112, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to the Security Agreement, or the security interest under the Security Agreement; and
- (c) Waives the Securitygiver's right to:
 - (i) receive a statement pursuant to section 116 of the PPSA;
 - (ii) recover any surplus pursuant to section 119 of the PPSA;
 - (iii) object to the Securityholder's proposal to retain any Personal Property under section 121 of the PPSA;
 - (iv) not have goods damaged when the Securityholder removes an accession under section 125 of the PPSA;
 - (v) receive notice of the removal of an accession under section 129 of the PPSA;
 - (vi) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;
 - (vii) subject to clause 5.58, redeem any Personal Property under section 132 of the PPSA;

(viii) receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by the Security Agreement.

GENERAL

- 5.50 Costs and Expenses:** The Securitygiver shall pay to the Securityholder upon demand all costs and expenses (including legal fees on a solicitor and own client basis) incurred or charged by the Securityholder in connection with:
- (a) the negotiation, preparation, execution, delivery, administration and release of the Security Agreement and each other Relevant Document;
 - (b) the enforcement or preservation of, or the attempted enforcement or preservation of, any rights under the Security Agreement and each other Relevant Document, or in suing for or recovering the Moneys Secured;
 - (c) the granting of any waiver or consent, or any variation or discharge of the Security Agreement or any other Relevant Document, required by the Securitygiver (including a demand to register a financing change statement).
- 5.51 Taxes:** The Securitygiver shall pay all stamp, documentary, transaction, registration and other like duties and taxes (including fines, interest and penalties), if any, which may be payable or determined to be payable in connection with the execution, delivery, registration, performance, enforcement or variation of the Security Agreement and each other Relevant Document, and shall indemnify the Securityholder against all liabilities with respect to or resulting from any delay or omission to pay any such duty or taxes.
- 5.52 Partial Invalidity:** If at any time any provision of the Security Agreement or any other Relevant Document is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability shall not affect the ability of the Securityholder to enforce the provisions (or, as the case may be, the remaining provisions) of the Security Agreement or each other Relevant Document, nor shall such affect or impair the legality, validity or enforceability of those provisions under the law of any other jurisdiction.
- 5.53 Waiver:** No failure on the part of the Securityholder to exercise, and no delay on its part in exercising, any right, power or remedy under the Security Agreement or a Relevant Document shall operate as a waiver of such right, power or remedy, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- 5.54 Remedies Cumulative:** The rights, powers and remedies provided in the Security Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 5.55 Survival of Provisions:** The obligations of the Securitygiver contained in the Security Agreement shall survive the repayment of the Moneys Secured and the release of the Security Agreement. Each indemnity shall constitute a continuing obligation of the Securitygiver that is separate and independent from its other obligations under the Security Agreement and each other Relevant Document. Each indemnity shall apply irrespective of any indulgence granted by the Securityholder and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under the Security Agreement or any judgment or order.
- 5.56 Release:** The Securityholder shall not be obliged to execute or deliver a release of the Security Agreement or the charge created by the Security Agreement unless:
- (a) the Securitygiver has paid to the Securityholder all of the Moneys Secured;
 - (b) the Securityholder is satisfied that no further moneys may become payable by the Securitygiver to the Securityholder in the future arising out of any Agreement entered into, or matter occurring, before the date of release; and
 - (c) the Securityholder is satisfied that no payment made or to be made by the Securitygiver may be voided, or required to be repaid by the Securityholder, under any law relating to insolvency.

- 5.57 Reinstatement:** If any payment received or recovered by the Securityholder, a Receiver, or any other person on behalf of the Securityholder is or may be avoided, whether by law or otherwise, then (notwithstanding that the Securityholder may have signed a release pursuant to clause 5.56):
- (a) the payment will be deemed not to have affected or discharged the liability of the Securitygiver under the Security Agreement or any other security given by the Securitygiver in favour of the Securityholder, and the Securityholder and the Securitygiver to the maximum extent permitted by law will be restored to the position in which each would have been if that payment had not been received or recovered; and
 - (b) the Securityholder will be entitled to exercise all rights which the Securityholder would have been entitled to exercise if that payment had not been received or recovered.
- 5.58 Redemption:** The Securitygiver may (unless otherwise specified in an Agreement or unless the Securitygiver has otherwise agreed in writing) redeem the Collateral by tendering to the Securityholder in cleared funds an amount certified by the Securityholder as being equal to the Moneys Secured as at the date the amount is tendered, after the occurrence of an Event of Default, but before the Securityholder:
- (a) sells any Collateral; or
 - (b) is deemed to have taken any Collateral in satisfaction of the Securitygiver's obligations under the Security Agreement.
- 5.59 No Merger:** The Securityholder's right to payment of any part of the Moneys Secured (including under any negotiable instrument or Agreement) shall not merge in the Securitygiver's obligation to pay that part under the Security Agreement. The Securityholder may demand payment of any part of the Moneys Secured, and may exercise its rights, powers and remedies under the Security Agreement, whether or not a negotiable instrument, security, contract or other obligation relating to that part is still current or has not fallen due.
- 5.60 Subordination:** Nothing in the Security Agreement (including without limitation clause 5.6) will be construed or interpreted as:
- (a) a consent by the Securityholder to any property that is not Personal Property becoming an accession to any Personal Property that is part of the Collateral;
 - (b) a consent by the Securityholder to any security interest attaching to or any charge or security interest being created in, any Collateral; or
 - (c) an agreement to subordinate the security interest or the charge constituted under the Security Agreement;
- 5.61 Certificate:** The certificate of the Securityholder as to any amount or fact, which might reasonably be expected to be within the Securityholder's knowledge shall be prima facie evidence of that amount or fact.
- 5.62 Consents:** The Securityholder or a Receiver may give or withhold an approval or consent, conditionally or unconditionally, and in the absolute discretion of the Securityholder or Receiver.
- 5.63 Governing Law:** The Security Agreement shall be governed by and construed in accordance with the laws of New Zealand.
- 5.64 Court Proceedings:** The parties agree that any proceeding in relation to the Moneys Secured and/or any security granted in relation to the Moneys Secured and/or any matter arising out of the Moneys Secured shall be filed and determined in the District Court at Whakatane or the High Court at Rotorua. For the avoidance of doubt the Securitygiver and the Guarantor waive compliance by the Securityholder with any rule requiring the Securityholder to file any proceeding in any other Court.
- 5.65 Conflict:** If there is any conflict between the terms, conditions, and provisions of the Security Agreement and the Credit Contracts and Consumer Finance Act 2003, the provisions of that Act shall prevail.

LIABILITY OF TRUSTEES AND DIRECTORS

5.66 Representations by Trustees: If the Securitygiver is entering into the Security Agreement as the trustee of a trust, then that person represents and warrants to the Securityholder that:

(a) Powers: the Securitygiver has the power under the instrument under which the Securitygiver holds property on trust to enter into the Security Agreement and every other Relevant Document;

(b) Proper purposes: the entry into the Security Agreement and any other Relevant Document is for a proper purpose and for the benefit of the trust under which the party holds property;

(c) Right to be indemnified: the Securitygiver has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of the Securitygiver including the entry into the Security Agreement and each Relevant Document;

(d) All trustees approve or assent: all of the persons who are trustees of the relevant trust have approved and have signed or assented to the Security Agreement and every Relevant Document.

These representations and warranties are in addition to any given by the Securityholder in addition to any other covenants, representations or warranties required of the Securitygiver under the Security Agreement or pursuant to a Trustees Certificate (if any).

5.67 Representations by Directors: If the Securitygiver is entering into the Security Agreement as the director of a company, then the Securitygiver represents and warrants to the Securityholder all matters set out in a Director's Certificate (if any) in addition to any other covenants, representations or warranties required of the Securitygiver under the Security Agreement.

5.68 Full and unlimited personal liability: Unless the Securitygiver has been specified in the Security Agreement or any other Relevant Document to be a limited liability trustee or director (in which case the provisions of clause 5.69 will apply) the Securitygiver has full and unlimited personal liability for the repayment of the Moneys Secured and the compliance with all obligations contained in the Security Agreement and these terms and conditions.

5.69 Limited liability: If the Securitygiver has been specified in the Security Agreement or any other Relevant document to be a limited liability trustee or director, the liability of the Securitygiver is not personal and unlimited but will be limited to an amount equal to the value of the assets of the trust or company under which that party has entered into this instrument as a trustee or director that are (or, but for default would be) available to meet the Securitygiver's liability for the Moneys Secured.

GUARANTOR

5.70 The Guarantor covenants with the Securityholder that:

(a) To pay and comply: The Guarantor will pay all obligations secured by the Security Agreement and these terms and conditions and will comply with all covenants and instruments on the part of the Securitygiver.

(b) Guarantor not a Surety: Although as between the Guarantor and the Securitygiver the guarantee may be a surety only, the Guarantor will in relation to the Securityholder be liable as if the Guarantor were the sole principal debtor and not merely a surety, and these terms and conditions and may be so treated in all respects by the Securityholder.

(c) Events that do not release Guarantor: Neither the liquidation of the Securitygiver nor the giving of time or any indulgence by the Securityholder to the Securitygiver, nor the exercise or non-exercise by the Securityholder of any Securityholder's powers, nor any release or partial release or variation of any Relevant Document, instrument or arrangement with the Securitygiver, without (in any of the above cases) the consent of the Guarantor, will release the Guarantor from liability to the Securityholder.

(d) No release if a surety would be released: Nor will the Guarantor be released by any other act or omission of the Securityholder or any other act, matter or thing which might release one liable as a surety only.

AGREEMENT TO MORTGAGE

PART SIX: INTERPRETATION

6.1 Definitions: In this Part, unless the context otherwise requires:

"The Agreement" means the Agreement to Mortgage signed by the Mortgagor and all schedules and appendices, and reference to The Agreement shall include reference to these terms and conditions incorporated by The Agreement.

"Business Day" means a day on which registered banks are generally open for business in New Zealand.

"Collateral Security" means any other security of any nature granted by any person as security for the payment of the Moneys Secured.

"Loan Agreement" means the loan agreement between the Mortgagor, guarantors as specified in The Agreement, and the Securityholder, pursuant to which the Securityholder has made available financial accommodation to the Mortgagor or to a third party borrower and an agreement to mortgage is granted as security.

"Moneys Secured" means all principal, interest, capitalised interest, default interest, fees, costs, expenses, charges, indebtedness and other moneys of whatever nature owed or payable by the Mortgagor to the Securityholder under The Agreement, the Loan Agreement, any Collateral Security or on any other account whatever.

"Mortgage" means a valid and registerable memorandum of mortgage over the Property in the form required by the Securityholder or its solicitors.

"Mortgagor" means the person or legal entity that has signed The Agreement as the Mortgagor and it includes the successors of the Mortgagor.

"Property" means the property as defined in The Agreement, owned or to be owned by the Mortgagor, and where the property is being purchased by the Mortgagor, shall include all rights and benefits of the Mortgagor under the sale and purchase agreement for such purchase.

"Securityholder" means Xceda Finance Limited or its nominee and it includes the successors and assigns of the Securityholder.

6.2 References: In The Agreement and these terms and conditions, unless the context otherwise requires:

"Agreement" includes a contract, deed, licence, franchise or undertaking (in each case whether oral or written);

"Building law" means all statutes, regulations, legal obligations, regulatory requirements and compliance controls relating to, controlling, or regulating any aspect of buildings, building work, the use of buildings and any change of use of buildings, including, but not limited to, the Building Act 1991, the building code, statutory duties and codes of practice under that Act;

"Charge" includes a fixed or floating charge, mortgage, encumbrance, lien, pledge, hypothecation, trust, finance lease, title retention, "hold back" or "flawed asset" arrangement, or other security interest or arrangement of what ever nature;

"Consent" includes an approval, authorisation, permission, exemption, filing, recording, registration, or other act of similar effect (including any of the foregoing) by or with a governmental agency;

A **"disposal"** and to **"dispose"** of an asset include a sale, gift transfer, lease, bailment or any other kind of disposal of, or the grant of an option or right of first refusal in respect of, a right or interest (legal or equitable) in that asset, or any agreement for any of these;

"Environmental law" means all statutes, regulations, legal obligations, regulatory requirements and compliance controls relating to the environment or to the health, safety or protection of people

or the environment, including but not limited to the Resource Management Act 1991 and the Health and Safety in Employment Act 1992 and the statutory duties, regulatory requirements and compliance controls arising under those Acts;

"Laws" means all applicable statutes, regulations, bylaws, orders in council, judgements and decrees, and includes common or customary law of any relevant jurisdiction and any other measure that has the force of law, and includes any environmental law and building law;

"Or" includes **"and/or"**;

"Person" includes any individual, company, corporation, partnership, joint venture, association, trust, state or agency of state, whether or not having separate legal personality;

"Written" and **"in writing"** include all means of reproducing words in a tangible and permanently visible form, and includes reproduction by facsimile.

6.3 General: Unless otherwise stated or the context otherwise requires, The Agreement and these terms and conditions shall be construed as follows:

(a) headings are inserted for reference only and shall be ignored in construing The Agreement and these terms and conditions. References to clauses, schedules and appendices are references to clauses, schedules and appendices in The Agreement and these terms and conditions;

(b) words referring to one gender include the other genders and singular words include the plural and vice versa;

(c) references to a document are references to that document as varied, amended or novated from time to time;

(d) references to a statute, regulation, order, bylaw or other legislation are references to that statute, regulation, order, bylaw or other legislation as amended, consolidated, re-enacted, substituted or extended from time to time. Reference to a statute includes a reference to all regulations as may be passed under that statute;

(e) references to a party in The Agreement and these terms and conditions include the representatives, successors and permitted assigns of that party; and

(f) where "Mortgagor" includes more than one person, each such person shall be bound jointly and severally by The Agreement.

PART SEVEN: COVENANTS

7.1 Covenants: The Mortgagor shall observe the following covenants:

(a) **Not Charge:** The Mortgagor will not so long as any Moneys Secured remains outstanding charge or otherwise dispose of the Mortgagor's interest in the Property or permit any encumbrances, charges or liens to be registered against the Property without the prior written consent of the Securityholder.

(b) **Loan Agreement:** The Mortgagor will promptly comply with and perform all its covenants and obligations under the Loan Agreement, Collateral Securities and all securities securing the payment of the Moneys Secured.

(c) **Insurance:** The Mortgagor shall so long as any Moneys Secured remain outstanding:

(i) insure and keep insured in the name of the Securityholder and the Mortgagor with an insurer approved by the Securityholder the Property against all risks as reasonably necessary for the protection of the legitimate interests of the Securityholder to insure against (including without limitation earthquake and war damage) for the full replacement value. All moneys received by virtue of any such policy shall be applied, at the option of the Securityholder, either in or towards making good the loss or damage with respect to which such moneys shall have been paid, or in or towards payment of all or any of the Moneys Secured, notwithstanding that the time or times for payment may not have arrived; and

(ii) if requested by the Securityholder, take out and maintain proper and adequate public liability and loss of profits insurance; and

(iii) provide the Securityholder with particulars of all such insurances and to duly and punctually pay all premiums and sums of money necessary to keep on foot those insurances, and if required by the Securityholder to deliver to the Securityholder the receipts for those payments.

(d) Comply with Laws: The Mortgagor will promptly comply with, and will procure compliance by its agents, officers, employees, tenants and lessors, with all laws applicable to it and the Property, including all building laws and environmental laws, and will keep the Property in good order and repair and will pay all rates when due and other outgoings payable in respect of the Property.

(e) Consents: The Mortgagor will obtain, give effect to, exercise, keep current, renew and comply and procure compliance by its agents, officers, employees, tenants and lessors with all resource consents (having the meaning given to that term by the Resource Management Act 1991) and authorisations necessary or desirable in respect of the Mortgagor's continuing business or in respect of land owned or occupied by the Mortgagor.

(f) Provide Copies: The Mortgagor shall promptly upon receipt, and promptly on request by the Securityholder, provide to the Securityholder copies of all building consents, building certificates, code compliance certificates, compliance schedules, annual warrants of fitness and all other notices, applications, consents, demands and requests received or made by the Mortgagor in connection with the Health and Safety in Employment Act 1992 in respect of the land charged by The Agreement.

(g) Mortgagee May Act: The Securityholder shall be entitled, but not obliged, at the cost of the Mortgagor to give all notices, make all communications and applications, complete all works and do all things and take all steps on behalf of the Mortgagor as the Securityholder may in its discretion deem necessary or desirable in order to ensure that the land charged under The Agreement and all buildings and structures on that land comply with the Building Act 1991. The Mortgagor shall on demand pay to the Securityholder the amount of all costs, expenses and liabilities incurred by the Securityholder pursuant to this clause. The Mortgagor hereby irrevocably grants to the Securityholder the right to enter on the land charged by The Agreement, together with its employees, consultants, workmen and contractors to undertake and complete any works which the Securityholder may deem necessary or desirable under this subclause. Notwithstanding anything else in this clause, the Securityholder shall not be entitled to act under this subclause unless the Securityholder has given the Mortgagor not less than 48 hours' notice of the Securityholder's intention to act under this subclause.

(h) Indemnity: The Mortgagor shall indemnify the Securityholder and its agents, officers and employees, and save the Securityholder and its agents, officers and employees harmless from and against all costs, expenses, liabilities, damages, claims and charges (including legal fees and disbursements on a solicitor and own client basis) suffered or incurred by the Securityholder, its agents, officers or employees in connection with:

(i) any failure by the Mortgagor or its agents, officers or employees to comply with the Building Act 1991 or the Resource Management Act 1991; and

(ii) any liability suffered by the Securityholder or its agents, officers, employees, tenants and lessors in connection with being an "owner" as defined under the Building Act 1991 or the Resource Management Act 1991, or any liability otherwise suffered or incurred by the Securityholder or its agents, officers or employees under either or both of those Acts in connection with the land charged by The Agreement.

(i) Purchase Obligations: Where the Mortgagor has entered into a sale and purchase agreement for the purchase of the Property, the Mortgagor shall fully and promptly comply with and perform all obligations upon the Mortgagor under such sale and purchase agreement, and shall take all steps and actions as required to protect its rights and benefits under such sale and purchase agreement.

PARTEIGHT: DEFAULT

- 8.1 Default:** If the Mortgagor defaults in the due performance of and compliance with its obligations under The Agreement and these terms and conditions, or an event of default occurs under the Loan Agreement (as that term is defined in the Loan Agreement), then the Securityholder shall be entitled to exercise all its rights and remedies under The Agreement, these terms and conditions, and the Mortgage.
- 8.2 Indemnity:** The Mortgagor shall indemnify the Securityholder against any loss or liability incurred or suffered by the Securityholder arising out of or as a consequence of the failure by the Mortgagor to perform and comply with its covenants and obligations under The Agreement and these terms and conditions.

PARTNINE: SECURITY

- 9.1 Continuing Security:** The Agreement and the charge created by it shall remain in full force and shall be a continuing security for the Moneys Secured and the performance of The Agreement until a final release of The Agreement shall have been executed by the Securityholder.
- 9.2 Priority maximum amount:** For the purposes of section 92 of the Property Law Act 2007, the maximum amount up to which the sum owing under The Agreement will rank in priority to any subsequent instrument, charge or security interest is the priority sum recorded in The Agreement, together with all interest (whether capitalised or not) and costs of enforcement.
- 9.3 Maximum amount neither waiver or representation:** Stating a maximum amount for the purposes of section 92 of the Property Law Act 2007 does not act:
- (a) as a waiver of the Securityholder's security under The Agreement for so much of the Moneys Secured as may exceed the priority sum; nor
 - (b) as a representation of the total amount of Moneys Secured to be provided by the Securityholder or intended to be secured by The Agreement.

PARTTEN: NOTICES

- 10.1 Sending of Notice:** Each notice, request, demand or other communication to be given or made to either party under The Agreement or these terms and conditions shall:
- (a) be given or made in writing;
 - (b) be signed by the sender or an authorised officer of the sender;
 - (c) served upon or delivered to the recipient personally, or sent by post to the recipient at the recipient's last known place of residence, place of business, or in the case of a company to its registered office, and marked for the attention of the person (if any) from time to time designated by that party to the other for the purposes of the Security Agreement.
- 10.2 No electronic service of notices:** The following provisions apply in respect of electronic service of notices:
- (a) The Securityholder does not consent to receive notices under The Agreement or pursuant to ss 189 and 188 of the PPSA or the Credit Contracts and Consumer Finance Act 2003 in electronic form or by means of electronic communication (including facsimiles and e-mail).
 - (b) The Mortgagor consents to receive notices under The Agreement in electronic form or by means of electronic communication. The Mortgagor also consents to disclosure required by the Credit Contracts and Consumer Finance Act 2003 being made by the Securityholder in electronic form or by means of electronic communication as provided in the Loan Agreement.

10.3 Receipt of Notice: A notice, request, demand or other communication shall be deemed to have been received:

- (a) in the case of personal delivery, on the date of that delivery;
- (b) in the case of a letter posted by mail, on the second Business Day after posting.

PART ELEVEN: GENERAL

- 11.1 Costs:** The Mortgagor will pay all the costs of and incidental to the preparation, stamping and completion of The Agreement, the lodgment of a caveat and its withdrawal, the Mortgage and its registration and discharge (including all legal costs of The Securityholder computed on a solicitor and own client basis) and will pay interest on all such moneys at the default interest rate provided for in the Loan Agreement from the date all such costs or expenses are incurred up to the date of actual payment.
- 11.2 Collateral:** The Agreement shall be collateral with all other mortgages, deeds and securities given by any person whatsoever to secure any of the Moneys Secured and with all documents that evidence the terms of any financial service. The Agreement shall also be collateral with all documents expressed to be collateral with The Agreement. All such securities and documents shall be read and construed together so that a default under one shall constitute a default under all, but so that the Securityholder may exercise its respective rights, powers and remedies either together or separately and in such order as it thinks fit.
- 11.3 Inspection:** The Mortgagor will permit the Securityholder or any persons authorised by the Securityholder, at any time, to inspect and examine the Property, and for this purpose will afford the Securityholder and its agents access to the Property.
- 11.4 Amendment:** The Agreement and these terms and conditions shall not be amended or varied except in writing signed by the parties.
- 11.5 Assignment:** The Mortgagor shall not assign or transfer any of its rights and obligations under The Agreement without the prior written consent of the Securityholder. The Securityholder may assign all of its rights and benefits under The Agreement without the consent of the Mortgagor.
- 11.6 Conflict:** If there is any conflict between the terms, conditions, and provisions of The Agreement and the Credit Contracts and Consumer Finance Act 2003, the provisions of that Act shall prevail.
- 11.7 Law:** The Agreement shall be governed by and construed in accordance with New Zealand law.
- 11.8 Court Proceedings:** The parties agree that any proceeding in relation to the Moneys Secured and/or any security granted in relation to the Moneys Secured and/or any matter arising out of the Moneys Secured shall be filed and determined in the District Court at Whakatane or the High Court at Rotorua. For the avoidance of doubt the Mortgagor and the Guarantor waive compliance by the Securityholder with any rule requiring the Securityholder to file any proceeding in any other Court.
- 11.9 Non-Waiver:** No failure or delay by the Securityholder in exercising, or single or partial exercise, of any right, power, discretion, remedy or privilege in connection with The Agreement shall operate as a waiver of that right, power, discretion or remedy. No course of dealing between the Mortgagor and the Securityholder or any person granting security for the payment of the Moneys Secured shall operate as a waiver of any right, power, discretion, remedy or privilege of the Securityholder.
- 11.10 Partial Invalidity:** Each of the provisions of The Agreement is severable and distinct from the others. If at any time one or more of those provisions is or becomes invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions of The Agreement shall not in any way be affected or impaired.



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