

GENERAL TERMS AND CONDITIONS FOR LOAN FACILITIES

These General Terms form part of the Loan Agreement entered into by the Lender and the Obligors.

1. Term Loan Facility

This clause 1 applies where a Term Loan Facility is made available under a Loan Agreement.

- 1.1 **Availability:** Subject to the conditions precedent in clause 3 having been satisfied and no Event of Default having occurred, the Lender agrees to make the Term Loan Facility available to the Borrower on the terms of the Loan Agreement. The Term Loan Facility will be made available by advancing the Loan in one amount on the Drawing Date.

2. Project Facility

This clause 2 applies where a Project Facility is made available under a Loan Agreement.

- 2.1 **Availability:** Subject to the conditions precedent in clause 3 having been satisfied and no Event of Default having occurred, the Lender agrees to make the Project Facility available to the Borrower on the terms of the Loan Agreement. The Project Facility will be made available by progressive Drawings.
- 2.2 **Drawdown:** The Lender will advance a Drawing to the Borrower on any business day during the Availability Period if:
- (a) the Lender has received from the Borrower a drawing request in writing from the Borrower not later than 10.00 am on the business day before the proposed Drawing Date, which notice will be irrevocable and must specify:
- (i) the amount of the Drawing;
 - (ii) the proposed Drawing Date; and
 - (iii) the bank and account to which the Borrower wishes the Drawing to be disbursed.
- (b) the Drawing would not cause the Loan Limit to be exceeded on the Drawing Date;
- (c) the Lender has received evidence that the Progressive Drawdown Conditions have been satisfied, such evidence to be in form and substance acceptable to the Lender in all respects.

3. Purpose and Conditions Precedent

- 3.1 **Purpose:** The Borrower will utilise the Loan for the Purpose. The Borrower shall not utilise the Loan for any other purpose except with the prior written consent of the Lender.
- 3.2 **Conditions Precedent:** The Lender shall not be obliged to make a Facility available to the Borrower unless the Lender has received, not later than one Business Day before the Commencement Date or such other date as the Lender may in its discretion approve, the following:
- (a) An original copy of Loan Agreement and the Security Documents duly executed by the Obligors;
 - (b) Evidence satisfactory to the Lender that the Borrower's insurance obligations under the Security Documents have been complied with.
 - (c) Any Additional Conditions Precedent specified in the relevant Facility Schedule.

4. Repayment

- 4.1 The Borrower will repay each Loan, together with all interest, fees and costs payable under the Loan Agreement and/or the Security Documents, at the times and in the manner described in the relevant Facility Schedule.

5. Illegality

- 5.1 If, at any time, the Lender determines that it is, or may be, or will become, unlawful, impractical or contrary to any law, treaty or directive of any agency of state or other regulatory, monetary or accounting authority to make, fund or allow to remain outstanding all or part of a Facility, a Drawing or a Loan, or to charge or receive interest at any applicable rate, or to comply with any of its obligations or exercise any of its rights under a Loan Agreement and/or the Security Documents, then, on the Lender notifying the Borrower accordingly:
- (a) the obligation of the Lender to make the Facility, Drawing or Loan available will be cancelled; and
 - (b) where a Facility or part of it has been made available, the Borrower will repay the Moneys Owed either immediately or, if permitted by law, treaty or directive, on the latest date on which payment may be made to avoid a breach of the relevant law, treaty or directive.

6. Prepayment

- 6.1 The Borrower may prepay all or any part of a Loan in full at any time, on the Borrower giving the Lender not less than two business days' notice of its intention to do so. That notice will be irrevocable and will bind the Borrower to make the prepayment specified in it. Any amounts prepaid will not be available to be redrawn.

7. Interest

- 7.1 The Borrower will pay interest on each Loan in arrears on the last day of each applicable Interest Period at the Interest Rate.
- 7.2 Interest shall accrue and be calculated on a daily basis, be calculated on the basis of days elapsed and a 365 day year, and be capitalised if not paid on the due date.
- 7.3 The certificate of the Lender as to the rate or amount of interest payable pursuant to the Loan Agreement shall be conclusive and binding upon the Borrower except in the case of manifest error or fraud.

8. Interest Periods

- 8.1 The first Interest Period applicable to a Loan will start on the Commencement Date and end on the last day of that calendar month. Each successive Interest Period will start on the last day of the preceding Interest Period. Each successive Interest Period will be a period of one month (or such other period as the Lender may agree in writing) except that:
- (a) an Interest Period that commences on a day for which there is no numerically corresponding day in the month that that Interest Period expires will end on the last business day of that month;
 - (b) if an Interest Period would otherwise end on a day that is not a business day, that Interest Period will be extended to end on the next succeeding business day, unless the result of that extension would be to carry the Interest Period over into the next calendar month, in which case the relevant Interest Period will expire on the previous business day;
 - (c) if an Interest Period will extend beyond the Expiry Date there will be a separate Interest Period expiring on the Expiry Date in respect of the amount that is due for repayment on that day, and if (a) or (b) apply, the next Interest Period will end on the day it would have ended if the previous Interest Period had not been extended or shortened.

9. Default interest

- 9.1 If the Borrower does not pay, when due, an amount payable by it under a Loan Agreement or the Security Documents then, without prejudice to its other obligations, the Borrower will pay interest on that overdue amount at the Default Interest Rate (including interest payable under this clause). If the Borrower does not comply with the terms of a Loan Agreement or any Security Document relating to payments due under a Loan Agreement or any Security Document then, at the Lender's discretion, the Borrower will pay interest at the Default Interest Rate on the Moneys Owed. Such interest shall be calculated from the date of the default and terminating on the date the failure to comply has been remedied, and shall be compounded (after as well as before judgment) and payable at intervals selected by the Lender at its discretion.
- 9.2 If the Borrower does not comply with the terms of a Loan Agreement or any Security Document, other than terms relating to payment of money, and that failure is not remedied on or before the 14th day after the date on which compliance was due, then, at the Lender's discretion, the Borrower shall pay interest at the Default Interest Rate on the Moneys Owed calculated from the date of the default and terminating on the date the failure to comply has been remedied.

10. Fees

- 10.1 The Borrower will pay to the Lender, in relation to each Facility, fees in the amounts and at the times specified in the relevant Facility Schedule.

11. Increased costs

- 11.1 **Increased costs:** If, at any time, the Lender determines that, as a result of:
- (a) the introduction of, or a change in, a law, treaty or directive of an agency of state or other regulatory, monetary or accounting authority, or in its interpretation by the agency or authority charged with its administration, or by a court of competent jurisdiction (including the implementation or application of, or compliance with, any document that forms part of the international capital or regulatory framework for banks published by the Basel Committee on Banking Supervision); or
 - (b) compliance by the Lender or by a person with whom the Lender may have a loan, swap or other funding or participation arrangement with a directive of an agency of state or other regulatory, monetary or accounting authority,
- the Lender determines that:
- (c) the cost to it of making, funding or maintaining a Facility, a Drawing or a Loan or any other amount under a Loan Agreement and/or the Security Documents, or all or any of the amounts comprised in a class of advances formed by or including a Facility, a Drawing or a Loan or any other amount is increased; or
 - (d) an amount payable to it or its effective return under a Loan Agreement and/or the Security Documents is reduced; or
 - (e) there is a reduction in the effective rate of return on its overall capital that, in its view, is attributable to either of paragraphs (a) or (b) above applying in relation to its obligations under a Loan Agreement and/or the Security Documents or to any class of obligations of which they form part; or
 - (f) it makes a payment or forgoes any interest or other return on or calculated by reference to a sum received or receivable by it from a Relevant Party under a Loan Agreement and/or the Security Documents in an amount that the Lender considers material, then, and in each case (whether or not the Lender is aware at the date of the Loan Agreement that any such introduction, change or directive will subsequently take effect):
 - (g) the Lender will notify the Borrower;
 - (h) on demand from time to time by the Lender, the Borrower will pay to the Lender, the amount certified by the Lender to be necessary to compensate it (and except to the extent that the Borrower is already liable to compensate it under the Loan Agreement) for that increased cost, reduction, payment or forgone interest or other return (or that portion of it as in the Lender's opinion, is attributable to the relevant Facility, or Drawing or Loan or the Lender's obligations under a Loan Agreement and/or the Security Documents) (if requested by the Borrower, this certificate will provide reasonable details of the composition of this amount); and
 - (i) and without prejudice to its obligation to make an additional payment under paragraph (h) above, the Borrower may, at any time by not less than 14 days prior written notice to the Lender (which will be irrevocable), cancel the relevant Facility.
- 11.2 **Minimisation:** If the Lender has acted in good faith, an amount certified under sub-clause 11.1 (Increased costs) above will be payable regardless of whether an increased cost, reduction, payment or forgone interest or other return referred to in that clause could have been avoided.
- 11.3 **Survival of obligations:** The obligations of the Borrower under sub-clause 11.1 (Increased costs) above are to survive termination of each Facility and payment of all other indebtedness due under any Loan Agreement and/or the Security Documents.
- 11.4 **Changes in market conditions:** If, by reason of circumstances affecting any relevant interbank market generally, it is or may be impossible or impractical for the Lender to obtain the relevant currency in that market (and accordingly it is impossible or impractical for it to make, fund or maintain a Facility or a Drawing or a Loan or any other amount under a Loan Agreement and/or the Security Documents, or all or any of the amounts comprised in a class of advances formed by or including a Facility, a Drawing or a Loan) for any period, the Lender is to notify the Borrower promptly and:
- (a) if the Drawing or Loan has not been made, the obligation of the Lender to make the Drawing or Loan available will be cancelled or suspended as the Lender may elect; and
 - (b) if the Drawing or Loan has been made, the Borrower will repay the Drawing or Loan and all other indebtedness of the Borrower and the Relevant Parties under each Loan Agreement and/or the Security Documents either immediately or, as the Lender elects, on the next date for payment of interest.
- Without prejudice to the Borrower's obligations to repay, the Borrower and the Lender are to negotiate in good faith with a view to agreeing terms for making the relevant Facility, Drawing or Loan available from another source. However, the Lender is under no obligation to agree to terms or to continue those negotiations if terms are not agreed promptly.
- Alternative basis of interest or funding:** If a Market Disruption Event occurs and the Lender or the Borrower so requires, the Lender and the Borrower will enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

12. Indemnities

- 12.1 **General indemnity:** Subject to any mandatory law, each Obligor indemnifies the Lender against each cost incurred by it as a result of:
- (a) the occurrence or continuance of an Event of Default; or
 - (b) an amount payable by the Obligors under a Loan Agreement and/or the Security Documents not being paid when due, whether by prepayment, acceleration or otherwise (but, so far as appropriate, credit is to be given for amounts, if any, of default interest paid under the Loan Agreement and/or the Security Documents); or
 - (c) a prepayment of a Drawing or a Loan being made or becoming due, or another amount being paid or becoming due, otherwise than on the last day of an Interest Period relating to it (whether or not that payment is permitted or required under the Loan Agreement); or
 - (d) a Drawing or Loan not being drawn on the requested Drawing Date, by payment on demand to the Lender, of the amount that the Lender certifies is required to compensate the Lender for that cost, including each cost incurred in liquidating or re-employing;
 - (e) deposits or other funds acquired or arranged to fund or maintain a Drawing or a Loan or any part of it; and
 - (f) any transaction entered into in anticipation of drawdown and/or disbursement of a Drawing or a Loan.
- 12.2 **Indemnities irrevocable:** The above indemnities are unconditional and irrevocable, and will survive both termination of each Agreement and payment of all other indebtedness due under the Loan Agreement and/or the Security Documents.

13. Costs

- 13.1 The Borrower will pay each cost incurred by the Lender (including legal fees and disbursements on a solicitor and own client basis) in connection with:
- (a) the preparation, negotiation, entry into and release of each Loan Agreement and each Security Document;
 - (b) each amendment to, waiver in respect of, or discharge of, a Loan Agreement or a Security Document;
 - (c) the exercise, protection, investigation or enforcement of the Lender's rights under a Loan Agreement or a Security Document; and
 - (d) the administration of each Facility by the Lender,
- in each case, on demand and on a full indemnity basis.

14. Representations

- 14.1 **Representations of Obligors:** Each Obligor represents that:
- (a) **Existence, power and authority:** it is incorporated, has full power to enter into and comply with its obligations under the Loan Agreement and/or the Security Documents and has taken all corporate and other action and obtained all consents needed to enable it to do so;
 - (b) **Obligations enforceable:** its obligations under the Loan Agreement and/or the Security Documents are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application;
 - (c) **No default:** it is not in default under:
 - (i) any agreement relating to indebtedness; or
 - (ii) any guarantee; or
 - (iii) any other agreement,to an extent or in a manner that has, or might have, a material adverse effect on it;
 - (d) **Compliance with laws:** its entry into the Loan Agreement and/or the Security Documents and the exercise of its rights and obligations under and in connection with the Loan Agreement and/or the Security Documents does not:
 - (i) contravene any law to which it is subject;
 - (ii) conflict with or result in a breach of, any agreement to which it is a party *where such breach or conflict would have a material adverse effect*;
 - (iii) conflict with or result in a breach of any of the documents constituting it; or
 - (iv) limit any of its powers or any right or ability of its directors to exercise its powers;
 - (e) **Solvency**
it is solvent and able to pay its indebtedness as it falls due;
 - (f) **No security interest:** except as disclosed to and accepted in writing by the Lender, no security interest exists over or affects, nor is there any agreement to give or permit to exist, any security interest over or affecting, any of its property;
 - (g) **No material adverse change:** there has been no material adverse change in respect of it since the last date as at which any of the financial statements referred to in the preceding paragraph were made up;
 - (h) **Litigation:** no litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened that has, or could have, a material adverse effect on it or on the Lender's ability to exercise or enforce its rights under any Loan Agreement and/or the Security Documents;
 - (i) **Information**
 - (i) all information provided by it or any other person on its behalf to the Lender in connection with the Loan Agreement was true in all material respects as at the date that information was provided, and remains so;
 - (ii) there are no facts or circumstances that have not been disclosed to the Lender that would make that information untrue or misleading in any material respect; and
 - (iii) it has disclosed to the lender all information that would be material to assessment by the Lender of the risks to be assumed by the Lender under each Facility;
 - (j) **No Event of Default:** no Event of Default has occurred and is continuing.
- 14.2 **Representations continuing:** Each of the representations in this clause will be deemed to be repeated continuously so long as the Loan Agreement remains in effect by reference to the facts and circumstances then existing.
- 14.3 **Reliance on representations:** Each Obligor acknowledges that the Lender has been induced to enter into the Loan Agreement and will be induced to make the Facilities available in reliance on the representations in this clause.
- 14.4 **No representations to Obligors:** Each Obligor acknowledges and accepts that it has not relied and will not rely on any statement made by or on behalf of the Lender in deciding to enter into any Loan Agreement and/or the Security Documents or to exercise any right or perform any obligation under any Loan Agreement and/or the Security Documents.

15. Undertakings

- 15.1 **General undertakings:** Each Obligor undertakes that it will:
- (a) **Events of Default:** notify the Lender of the occurrence of any Event of Default and any event or circumstance that may have a material adverse effect on it, immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result;
 - (b) **Use of Drawings and Loan:** use each Drawing and Loan solely for the Purpose (failing which the relevant amounts will be held on trust for the Lender);
 - (c) **Conduct of business**
 - (i) pay all its indebtedness when due; and
 - (ii) comply with all consents and all obligations binding on it by law, contract or otherwise, *where failure to do so would have a material adverse effect on it*;
 - (d) **Maintenance of corporate existence:** do all things necessary to maintain its corporate existence *and the corporate existence of each other Obligor, where failure to do so would have a material adverse effect on it*;
 - (e) **Maintain consents:** maintain in full effect all consents required to enable it to comply with its obligations under the Loan Agreement and/or the Security Documents *where failure to do so would have a material adverse effect on it*;
 - (f) **Compliance with laws:** duly and promptly comply with all laws, directives and consents the non-compliance with which might give rise to a security interest or have a material adverse effect on it, or that may adversely affect the rights or security of the Lender under a Loan Agreement and/or the Security Documents;
 - (g) **Pay taxes:** file all tax returns as required by law, and pay and discharge all taxes, assessments and governmental charges payable by it or on its property prior to the date that penalties become payable, except only to the extent that those taxes, assessments or governmental charges are being contested in good faith by appropriate proceedings and adequate reserves are set aside for their payment, *where failure to do so would have a material adverse effect on it*;
 - (h) **Further assurance:** promptly, and at its own cost, execute and deliver to the Lender all transfers, assignments and other agreements and do all acts and things in respect of a Loan Agreement and/or the Security Documents as the Lender may deem necessary or desirable to secure the full benefit of its rights under any Loan Agreement and/or the Security Documents;
 - (i) **Insurance:** ensure that it, and each of its subsidiaries, will:
 - (i) keep insured with reputable insurers all its property of an insurable nature that is customarily insured by persons carrying on a similar business against loss or damage by fire and other risks normally insured against, by persons carrying on the same class of business as that carried on by it or such lower value as the lender may agree in writing; and
 - (ii) promptly pay all premiums and do all other things necessary to maintain the insurances required by this clause; and
 - (j) **Environmental Laws**
 - (i) comply (and has complied with) all Environmental Laws affecting its operation or its property, *where failure to do so would have a material adverse effect on it*;
 - (ii) inform the Lender of any material breach of an Environmental Law, or any notice or order received by it under an Environmental Law, that could affect it or its property;
 - (iii) if the Lender has reasonable cause to believe that a breach of this clause has occurred or is reasonably likely to occur, provide the Lender on request, but at the Borrower's sole cost, with environmental audits and reports in respect of its property, in a form and from an independent consultant acceptable to the Lender; and
 - (iv) indemnify the Lender against all liabilities and costs arising out of any act or omission of it in respect of any circumstance that breaches, or might breach, any Environmental Law.

- 15.2 **Reporting undertakings:** Each Obligor undertakes that it will:
- Accounts:** as soon as available and in any event within 180 days after the end of its financial years, deliver to the Lender its financial statements and, in relation to the Borrower, its group financial statements as at the end of and for that financial year or half-year, audited in the case of financial statements as at the end of a financial year; and
 - Other information:** promptly deliver to the Lender within seven days of request, any other information that the Lender reasonably requests with respect to its business or financial condition.
- 15.3 **Negative undertakings:** Each Obligor undertakes that it will not, without the prior written consent of the Lender:
- Security interests:** create or permit to exist any security interest, charge or encumbrance over or affecting its property, other than a security interest, charge or encumbrance previously approved in writing by the Lender; or
 - Disposals:** either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary, dispose of all or any part of its property other than disposal previously approved in writing by the Lender; or
 - Indebtedness:** incur any further indebtedness to any new or existing financier of the Borrower, except indebtedness that is fully subordinated to all amounts owed under Loan Agreement and the Security Documents on terms satisfactory to the Lender;
 - Change of business:** make a substantial change in the nature or scope of its business as presently conducted; or
 - Merger:** enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction.
 - Dwellings / Buildings:** remove or demolish the improvements on any Land the subject of the Security Documents, or complete any demolition or excavation works of any nature on that land.
- 15.4 **Authority to auditors:** Each Obligor authorises the Lender to discuss its financial statements and financial affairs at any time with the Obligors' auditors and financial advisers, and irrevocably authorises and requests its auditors and financial advisers to participate in those discussions and to provide any information the Lender requests.
16. **Land**

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- 16.1 **Agreement to mortgage:** To the extent that the Security Documents include an interest in Land, each Obligor who is party to such Security Documents irrevocably agrees:
- as security for its obligations to the Lender under the Loan Agreement, to grant a mortgage over the Land; and
 - to execute and deliver a memorandum of mortgage over the Land promptly on demand in writing from the Lender at any time during the term of the Loan Agreement.
- 16.2 **Caveat:** It is intended and agreed that the Lender is entitled to lodge a caveat over the Land at any time, including prior to demanding execution and delivery of a mortgage, to protect the Lender's interests under the Loan Agreement. The Obligors must do all things necessary to enable the registration of any caveat to protect the Lender's interests under the Loan Agreement and to allow any such caveat to remain registered during the term of the Loan Agreement.
- 16.3 **Unregistered mortgage supported by caveat:** Each of the Obligors undertake and agree that, upon request by the Lender, it or they will provide to the Lender's solicitors an authority & instruction form to enable the Lender's solicitors to register by way of electronic transmission the Lender's mortgage in respect of the Property incorporating the provisions of mortgage memorandum number 2015/4328 and having a priority amount under section 92 of the Property Law Act 2007 of twice the amount of the Loan Limit plus interest.
- Each of the Obligors irrevocably appoints the Lender as its true and lawful attorney to do all things necessary to complete registration of the Lender's mortgage described in this clause 16.3, including but not limited to executing and completing the authority & instruction form described in this clause 16.3.
- 16.4 **Restrictions on dealing with Land:** The Obligors undertake to the Lender that they will not sell, surrender, subdivide, dispose of or deal with the Land, including creating any lease of the Land, creating any easement or granting any covenant over the Land and/or creating, or allowing to exist, any other security interest (other than in favour of the Lender) over the Land, in each case without the prior written consent of the Lender.

17. Events of Default

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- 17.1 **Events of Default:** An Event of Default occurs if, at any time and for any reason, whether or not within the control of a party:
- Non-payment:** an Obligor fails to pay on its due date any principal or, within three business days of its due date, any interest or other amount payable under any Loan Agreement and/or the Security Documents; or
 - Breach of other obligations:** An Obligor commits any breach of or omits to observe or perform any of its obligations or undertakings under the Loan Agreement or the Security Documents or any of them on its due date, or any representations or warranties provided by an Obligor under the Loan Agreement or the Security Documents or any of them are untrue, incorrect or incomplete; or
 - Receiver:** An encumbrancer takes possession or a liquidator, provisional liquidator, statutory manager, administrator, trustee, receiver, receiver and manager, inspector appointed under any companies or securities legislation, or similar officer, or official, is appointed in respect of the whole or any part of the assets of the Borrower; or
 - Insolvency:** an Obligor:
 - is insolvent or unable to pay its indebtedness as it falls due, or is deemed to be so under any law; or
 - stops or suspends payment of any of its indebtedness or threatens to do so; or
 - makes, or proposes to make, a compromise with, or for the benefit of, its creditors; or
 - Enforcement:** a distress, attachment, execution or other legal process is levied against property of an Obligor and is not discharged or stayed within five days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of it or any of its property; or
 - Amalgamation:** the board of an Obligor passes a resolution for, or in contemplation of, an amalgamation of the Obligor with another company; or
 - Liquidation:** an order is made, resolution passed or other step taken by a person for the liquidation of an Obligor, except for the purpose of, and followed by, a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Lender before that step is taken; or
 - Pooling of debts:** an order is made against an Obligor requiring it to pay the whole or any part of claims made against another company that is in liquidation;
 - Corporations (Investigation and Management) Act 1989:** an Obligor is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed or any step taken with a view to any such appointment in respect of it under that Act; or
 - Cessation of business:** an Obligor ceases, or threatens to cease, to conduct all or a substantial part of its business; or
 - Material adverse change:** any other event or series of events, whether related or not, occurs, or any circumstances arise or exist which, in the reasonable opinion of the Lender, has, or is likely to have, a material adverse effect on an Obligor; or
 - Enforcement of security:** a security interest in property of an Obligor securing indebtedness of not less than \$100,000 becomes enforceable or is enforced; or
 - Illegality:** it is, or will become, unlawful for an Obligor to comply with any of its obligations under the Loan Agreement or a Security Document in any material respect; or
 - Change in Control:** there is a change in the control of an Obligor without the prior written consent of the Lender; or
 - Cross default:** any other indebtedness for borrowed money of an Obligor (including indebtedness to a third party lender) is not paid when due or shall become due and payable prior to its stated maturity by reason of a default or event of default (however described) or if steps are taken to enforce any security for such indebtedness or if any default or event of default (however described) occurs and is continuing under any loan facility an obligor has with any third party lender.
- 17.2 **Consequences:** On and after the occurrence of an Event of Default, the Security Documents will become immediately enforceable and the Lender may at any time, by notice to the Borrower:
- cancel each Facility; and/or
 - declare any or all of the Drawings, the Loan and any other indebtedness of the Borrower under the Security Documents to be, and those Drawings, Loan and that indebtedness will be, due and payable either immediately or on demand or at such later date as the Lender may specify; and/or
 - enforce, or procure the enforcement of, its rights and remedies under the Loan Agreement and the Security Documents or any of them in such order as it thinks fit.

18. Changes to the Lender

- 18.1 **Assignment by Lender:** The Lender may at any time assign or transfer all or any part of its rights and benefits under the Loan Agreement and Security Documents without the consent of the Obligors.
- 18.2 **Disclosure of information:** The Lender may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with the Loan Agreement are contemplated, any information about the Obligors, whether or not that information was obtained in confidence and whether or not that information is publicly available.

19. Changes to the Obligors

The Obligors may not assign or transfer any of their rights or obligations under the Loan Agreement or the Security Documents without the prior written consent of the Lender.

20. Payment mechanics

- 20.1 **Business days:** Where a payment under the Loan Agreement is due on a day that is not a business day, the due date will be the next business day (unless the next business day falls in another calendar month, in which case the due date will be the previous business day).
- 20.2 **Mode**
- (a) Each payment to the Lender under a Loan Agreement and/or the Security Documents is to be made on the due date by 2.00pm in immediately available freely transferable funds in the manner and to the account at the bank that the Lender, by notice to the Borrower, specifies from time to time. If a payment is made on the due date but after the specified time, the Borrower will pay to the Lender, on request, interest on the amount paid until the next business day (as if the payment were made on the later day).
- (b) Each payment due by the Obligors under the Loan Agreement is to be made to the Lender.
- 20.3 **Payments to be free and clear:** Each payment by the Obligors to the Lender under a Loan Agreement and/or the Security Documents will be made:
- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.
- 20.4 **Reinstatement:** If a payment made by an Obligor pursuant to a Loan Agreement and/or the Security Documents is avoided by law:
- (a) that payment will be deemed not to have discharged or affected the relevant obligation of the Obligors; and
- (b) the Lender and the Obligors will be deemed to be restored to the position in which each would have been if that payment had not been made.

21. Set-off and deposits

- 21.1 **Set-off:** Each Obligor authorises the Lender to apply (without prior notice or demand) any credit balance of that Obligor and each other Obligor on any account in any currency and at any of its offices in or towards satisfaction of any indebtedness then due to it under a Loan Agreement and/or the Security Documents and unpaid. If, at any time an amount is contingently due, or an amount due is not quantified, the Lender may retain and withhold repayment of any such credit balance and the payment of interest or other money pending that amount becoming due and/or being quantified, and may set-off the maximum liability that may at any time be owing to it by an Obligor. The Lender:
- (a) may use any credit balance to buy other currencies and may break any term deposit to effect that application; and
- (b) need not exercise its rights under this sub-clause, which are without prejudice and in addition to its rights under each Loan Agreement and/or the Security Documents and any other right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (by law or contract).
- 21.2 **Contractual rights:** The rights of the Lender under this clause are contractual rights affecting the terms on which a credit balance is held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

22. Notices

- 22.1 **General:** In connection with any notice or other communication (a "Communication") made by an Obligor to the Lender under any Loan Agreement and/or the Security Documents, the Lender:
- (a) may take the Communication at face value, and has no obligation to take any steps to ensure it was sent by the person it was purported to be sent by;
- (b) has no obligation to act on any incorrect or incomplete Communication, or any Communication that does not comply with any agreed process; and
- (c) is authorised to accept any electronic mail address, facsimile number or personal delivery address advised to it from time to time by an authorised signatory of an Obligor.
- 22.2 **Addresses:** Each notice or other communication under a Loan Agreement will be made in writing and sent by electronic mail, facsimile, personal delivery or by post to the addressee at the electronic mail address, facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial electronic mail address, facsimile number, address and relevant person or office holder of each party is set out in the Loan Agreement.
- 22.3 **Delivery**
- (a) **General:** No communication will be effective until received. A communication to the Obligors is, however, deemed to be received:
- (i) in the case of a letter, on the third Business Day after posting;
- (ii) in the case of a facsimile, on the business day on which it is despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of despatch; and
- (iii) in the case of an electronic mail, when it is sent from the Lender's email server to the Obligor's electronic mail address designated by the Obligor. A communication to the Obligors, or any of them, is deemed to be received when it is deemed to be received by the Borrower in accordance with this clause.
- (b) **Electronic mail:** Electronic mail to the Lender must:
- (i) be sent from a contact of the relevant obligor authorised by the lender to communicate by electronic mail;
- (ii) be sent to the exact electronic mail address specified by the Lender from time to time;
- (iii) in the case of a drawing notice, attach a pdf copy of the original drawing notice, signed by an authorised signatory of the Obligor.
- All parties acknowledge the risk of receiving non-encrypted electronic mail containing confidential information that may also be privileged and accept that:
- (iv) the Lender shall not be responsible for unauthorised access and/or alteration to any electronic mail, nor for the consequences arising as a result of use of information that may have been illegitimately accessed or altered, except in the case of gross negligence or wilful misconduct of the Lender; and
- (v) the Lender has no obligation to look behind an instruction to check that it was sent by the person it was purported to be sent by, or to act on incorrect or incomplete instructions.

23. Miscellaneous

- 23.1 **Impossibility:** The Lender will not be liable for any failure to perform or comply with its obligations under the Loan Agreement resulting directly or indirectly from the action or inaction of a governmental or local authority, strike, labour disturbance (whether of its employees, officers or otherwise) or any other cause that is beyond its control.
- 23.2 **Anti-money laundering:**
- (a) The Borrower agrees that the Lender may delay, block or refuse to process any transaction without incurring any liability if it is suspected that:
- (i) the transaction may breach any laws or regulations in New Zealand or any other country;
- (ii) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the united states, the united nations, the European Union or any country; or

- (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct that is unlawful in New Zealand or any other country.
- (b) The Borrower must (and must procure that each other Obligor will) provide all information to the Lender that the Lender reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Borrower agrees that the Lender may disclose any information concerning the Obligors to any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or elsewhere.
- 23.3 **Benefit and burden of the Loan Agreement:** The Loan Agreement is binding on and enures for the benefit of the parties and their respective successors and their permitted assignees and transferees.
- 23.4 **Amendments:** No amendment to the Loan Agreement is effective unless it is in writing signed by all the parties.
- 23.5 **Partial invalidity:** The illegality, invalidity or unenforceability of a provision of the Loan Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 23.6 **Counterparts:** The Loan Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into the Loan Agreement by executing any counterpart.
- 23.7 **Inconsistency:** In the event of any inconsistency between the provisions of these General Terms and the provisions of any other Loan Agreement and/or the Security Documents, the Lender will determine, at its discretion, which provision prevails.
- 23.8 **Entire Agreement:** The Loan Agreement, together with each other agreement made in writing signed by all the parties, constitutes the entire agreement between the parties.
24. **Governing law**

24.1 The Loan Agreement and the General Terms are governed by, and are to be construed in accordance with, New Zealand law.

25. **Interpretation**

- 25.1 Terms defined in a Loan Agreement have the same meaning where used in these General Terms and, unless the context otherwise requires:
- Availability Period** means the period starting on the Commencement Date and ending on the Expiry Date;
- Drawing** means each principal amount advanced (or to be advanced) to the Borrower under a Facility in accordance with the terms of the Loan Agreement;
- Drawing Date** means, in relation to a Drawing, the date on which it is (or is to be) advanced, which must be a business day during the relevant Availability Period;
- Environmental Law** means any law relating to the environment, land or water use, noise, smell, pollution or contamination, toxic or hazardous substances, waste disposal or conservation (including the Resource Management Act 1991) and any consent or notice under any such law;
- Event of Default** means any event specified in clause 17.1 (Events of Default) and any other event agreed from time to time by the Lender and the Borrower to constitute an Event of Default;
- Expiry Date** means, in respect of a Facility, the date specified as such in the relevant Loan Agreement;
- Facility** means each loan facility made available under a Loan Agreement;
- Facility Schedule** means, in respect of a Facility, the Facility Schedule forming part of a Loan Agreement setting out the specific terms that apply to that Facility;
- GST Act** means the Goods and Services Tax Act 1985;
- Land** means any real property of the Obligors and all buildings and improvements on that land;
- Loan** means the aggregate principal amount advanced (or to be advanced) to the Borrower under a Facility in accordance with the terms of the Loan Agreement, or such amount of it as remains outstanding on any day;
- Loan Agreement** means the Business Loan Agreement entered into between each Borrower, each Guarantor and the Lender from time to time, and incorporating these General Terms and each Facility Schedule;
- Loan Limit** means, in respect of a Facility, the amount specified as such in the relevant Loan Agreement;
- Moneys Owed** means, in respect of a Facility at any time, the aggregate principal amount of the Loan (if it is a Term Loan Facility) or Drawing (if it is a Project Facility) outstanding at that time, together with any accrued and unpaid interest, fees and all costs and other amounts then due and payable by the Obligors to the Lender;
- Obligor** means each Borrower and each Guarantor and, where there is only one Borrower and no Guarantor, means the Borrower;
- PPSA** means the Personal Property Securities Act 1999;
- Project Facility** means a credit facility described as such in the relevant Facility Schedule;
- Security Documents** means each of the Loan Agreements specified as such in the Loan Agreement and each other security agreement, guarantee or other agreement (present or future) expressed or intended to guarantee or secure the Obligors' obligations under the Loan Agreement;
- Tax Act** means the Income Tax Act 2007;
- Term Loan Facility** means a credit facility described as such in the relevant Loan Agreement, to be made available on the terms of the Loan Agreement.
- 25.2 **Construction:** In these General Terms, unless the context otherwise requires:
- an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future), and includes that document as amended, assigned, novated or substituted from time to time;
- a **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland;
- compromise** includes a compromise as defined in section 227 of the Companies Act 1993;
- a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration;
- one person being **controlled** by another means that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):
- has the power to appoint and/or remove the majority of the members of the governing body of that person;
 - otherwise controls or has the power to control the affairs and policies of that person; or
 - is in a position to derive the whole or a substantial part of the benefit of that person;
- costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;
- a **directive** includes a present and future directive, regulation and requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive is addressed);
- financial statements** has the meaning specified in section 6 of the Financial Reporting Act 2013;
- group financial statements** has the meaning specified in section 7 of the Financial Reporting Act 2013;
- a **guarantee** includes an indemnity, letter of credit, letter of comfort, suretyship and other agreement, the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;
- indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;
- the **liquidation** of a person includes the dissolution, administration, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;
- loss** includes loss of profit and loss of margin;
- something having a **material adverse effect** on a person is a reference to it having, in the reasonable opinion of the Lender, a material adverse effect on:
- that person's financial condition or operations or on the consolidated financial condition or operations of it and its subsidiaries; or
 - its ability to comply with its obligations under any Loan Agreement and/or the Security Documents; or
 - the validity or enforceability of, or the effectiveness or ranking of any security interest created under or in connection with a Security Document or the rights and remedies of the Lender under any Loan Agreement and/or the Security Documents,
- and references to **material adverse change** shall be construed accordingly;

a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality);

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

rights includes authorities, consents, discretions, remedies, powers and causes of action;

a **security interest** includes:

a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and

a "security interest" as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor,

but does not include:

a lien or other security interest arising solely by operation of law; or

a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that collateral, where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid within 60 days of supply; or

a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances;

tax(es) includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay, or any delay in paying, any of the same);

writing includes a facsimile transmission, an email communication and any means of reproducing words in a tangible and permanently visible form;

a reference to a **party, clause, schedule** or **annexure** is a reference to a party to, clause of, schedule to or annexure to, these General Terms;

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

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

an agreement, representation or undertaking given by an Obligor in favour of two or more persons is for the benefit of them jointly and each of them severally;

a gender includes each other gender;

the singular includes the plural and vice versa;

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

any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and

a party to the Loan Agreement or another agreement includes its successors and its permitted assignees and transferees.

Headings and the table of contents are to be ignored in construing these General Terms.

25.3 **Joint and several liability:** The liability of, and obligations on, each Obligor under the Loan Agreement are joint and several. References in these General Terms to:

"Borrower" are to each Borrower individually, and to all Borrowers together; and

"Guarantor" are to each Guarantor individually, and to all Guarantors together.

25.4 **PPSA:** The terms "collateral" and "debtor" in the definition of "security interest" above have the meanings given to them in the PPSA.