

## IT IS AGREED

### 1. Interpretation

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

- **Availability Date** is the date so specified in the Loan Terms.
- **Bond** means any guarantee given by the Lender at the request of the Borrower.
- **Business Day** means a day (other than a Saturday or a Sunday) on which registered banks are open for general banking business in Auckland.
- **Date of Advance** means the day on which the Loan is advanced.
- **Default Rate** is the rate so specified in the Loan Terms.
- **Distribution** is defined in section 2 of the Companies Act 1993, and includes any redistribution of capital, any acquisition by a company of any share in itself or in its holding company, and any financial assistance provided by a company to enable another person to acquire any such share.
- **Event of Default** means the occurrence of any event specified in clause 9.1.
- **Facility** means the loan facility the terms of which are set out in this Agreement.
- **Guaranteed Indebtedness** means all indebtedness of the Borrower to the Lender or incurred by the Lender on behalf of the Borrower (including all interest, costs, taxes, stamp or similar duties or taxes, commissions, charges and expenses (including legal fees and expenses) incurred or sustained in any way by the Lender in connection with that indebtedness or the enforcement or attempted enforcement of that indebtedness under a Relevant Document).
- **Guaranteed Obligations** means all obligations (whether present or future but other than obligations to pay money) of the Borrower to the Lender under a Relevant Document.
- **Interest Rate** is the rate so specified in the Loan Terms.
- **Loan** means the total amount advanced by the Lender to the Borrower under the Facility as specified in the Loan Terms or, where the context requires, the outstanding amount thereof.
- **Loan Terms** means those terms and particulars set out in Schedule 1.
- **Payment Date** means, unless expressly stated otherwise in the Loan Terms, the date falling at monthly intervals from the Date of Advance. If there is no corresponding date in any month (because the Date of Advance was the 29th, 30th or 31st of the month) then the Payment Date in that month shall be the last Business Day of that month.
- **PLA** means the Property Law Act 2007.
- **PPSA** means the Personal Property Securities Act 1999.
- **Relevant Document** means this Agreement, the Securities and each other agreement, present or future, required or contemplated by or relating to this Agreement or the Securities.
- **Relevant Party** means the Borrower, the Guarantor and each of the parties to a Relevant Document (other than the Lender).
- **Securities** means the securities set out in paragraph (vi) of the Loan Terms.
- **Solvency Test** is defined in section 4 of the Companies Act 1993.
- **Special Conditions** means those conditions set out in Schedule 3.
- **Trust** means the trust as set out in paragraph (x) of the Loan Terms.

#### 1.2 Construction of certain references

In this Agreement, unless the context otherwise requires, references to:

- an **agreement** also includes a contract, deed, licence, franchise, undertaking, and other document (in each case whether oral or written) and includes that document as modified, supplemented, novated or substituted from time to time;
- a **compromise** includes a compromise as defined in section 227 of the Companies Act 1993;
- a **consent** also includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration (and references to obtaining consents are to be construed accordingly);

- the **dissolution** of a person also includes the winding-up, bankruptcy, administration or liquidation of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;
- a **guarantee** also includes:
  - (a) an obligation of a person to pay, purchase, provide funds (whether by the advance of money, the purchase or subscription of shares or other securities, the purchase of assets or services or otherwise) or provide a security interest for the payment or performance of, or to indemnify against the consequences of default in the payment or performance of, or otherwise to be responsible for, indebtedness or obligations of another person; and
  - (b) an obligation of a person to redeem or purchase share capital of another person incurred in connection with the purchase of that share capital by another person or the granting of any security interest in relation to that share capital;
- **indebtedness** includes an 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;
- something having a material adverse effect on a person is a reference to it having a **material adverse effect**:
  - (a) on that person's financial condition or operations or on the consolidated financial condition or operations of it and its subsidiaries; or
  - (b) on its commercial or financial prospects; or
  - (c) on its ability or willingness to perform and comply with its obligations under any Relevant Document,
- and references to **material adverse change** are to be construed accordingly;
- moneys expressed to be payable **on demand** are due and payable on the date on which demand is made (or, if a later date is specified in the demand, on that date);
- a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state or agency of a state (in each case, whether or not having separate legal personality);
- a **security interest** includes a security interest (as defined in the PPSA), mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, lease, sale-and-repurchase and sale-and-leaseback arrangement and preferential arrangement of any kind, the practical effect of which is to secure a creditor;
- the expressions **subsidiary** and **related company** shall have the same meaning as in the Companies Act 1993;
- **tax(es)** includes any present and future tax, levy, impost, duty, rate, charge, fee, deduction and withholding of any nature regardless of where and by whom imposed, levied, collected, withheld and assessed and includes interest, penalties, fines, costs, charges and expenses and other amounts relating to and arising in connection with taxes;
- **trustee** includes the Borrower and each other trustee of the Trust from time to time;
- any words or phrases defined in the Loan Terms shall have that defined meaning whenever they occur in this Agreement;
- a gender includes each other gender;
- the singular includes the plural and vice versa;
- 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;
- a party to this Agreement or another agreement includes its successors and, in the case of the Lender, its assignees and transferees and, in the case of the Borrower, its permitted assignees and transferees; and
- references to Clauses and Schedules are to the clauses and schedules in this Agreement.

Headings shall be ignored in construing this Agreement.

### 2. Availability of the Loan

- 2.1 Subject to the Special Conditions (if any), the Lender will make the Loan available for borrowing with effect from the Availability Date on the date requested by the Borrower if:
  - (a) the Borrower has given the Lender written notice of the requested date at least two Business Days prior to that date;
  - (b) the Lender has received the documents specified in Schedule 2;

- (c) the Lender has received the establishment fee specified in paragraph (v)(a) of Schedule 1, any commitment fee payable in accordance with clause 3.8 and payment of costs of its solicitors as advised to the Borrower;
- (d) no Event of Default has occurred or will occur as a result of advance of the Loan;
- (e) no event described in clause 13 has occurred or will occur as a result of advance of the Loan, failing which the Lender may discontinue the requested drawdown of the Loan.

- 2.2 If the Loan is not advanced within one month of the Availability Date the Lender may cancel the Facility.

- 2.3 The Borrower acknowledges that, unless specified otherwise in paragraph (ix) of the Loan Terms, the Loan shall be disbursed through the Lender's solicitors.

### 3. Payment of Loan and Interest

- 3.1 The Borrower shall repay the Loan together with interest on the Payment Dates by the amounts set out in the Loan Terms.

- 3.2 Interest accrues daily but is payable in arrears on each Payment Date.

- 3.3 The Interest Rate and/or the Default Rate may be altered by the Lender at any time. The altered rates shall be determined by the Lender and notified to the Borrower.

- 3.4 Any moneys payable to the Lender shall be paid, without any set-off or deduction whatsoever, not later than 3.00 pm on the due date by automatic bank authority to the account of the Lender advised to the Borrower.

- 3.5 If any due date is not a Business Day, payment shall be made on the next Business Day unless that next Business Day occurs in the following month, in which event the payment shall be made on the previous Business Day.

- 3.6 If the Borrower does not make any payment (including a payment of interest) on or before its due payment date, interest on the amount unpaid shall be paid by the Borrower at the Default Rate both before and after judgement for the period from the due payment date until the actual date of payment. Default interest will accrue daily, and will be compounded monthly.

- 3.7 If any payment is made after 3.00 pm on the due date the Borrower shall pay to the Lender, immediately upon request, interest on the payment concerned at the Default Rate until the next Business Day as if the payment were made on the later day.

- 3.8 If the Loan is not advanced on the Availability Date, the Borrower shall pay to the Lender on the Date of Advance (or the date the Facility is cancelled, as the case may be) a commitment fee for the period from the Availability Date until that day. The fee will accrue daily and will be charged at a rate per annum certified by the Lender to be equal to the Interest Rate less the rate then paid by the Lender for call deposits of amounts similar to the Loan. The minimum rate to apply under this sub-clause shall be five per cent per annum.

- 3.9 The Borrower may prepay the Loan as set out in paragraph (vii) in Schedule 1.

### 4. Guarantee and Indemnity

- 4.1 The Guarantor unconditionally and irrevocably guarantees to the Lender the due payment by the Borrower of the Guaranteed Indebtedness and the due performance of and compliance by the Borrower with the Guaranteed Obligations.

- 4.2 The Guarantor undertakes that if, for any reason, the Borrower does not pay when due (whether by acceleration or otherwise) any Guaranteed Indebtedness, it will pay the relevant amount immediately on demand by the Lender.

- 4.3 As a separate and continuing undertaking, the Guarantor unconditionally and irrevocably undertakes to the Lender that, should the Guaranteed Indebtedness not be recoverable from the Guarantor under this Agreement or another Relevant Document for any reason, including a provision of this Agreement or another Relevant Document or an obligation (or purported obligation) of the Borrower to pay Guaranteed Indebtedness or to perform or comply with a Guaranteed Obligation being or becoming void, voidable, unenforceable or otherwise invalid, whether or not that reason is or was known to the Lender and whether or not that reason is:
- a defect in or lack of powers of a Relevant Party or the irregular exercise of those powers; or
  - a defect in or lack of authority by a person purporting to act on behalf of a Relevant Party; or
  - a legal or other limitation (whether under the Limitation Act 1950 or otherwise), disability or incapacity of a Relevant Party; or
  - a dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of a Relevant Party (or the commencement of steps to effect the same),
- the Guarantor will, as a sole and independent obligation, pay to the Lender on demand the amount which the Lender would otherwise have been able to recover (on a full indemnity basis). In this clause, the expressions "Guaranteed Indebtedness" and "Guaranteed Obligations" includes any indebtedness or obligation which would have been included in those expressions but for anything referred to in this clause.
- 4.4 If:
- a resolution is proposed and put to the vote; or
  - a petition is presented and is heard or otherwise judicially considered,
- which, if successful, would result in the dissolution of the Guarantor, the Guarantor is to immediately pay to the Lender an amount equal to its maximum contingent liability under this Agreement at that time. That amount will be a debt due from the Guarantor to the Lender.
- 4.5 All moneys from time to time received by the Lender in respect of the Guaranteed Indebtedness from or on account of the Guarantor may be placed in a suspense account with a view to preserving the rights of the Lender to prove for the whole of the Guaranteed Indebtedness in the event of any proceeding in, or analogous to, dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of a Relevant Party.
- 5. Nature of Guarantee and Indemnity Obligations**
- 5.1 As between the Guarantor and the Lender (but without affecting the obligations of the Borrower) the Guarantor is liable under this Agreement as a sole and principal borrower and not as a surety.
- 5.2 The Guarantor is not to be discharged, nor are its obligations to be affected, by anything which, but for this clause, would or might have discharged the Guarantor or affected its obligations, including:
- time, indulgence, waiver or consent whenever given to a Relevant Party or another person; or
  - an amendment to a Relevant Document or to another security interest, guarantee, indemnity or other agreement (whether or not that amendment might increase the liability of the Guarantor under this Agreement or otherwise); or
  - the making of, or failure to make, a demand on a Relevant Party or another person for payment; or
  - the failure to obtain, or the failure of a person to execute or otherwise be bound by, a Relevant Document or another security interest, guarantee, indemnity or other agreement; or
  - the enforcement of, or failure to enforce, a Relevant Document or another security interest, guarantee, indemnity or other agreement; or
  - the release of, or the release of a Relevant Party from, a Relevant Document or a security interest, guarantee, indemnity or other agreement; or
  - the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of a Relevant Party or another person (or the commencement of steps to effect the same); or
  - the illegality, invalidity, unenforceability of, or defect in, a provision of a Relevant Document or a Relevant Party's obligations under any of them for any reason whatsoever, whether or not known to the Lender; or
  - any other matter or thing whatsoever.
- The Lender is to be under no liability to the Guarantor in respect of any of these matters, even if the Guarantor's rights in subrogation or otherwise may be prejudiced as a result.
- 5.3 The Guarantor's obligations under this Agreement:
- are by way of continuing security, notwithstanding intermediate payments, settlement of accounts or payments or any other matter or thing whatsoever;
  - are in addition to, are not to be merged in and are without prejudice to, any security interest, guarantee, indemnity or other agreement, whenever in existence, in favour of any person, whether from the Guarantor or otherwise; and
  - are to remain in full force and effect until the execution by the Lender of an unconditional discharge of the obligations of the Guarantor under this Agreement pursuant to clause 5.4.
- 5.4 If, in the opinion of the Lender:
- the Borrower has paid all the Guaranteed Indebtedness and performed and complied with all the Guaranteed Obligations; and
  - the Lender is under no obligation to make available any further credit, advance or facility in respect of any Guaranteed Indebtedness; and
  - the Guarantor has discharged all its obligations under this Agreement; and
  - there is no possibility that any Guaranteed Indebtedness received or recovered by the Lender from the Guarantor or any other person will or may have to be refunded or repaid under any applicable law (including, without limitation, any law relating to preferences or insolvency),
- the Lender will, at the request and cost of the Guarantor, execute an unconditional discharge of the obligations of the Guarantor under this Agreement. All agreements which are necessary in connection with this discharge shall be in whatever form and substance the Guarantor may reasonably require. However, that discharge and any composition or arrangement which the Guarantor may effect with the Lender, will be deemed to be made subject to the condition that it will be void if any payment or security interest which the Lender may previously have received or may later receive from the Guarantor or another person in respect of Guaranteed Indebtedness or Guaranteed Obligations is set aside under applicable law or proves to have been, for whatever reason, invalid. In that case:
- that payment or security interest will be deemed not to have discharged or affected the obligation of the Guarantor in respect of which that payment or security interest was made, given or received; and
  - the Lender and the Guarantor will be deemed to be restored to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment or security interest had not been made or given.
- 5.5 The Guarantor will not, without the written consent of the Lender:
- take, accept or hold a security interest from the Borrower or, in relation to Guaranteed Indebtedness, from another person; or
  - take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercise or enforce rights in respect of, indebtedness of the Borrower to the Guarantor or, in relation to Guaranteed Indebtedness, indebtedness of another person to the Guarantor; or
  - claim, prove or accept payment in composition by, or a dissolution of, the Borrower or, in relation to Guaranteed Indebtedness, another person,
- and until such time as the Guaranteed Indebtedness has been fully paid and the Guaranteed Obligations have been fully satisfied the Guarantor waives all rights of subrogation to which it would otherwise be entitled by reason of performance of its obligations under this Agreement. If, notwithstanding this clause, the Guarantor holds or receives any such security interest, money or property, the Guarantor is to pay or transfer it to the Lender immediately and, pending that payment or transfer, will hold it on trust for the Lender.
- 6. Representations and Warranties of Borrower and Guarantor**
- 6.1 The Borrower and each Guarantor represents and warrants that:
- if it is a company, it is duly incorporated and existing under the laws of New Zealand;
  - it has the power and capacity to enter into, exercise its rights and perform and comply with its obligations under, the Relevant Documents;
  - everything required to be done (including the obtaining of any necessary consents and the passing of all necessary resolutions) to:
    - enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under, the Relevant Documents;
    - ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms; and
    - make the Relevant Documents admissible in evidence in the courts of New Zealand,
- has been duly done or, on the Date of Advance, will have been duly done;
- no Event of Default has occurred;
  - its entry into, exercise of its rights and performance of and compliance with its obligations under, the Relevant Documents do not and will not:
    - contravene any law to which it is subject; or
    - contravene any of the documents constituting it; or
    - exceed any limitation on, or constitute an abuse of, the powers of its directors or officers; or
    - contravene any agreement to which it or any of its subsidiaries is a party or which is binding on any of their assets; or
    - result in the creation of, or oblige it or any of its subsidiaries (absolutely or contingently) to create, or permit to exist, any security interest over or affecting their assets except as created or permitted by the Relevant Documents;
  - its obligations under the Relevant Documents are legal, valid, binding and enforceable in accordance with their respective terms;
  - it is not, nor, if it is a company, are any of its subsidiaries in default under:
    - any agreement relating to indebtedness; or
    - any guarantee; or
    - any other agreement, to an extent or in a manner which, has or could have a material adverse effect on the Borrower, Guarantor or any relevant subsidiary;
  - if it is a company, it, and each of its subsidiaries, satisfies the Solvency Test;
  - no litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened:
    - to restrain its entry into, or the exercise of its rights or the performance of or compliance with or enforcement of its obligations under, any Relevant Document; or
    - which has or could have a material adverse effect on it or on any of its subsidiaries or on its ability to perform or comply with its obligations under a Relevant Document or on the Lender's ability to exercise or enforce its rights under any Relevant Document;
  - all information provided by it to the Lender in connection with the Relevant Documents was true and accurate as at the date when that information was provided and remains so at the date of this Agreement and there are no facts or circumstances which have not been disclosed to the Lender which would make that information untrue, inaccurate or misleading; and
  - each of the representations and warranties in paragraphs (a) to (i) of this sub-clause would be true, accurate and complied with if it were also expressed as being made in respect of each Relevant Party other than the Borrower and each Guarantor.
- 6.2 Each of the representations and warranties in this clause will be deemed to be repeated continuously so long as this Agreement remains in effect by reference to the facts and circumstances then existing, except that each reference to financial statements shall be construed as a reference to the latest available financial statements of the relevant person.
- 6.3 The Borrower, and each Guarantor, acknowledges that the Lender has been induced to enter into this Agreement and will be induced to make the Loan available in reliance on the representations and warranties in this clause.
- 7. Undertakings**
- 7.1 The Borrower and each Guarantor undertakes that it will:
- notify the Lender of the occurrence of any Event of Default and any event or circumstance which 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;
  - Notify the Lender if an order is made resolution passed or other step taken by person in connection with the voluntary administration of the Borrower or Guarantor, immediately upon becoming aware of it, giving full details of any action taken (or to be taken);
  - if it is a company, do all things necessary to maintain its corporate existence and the corporate existence of each of its subsidiaries and will not transfer its jurisdiction of incorporation or place of domicile for taxation purposes without the prior written consent of the Lender;

- (d) maintain in full effect all consents required to enable it to perform or comply with its obligations under the Relevant Documents and procure that each other Relevant Party does the same;
- (e) duly and promptly comply, and procure that each other Relevant Party will 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 on a Relevant Party or may adversely affect the rights or security of the Lender under a Relevant Document;
- (f) file all tax returns as required by law, and pay and discharge all taxes, assessments and governmental charges payable by it or on its assets prior to the date upon which 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;
- (g) perform and comply and will procure that each other Relevant Party will perform and comply with its obligations under each Relevant Document to which it is a party;
- (h) 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 Relevant Document as the Lender may deem necessary or desirable to secure to it the full benefit of its rights under a Relevant Document and procure that each other Relevant Party does the same;
- (i) ensure that all information provided by it to the Lender in connection with the Relevant Documents after the date of this Agreement is true and accurate as at the date that information is provided and will not omit to state any facts or circumstances which would make that information untrue, inaccurate or misleading and that all projections and forecasts made by it will be made with all due care after diligent consideration; and
- (j) promptly deliver to the Lender:
- (i) details of any litigation, arbitration or administrative proceeding which, if it had been current, pending or, to its knowledge, threatened against it or any of its subsidiaries which would render the relevant representation and warranty in a Relevant Document incorrect if repeated;
  - (ii) details of each material notice affecting its assets which is served on it;
  - (iii) any document or information sent to its shareholders or creditors generally (or any class of them) as such at the same time as sent to them;
  - (iv) notice of any change of ownership of any shares in any of its subsidiaries and of the formation or acquisition of any subsidiary;
  - (v) details of each material investment in, and each loan to, or guarantee of the obligations of, a subsidiary of the Borrower or a person which, according to generally accepted accounting principles and practice in New Zealand, is an associated person of the Borrower and of each material increase in that investment, loan or guarantee;
  - (vi) upon request (and in any event within 21 days of the end of each of its financial years), a list of all bank accounts maintained by it and by each of its subsidiaries;
  - (vii) upon request details of any indebtedness that would, upon its dissolution, constitute a preferential claim in terms of the Seventh Schedule of the Companies Act 1993;
  - (viii) upon request the value and type of any asset or class of assets in its possession or control that is subject to any deferred purchase entitlement of, or title retention claim by, any supplier or other third party;
  - (ix) details of each transfer or intended transfer of any of its shares on receiving notice of it (whether by the presentation of a transfer for registration or otherwise);
  - (x) on signing this Agreement, details of all security interests affecting it; and
- (k) use the Loan solely for the purpose disclosed in the Borrower's application. Until so used, the Borrower will hold the proceeds of the Loan on trust for the Lender.
- (l) comply with any special conditions as set out in Schedule 3.
- 7.2 The Borrower (and any corporate Guarantor) undertakes to the Lender that it will:
- (a) as soon as available and in any event within 3 months after the end of its financial year, deliver to the Lender its financial statements and, if it has subsidiaries, its consolidated financial statements; and
  - (b) provide the Lender with all such other financial information relating to it as the Lender may from time to time require.
- 7.3 The Borrower and the Guarantor each undertakes to the Lender that it will not and will ensure that no Relevant Party will, without the prior written consent of the Lender:
- (a) create or permit to exist any security interest over or affecting its assets except any created or permitted by the Relevant Documents; or
  - (b) enter into a Major Transaction (as defined in section 129 of the Companies Act 1993); or
  - (c) make or attempt to make any Distribution; or
  - (d) permit its effective control or management to be transferred to a person or persons who were not exercising such control or management at the date of this Agreement; or
  - (e) unless in the ordinary course of business, give a guarantee or endorse or otherwise be liable in respect of the obligations of any other person; or
  - (f) lend money to another person except on proper commercial terms; or
  - (g) recover any of its assets which are subject to a security from the jurisdiction in which it is located.
- 7.4 The Lender may, in its absolute discretion, withhold its consent to any of the above issues, or give its consent subject to such conditions as it shall in its discretion think fit.
- 7.5 The Borrower acknowledges that the Lender is relying on information provided by the Borrower in the GST Disclosure to determine the GST treatment of this Agreement and warrants that this information is correct at the date of this Agreement and will remain correct during the term of this Agreement.
- 8. Caveatable interest**
- 8.1 The Borrower irrevocably agrees:
- (a) as security for its obligations to the Lender under this Agreement, to grant a mortgage over the Land; and
  - (b) to execute and deliver a memorandum of mortgage over the Land promptly on demand in writing from the lender at any time while this agreement remains in place.
- 8.2 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 its interest under this Agreement. The Borrower must do all things necessary to enable the registration of any caveat to protect the Lender's interest under this Agreement and to allow any such caveat to remain registered while this Agreement remains in place.
- 8.3 The Borrower undertakes to the Lender that it 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.
- 9. Events of Default**
- 9.1 If, at any time and for any reason, whether or not within the control of a party:
- (a) the Borrower fails to pay on its due date:
    - (i) any amount payable under any Relevant Document; or
    - (ii) any amount payable by the Borrower to the Lender; or
    - (iii) any other indebtedness when due; or
  - (b) the Borrower fails to perform or comply with any of its other obligations under any Relevant Document and, in the case of a failure that is capable of remedy, that failure is not remedied to the satisfaction of the Lender within 14 days after notice of that failure has been given to it by the Lender or of the date that the Borrower (or the Guarantor) first became aware of it, whichever is earlier; or
  - (c) any representation, warranty or statement by the Borrower in or in connection with any Relevant Document is not true in all material respects, or is or proves to have been untrue or misleading in any material respect, when made or repeated or deemed to have been made or repeated; or
  - (d) the Loan, or any part of the Loan, is, without the Lender's prior written consent, applied to any purpose other than the purpose disclosed in the Borrower's application; or
  - (e) any Relevant Document ceases to be, or is claimed not to be, in full force and effect, or the validity or enforceability of a Relevant Document is contested by any person (other than the Lender); or
  - (f) a person (other than the Lender) repudiates or does or causes to be done any thing evidencing an intention to repudiate a Relevant Document; or
  - (g) the Borrower:
    - (i) dies, is insolvent, commits an act of bankruptcy, has a receiver appointed or is unable to pay its indebtedness as it falls due or is deemed to be so under any law; or
    - (ii) stops or suspends, or threatens to stop or suspend, payment of any of its indebtedness, or begins negotiations or takes any proceedings to reschedule any of its indebtedness; or
    - (iii) makes, or proposes to make, an assignment, arrangement, composition or compromise with, or for the benefit of, its creditors; or
  - (h) a distress, attachment, execution or other legal process is levied or enforced on or against assets of the Borrower and is not discharged or stayed within five days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of any of them or their assets; or
  - (i) the board of the Borrower passes any resolution, for or in contemplation of any amalgamation of the Borrower with or involving another company then existing or yet to be formed; or
  - (j) an order is made, resolution passed or other step taken by a person for the dissolution or liquidation of the Borrower, 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
  - (k) an order is made against the Borrower requiring the Borrower to pay the whole or any part of claims made against another company that is in liquidation; or
  - (l) the Borrower 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 (including a recommendation by, or submission by any person to, the Securities Commission supporting such an appointment); or
  - (m) the Borrower ceases or threatens to cease to conduct all or a substantial part of its business, or disposes of, or threatens or agrees to dispose of (either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary) all or a substantial part of its assets; or
  - (n) in the opinion of the Lender, a material adverse change occurs in relation to the Borrower; or
  - (o) a present or future security interest over or affecting any asset of the Borrower becomes enforceable; or
  - (p) any indebtedness of the Borrower is not paid when due or becomes due, or is capable of being declared due, before it would otherwise have been due; or
  - (q) it is or will become unlawful or impractical for the Borrower to perform or comply with any of its obligations under the Relevant Documents; or
  - (r) without the prior written consent of the Lender there is any change in the control of the Borrower; or
  - (s) any shares in the capital of the Borrower are transferred by the present holders or are issued to a person otherwise than an existing shareholder, or there is any change in the proportions in which shares are held in the capital of the Borrower or the Borrower's holding company by the present shareholders, or any of the rights attaching to any of the shares in the capital of the Borrower or the Borrower's holding company are altered, varied, or modified, in each case without the prior written consent of the Lender; or
  - (t) any meeting of directors or shareholders of the Borrower is called for the purpose of considering and, if thought fit, passing any resolution the passing or the performance of which would cause an Event of Default to occur; or
  - (u) any event specified in the preceding paragraphs of this clause occurs with respect to a Relevant Party other than the Borrower as if references in those paragraphs to the Borrower were to each other Relevant Party, then this Agreement, the Securities and the other Relevant Documents shall become immediately enforceable and the Lender may, at any time, by notice to the Borrower:
    - (v) cancel the Facility; and
    - (w) declare all or any part of the Loan and any other indebtedness of the Borrower under the Relevant Documents to be, and that indebtedness will be, due and payable either immediately or upon demand or at a later date as the Lender may specify.

9.2 If an Event of Default occurs the Borrower agrees to pay to the Lender upon demand an amount equal to the maximum amount payable by the Lender under any Bond at that time, which amount may be held by the Lender until expiry of that Bond and, at any time, may be applied by the Lender in satisfaction of the Borrower's obligation under clause 10.2 below.

## 10. Indemnities

10.1 The Borrower will on demand indemnify and hold the Lender harmless against each cost, loss (including loss of profit or margin), expense (including all legal expenses on a solicitor and own client basis and taxes) and liability sustained or incurred by the Lender as a result of:

- (a) the occurrence or continuation of an Event of Default, or a Relevant Party not complying with any obligation expressed to be assumed by it in a Relevant Document; or
- (b) an amount payable by the Borrower to the Lender under a Relevant Document,
  - (i) 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 Relevant Document) or,
  - (ii) being paid or becoming payable otherwise than on a Payment Date (whether or not that payment is permitted or required under this Agreement); or
- (c) any repayment of the Loan being made or becoming due except as expressly permitted by clauses 3.1 and 3.9 (even if the prepayment is required under this Agreement); or
- (d) the Facility not being drawn on the date requested, by payment to the Lender of the amount the Lender certifies is required to indemnify it for that cost, loss, expense or other liability, including each cost and loss incurred in liquidating or re-employing deposits or other funds acquired or arranged to fund or maintain the Loan or any part of it.

10.2 The Borrower indemnifies the Lender against all costs, liabilities, expenses and claims which the Lender sustains or incurs, under or in connection with any Bond. The Borrower is to pay to the Lender immediately upon demand each amount paid by the Lender under any Bond together with interest calculated from the date of payment under that Bond. Such interest shall be calculated in accordance with clause 3. The Borrower will not be released from its obligations under this clause nor are those obligations to be affected by:

- (i) any falsity, inaccuracy, insufficiency or forgery of, or in relation to any claim satisfied pursuant to the Bond; or
- (ii) any failure by the Lender to enquire whether, or ascertain that, any claim under the Bond has been accurately transmitted or received or has been sent by an authorised person; or
- (iii) any insolvency, bankruptcy, liquidation or cessation of existence of any entity or person; or
- (iv) any defence of set-off alleged by the Borrower to be available to a claim made under the Bond; or
- (v) any other cause or circumstance, foreseen or unforeseen, whether similar or dissimilar to any of those listed above.

10.3 The above indemnities are unconditional and irrevocable, are to survive termination of the Facility and payment of all other indebtedness due under any Relevant Document and are not to be discharged or impaired by an act, omission, matter or thing that might discharge or impair them but for this sub-clause.

## 11. Set Off

11.1 The Borrower and any Guarantor authorises the Lender to apply (without prior notice or demand) any credit balance of the Borrower or any Guarantor on any account in any currency and at any of the Lender's offices in or towards satisfaction of any indebtedness then due to the Lender under a Relevant Document and unpaid. If at any time following an Event of Default 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 moneys pending that amount becoming due and/or being quantified and may set off the maximum liability which may at any time be or become owing to the Lender by the Borrower or the Guarantor (or partly the one and partly the other) and in each case without prior notice or demand. 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 the rights of the Lender under the Relevant Documents 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 or contract).
- The Lender's rights under this clause are contractual rights affecting the terms upon 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.

## 12. Trustee Liability

12.1 If a trustee of a trust is named on the signature page as a trustee to whom this clause applies (an Independent Trustee) then the Lender will have no recourse to assets of that Independent Trustee which are not assets of the trust, except in respect of any loss incurred by the Lender:

- (a) by reason of a breach of trust of that Independent Trustee; or
- (b) by reason of any lack of capacity, power or authority of that Independent Trustee to enter into this Agreement or any Relevant Document; or
- (c) resulting in the wilful default or dishonesty of that Independent Trustee; or
- (d) resulting from a breach on that Independent Trustee's part of the statements or undertakings made by it in subparagraph 12.3 below.

In any other case, each other trustee who is not an Independent Trustee will have full personal liability, so that the Lender may have recourse to its personal assets as well as to the assets of the Trust.

12.2 The Lender may have full recourse to all of the assets of the Trust and will be subrogated to each trustee's right to be indemnified from those assets or to be indemnified by any other person (including any beneficiary of any Trust).

12.3 Each trustee warrants and undertakes to the Lender that:

- (a) it has the power to enter into this Agreement and any Relevant Document and to grant any security interest to be given over assets of the Trust in its capacity as trustee, and in each case does so for the benefit of and for the proper purposes of the Trust;
- (b) other than with the prior written consent of the Lender, it will not permit:
  - (i) the terms and conditions of the Trust to be varied in any way;
  - (ii) any of the assets subject to the Trust to be disposed of, transferred, distributed, loaned or advanced other than for the purposes of the Trust;
  - (iii) the capital of the Trust to be distributed to or on behalf of the beneficiaries of the Trust;
  - (iv) the Trust to be determined; nor
  - (v) a new trustee of the Trust to be appointed.

12.4 Each trustee is to remain liable under this Agreement and any Relevant Document after it ceases to be a trustee until released in writing by the Lender.

## 13. Illegality

If, at any time, the Lender determines that because of war, civil disorder, monetary or economic developments, acts of government or other factors beyond the reasonable control of the Lender, it is or may be or will become unlawful or contrary to any law, treaty or directive of any agency of state or other regulatory authority or impracticable to make, fund or allow to remain outstanding all or part of the Loan, to charge or receive interest at any applicable rate or to comply with any of its obligations or to exercise any of its rights under this Agreement or any Relevant Document and if impracticable it has remained so for three months, then, upon the Lender notifying the Borrower:

- (a) the Lender may cancel the Facility; and
- (b) if the Loan has been made, the Borrower will immediately repay or cause to be repaid the Loan and any other indebtedness of the Borrower under this Agreement or any Relevant Document.

## 14. Expenses

14.1 The Borrower will pay each cost and expense (including all legal expenses on a solicitor and own client basis and taxes) sustained or incurred by the Lender in connection with:

- (a) the preparation, negotiation and entry into of each Relevant Document and each other transaction required or contemplated thereby; and
- (b) each amendment to, or waiver in respect of, a Relevant Document or another transaction required or contemplated by a Relevant Document, in each case on demand and on a full indemnity basis.

14.2 The Borrower will pay each cost and expense (including all legal expenses on a solicitor and own client basis and taxes) sustained or incurred by the Lender as a result of the exercise of, or in protecting or enforcing or otherwise in connection with, its rights under any Relevant Document or another transaction required or contemplated by any Relevant Document, in each case on demand and on a full indemnity basis.

14.3 The Borrower will pay promptly any duty and any tax (including GST) and registration fee payable in connection with:

- (a) the entry into, performance, registration, enforcement or admissibility in evidence of any Relevant Document; and
- (b) any amendment to, or waiver in respect of, any Relevant Document, and will indemnify and hold the Lender harmless against any liability with respect to, or resulting from, any failure to pay, when due, any duty, tax or fee.

## 15. Miscellaneous

15.1 Time is of the essence of this Agreement but no failure or delay by the Lender to exercise any right under this Agreement or any Relevant Document shall operate as a waiver of that right, nor shall any single or partial exercise by the Lender of any right preclude any other or further exercise of that right or of any other right. No waiver by the Lender of its rights under a Relevant Document will be effective unless it is in writing signed by the Lender. The rights of the Lender expressed in this Agreement and any Relevant Document are cumulative and do not exclude any rights provided by law.

15.2 This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same agreement. Any of the parties may execute this agreement by signing any such counterpart.

15.3 Neither the Borrower nor any Guarantor may assign any of its rights or obligations under this Agreement.

15.4 The Lender may at any time, assign or transfer all or any part of its rights or obligations under this Agreement or any Relevant Document. Any transfer of obligations may be effected by means of a notice from the Lender and the transferee concerned to the Borrower, substituting that transferee for the Lender as may be appropriate. References to the Lender in this Agreement shall include its assigns and transferees.

15.5 The lender may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this agreement are contemplated, any information about the Borrower or any Guarantor whether or not that information was obtained in confidence and whether or not that information is publicly available.

15.6 Notices may be given to the Borrower and any Guarantor at their addresses as set out in this Agreement, and shall be deemed to have been received:

- (a) in the case of a facsimile upon transmission, and
- (b) in the case of mail, 2 days after posting.

15.7 If there is more than one Borrower, the Borrowers' obligations shall be joint and several.

15.8 If there is more than one Guarantor, the Guarantors' obligations shall be joint and several.

15.9 Any statement or certificate setting out the rate of interest applicable or the amount of any moneys due signed by an officer or solicitor of the Lender shall, unless it is manifestly wrong, be conclusive as to the interest rate or the amount due.