

# CONSUMER LOAN & SECURITY AGREEMENT COMMERCIAL TERMS



Introducer \_\_\_\_\_  
Approval Number \_\_\_\_\_  
The **Effective Date** of the Agreement     /   / \_\_\_\_\_

Under this Agreement, **Ebbett Finance, provided by Heartland Bank Limited** (who we call the **Lender, we, or us** in this Agreement) agrees to make you a Loan and you grant to the Lender a security interest in the Goods (described below) and all your rights in the Goods, as security for the **Secured Debt (Loan and Secured Debt** are defined in the Dictionary in the General Terms). When we refer to this Agreement we mean these Commercial Terms- including the attached Fee Schedule- and the General Terms.

**IMPORTANT** – This Agreement contains key information about your Loan and is a disclosure statement under section 17 of the Credit Contracts and Consumer Finance Act 2003. We may also have to give you regular information about your Loan (**continuing disclosure**) - If required, we will give you statements containing the continuing disclosure at least every six months. You should keep a copy of this Agreement in a safe place.

You have the right to cancel this Agreement for a short period - see the **“Your right to cancel”** section in these Commercial Terms for more information.

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## LENDER (we are the person making the Loan to you)

*You can send notices to us under this Agreement by:*

- *writing to us at this postal address*
- *sending an email to this email address*

*Please also see clause 13 of the General Terms.*

Name	Ebbett Finance, provided by Heartland Bank Limited
Address	Level 3, 277 Broadway, PO Box 9919, Newmarket, Auckland 1149
Email	customerservice@heartland.co.nz

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## PRIMARY(S) (this is who we call **you** in this Agreement)

Full legal name (if you are a partnership, limited partnership or trust, please include the full legal name of each partner or trustee)

Role

Name \_\_\_\_\_ Date of Birth     /   / \_\_\_\_\_

Physical address \_\_\_\_\_

If this is not where the Goods are ordinarily located, please let us know

Postal address \_\_\_\_\_

Email \_\_\_\_\_

Unless you otherwise request in writing, you consent to receiving all communications from us, including disclosure information required by law, in electronic form. See under **“Electronic communication”** in the Other Key Information section for more information.

**LOAN DETAILS**

**LOAN AMOUNT** (this is the amount you owe us on the Effective Date, including any fees we charge you on that date)

\$ \_\_\_\_\_

made up of:

**Purchase Price** (including GST) \$ \_\_\_\_\_

**Accessories** \$ \_\_\_\_\_

**PPSR Fee** \$ \_\_\_\_\_

**Establishment Fee** \$ \_\_\_\_\_

**Dealer/Broker/Introducer Fee** \$ \_\_\_\_\_

**Other Insurance Premium(s)** \$ \_\_\_\_\_

**TOTAL GROSS COST** \$ \_\_\_\_\_

**LESS DEPOSIT** \$ \_\_\_\_\_

made up of:

Cash \$ \_\_\_\_\_

Trade-in allowance \$ \_\_\_\_\_

**SCHEDULE OF PAYMENTS**

Your Payment Dates are at weekly intervals.

First Payment Date: / /

Final Payment Date: \_\_\_ weeks after the effective date of this Agreement.

Total Payments:\$

Total Interest Payable:\$

Payment Number	Each Payment Amount
Payment ____	\$
Payment ____	\$

In order to calculate your Payment Amounts, we have assumed that your Loan will be advanced on a certain date. If your Loan is advanced on another date, then your Payment Amounts may vary slightly (and if it does, we will provide you with an updated Schedule of Payments in accordance with clause 12 of the General Terms).

**ANNUAL INTEREST RATE**

We will charge you interest on the Loan at a rate of 9.95% per annum. This is the only rate you will pay **unless** you are in default. The Annual Interest Rate is fixed for the full period of this Loan except as set out in clause 12.2(b)(iii) of the General Terms.

If you have been referred to us by a dealer/broker/introducer (a **Dealer**) the interest rate that we charge may be determined by the Dealer (subject to a maximum rate set by us) and the Dealer may receive commission from us in addition to the Dealer/Broker/Introducer Fee which we charge you. The commission will be based on the interest rate determined by the Dealer.

**INTEREST FREE PERIOD**

There is no interest-free period under this Agreement

**GOODS**

Make or Manufacturer		Vin Number	
Model		Registration No	
Year of Manufacture		Chassis/Serial No	

**PARTICULARS OF INSURANCE**

Company \_\_\_\_\_

Branch/Broker \_\_\_\_\_ Expiry date \_\_\_\_\_

C/N or Policy No. \_\_\_\_\_ Amount \$ \_\_\_\_\_

## CREDIT FEES AND CHARGES

All credit fees and charges (including default charges) that you might need to pay us under this Agreement (which are not part of the LOAN AMOUNT in these Commercial Terms) are listed in the attached FEE SCHEDULE. If you do not pay an amount when it is due, we will also charge you interest at a **Default Interest Rate**. We give you information about the default interest charges in clause 5.1 of the General Terms.

You should be aware that we can change the credit fees and charges you might have to pay under clause 12.2(b)(ii) of the General Terms.

## FULL PREPAYMENT

You can pay the Loan back early by paying us the **Full Prepayment Amount** defined in clause 3.3(a) of the General Terms. The Full Prepayment Amount includes an Early Settlement Fee and an amount equal to our reasonable estimate of our loss arising from full prepayment (if any)—that is, a loss that relates to differences in interest rates. Our reasonable estimate of our loss will not be any more than an amount calculated using the formula set out in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004.

## YOUR RIGHT TO CANCEL

You can cancel this Agreement by giving written notice to us within 5 business days of being handed a completed copy of this Agreement; or within 7 business days of receipt if the completed Agreement is emailed or sent to you electronically; or within 9 business days of the date the completed Agreement was posted to you (if applicable). Saturdays, Sundays and national public holidays are not counted as business days. You can physically give the notice to us or our employee or agent post the notice to us or our agent or email the notice to our email address listed in these Commercial Terms. **If you cancel this Agreement, you must immediately repay the Loan and any interest accrued for the period starting on the day you get the Loan until the day you repay us in full (if relevant). You must also reimburse us for any reasonable expenses we have to pay in connection with this Agreement and its cancellation, including legal fees and credit report fees.** *This statement is only a summary of your cancellation rights and obligations. If you want more information, or if you think that we are being unreasonable in any way, you should seek legal advice immediately.*

## WHAT CAN YOU DO IF YOU SUFFER UNFORESEEN HARDSHIP?

If you are unable reasonably to keep up your payments because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, you may be able to ask us to vary the terms of this Agreement (we call this a **Hardship Variation**). To apply for a Hardship Variation, you need to:

(a) make an application in writing; and

(b) explain your reasons for the Hardship Variation; and

(c) request one of the following:

- an extension of the term of this Agreement - this means we would reduce the Payment Amount due on each new Payment Date and increase the Number of Payments; or
- a postponement of certain Payment Dates; or
- both of the above – that is, postpone some payments and pay smaller amounts over a longer time period; and

(d) give the application to us - feel free to phone us to discuss on 0800 85 30 30 but we will ask you to follow up in writing in any of the ways listed in these Commercial Terms.

**Do this as soon as possible.** If you delay for too long in making an application, or do not meet the Hardship Variation criteria, we may not have to consider your request. If we agree to your requests, we may ask you to enter into a new agreement or we may change the amounts and dates in the SCHEDULE OF PAYMENTS in these Commercial Terms to help you meet your obligations. You may have to pay a fee (as set out in the attached FEE SCHEDULE).

## WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS?

This is a secured loan. If you fail to meet your commitments under this Agreement, we may be able to repossess and sell any Goods (that is, any property listed as Goods in these Commercial Terms and any other property included in the definition of Goods in the Dictionary in the General Terms).

- **Nature of the security interest:** Unless we agree otherwise in writing, our security interest must be a first-ranking exclusive security interest in the Goods. We must be the only person with a security interest in the Goods and you cannot grant security over the Goods to anyone else without our consent.
- **Extent of security interest:** The security interest secures the repayment of all amounts you owe us, and the performance of all of our obligations to us, under this Agreement or any other Relevant Document. However, we are not obliged to exercise our rights under the security interest if you fail to meet your commitments under this Agreement (and, if we choose not to do so, you will still be liable to pay us what you owe). If we exercise our rights under the security interest and the proceeds of sale of the Goods are insufficient to repay the Loan and any other amounts you owe us, you will still be liable to pay us the remaining amounts.
- **What happens if you give someone else a security interest in the Goods?** If you give a security interest over the Goods to anyone else without our prior written consent, you will be in breach of this Agreement and this will be an Event of Default under clause 6.1 of the General Terms. If that happens, we can give you notice declaring all amounts you owe us under this Agreement to be due immediately and we can enforce our rights under the security interest (which could include re-possessing and selling the Goods).

## ELECTRONIC COMMUNICATION

By entering into this Agreement and unless you otherwise request in writing, you agree that we can (subject to applicable legal requirements) send you notices and other communications relating to this Agreement electronically, including by email or using any other electronic message address provided by you or (if we choose to) by making the information available by other electronic means such as access to an online platform. This includes any disclosure that we have to make to you under the Credit Contracts and Consumer Finance Act 2003. We agree to receive notices or other communications from you in electronic form.

## IF THERE IS A DISPUTE ABOUT THIS AGREEMENT

We are a member of the following dispute resolution scheme:

Banking Ombudsman, Level 5, Huddart Parker Building, 1 Post Office Square, Wellington 6011

<http://www.bankomb.org.nz> phone: 0800 805 950 and [email: help@bankomb.org.nz](mailto:help@bankomb.org.nz)

It is free to make a complaint to this independent dispute resolution scheme. The scheme can help you to resolve any disagreement you have with us.

## REGISTRATION ON FINANCIAL SERVICE PROVIDERS REGISTER

Our Financial Service Providers Register Number is FSP53901 and our registration name is Heartland Bank Limited.

**IMPORTANT: The Credit Contracts and Consumer Finance Act 2003 requires us to give you certain key information relating to this Agreement. We have summarised below where to find key information about your Loan.**

<b>Name and address of creditor:</b>	Our details are provided in the LENDER section in these Commercial Terms.	<b>Annual Interest Rate:</b>	This is the interest rate set out in the ANNUAL INTEREST RATE section in these Commercial Terms. This is the interest rate that you will pay <b>unless</b> you are in default. The Annual Interest Rate is fixed for the full period of this Loan <b><u>except in the circumstances set out in clause 12.2(b)(iii) of the General Terms.</u></b>
<b>Initial Unpaid Balance:</b>	This is the LOAN AMOUNT set out in the LOAN DETAILS section in these Commercial Terms.	<b>Method of Charging Interest:</b>	We explain this in clause 3.1 of the General Terms.
<b>Total Advances:</b>	The Total Advances is the same as the LOAN AMOUNT set out in the LOAN DETAILS section in these Commercial Terms.	<b>Total Interest Charges:</b>	We set out the total interest charges payable under this Agreement in the SCHEDULE OF PAYMENTS section in these Commercial Terms.
<b>Subsequent Advances:</b>	There are no subsequent advances under this Agreement. This means the full loan is paid to you in one lump sum.	<b>Interest Free Period:</b>	Unless specified in these Commercial Terms, there is no interest free period under this Agreement.
<b>Payments Required:</b>	The payments you have to make under this Agreement are set out in the SCHEDULE OF PAYMENTS section in these Commercial Terms. The Payment Amount must be paid on each Payment Date.	<b>Default Interest Charges and Default Fees:</b>	We provide information on default interest charges in clause 5.1 of the General Terms. Default Fees are set out in the attached FEE SCHEDULE.
<b>Full Prepayment:</b>	The Full Prepayment Amount is defined in clause 3.3 of the General Terms. It includes an Early Settlement Fee and an amount equal to our reasonable estimate of our loss arising from full prepayment (if any).	<b>Credit Fees and Charges:</b>	The credit fees and charges that we will or might charge you are set out in the CREDIT FEES AND CHARGES section above and in the attached FEE SCHEDULE.
<b>Security:</b>	The secured property includes any Goods identified in the GOODS section in these Commercial Terms. You should also refer to the section headed WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS? in these Commercial Terms.	<b>Your Right to Cancel:</b>	We have explained your right to cancel this Agreement in the YOUR RIGHT TO CANCEL section in these Commercial Terms.
<b>Electronic communications:</b>	We agree to receive notices or other communications from you in electronic form.	<b>Statements:</b>	We will send you regular statements of account at least every six months if we are required to. You can also request additional statements but we may charge you a fee for this see the attached FEE SCHEDULE.

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**AGREEMENT**

By completing and submitting this Agreement, you request that we provide the Loan to you on the terms of this Agreement. A legally binding agreement is effective only when your request is accepted by us, which will be notified to you. We are under no obligation to accept your request.

You and the Guarantor confirm that:

- you and the Guarantor have received a copy of this Agreement and have read, understood and agree to the terms of this Agreement – **if you or the Guarantor do not understand anything in this Agreement please seek legal advice before entering into this Agreement.**
- all of the information that you and the Guarantor have provided to us in connection with this Agreement is complete, accurate and not misleading.

We will rely on the information that you and the Guarantor have provided to us (whether directly or through any other person who is assisting with this Agreement, such as the retailer who sold the Goods to you), unless we have a good reason to believe the information is not reliable.

**PRIMARY'S SIGNATURE**

Date

**WITNESS SIGNATURE**

Signed by each BORROWER in the presence of

Witness

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Name

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Address

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Occupation

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**FEE SCHEDULE**

**SCHEDULE OF STANDARD FEES AND CHARGES APPLIED TO CONSUMER LOANS\***

**APPLICATION / APPROVAL / ACCOUNT MAINTENANCE**

**Establishment Fee (Direct) \$205.00**

We will charge you this fee for processing a new loan application made directly to us, including approval and acceptance.

**Establishment Fee (Intermediary) Up to \$92.00**

We will charge you a fee for processing a new loan application via an intermediary, including approval and acceptance.

**Dealer/Broker/Introducer Fee Up to \$500.00**

We may charge you a fee which we will pay to any dealer/broker/introducer who refers you to us in relation to the Loan.

**PPSR Fee \$7.39**

We will charge you this fee for registration of our security interest in the Goods.

**Refund Fee \$3.00**

We will charge you this fee if you overpay us and we refund you.

**Early Settlement Fee \$7.00**

Debited to the account when a loan is settled in full before its final payment date.

**Statement Fee \$3.00**

We will charge you this fee if we give you (at your request) an additional statement. We do not charge you this fee for providing any six monthly continuing disclosure statements.

**Caveat Fee Actual Cost**

If we register a caveat over any of your property at any time, we will charge you caveat registration and release costs.

**Mortgage Fee Actual Cost**

If we register a mortgage over your property at any time, we will charge you mortgage registration costs.

**MODIFICATIONS**

**Variation Fee \$21.00**

We will charge you this fee if we agree you can make an unscheduled part prepayment of the Loan and we have to change the amounts and dates in the SCHEDULE OF PAYMENTS in these Commercial Terms as a result, or if we agree to release our security interest in the Goods and substitute it with a security interest over other Goods.

**COLLECTIONS**

**Repossession Warning Notice Fee \$41.00**

We will charge you this fee if we have to send you a Repossession Warning Notice. We usually do this 12-15 days after you have breached this Agreement (e.g. overdue payments).

**Couriered Letter Fee \$3.00**

We will charge you this fee if a letter is couriered to you. Letters may be couriered to you if your Loan is in arrears and/or we are having difficulty contacting you about your Loan.

**Dishonoured payment Fee \$3.00**

We will charge you this fee if your bank dishonours a payment you make to us.

**Repossession Warrant Fee \$89.00**

We will charge you this fee if we have to instruct an agent to repossess the Goods (for example, due to overdue payments).

**Repossession Fee \$341.00**

We will charge you this fee if we have to repossess the Goods.

**Repossessed Vehicle Sales Fee**

We will charge you this fee if we sell the Goods. We select the method of sale in order to obtain the best price reasonably obtainable for the Goods and the fee will differ depending on how the Goods are sold as follows:

If we sell the Goods through our outlet, as a registered motor vehicle trader; **\$1460.00**

OR  
If we sell the Goods in any other manner. **Actual Cost**

**Debit card fee \$0.36c plus 1.63% of the payment amount**

We will charge you this fee when you make a payment on your Loan by debit card. The fee for each payment will be \$0.36c plus 1.63% of the payment amount. This fee will be deducted from your payment when it is made.

**Recovery Costs Actual Cost**

We will charge you any costs charged by third parties relating to your Loan or this Agreement (e.g. repossession agent, legal provider, repairer). We can provide copies of the invoices on request.

**FEES AND COSTS ADDED TO LOAN BALANCE**

If we charge you any of the above fees or costs, we will add that amount to the Loan principal. That means we will charge interest on that amount until you pay it.

\*Fees may be changed under clause 12.2(b)(ii) of the General Terms.

# CONSUMER LOAN & SECURITY GENERAL TERMS



## Clause 1: Understanding and interpreting this Agreement

This Agreement has two parts:

- these General Terms
- the Commercial Terms (at the front of these General Terms) which includes the SCHEDULE OF PAYMENTS and the Fee Schedule.

Read both parts carefully. Ask for help if there is anything you don't understand.

We use ordinary words where possible. But sometimes we have to use legal words or terms because there is no ordinary word with the same meaning. *To help you, we have added some explanations in italics.*

Also, some of the ordinary words we use have special meanings in this Agreement. We explain some legal and ordinary words, and set out the rules for interpreting this Agreement, in the **Dictionary** (clause 16).

## Clause 2: Getting your Loan

### 2.1 When we will make the Loan to you

We will make the Loan in one amount once this Agreement has been completed and submitted (and we have accepted it) and we have received all the other information and documents we have asked for, including for the purposes of Regulatory Compliance.

### 2.2 When we will pay the Loan money to someone else

We will make the Loan to you, unless:

- (a) you have told us you need the Loan to repay another person (for example, to manage debts you already have with another bank), in which case we can choose to pay the other person directly; or
- (b) the Loan is to be used to purchase any asset, in which case we can choose to pay the vendor directly.

## Clause 3: Paying us back

### 3.1 You have to pay the Loan back on time with interest and fees

(a) You promise to:

- (i) pay us the amounts (each a **Payment Amount**) on each of the dates and at the intervals (the **Payment Dates**) set out in the SCHEDULE OF PAYMENTS in the Commercial Terms; and
- (ii) pay us back the Loan in full, plus all accrued and unpaid interest on the Loan calculated at the Annual Interest Rate, and all other fees, charges and other amounts due to us under this Agreement.

(b) We calculate and charge interest on the Loan on each Payment Date by multiplying:

- the average unpaid daily balance of the Loan for each **payment period**; by
- the **average period interest rate**.

A **payment period** is the period ending on a Payment Date and starting on the day immediately after the prior Payment Date (and includes the initial period between the date we pay the Loan to you and the First Payment Date if that initial period is the same as each other payment period).

The **average period interest rate** is calculated by dividing the Annual Interest Rate by 12 (where the period between Payment Dates is a month), or 26 (where the period between Payment Dates is a fortnight), or 52 (where the period between Payment Dates is one week).

If the initial period between the date we pay the Loan to you and the First Payment Date is not the same as each other payment period, we calculate interest for the initial period by multiplying the unpaid daily balance of the Loan by a daily interest rate (calculated by dividing the Annual Interest Rate by 365).

(c) Interest is payable in arrears on each Payment Date (as part of the Payment Amount). *This means that the interest you pay on a Payment Date relates to the previous month, fortnight or week, depending on the length of time between your Payment Dates.*

### 3.2 How should you pay us?

You must pay us the full amount due on each Payment Date (that is, you will not deduct or set off any amounts from the amount that you pay). You must pay that amount by 3.00pm in New Zealand dollars to the account we have advised by direct debit, unless we have agreed otherwise. If a Payment Date is not a business day, you must pay on the next business day.

### 3.3 What happens if you pay us back early?

**If you want to pay us back early, please contact us first to check what fees and other amounts may be payable.**

(a) You can pay the Loan back early by paying us the **Full Prepayment Amount**. The **Full Prepayment Amount** will be no more than the total of:

- (i) the unpaid Loan principal (*that is, the remaining unpaid balance*), plus accrued and unpaid interest and costs and all other amounts due to us under any Relevant Document; and
- (ii) the Early Settlement Fee; and
- (iii) an amount equal to our **reasonable estimate of our loss** arising from your prepayment (if any) (*that is, a loss that relates to differences in interest rates*) minus, in some circumstances, a deduction in respect of any consumer credit insurance premium, repayment waiver fee or extended warranty fee you have already paid that relates to the remainder of the Loan period.

(b) Our **reasonable estimate of our loss** will not be any more than the amount calculated using the formula set out in regulation 9 or regulation 11 of the Credit Contracts and Consumer Finance Regulations 2004.

(c) If you don't want to pay your Loan in full, but do want to pay us an extra amount on top of your scheduled payments, **please contact us first** as we can choose not to accept that extra payment (which we call a **Part Prepayment**). **If we do accept a Part Prepayment:**

- **you should be aware that it will not reduce the amount of interest you pay us overall** – this is because we hold the Part Prepayment and credit it in accordance with the SCHEDULE OF PAYMENTS
- we might change the SCHEDULE OF PAYMENTS in the Commercial Terms or we might refinance the Loan (that is, ask you to enter into a new loan to repay the Loan and other amounts due). In that case, you will also have to pay a Variation Fee as set out in the Fee Schedule.

**(Please note: This clause does not apply if you exercise your right to cancel this Agreement in accordance with the section headed "Your right to cancel" in the Commercial Terms).**

#### Clause 4: You give us a security interest in the Goods and make important promises to us

##### 4.1 You give us a security interest

- (a) You grant us a security interest in the Goods to secure payment of the Secured Debt.
- (b) You agree that each Related Security Agreement that you give secures all of your obligations under this Agreement. The Guarantor agrees that each Related Security Agreement that he or she (or it) gives secures all of the Guarantor's obligations under this Agreement. We can exercise any of our rights under this Agreement and any other Related Security Agreement separately or at the same time.

##### 4.2 How this security interest can be released

This Agreement, and each security interest created under it, continues as a separate security until we agree that it has been unconditionally released in writing and is not affected if any Relevant Document is not legally effective for any reason (and in that case we are not liable to you in any way, even if your rights are affected).

##### 4.3 Your promises in relation to the Goods

On each day of this Agreement, you promise us that:

- (a) the Goods are and will remain in your possession in New Zealand (and, if a specific location has been notified to us for this purpose, the Goods will ordinarily be kept at that location);
- (b) you alone own the Goods legally and beneficially (*that is, they will not be owned by a trust*);
- (c) you have not given and will not give a security interest in the Goods to anyone other than us;
- (d) you will not sell, lease, sub-lease or unreasonably part with possession or otherwise dispose of any Goods;
- (e) you will not do or fail to do anything that will reduce the value of the Goods or affect the value of our security interest in the Goods in a material way;
- (f) you will provide us with access (on any business day) to inspect the Goods following reasonable notice from us;
- (g) on request by us at any time, you will use best endeavours to procure the consent of any third party on whose land or premises the Goods are located for us to enter such land or premises for the purpose of exercising any of our rights under this Agreement;
- (h) you will keep the Goods insured against all risks that should sensibly be insured against for a value agreed with us and with our interest as lender noted on the policy. (If you don't organise this insurance we can do it as your agent at your cost under clause 12.3);
- (i) you will hold any money you receive under the insurance policy relating to the Goods on trust for us and use it to pay Secured Debt immediately if we ask you to; and
- (j) you will provide us on request with an up-to-date valuation for any or all of the Goods. (If you don't organise this valuation we can do it as your agent at your cost under clause 12.3).

##### 4.4 Other promises

On each day of this Agreement, you and the Guarantor promise us that:

- (a) **you will not change your name, ownership, authorised persons or contact details without giving us at least 14 days' prior notice;**
- (b) you will promptly give us any other information about yourself, your business, your financial condition or the Goods that we reasonably request; and
- (c) you will provide us with any information or documents we may require from time to time for the purposes of Regulatory Compliance.

##### 4.5 You will give effect to your promises

You and the Guarantor promise to provide us with all documents we ask for, and to do anything else we appropriately request, at your cost and in a timely manner, to give effect to the promises and the rights we are intended to have under this Agreement or a Related Security Agreement.

#### Clause 5: What happens if you do not pay us what you owe on time?

##### 5.1 If you do not pay us on time, we will charge you extra interest

- (a) If you do not pay an amount when it is due (under clause 3 above), we will charge you interest at the Default Interest Rate on the amount which is due and unpaid while the payment default continues. However, we will not charge you default interest on any amount that has become payable early under clause 6.2(a) or 10.1(b). The **Default Interest Rate** is a rate equal to the **Annual Interest Rate at the time of the default plus 6 per cent per annum**.
- (b) Default interest accrues daily, both before and after judgment, for the period from the due date for payment until the actual date of payment. If it remains unpaid, default interest is added to the principal amount of the Loan on each Payment Date. (*This means that default interest is added to the Loan, on which you pay interest, until you pay us.*)

**If you do not pay on time:**

- **this will cause an Event of Default** (see Clause 6 below)
- **we can charge you extra fees** (see Clause 9 below)

#### Clause 6: Events of Default and our enforcement rights

##### 6.1 Events of Default

There will be an Event of Default if any of the following things happen, whether or not it was within your or the Guarantor's control:

- (a) **Non-payment**  
you do not pay us any Secured Debt or any other amount you owe us, or the Guarantor does not pay us any Guaranteed Debt, when it is due under a Relevant Document, unless the non-payment is caused solely by the failure of the payment system which is beyond your or the Guarantor's control and we receive payment within 2 business days of its due date; or
- (b) **Breach of obligations**  
you do not perform your obligations or you fail to keep any of your promises under a Relevant Document (this includes any Related Security Agreement) and you do not remedy that failure to our satisfaction within 5 business days after we have notified you of that failure, or the Guarantor does not perform his or her (or its) obligations under a Relevant Document and does not remedy that failure to our satisfaction within 5 business days after we have notified him or her (or it) of that failure; or
- (c) **Untrue statement**  
any statement you or the Guarantor have made in relation to a Relevant Document is or was misleading or is materially untrue; or
- (d) **Legally ineffective documents**
  - (i) a Relevant Document is not legally effective against you or the Guarantor; or
  - (ii) you, the Guarantor or someone else disputes the legal effectiveness of a Relevant Document; or
- (e) **Bankruptcy (etc)**
  - (i) we reasonably believe that you are unable to pay your debts as they fall due or are bankrupt or insolvent, or you are deemed to be unable to pay your debts as they fall due or are deemed to be bankrupt or insolvent under any law; or
  - (ii) we reasonably believe that the Guarantor is unable to pay his or her (or its) debts as they fall due or is bankrupt or insolvent, or the Guarantor is deemed to be unable to pay his or her (or its) debts as they fall due or is deemed to be bankrupt or insolvent under any law; or
- (f) **Enforcement**
  - (i) another person takes enforcement action against your property, or the Guarantor's property, whether or not it includes any Goods, and that enforcement action continues after five business days; or



(ii) another person appoints an insolvency official (for example, a receiver, trustee, manager, administrator or similar officer) to any of your property, including any Goods, or to the Guarantor or any of the Guarantor's property; or

(g) **Goods at risk**

we reasonably believe that the Goods are at risk of being seized or being dealt with in breach of this Agreement or another Relevant Document in a way that would have a material and adverse effect on our rights under a Relevant Document; or

(h) **Cross-default**

an event happens which has the same effect as an event of default or termination (no matter what it is called) under another Relevant Document.

**6.2 Our rights if there is an Event of Default**

We have all the following rights if an Event of Default happens, to the extent the law allows:

- (a) We can, at any time, by notice to you, declare all or any part of the Secured Debt or any other amount owing under the Relevant Documents to be immediately due and payable. *(This means we can tell you to pay us the whole amount of the Loan principal, plus all unpaid interest, fees and charges and other amounts you owe us, immediately.)*
- (b) We can take possession of the Goods, appoint a receiver to the Goods, sell the Goods and do anything you can do in relation to the Goods (but we do not accept any of your obligations in relation to the Goods and neither we nor anyone acting for us is liable to account to you or anyone else as a mortgagee in possession of the Goods). For any of these purposes, we or a receiver (or any person acting on our behalf) may enter any premises where the Goods are reasonably believed to be located (whether or not any occupier is present). We are not liable to you or to the Guarantor under any circumstances for any loss or damage to the Goods, or for any defect in or failure of the Goods, that you or the Guarantor suffer or experience as a result of us, a receiver we appoint or our agent taking any action under this clause, or otherwise under this Agreement.
- (c) Each security interest created under any Related Security Agreement will become immediately enforceable. *(This means that if this Loan is secured over any property then we can take and sell the property and use the proceeds of sale to pay down the Loan or appoint a receiver to do that, among other things.)*
- (d) We have all other rights given to us by law and in any Relevant Document.

**Clause 7: Indemnity**

**7.1 Indemnity (your and the Guarantor's obligation to reimburse us)**

You and the Guarantor each fully indemnify us against each cost or liability by paying us on demand the amount that we confirm is required to compensate us for that cost as a result of:

- (a) an Event of Default happening or continuing (that is, not being remedied to our satisfaction);
- (b) you or the Guarantor not paying any amount under a Relevant Document when due for any reason;
- (c) any amount falling due under a Relevant Document on a date which is not a Payment Date, for any reason; or
- (d) anything we do or do not do in exercising our rights under this Agreement or at law (unless we are responsible for causing that cost or liability to arise).

*(This means that you and the Guarantor separately and personally promise to reimburse us for all of the costs and liabilities we incur as a result of the things listed in sub-paragraphs (a) – (d) in addition to your other payment obligations.)*

You and the Guarantor each agree that this indemnity continues even after this Agreement comes to an end.

**Clause 8: Guarantee**

**8.1 Guarantee**

- (a) The Guarantor guarantees us the Borrower's due payment of the Guaranteed Debt. If the Borrower does not pay us any Guaranteed Indebtedness when it is due, the Guarantor promises to pay it to us immediately on demand. In addition, as a separate and continuing promise which is independent of the Borrower's promises to us, the Guarantor promises to pay us immediately on demand the amount that we would otherwise have been able to recover (on a full indemnity basis) if we cannot recover any Guaranteed Debt from the Borrower for any reason. The Guarantor is liable under this Agreement in relation to the Guaranteed Debt as a sole and principal debtor and not as a surety. *(This means that the Guarantor is personally and fully responsible for paying us all amounts that the Borrower and any other Guarantor owes us. We do not have to try and collect any amount from the Borrower before we ask the Guarantor to pay us.)*
- (b) The Guarantor's obligations under sub-clause (a) are not reduced, cancelled or changed by anything unless we agree to the reduction, cancellation or change in writing. It does not matter if this Agreement or any other document is invalid or unenforceable or if the Borrower is not bound by the terms of this Agreement or any other document. We are not in any circumstances liable to the Guarantor, even if the Guarantor's ability to be reimbursed by the Borrower is affected by something we do or do not do. This Agreement and each of the Guarantor's obligations under this Agreement remain in full effect until we agree in writing to an unconditional discharge of the Guarantor's obligations under this Agreement. *(This means that the Guarantor is legally responsible for all amounts the Borrower owes us- no matter what- until we provide a written agreement saying the Guarantor has no further responsibilities.)*

**Note that the Guarantor makes extra promises under clause 4 ("You give us a security interest in the Goods").**

**Clause 9: Costs and fees**

**9.1 Costs and fees**

- (a) You must reimburse us or pay directly any cost that we properly incur, plus each fee that we charge you in connection with a Relevant Document, immediately on demand and on a full indemnity basis. This includes costs or fees in connection with the entry into, changes to, disclosures under, and the exercise of rights under a Relevant Document.
- (b) We have set out details of our fees and charges in the Commercial Terms. **Please note that we can change the fees in the Fee Schedule under clauses 12.2(b)(ii). We will notify you of any changes in accordance with applicable law.**

**Clause 10: Our extra rights and protections**

**10.1 Illegality**

If, at any time, we determine that, as a result of our Regulatory Compliance obligations, we are no longer reasonably able to continue to provide or fund the Loan, or to exercise any of our rights or comply with any of our obligations under a Relevant Document, then:

- (a) we are under no further obligation to provide the Loan; and
- (b) we can, at any time, by notice to you, declare all or any part of the Secured Debt or any other amount owing under the Relevant Documents to be immediately due and payable.

**10.2 When we are not liable**

We are not liable in respect of any loss or damage that results from us exercising, trying to exercise or not exercising our rights under this Agreement or at law, unless the law holds us liable.

**10.3 We are free to enforce our rights as we choose**

We can enforce our rights as we choose to, in any order, under:

- (a) any security interest, guarantee or other entitlement that we hold at any time; or
- (b) any money or property that we hold or may receive at any time.

#### **10.4 Our right to “set off”**

- (a) You agree that we can use any funds you have deposited or invested with us (or which we otherwise owe you) to pay down the amount of any unpaid debt which is overdue under a Relevant Document at any time.
- (b) The Guarantor agrees we can use any funds which he or she (or it) has deposited with us (or which we otherwise owe the Guarantor), to pay down the amount of any unpaid debt which is overdue under a Relevant Document at any time.

#### **10.5 Our remedies and waivers**

- (a) You and the Guarantor must meet your obligations under this Agreement in a timely manner. We can take the time we need to exercise our rights, and we do not give up our rights if we do not act quickly or take all steps to enforce our rights at once.
- (b) The only time we give up any of our rights is if we agree to do so in writing.

#### **10.6 Our remedies accumulate**

The rights we have under the Relevant Documents accumulate and are in addition to the rights we have at law.

### **Clause 11: Assignment**

#### **11.1 The Lender**

We can choose to assign or transfer any of our rights or obligations under this Agreement without your or the Guarantor’s specific consent, and each of our assignees and transferees has the same rights against you and the Guarantor under the Relevant Documents as if it were named in this Agreement as the Lender.

#### **11.2 Borrower and Guarantor**

- (a) You cannot assign or transfer any of your rights or obligations under this Agreement without our prior written consent.
- (b) The Guarantor cannot assign or transfer any of his or her (or its) rights or obligations under this Agreement without our prior written consent.

### **Clause 12: Other important things to note**

#### **12.1 If there are multiple Borrowers or Guarantors:**

- (a) If there is more than one Borrower, each Borrower has joint and several liability. *(That means we can sue all Borrowers together, or any Borrower by itself, for the full amount owed to us.)*
- (b) If there is more than one Guarantor, each Guarantor has joint and several liability. *(That means we can sue all Guarantors together, or any Guarantor by itself, for the full amount owed to us.)*
- (c) Any security under this Agreement is given in the relevant Goods regardless of whether those Goods are held by you individually or jointly with any other person. *(That means that we can take and sell the Goods under this Agreement, even where you are not the only owner of the Goods).*

#### **12.2 Changes to this Agreement**

- (a) No change to this Agreement will be effective unless the change is made in writing agreed between us, you and the Guarantor (if there is a Guarantor), except for the changes listed in sub-paragraph (b) below.
- (b) The following changes will be effective on the date we tell you they are effective:
  - (i) **Changes to comply with law:** We can make any changes to the Agreement that we reasonably believe are:
    - sensible or necessary in order to comply with applicable law;
    - sensible or necessary to correct a manifest error or omission; or
    - of a technical or administrative nature and will not prejudice or disadvantage you or the Guarantor in any material respect.
  - (ii) **Changes to fees you must pay:** We can change any of the fees you have to pay us or introduce any new fee at any time.
  - (iii) **Changes to the Annual Interest Rate:** We can increase the Annual Interest Rate you pay if our costs of borrowing materially increase at any time due to a change in funding market conditions, or on any Payment Date that falls 60 months or more after the day you receive the Loan under clause 2.1 if this is necessary for us to maintain our rate of return on the Loan.
  - (iv) **Changes to the Default Interest Rate:** We can change the method of calculation of the Default Interest Rate at any time (including the amount of any margin that forms part of that calculation).
  - (v) **Changes to our privacy statement:** We can change our privacy statement in accordance with its terms.

We will give notice of any change to this Agreement (including notice of the effective date of the change) in accordance with applicable law.

#### **12.3 When we can do things on your behalf**

You promise to do all the things you have said that you will in this Agreement in a timely manner. You appoint us as your agent to do (at your expense) anything that you have to do under this Agreement, or that we believe is necessary to protect our rights under this Agreement or in relation to the Goods, and you cannot undo this appointment. This includes arranging any insurance or valuation for the Goods at your expense if you fail to keep your promise to do so under clause 4.4. You confirm anything we do as your agent under this Agreement. However, we cannot take security over your property, or property you acquire rights in (including property you lease), after the date of this Agreement using this right.

#### **12.4 You agree to give up some of your rights under the PPSA**

- You:
- (a) waive your right under section 148 of the PPSA to receive a copy of any verification statement relating to any financing statement or financing change statement that we register in connection with our security interest in the Goods;
  - (b) waive your rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
  - (c) agree that sections 114(1)(a) and 133 of the PPSA do not apply to this Agreement or the security given under it.

#### **12.5 When part of the Agreement does not legally “work”**

If any part of this Agreement is illegal, invalid or unenforceable, the other parts of the Agreement will still be legal, valid and enforceable.

#### **12.6 Lender does not have to be a party**

You and the Guarantor agree that we can enforce our rights, and hold you and the Guarantor to all promises and obligations, under a Relevant Document even if we are not a party to the Relevant Document for the purposes of the Contract and Commercial Law Act 2017, Part 2, Subpart 1.

#### **12.7 Governing law**

This Agreement is governed by and must be interpreted under New Zealand law.

### **Clause 13: Communications**

#### **13.1 How to communicate with us**

In respect of this Agreement, you and the Guarantor must give notices and other formal communications to us in writing, which may be by means of an electronic message, using the details provided in the Commercial Terms (or any updated details subsequently provided by us).

#### **13.2 How we will communicate**

In respect of this Agreement, we must give notices and other formal communications to you and the Guarantor in writing, which may be by means of an

electronic message, using the details provided in the Commercial Terms (or any other details we reasonably believe to be your details or the details of the Guarantor (as applicable)). In some circumstances, we may instead communicate with you and the Guarantor indirectly through our website, our branches, the internet or the media, or otherwise as we see fit and permitted by applicable law.

### 13.3 When received

Notices and other communications given under this Agreement in writing will be deemed to have been received by the addressee:

- (a) if delivered personally, at the time of service;
- (b) if sent by post, on the fourth business day after being posted by prepaid postage; or
- (c) if sent by electronic message, on the second business day after sending.

### 13.4 Electronic messages

For the purposes of each Relevant Document, the conditions relating to sending and receiving information in electronic form are those in the Contract and Commercial Law Act 2017 (and any other applicable law from time to time). Where you or a Guarantor has given us an electronic message address, that person consents (unless otherwise requested in writing) to receiving information (including, but not limited to, information required by law) in electronic form, by means of an electronic communication, and signed by means of an electronic signature. This may include receiving electronic messages allowing access to statements from a website or by means of the internet.

### 13.5 We can rely on communications

If we receive any communication that we reasonably believe to be from you or the Guarantor (or that we reasonably believe to be from someone authorised by you or the Guarantor), we may rely on that communication without any further enquiry or verification. Despite this, we may (at our discretion) decline to act, or delay acting, on any instructions received where we consider that we have good reason to do so. Without limitation, we may decline to act if there is a dispute between, or we receive contradictory communications from, you and/or the Guarantor.

## Clause 14: Privacy and information sharing

### 14.1 Our Privacy Statement

By entering into this Agreement, you and the Guarantor (if an individual) consents to the collection, use, disclosure, storage and processing of information about you and the Guarantor (if an individual) in accordance with the Privacy Act 2020 and our privacy statement (which is available on our website). We can change our privacy statement from time to time in accordance with its terms. Clauses 14.2 to 14.6 summarise some important information from the Privacy Statement as at the date of this Agreement.

### 14.2 What information we collect about you

We collect various types of personal information about you and the Guarantor (if an individual), which may include that Relevant Party's name, age, gender, address, contact details (including phone numbers and email addresses), image, biometric data and financial information, including payment information. If the information we request from or about a Relevant Party is not provided, we may not be able to provide the requested services.

### 14.3 How we collect information about you

We collect information about you when you interact with us, including when you:

- (a) apply for a loan (or commence the process for applying for a loan), including when you provide personal information when completing assess this Agreement;
- (b) visit our website;
- (c) contact us with queries or feedback; and
- (d) subscribe to receive marketing communications from us.

You also authorise us to collect information about you from third parties including credit reporting agencies, your present or former creditors and insurance companies, identification service providers, your referees, government agencies, and your past and present employers and business partners. We may do this to confirm your identity, verify your current credit obligations, help us assess your ability to meet repayment obligations and make credit decisions, and to provide you with quotations for the cost of credit.

### 14.4 Your rights to request access to and correct of your information

You and the Guarantor (if an individual) have the right to access and request correction of information we hold about you or the Guarantor (as applicable). You can do so by contacting us using the details provided in the Commercial Terms.

### 14.5 What we can do with your and the Guarantor's information

Subject to any update to our privacy statement in accordance with clause 14.1 (which applies to you and the Guarantor (if an individual)), information that we collect, or that is provided to us, about you and the Guarantor may be used by us for the following purposes:

- (a) consider any application for an account or service (and any future application involving you), including to establish and verify your identity and to assess your creditworthiness and financial position from time to time;
- (b) carry out our business functions and activities;
- (c) collect amounts owed to us, including taking enforcement action and to notify credit reporting agencies of your repayment history and account details;
- (d) exercise our rights and fulfil our obligations under any agreement;
- (e) exercise our rights and fulfil our obligations for the purposes of Regulatory Compliance;
- (f) generally administer and monitor services provided to you (or any related entity); and
- (g) provide information about our other services, or the services of selected third parties in which we think you may have an interest, including by post, telephone and electronic message – **you or the Guarantor can opt out of receiving information about our other services and/or the services of selected third parties by telling us in writing.**

### 14.6 Who we can share your and the Guarantor's information with

Subject to any update to our privacy statement in accordance with clause 14.1 (which applies to you and the Guarantor (if an individual)), you and the Guarantor agree that we can share any information we get with:

- (a) our related companies;
- (b) existing and potential business partners;
- (c) identity verification agencies;
- (d) credit reporting agencies – credit reporting agencies may retain information (including default information) and use it to provide their credit reporting services;
- (e) third parties for the purposes of fraud prevention, identity verification, and any other purposes relevant to those purposes – those third parties may retain information and use it for identity verification and fraud detection purposes;
- (f) the New Zealand Transport Agency's 'Driver Check' service;
- (g) insurers;
- (h) any person providing us with guarantees or security for the Loan;
- (i) anyone to whom we consider assigning or transferring any of our rights or obligations;
- (j) anyone that we engage with about selling all or part of our business;

- (k) anyone providing any credit or funding support to all or any part of our business and anyone else involved in the funding process;
- (l) government agencies and regulators, or anyone else with whom we are required to share that information for the purposes of Regulatory Compliance;
- (m) service providers – this may include information being held on our behalf by data storage providers, including cloud-based data storage providers in New Zealand or overseas;
- (n) referees; and
- (o) debt recovery agencies.

**Clause 15: Online services/internet banking**

By using any online services provided by us from time to time, you and the Guarantor consent to our online services/internet banking terms of use (which are available on our website). We can change those terms of use from time to time in accordance with their terms.

**Clause 16: Dictionary**

Some of the terms used in this Agreement are defined in the Commercial Terms. Otherwise:

<b>accrued (interest)</b>	interest which is calculated and grows on the principal amount of the Loan
<b>Agreement</b>	these General Terms and the Commercial Terms (including the Fee Schedule)
<b>Annual Interest Rate</b>	the rate stated in the Annual Interest Rate section in the Commercial Terms (or the updated Annual Interest Rate if we have updated it in accordance with clause 12.2(b)(iii))
<b>assign</b>	to pass rights to another person (but not obligations)
<b>bankrupt</b>	includes the bankruptcy of, and entry into any non-asset procedure (which is an alternative to bankruptcy) by an individual Borrower or Guarantor and the dissolution, liquidation, receivership, administration and winding-up of any other Borrower or Guarantor
<b>Borrower</b>	the person or persons named as a Primary or Joint Holder on the front page of the Commercial Terms
<b>business day</b>	a day (other than a Saturday, Sunday or public holiday observed in New Zealand) on which registered banks are opened for general banking business in New Zealand
<b>Commercial Terms</b>	the terms set out under the heading 'Commercial Terms' at the beginning of this Agreement
<b>cost</b>	includes all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes that we incur
<b>debt</b>	includes any obligation you have to us now or in the future in any capacity relating to the payment of money
<b>Default Interest Rate</b>	is defined in clause 5.1
<b>dispose</b>	includes any assignment, transfer, lending arrangement, variation of terms, lease, sublease and sale and anything that has the same effect as any of those things
<b>due</b>	owed to us on a specific date
<b>Event of Default</b>	any event listed in clause 6.1
<b>financing change statement</b>	has the meaning given in the PPSA
<b>financing statement</b>	has the meaning given in the PPSA
<b>Goods</b>	<ul style="list-style-type: none"> <li>(a) all Goods specified in the Commercial Terms;</li> <li>(b) all other property, including any after-acquired property, which you agree is Goods for the purposes of the Relevant Documents;</li> <li>(c) all attachments, accessories, replacements or spare-parts relating to the property in paragraphs (a) and (b); and</li> <li>(d) all of your present and future right, title and interest (legal and equitable) in all documents of title relating to, and proceeds of, the property described in paragraphs (a) – (c) above</li> </ul>
<b>Guaranteed Debt</b>	in relation to the Guarantor, all debt of the Borrower and (if relevant) each other Guarantor to us, including the unpaid principal amount of the Loan, plus all accrued and unpaid interest and costs relating to it and all other amounts due to us under any Relevant Document
<b>law</b>	any law, regulation, rule, official directive, order, request, guideline or consent (whether or not having the force of law) of any governmental body or regulatory authority and, if not having the force of law, with which responsible entities in the position of the relevant party would normally comply
<b>liable</b>	legally responsible
<b>Loan</b>	the principal amount that we pay you under this Agreement (the Amount of Credit listed in the Commercial Terms) and, depending on the context, may also include all accrued and unpaid interest and fees
<b>Payment Amount</b>	is defined in clause 3.1(a)(i)
<b>Payment Date</b>	is defined in clause 3.1(a)(i)
<b>person</b>	an individual and any entity, such as a company, whether or not it exists as a separate person at law
<b>PPSA</b>	the Personal Property Securities Act 1999
<b>principal</b>	the principal amount of the Loan is the amount you borrow from us (this does not include accrued interest or fees relating to the Loan)
<b>Property</b>	includes any legal or present and future property, revenue and rights, and any legal or equitable interest in it
<b>Regulatory Compliance</b>	the requirements for us to comply with all applicable laws, including those relating to money laundering, terrorist financing, bribery, corruption, tax evasion, fraud or similar, and manage all economic and trade sanction risks
<b>Related Security Agreement</b>	each security agreement, guarantee or other agreement or document (present or future) that guarantees or secures all or any part of the Secured Debt (directly or indirectly)
<b>Relevant Documents</b>	this Agreement, each Related Security Agreement and each other agreement (present or future) evidencing or relating to the Secured Debt
<b>Schedule of Payments</b>	the SCHEDULE OF PAYMENTS in the Commercial Terms
<b>Secured Debt</b>	the Loan, and all accrued but unpaid interest, and any other fees, charges or other amounts owing under this Agreement
<b>security interest</b>	an interest in personal property that, in substance, secures payment or performance of an obligation
<b>sue</b>	take legal action (such as taking you to court)
<b>unpaid (interest)</b>	interest which, at a particular time, is due but has not been paid or which has not been added to the principal amount of the Loan at that time
<b>we (or us)</b>	the Lender, Heartland Bank Limited
<b>you</b>	the Borrower or, if there is more than one Borrower, all Borrowers equally

#### INTERPRETING THIS AGREEMENT

The Agreement must be interpreted using the following rules (unless it would not make sense to do so):

- Ignore all headings, **bolded text** and *italicised text* when interpreting this Agreement.
- Where we have provided an explanation of a legal word (in brackets), the legal word or phrase takes priority over the explanation.
- Where we refer to one thing (the singular), we include multiple things (the plural), and the other way around.
- Where we define a word or expression in the Dictionary or in the Commercial Terms, then other grammatical forms of that word or expression have corresponding meanings.
- Where we refer to any statute, we include all future versions if it, including all changes to it, all re-enactments or replacements of it, and all regulations and orders in-council made in connection with it.
- Where we refer to you, or to the Guarantor, we include any person that legally takes over your or the Guarantor's responsibilities or rights, or both.
- Where we refer to the Lender (or we or us), we include any person that legally takes over our responsibilities or rights, or both. This includes any of our transferees or assignees under clause 11.1.