

# Home Loan Agreement General Terms

Your Home Loan Agreement with us, China Construction Bank (New Zealand) Limited is made up of two documents:

- A. This document called "Home Loan Agreement General Terms"; and
- B. The document called "Home Loan Agreement Specific Terms".

Your obligations to us are also secured by a mortgage over the Property referred to in the Specific Terms. By entering into these agreements with us you are therefore agreeing to borrow money and give security over land.

For these reasons we recommend that before you sign these documents you obtain independent legal advice on them from your solicitor. It is important to us that you fully understand the nature and extent of the obligations you are entering into and that you agree to do so after you have had the time and help that you may need to make an informed decision.

If English is not your primary language, then we recommend that you have the contents of these documents explained to you in your primary language by a translator.

## Clause 1 – Drawing down your Loan

- 1.1 We will make the Loan by paying you the amount to be advanced to you on the Start Date (as specified in the Specific Terms) and, if relevant, any subsequent advances (as specified in the Specific Terms). Before we make any advance of the Loan to you, each Condition Precedent must have been met (or waived by us in writing).
- 1.2 We will pay you or your lawyer each amount to be advanced to you under this Agreement, unless you have told us you need the Loan to repay another person (for example, to manage debts you already have with another bank). In that case, we can choose to pay the other person directly.
- 1.3 If you have chosen to split your Loan into several **Facilities** and one of these **Facilities** provides for advances at a later date or dates, these amounts will be shown in the Specific Terms under the heading "subsequent advances".

## Clause 2 – Repayments

- 2.1 You have to repay the Loan on time with interest, fees and all other amounts due and payable by you under this Agreement. You must give us a Direct Debit Authority to enable us to collect the amounts due and payable by you from your bank on the due dates. If a Direct Debit Authority is not paid or any payments collected by us are reversed, you remain liable to pay those amounts to us. A late or reversed payment may also incur default fees and default interest charges.
- (a) You promise to:
- (i) pay us the full **Payment Amount** on each of the **Payment Dates** set out in the Payment Details in the Specific Terms;
  - (ii) pay us all other fees, charges and other amounts when due and payable under this Agreement; and
  - (iii) repay the Loan in full on the End Date, plus all accrued and unpaid interest on the Loan, and all other fees, charges and other amounts due to us under this Agreement.
- (b) If a **Payment Amount** (as specified in the Specific Terms) refers to payment of a principal and interest instalment, each such amount will be calculated so that the Loan (or, if the Loan is split into Facilities, the relevant Facility) is repaid over the period until the **End Date** together with interest at the relevant Annual Interest Rate. We calculate the **Payment Amount** so that all payments other than the last payment are the same amount. The last payment may be higher or lower than the regular **Payment Amount**.
- (c) If a **Payment Amount** (as specified in the Specific Terms) refers to payment of an interest-only instalment, each such amount will be calculated so that accrued and unpaid interest on the Loan (or, if the Loan is split into Facilities, the relevant Facility) at the relevant Annual Interest Rate is paid over the period until the **End Date**. The final payment on the End Date also requires payment of the relevant principal in full.
- (d) Unless an Event of Default has occurred under this Agreement or you have prepaid the Loan in full, **Payment Dates** and/or **Payment Amounts** will only change if we agree with you to change the End Date or any applicable Annual Interest Rate, or if we make any change (including to any applicable Annual Interest Rate) under clause 10.2.
- (e) In relation to the Loan or a Facility (as applicable), we calculate interest on each **Payment Date** by multiplying:
- the average unpaid daily balance of the Loan or Facility for the period ending on that **Payment Date** (and starting on the day immediately after the prior **Payment Date**) (or, in the case of the first Payment Date after the Start Date, starting on the Start Date); by

- the **average period interest rate**.

The **average period interest rate** is calculated by dividing the relevant Annual Interest Rate by 12 (where the period between Payment Dates is a month).

- (f) Interest is charged 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.]***

**2.2** You must pay us the full amount due on each **Payment Date** (that is, you must 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.

**2.3** You can repay the Loan early by paying us the **Prepayment Amount**. The **Prepayment Amount** will be no more than the total of:

- (a) 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 Loan Document; and
- (b) our administrative costs relating to your prepayment; and
- (c) an amount that does not exceed our **reasonable estimate of our loss** arising from your prepayment. We may have suffered a loss if our current interest rate is lower than any fixed rate then applying to the Loan. If a fixed rate applies to the Loan, we recommend you contact us for a quote before making an early repayment.

We calculate our **reasonable estimate of our loss** using the formula set out in either regulation 9 or regulation 11 (as applicable) of the Credit Contracts and Consumer Finance Regulations 2004.

### **Clause 3 – What happens if you do not repay what you owe on time?**

**3.1** If you do not pay an amount when it is due under this Agreement, we will charge you interest at the applicable Default Interest Rate on the amount which is due and unpaid while the payment default continues.

**3.2** Default interest is calculated and accrues daily, both before and after judgment, for the period from the due date for payment until the actual date of payment. ***[This means that default interest is added on the overdue amount as soon as it becomes due until you pay us.]***

**3.3** If there is an Event of Default, we do not charge default interest on any amount that has become payable earlier than would have been the case had there not been an Event of Default.

**If you do not pay on time, this will cause an Event of Default and we may also charge you default fees.**

### **Clause 4 – Costs, fees and other payments**

**4.1** You must pay us each fee or charge under this Agreement as specified in the Specific Terms.

**4.2** You must pay us (on demand) any costs we reasonably incur in enforcing this Agreement or a Related Security Agreement after you are in default (including:

- (i) costs and expenses payable to a third party; and
- (ii) in the case of a mortgage, expenses incurred in preserving and maintaining the property secured by a Related Security Agreement - such as by paying insurance, rates and taxes for the property).

**4.3** You must pay us (on demand) the amount of any GST that is payable by us under section 5(2) of the Goods and Services Tax Act 1985 upon exercise of the power of sale under any Related Security Agreement.

- 4.4 Payments of costs, fees and other amounts are due and payable on the dates specified in the Specific Terms.

## Clause 5 – Events of Default

- 5.1 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 amount you owe us, or the Guarantor does not pay us any Guaranteed Debt, when it is due under a Loan Document, unless the non-payment is caused solely by the failure of the payment system which is beyond your control and we receive payment within 2 days of its due date; or

(b) **Breach of obligations**

you do not perform your obligations under a Loan Document (this includes any Related Security Agreement) in any respect that we reasonably consider material 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 its obligations under a Loan Document in any respect that we reasonably consider material 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 Loan Document is or was misleading or untrue in a material respect when made; or

(d) **Legally ineffective documents**

- (i) a Loan Document is not legally effective against you or the Guarantor in a material respect; or
- (ii) you, the Guarantor or someone else disputes the legal effectiveness of a Loan Document in a material respect; or

(e) **Insolvency**

where you or the Guarantor are a company, you or the Guarantor:

- (i) are insolvent or unable to pay your or the Guarantor's (as the case may be) indebtedness as it falls due or you or the Guarantor (as the case may be) are deemed to be so under any law; or
- (ii) stop or suspend payment of any of your or the Guarantor's (as the case may be) indebtedness or threaten to do so; or
- (iii) make, or proposes to make, any compromise, assignment, novation, arrangement or composition with, or for the benefit of, your or the Guarantor's (as the case may be) creditors;
- (iv) are involved in any insolvent restructuring; or
- (v) any steps are taken in relation to any such event, or any such event is threatened, or anything analogous or having substantially similar effect to any such event occurs; or

(f) **Liquidation (etc)**

where you or the Guarantor are a company, an order is made, resolution passed, appointment made or other step taken by a person for your or the Guarantor's (as the case may be) liquidation, receivership, statutory management or voluntary administration, or any such event is threatened, or anything analogous or having substantially similar effect to any such event occurs; or

(g) **Bankruptcy (etc)**

- (i) we reasonably believe that you are unable to pay your debts as they fall due or bankrupt, or you are deemed to be unable to pay your debts as they fall due or bankrupt 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 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 under any law; or

(h) **Enforcement**

- (i) another person takes enforcement action against your property, or the Guarantor's property, 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 or to the Guarantor or any of the Guarantor's property; or

(i) **Property at risk**

we reasonably believe that the Property is at risk of being dealt with in breach of any Loan Document; or

(j) **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 Loan Document; or

(k) **Illegality**

we reasonably determine that we are unable to continue to provide or fund the Loan, or to exercise any of our rights or comply with any of our obligations under a Loan Document, as a result of applicable law.

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

- (a) We are under no further obligation to make any advance of the Loan to you.
- (b) We can, at any time, by notice to you, declare all or any part of the amount owing under the Loan 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.]***
- (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 Loan Document.

## **Clause 6 – Your obligations to us**

**6.1** You and the Guarantor each undertake to:

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- (a) keep and maintain the Property in a good state of repair (including, without limitation, ensuring that all building work and alterations are completed properly) and (to the extent that you can) protect the value of the Property;
- (b) pay all rates, insurance premiums, taxes and other outgoings on the Property on their due date, and promptly provide evidence of such payment if requested by us;
- (c) ensure that the buildings and improvements that are on the Property are insured at all times to our satisfaction:
  - (i) with an insurance company acceptable to us;
  - (ii) with our interest as first mortgagee noted against each policy and your name or the Guarantor's name as owner (as applicable);
  - (iii) for either an amount equal to the full replacement value of the Property or a specified total sum insured amount acceptable to us to fully rebuild the Property; and
  - (iv) against fire, earthquake, flood, natural disaster and all other risks usually covered by a comprehensive policy of insurance for a residential property or otherwise specified by us;
- (d) provide us with a certificate of currency and/or the insurance policy for the Property to us promptly on request;
- (e) not do anything to or fail to do anything which may prejudice the insurance cover for the Property;
- (f) notify us of any loss or damage to the Property or any other thing that may or does give rise to a claim under the insurance policy for the Property;
- (g) take all steps necessary or reasonably requested by us to enable us to claim under any insurance policy for the Property and collect the insurance proceeds (which may include holding any insurance proceeds on trust for us). If we receive such insurance proceeds, we will apply those proceeds in accordance with clause 8(b) of the ADLS Memorandum of Mortgage terms 2018/4344);
- (h) if anyone (other than us) lodges a caveat against the Property, notify us immediately and take all action that you are reasonably able to, to remove that caveat;
- (i) promptly give us any information about you or the Guarantor or the Property (including insurance) that we reasonably request;
- (j) give us at least 14 days' prior notice of any change of name or contact details;
- (k) authorise us to obtain a valuation of the Property at any time and from time to time in order to confirm its value (at your cost), and you agree to pay us the cost of such valuation when requested; and
- (l) notify us of the occurrence of any Event of Default immediately upon becoming aware of it, giving full details of it and any action taken (or to be taken) as a result.

## Clause 7 – Guarantee

**7.1** The Guarantor guarantees to 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.]***

**7.2** The Guarantor's obligations under sub-clause 7.1 are not reduced, cancelled or changed by anything unless we agree to the reduction, cancellation or change in writing and sign that agreement. 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 sign 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 sign a piece of paper saying the Guarantor has no further responsibilities.]***

## **Clause 8 – Our extra rights and protections**

### **8.1 When we are not liable**

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

### **8.2 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.

### **8.3 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 Loan 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 Loan Document at any time.

### **8.4 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 a signed, written agreement.

### **8.5 Our remedies accumulate**

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

### **8.6 Certificates**

We may give you a certificate or formal statement about a matter or about an amount payable in connection with this Agreement. This is sufficient evidence of the matter or amount, unless it is proved to be incorrect. You may, however, show us evidence that the matter or amount is incorrect if you wish to do so.

## Clause 9 – Assignment

### 9.1 The Lender

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

### 9.2 Borrower and Guarantor

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

## Clause 10 – Other important things to note

### 10.1 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.]***

### 10.2 Changes to this Agreement

- (a) No change to this Agreement will be effective unless the change is made in writing and is signed by us and you (and, in the case of a change to clause 7 or this clause 10.2, 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 (although we will give you as much prior notice as we reasonably can in the particular circumstances):
  - (i) **Changes to comply with law:** We can make any changes to the Agreement that we reasonably believe are sensible or necessary to make in order to comply with the law, including statutes, directives, case law or official guidance.
  - (ii) **Changes to fees you must pay:** We can change any of the fees you have to pay us or introduce new fees. All changes and new fees must be reasonable and may only be introduced to reimburse a cost we incur or a loss we sustain that has a close and relevant connection with the Loan.
  - (iii) **Changes to Annual Interest Rate and Default Interest Rate:** We can change the relevant Annual Interest Rate or Default Interest Rate at any time. However, if we have agreed that the relevant Annual Interest Rate is fixed for a period – we call the rate a "fixed rate" and the period a "fixed rate period" - then we promise that we will not change that fixed rate during the fixed rate period. At the end of the fixed rate period, unless we otherwise agree, the relevant Annual Interest Rate will revert to the current standard variable rate.

### 10.3 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 any Secured Property, and you cannot undo this appointment. You confirm anything we do as your agent under this Agreement. However, we will only use this right, acting reasonably, if an Event of Default has occurred and in accordance with applicable law. 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.

#### **10.4 Agreement to mortgage**

You irrevocably agree:

- (a) as security for your obligations to us under this Agreement, to grant a mortgage over the Property; and
- (b) to execute and deliver to us a memorandum of mortgage over the Property.

#### **10.5 Goods and Services Tax**

Unless you have provided us with information to the contrary, we are lending to you on the basis that neither you nor any person providing security are a "registered person" for the purposes of the Goods and Services Tax Act 1985 (**GST Act**). If you or any person providing security is a registered person for the purposes of the GST Act; then unless you have provided us with information to the contrary, you warrant that you are not using any property given as security for the Loan for a "taxable activity" under the GST Act and that any supply of that property would not be a "taxable supply" under the GST Act.

If that position changes you must advise us immediately. If we determine that we would be liable to pay GST on any sale in exercise of our power of sale, then we may demand and you must pay us immediately, the amount that we determine is the amount by which the value to us of the property as security for the Loan has been reduced as a result of GST being payable under section 5(2) of the GST Act in the event of a sale.

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

**10.7** You and the Guarantor agree that we can enforce our rights, and hold you both to your promises and obligations, under a Loan Document even if we have not signed a Loan Document for the purposes of the Contract and Commercial Law Act 2017.

### **Clause 11 – Governing Law and translations**

**11.1** This Agreement is governed by and must be interpreted under New Zealand law. You irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

**11.2** This Agreement is written and is to be interpreted by reference to the English language and in accordance with the laws of New Zealand. Any translation of this Agreement into any other language, whether by the lender or by any other person is provided for assistance only and if there is any conflict between the terms of a translation and the terms of this Agreement in the English language, the terms of this Agreement in the English language will prevail.

### **Clause 12 – Notices**

**12.1** Each notice or other communication under this Agreement must be in writing and sent, or made available, by email, facsimile, personal delivery, by post or (if we choose to) by other electronic means such as an online portal. The email address, facsimile number and address of each party is set out under its name in the Specific Terms. You or the Guarantor can change your contact details by letting us know in writing. We will notify you if we change our contact details.

**12.2** A communication is not effective until the party it is addressed to receives it. For this purpose, a communication is deemed to be received:

- (a) in the case of a letter, on the fourth business day after it is posted; and
- (b) in the case of an email, other electronic notice or a facsimile, on the business day on which it is sent, or, if sent after 5.00pm (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of sending.

### **12.3 Appointment of Agent for service**

If you or any Guarantor is not resident in New Zealand (a non-resident) then it is condition of making the Loan that the non- resident appoint another person who is resident in New Zealand as an agent for service of:

- (a) notices under section 355 of the Property Law Act 2007; and
- (b) any other notices that may be served at any time on a party under this Agreement.

This appointment must include granting that person an irrevocable power of attorney.

**12.4** If we receive any communication that we reasonably believe to be from you or a Guarantor (or a person authorised to act for you or a Guarantor), we may rely on that communication without further enquiry or verification. Unless otherwise agreed, we may act on an instruction from anyone authorised to act for you or a Guarantor (acting alone). However, we may (at our discretion) decline to act, or delay acting, on any instructions received where we reasonably 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 instructions from, you or a Guarantor.

## **Clause 13 – Trustees and Limitation of liability of Independent trustees**

**13.1** Where you have entered into a Loan Document as a trustee of a trust (**Trustee and Trust** respectively) then you represent, warrant and undertake that:

- (a) you are validly appointed as a trustee of the Trust;
- (b) you have the unrestricted power to enter into, and perform all obligations under, each Loan Document, including (if applicable) to grant a security interest over the assets of the Trust, and in each case you do so for the benefit of and for the proper purposes of the Trust;
- (c) in order to execute, enter into and perform your obligations under each Loan Document:
  - (i) the trustees of the Trust have passed all necessary resolutions;
  - (ii) those resolutions remain (and will remain) in full force and effect;
  - (iii) all necessary consents and approvals required, by law or otherwise, have been obtained; and
  - (iv) no trustee of the Trust is (or will be) in breach of the trust deed of the Trust, any law or other obligation; and
- (d) each Loan Document are legal, valid, binding and enforceable on and against you as trustee of the Trust in accordance with its terms;
- (e) you are not aware of any breach by you or any other trustee of the Trust of any duty owed to a Trust beneficiary giving rise to an unsatisfied claim or potential claim against you or another trustee of the Trust; and
- (f) you will not (without the prior written consent of us) retire as Trustee; permit: a variation of the terms of the Trust; a disposal of Trust assets (other than for the purposes of the Trust and provided this would not, nor be reasonably likely to, prejudice our rights or ability to be

repaid under the Loan Documents including via access to the Trustee's right of indemnity); the Trust to be determined; or a new trustee appointed.

- 13.2** Where you are identified in the execution section as an "Independent Trustee" then you enter into and performs each Loan Document and the transactions contemplated by the Loan Documents only as a trustee of the Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to the Loan Documents and those transactions.
- 13.3** Under and in accordance with the Loan Documents and those transactions and conduct, your liability as an independent trustee (including for negligence) is limited to the extent it can be satisfied out of the assets of the Trust. You need not pay any such liability out of other assets.
- 13.4** Paragraphs 13.2 and 13.3 apply despite any other provision in this agreement but do not apply with respect to any liability of you to another party (including for negligence):
- (a) to the extent that you as independent trustee have no right or power to have Trust assets applied towards satisfaction of that liability, or your right or power to do so is subject to a limitation, reduction, deduction, obligation to make good or to clear accounts, in any case because you have acted beyond power or improperly in relation to the Trust; or
  - (b) in connection with the representations, warranties and undertakings in clause (a) above or any provision which expressly binds you other than as trustee of the Trust (whether or not it also binds it as trustee of the Trust).
- 13.5** For the avoidance of doubt:
- (a) this clause is not to be construed as limiting the personal liability of you where you are not an independent trustee; and
  - (b) you shall remain liable under each Loan Document after you cease to be a Trustee until released in writing by us.

## **Clause 14 – Privacy statement**

- 14.1** You and the Guarantor agree that we can ask for any information about you and the Guarantor in accordance with the Privacy Act and this privacy statement. We may update this privacy statement from time to time by giving notice to you and the Guarantor. If any information we request is not provided, we may not be able to provide the requested services.
- 14.2** You and the Guarantor agree that we can use any information we get for the following purposes (or any other purpose that we notify to you):
- (a) assessing your Loan application and your ability to pay the Loan and other debts;
  - (b) checking information about your identity documentation, such as your driver's licence or passport;
  - (c) carrying out our and our related companies' business functions and activities, including marketing products and services to you (which may be the products and services of our third party business partners) – you can opt-out of this by telling us in writing;
  - (d) collecting amounts you owe us under the Loan Documents, including by taking enforcement action;
  - (e) making sure any Secured Property is properly insured; and
  - (f) exercising our rights under the Loan Documents and fulfilling our obligations under any Loan Document or at law.
- 14.3** You and the Guarantor agree that we can share any information we get with: our related companies; existing and potential business partners; credit reporting and identity verification agencies – credit

reporting agencies may retain information about you (including default information) and use it to provide their credit reporting services; the New Zealand Transport Agency's 'Driver Check' service; the Inland Revenue Department; insurers; any person providing us with guarantees or security for the Loan; anyone that we consider assigning or transferring the Loan to; anyone that we engage with about selling all or part of our business to; any service provider engaged by us to provide services in relation to the Loan; government agencies and regulators; anyone else who has rights under a Loan Document or that we are legally required to share your information with; and any other person or organisation we notify to you.

- 14.4** You and the Guarantor have the right to access and request correction of information we hold about you, and full details of every organisation to whom we have disclosed information about you, by contacting us using the contact details specified in the Specific Terms.

## Clause 15 – Defined Terms and Interpretation

In this Agreement, words have the meaning given to them in the table in Part A ("Home Loan Terms") of the Specific Terms and the words below have the meaning given opposite:

<b>accrued (interest)</b>	interest which is calculated and grows on the principal amount of the Loan or a Facility
<b>Agreement</b>	these General Terms and the Specific Terms
<b>Annual Interest Rate</b>	in relation to the Loan or each Facility (as applicable), the relevant rate stated as the "Annual Interest Rate" in Part A ("Home Loan Terms") of the Specific Terms (or the updated Annual Interest Rate if we have updated it in accordance with clause 10.2(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, the Borrower or the Guarantor, or if the Guarantor is not an individual, its dissolution, liquidation, receivership, administration and winding-up
<b>Borrower</b>	the person or persons, including any company or any trustee of a trust (as applicable) named as a "Borrower" on the front page of the Specific 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>Collateral</b>	the personal property described as Collateral in the Security Agreement section in Part A ("Home Loan Terms") of the Specific Terms
<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>	in relation to the Loan or each Facility (as applicable), the rate stated as the "Default Interest Rate" in Part A ("Home Loan Terms") of the Specific Terms
<b>due</b>	owed to us on a specific date
<b>Event of Default</b>	any event listed in clause 5.1 and any other circumstance that is likely to be such an event if we give you notice, or if time passes, or if another requirement is met

<b>Facility and Facilities</b>	we may agree to lend the Loan Amount under different facilities. For example, one Facility may be a fixed rate facility and another a variable rate facility. All Facilities together make up the Loan.
<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 Loan Document
<b>liable</b>	legally responsible
<b>Loan</b>	the principal amount that we pay you under this Agreement (the "Maximum Loan Amount" listed in Part A ("Home Loan Terms") of the Specific Terms) and, depending on the context, may also include all accrued and unpaid interest and fees and charges relating to the principal amount payable under this Agreement
<b>Loan Documents</b>	this Agreement, each Related Security Agreement and each other agreement (present or future) evidencing or relating to the Loan
<b>Loan Pre-conditions</b>	the conditions specified as "Conditions Precedent" and "Special Conditions" in Part A ("Home Loan Terms") of the Specific Terms
<b>Payment Details</b>	the Payment Details in Part B ("Other Key Information") of the Specific Terms
<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>the Property</b>	the Property described in Part A ("Home Loan Terms") of the Specific Terms (which includes the land and all buildings, fixtures and improvements on that land)
<b>Related Security Agreement</b>	each Security Agreement, mortgage, guarantee or other agreement (present or future) specified in the Specific Terms or otherwise expressed or intended to be security for this Loan
<b>Security Agreement</b>	each security agreement specified in the "Security Agreement" section in Part A ("Home Loan Terms") of the Specific Terms
<b>Secured Property</b>	all property that is secured property for the purposes of any Related Security Agreement and all of your present and future right, title and interest (legal and equitable) in all documents of title relating to, and proceeds of, that property
<b>security interest</b>	an interest in personal property that, in substance, secures payment or performance of an obligation
<b>Specific Terms</b>	the terms set out in the document titled "Home Loan Agreement Specific Terms" dated on or about the date of this Agreement between you as the borrower and us as the Lender
<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

**we (or us)** the Lender, **CHINA CONSTRUCTION BANK (NEW ZEALAND) LIMITED**

**you** the Borrower or, if there is more than one Borrower, all Borrowers equally

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

- Ignore all headings and text in **[like this]** (this means text that is written in bold, italics and placed inside square brackets) 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.
- A reference to the singular includes the plural, and vice versa.
- Where we define a word or expression in clause 15 or in the Specific 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 a 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 9.1 above.

## Clause 16 – Security Agreement

**16.1** If the Specific Terms provide that one or more of the Borrowers or Guarantors is to grant a Security Agreement over:

- (a) all present and after acquired property of the named Borrowers or Guarantor; and/or
- (b) the specific property referred to on the Specific Terms of the named Borrower or Guarantor

then the following provisions shall apply:

### **16.2 Memorandum of general terms that apply**

The Security Agreement is comprised of, includes: and incorporates

- (a) the Specific Terms;
- (b) this Agreement; and
- (c) the memorandum, a copy of which is registered pursuant to section 209 of the Land Transfer Act 2017 under number 2018/4344 (“the GSA Memo”) and the Secured Party undertakes that it holds a licence from ADLSi to use the same.

### **16.3 Parties**

For the purposes of the GSA Memo the parties to the Security Agreement are as follows:

**The Debtor** is the person or persons named in the Specific Terms as the person or persons granting the security interest

**The Security Holder and Secured Party** is the Lender, **CHINA CONSTRUCTION BANK (NEW ZEALAND) LIMITED**

**The Covenantor** is the person named in the Specific Terms as the Borrower but only if that person is not the person or persons named in the Specific Terms as granting the security Interest.

### **16.4 Grant of Security Interest**

By signing the Specific Terms:

- (a) the Debtor grants a security interest in favour of the Secured Party in respect of all of the debtor’s right title and interest in the personal property referred to in the Specific Terms as Collateral; and
- (b) the covenantor, if any, covenants with the secured party as provided in the GSA Memo.

### **16.5 Moneys Secured by Security Agreement includes Proceeds**

The Security Agreement secures as Secured Moneys all moneys provided by the Secured Party to the Debtor now and in the future and includes all obligations of the Debtor to the Secured Party or if the Debtor’s obligations to the Secured Party are obligations under one or more guarantees then the Security Agreement secures all of the obligations of the Debtor to the Secured Party under all guarantees. The Secured Moneys also includes all enforcement costs of the Secured Party if the Secured Party exercises the enforcement of the provisions of the Security Agreement.

### **16.6 Attachment**

The security interest created by this Security Agreement to which the PPSA applies will attach, in the case of:

- (a) any present Secured Property, from the earlier of when the Debtor signs or assents to this Security Agreement in one of the ways specified in section 36(1)(b) of the PPSA; or
- (b) any after-acquired Secured Property, from when the Debtor acquires any rights in that property.

**16.7** The Debtor acknowledges that it has not agreed with the Secured Party that the attachment of the security interest created by this Security Agreement will be at any time other than as set out in clause 16.6.

**16.8 Security over Deposit - Set off**

Where the Collateral includes a deposit account which is held with the Secured Party (the secured account), the Secured Party may apply any credit balance in any secured account, in any currency, to satisfy any debt owing by that Debtor to the Secured Party. This means the Secured Party may:

- (a) set off against the credit balance the maximum amount which may become due to the Secured Party;
- (b) stop withdrawal or payment of the credit balance if an amount is contingently due to the Secured Party or an amount due is not quantified; and
- (c) break any term deposit.

**16.9** The Secured Party's rights of set-off under this Security Agreement are contractual rights affecting the terms on which the Debtor holds a credit balance in the secured account. Those rights do not affect any other right of set-off, combination of accounts, lien or other right to which the Secured Party is entitled, whether by law or contract.

**16.10 PPSA waivers**

On the enforcement of the security interest created by this Security Agreement to which the PPSA applies, sections 114(1)(a), 133 and 134 of the PPSA will not apply. The Debtor also waives any rights the Debtor may have under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement.

**16.11** The Debtor acknowledges receipt of a copy of this Security Agreement and waives any right it may have to receive from the Secured Party a copy of any financing statement or verification statement in relation to this Security Agreement or any collateral security interest.