

Clause 1: Understanding and interpreting this Agreement

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 15).

Clause 2: Getting your Loan

2.1 When we will make the Loan to you

We will make the Loan in one amount once you have signed and returned this Agreement to us and given us all the other information and documents we have asked for.

2.2 When we will pay the Loan money to someone else

We will make the Loan to you, 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.

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 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; and
 - (ii) 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. (Those Payment Dates and/or Payment Amounts will only change if you ask us to alter the length of the Loan and we agree to do that, or if we increase our fees or the Annual Interest Rate under clause 12.2(b)(iii)).
- (b) We calculate and charge interest on the Loan on each Payment Date by multiplying:
 - the average unpaid daily balance of the Loan for the period ending on that Payment Date (and starting on the day immediately after the prior Payment Date); by
 - the average period interest rate.

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).
- (c) Interest is payable in arrears on each Payment Date. *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 3.00 pm 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?

- (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) any administrative costs we incur due to your prepayment; 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 a refund of any consumer credit insurance premium you have already paid that relates to the remainder of the Loan period that we have financed under this Agreement (if any).

- (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.
 - 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 one of the fees listed in the “Modifications” section 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” on page 2 of the Commercial Terms).

Clause 4: You give us a security interest in the Goods

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, and any Guarantor's obligations, under this Agreement. The Guarantor agrees that each Related Security Agreement that he or she (or it) gives secures all of your obligations, and 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 You will give effect to your promises

You promise to sign and deliver to us 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 your promises and the rights we are intended to have under this Agreement or a Related Security Agreement.

4.3 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).

4.4 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;
- (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 not change your name without giving us at least 14 days' prior notice;
- (g) you will keep the Goods insured against all risks that should sensibly be insured against for the full replacement value (unless we agree to a lesser amount) 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);
- (h) 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

- (i) you will promptly give us any other information about yourself, your business, your financial condition or the Goods that we reasonably request.

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. 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. *(This means that default interest is added on the overdue amount as soon as it becomes due 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 control and we receive payment within 2 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 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 bankrupt or insolvent, or you are deemed to be unable to pay your debts as they fall due or 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, including 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). 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 Debt 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 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.)*

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 some of the fees in the Fee Schedule under clauses 12.2. We will notify you of any changes as soon as we can in the particular circumstances.

Clause 10: Our extra rights and protections

10.1 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.

10.2 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.

10.3 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 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.

10.4 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.

10.5 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 consent:

- (a) to any person whom we genuinely believe can perform all of our obligations under this Agreement; or
- (b) if we believe it is sensible or necessary to do so to comply with the law (including statutes, directives, case law or official guidance), and each of our assignees and transferees has the same rights against you and each 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.*

12.2 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, you and the Guarantor (if there is a Guarantor), except for the changes listed in subparagraph (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 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 increase any of the fees you have to pay us if our underlying costs increase (for example, if a third party providing collection services charges us more to provide those services) so that we can maintain our rate of return on the Loan.
- (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 our Privacy Statement:** We can change our Privacy Statement under clause 14.1.

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 for the Goods at your expense if you fail to keep your promise to do so under clause 4.4(g). 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 agree to give up some of your rights under Part 9 of the PPSA (which deals with the enforcement of security interests in personal property). This means you agree not to receive a statement of account under section 116, you agree not to receive our proposal to retain any Goods under section 120(2), and you agree not to receive a copy of a verification statement under section 148 relating to any financing statement or financing change statement that we register in connection with our security interest in the Goods.

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 sign

You and the Guarantor agree that we can enforce our rights, and hold you both to your promises and obligations, under a Relevant Document even if we have not signed the Relevant Document for the purposes of the Contracts (Privacy) Act 1982.

12.7 Governing law

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

Clause 13: Notices

13.1 Addresses and references

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 Commercial Terms. You or the Guarantor can change your address by letting us know via phone, email or in writing.

13.2 When a notice or communication is effective

A communication is not effective until the party it is addressed to receives it. For this purpose, we treat a communication we send to you or to the Guarantor as being received:

- (a) in the case of a letter, on the third business day after we posted it; 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.

Clause 14: Privacy and information sharing

14.1 Our Privacy Statement

You and the Guarantor agree that we can ask for any information about you and the Guarantor in accordance with the Privacy Act and our Privacy Statement. To find out more, you can see our Privacy Statement on our website marac.co.nz. We can change our Privacy Statement from time to time to reflect changes in the law and also our business needs so long as the changes do not disadvantage you.

Key terms of our current Privacy Statement are summarised below.

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

You and the Guarantor agree that we can use any information we get for the following purposes:

- (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) our and our related companies' business functions and activities, including marketing products and services, and products and services of selected third parties, to you by mail, email and telephone (including SMS) – **you can opt-out of this by telling us in writing**;
- (d) collecting amounts you owe us under the Relevant Documents, including by taking enforcement action;
- (e) making sure any Goods are properly insured; and
- (f) exercising our rights under the Relevant Documents and fulfilling our obligations under any Relevant Document or at law.

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

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) 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;
- (d) the New Zealand Transport Agency's 'Driver Check' service;
- (e) insurers;
- (f) any person providing us with guarantees or security for the Loan;
- (g) anyone that we consider assigning or transferring the Loan to under clause 11.1;
- (h) anyone that we engage with about selling all or part of our business to; and
- (i) government agencies and regulators, or anyone else who has rights under a Relevant Document or that we are legally required to share your information with.

14.4 Your rights to your information

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 on 0800 85 30 30.

Clause 15: Dictionary

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

accrued (interest)	interest which is calculated and grows on the principal amount of the Loan
Agreement	these General Terms and the Commercial Terms (including the Fee Schedule)
Annual Interest Rate	the rate stated in the "Annual Interest Rate" section on page 1 of the Commercial Terms (or the updated Annual Interest Rate if we have updated it in accordance with clause 12.2(b)(iii))
assign	to pass rights to another person (but not obligations)
bankrupt	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
Borrower	the person or persons named as a "Borrower" on the front page of the Commercial Terms
business day	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
Commercial Terms	the terms set out under the heading "Commercial Terms" at the beginning of this Agreement
cost	includes all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes that we incur
debt	includes any obligation you have to us now or in the future in any capacity relating to the payment of money
Default Interest Rate	is defined in clause 5.1 as the higher of the rate per annum equal to (a) the Annual Interest Rate at the time of the default plus 6 per cent per annum and (b) 18 per cent per annum (as amended under clause 12.2(b)(iv))
dispose	includes any assignment, transfer, lending arrangement, variation of terms, lease, sub-lease and sale and anything that has the same effect as any of those things
due	owed to us on a specific date
Event of Default	any event listed in clause 6.1 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
financing statement	has the meaning given in the PPSA
financing change statement	has the meaning given in the PPSA
Goods	(a) all "Goods" specified on page 1 of the Commercial Terms; (b) all other property, including any after-acquired property, which you agree is "Goods" for the purposes of the Relevant Documents; (c) all attachments, accessories, replacements or spare-parts relating to the property in paragraphs (a) and (b); and (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

Guaranteed Debt	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
liable	legally responsible
Loan	the principal amount that we pay you under this Agreement (the “Amount of Credit” listed on page 1 of the Commercial 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
Paymount Amount	is defined in clause 3.1(ii)
Payment Date	is defined in clause 3.1(ii)
person	an individual and any entity, such as a company, whether or not it exists as a separate “person” at law
PPSA	the Personal Property Securities Act 1999
principal	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)
Property	includes any legal or present and future property, revenue and rights, and any legal or equitable interest in it
Related Security Agreement	each security agreement, guarantee or other agreement or document (present or future) that is (a) expressed to be a security for the Loan; or (b) that you and we otherwise agree in writing is a “Related Security Agreement” for the purposes of this Agreement.
Relevant Documents	this Agreement, each Related Security Agreement and each other agreement (present or future) evidencing or relating to the Secured Debt
Schedule of Payments	the SCHEDULE OF PAYMENTS on page 1 of the Commercial Terms
Secured Debt	the Loan, and all other debt you and the Guarantor owe us under any Relevant Document (including <i>future advances</i> for the purposes of sections 71 and 72 of the PPSA)
security interest	an interest in personal property that, in substance, secures payment or performance of an obligation
sue	take legal action (such as taking you to court)
unpaid (interest)	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, i-finance, a division of Heartland Bank Limited
you	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 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 11.1 .
- **Nothing in this Agreement should be interpreted as an agreement that a security interest under this Agreement or a Related Security Agreement *attaches* (for PPSA purposes) at a later time than the time specified in the PPSA, or as an agreement to subordinate a security interest under this Agreement in favour of any person.**

SCHEDULE OF STANDARD FEES AND CHARGES APPLIED TO CONSUMER CONTRACTS



APPLICATION/APPROVAL/ACCOUNT MAINTENANCE

Establishment Fee (Direct) **\$425.00**

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

Establishment Fee (Intermediary) **\$225.00**

We will charge you a fee of up to \$225.00 for processing a new loan application via an intermediary, including approval and acceptance.

Dealer / Broker / Introducer Fee **\$350.00**

We may charge you a fee of up to \$350.00 which we will pay to any dealer/broker/introducer who refers you to us in relation to the Loan.

PPSR **\$10.00**

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

Refund **\$16.00**

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

Statement Fee **\$5.00**

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.

Transfer Fee **\$425.00**

We will charge you this fee if you or the guarantor assign or transfer any of your rights or obligations under this Agreement (with our prior written consent).

Caveat Fee **\$163.00**

If we register a caveat over any of your property at any time, we will charge you caveat registration and release costs, up to a maximum of \$163.00 for each property.

Mortgage Fee **\$401.50**

If we register a mortgage over your property at any time, we will charge you mortgage registration costs, up to a maximum of \$401.50 for each property.

Credit Card Transaction Fee **up to 3.50%**

We will charge you this fee if you pay us using your Credit Card (Payment amount plus up to 3.50% merchant fee).

MODIFICATIONS

Variation Fee **\$150.00**

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 on page 1 of these Commercial Terms as a result.

Refinance Fee **\$425.00**

We will charge you this fee if we change the terms of the Loan to help you if you are having difficulty keeping up with your payments, or if you want to change the term (length) of the Loan.

COLLECTIONS

Reminder Letter Fee **\$55.00**

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

Telegram **\$3.00**

We will charge you this fee if we have to send a Telegram. (We usually only send Telegrams after expiry of Pre-Possession Notices when we are having difficulty contacting a customer. The Telegram would ask you to contact us to avoid further 'enforcement action'.)

Dishonoured Payment Fee **\$5.00**

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

Repossession Warrant Fee **\$75.00**

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 **\$200.00**

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

Reposessed Goods Sales Fee **\$870.00**

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

Recovery Costs

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.

CONSUMER LOAN & SECURITY AGREEMENT COMMERCIAL TERMS



Introducer Heartland Bank

Approval Number FSZDBJ27CT

The **Effective Date** of the Agreement

Under this Agreement, **MARAC, a division of 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 after you sign it - see the "Your right to cancel" section on the next page for more information.

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
- sending a fax to this fax number

Name MARAC, a division of Heartland Bank Limited

Address Heartland House, 35 Teed Street, Newmarket, Auckland 1023

Postal Address PO Box 9919, Newmarket, Auckland 1149

Email info@heartland.co.nz

Fax (09) 927 9319

FIRST BORROWER (this is who we call **you** in this Agreement)

Name Test Applicant

Address 12 Test Street, Test Suburb, Test Town 1234

Email Test@customer.co.nz

SECOND BORROWER (this is who we call **you** in this Agreement)

Name Test Applicant Two

Address 12 Test Street, Test Suburb, Test Town 1234

Email test@test.co.nz

LOAN DETAILS

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

\$26,380.00

made up of:

Purchase Price (including GST) \$25,000.00

PPSR Fee \$10.00

Establishment Fee \$125.00

Dealer/Broker/Introducer Fee \$250.00

Insurance \$995.00

Warranty \$0.00

Other Charges \$0.00

TOTAL GROSS COST \$26,380.00

LESS DEPOSIT \$0.00

made up of:

Cash \$0.00

Trade-in allowance \$0.00

SCHEDULE OF PAYMENTS

Your Payment Dates are at monthly intervals.

First Payment Date: One month after the effective date of this Agreement.

Final Payment Date: 36 months after the effective date of this Agreement.

Total Payments: \$32,897.68

Total Interest Payable: \$6,517.68

Payment Number	Each Payment Amount
Payment 1 - 35	\$913.83
Payment 36	\$913.63

ANNUAL INTEREST RATE

We will charge you interest on the Loan at a rate of 14.95% 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.

INTEREST FREE PERIOD

There is no interest-free period under this Agreement.

GOODS

Make or manufacture: MAZDA

Model: MAZDA3

Year of Manufacture: 2013

Vin No: JM0BL10L200376059

Registration No: GRL189

Chassis / Serial No:

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 on page 1 of 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 of the higher of 6 per cent per annum above the Annual Interest Rate and 18 per cent per annum. We give you information about the default interest charges in clause 5.1 of the General Terms.

You should be aware that in some cases we can change the credit fees and charges you might have to pay and the Default Interest Rate under clause 12.2(b) 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 administration 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 sending a written cancellation notice to us or an employee (in any of the ways listed on page 1 of these Commercial Terms) within 5 business days of being handed a signed copy of this Agreement; or within 7 business days of receipt if the signed Agreement is emailed or sent to you electronically; or within 9 business days of the date the signed Agreement was posted to you (if applicable). Saturdays, Sundays and national public holidays are not counted as business days. **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 3030 but we will ask you to follow up in writing in any of the ways listed on page 1 of 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 on page 1 to help you meet your obligations. You will have to pay a Refinance 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 on page 1 of 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 your obligations to us, under this Agreement or any other Relevant Document. 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, all amounts you owe us under this Agreement will be due immediately and we can enforce our rights under the security interest (which could include repossessing and selling the Goods).

ELECTRONIC COMMUNICATION

By signing this Agreement, you agree that we can send you notices and other communications relating to this Agreement electronically, including by email or (if we choose to) by other electronic means such as an online portal. This includes any continuing disclosure that we have to make to you under the Credit Contract and Consumer Finance Act 2003.

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.

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 FSP53921 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.

Name and address of creditor:	Our details are provided in the LENDER section on page 1 of these Commercial Terms.	Annual Interest Rate:	This is the interest rate set out in the ANNUAL INTEREST RATE section on page 1 of these Commercial Terms. This is the interest rate that you will pay unless you are in default. The Annual Interest Rate is fixed for the full period of this Loan except in the circumstances set out in clause 12.2(b)(iii) of the General Terms.
Initial Unpaid Balance:	This is the LOAN AMOUNT set out in the LOAN DETAILS section on page 1 of these Commercial Terms.		
Total Advances:	The Total Advances is the same as the LOAN AMOUNT set out in the LOAN DETAILS section on page 1 of these Commercial Terms.	Method of Charging Interest:	We explain this in clause 3.1 of the General Terms.
Subsequent Advances:	There are no subsequent advances under this Agreement. This means the full loan is paid to you in one lump sum.	Total Interest Charges:	We set out the total interest charges payable under this Agreement in the SCHEDULE OF PAYMENTS section on page 1 of these Commercial Terms. Unless specified on page 1 of these Commercial Terms, there is no interest free period under this Agreement.
Payments Required:	The payments you have to make under this Agreement are set out in the SCHEDULE OF PAYMENTS section on page 1 of these Commercial Terms. The Payment Amount must be paid on each Payment Date.	Interest Free Period:	
Full Prepayment:	The Full Prepayment Amount is defined in clause 3.3 of the General Terms. It includes an administration fee and an amount equal to our reasonable estimate of our loss arising from full prepayment (if any).	Default Interest Charges and Default Fees:	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.
Security:	The secured property includes any Goods identified in the GOODS section on page 1 of these Commercial Terms. You should also refer to the section headed WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS? on page 2 of these Commercial Terms.	Credit Fees and Charges:	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.
Electronic communications:	We agree to receive notices or other communications from you in electronic form.	Your Right to Cancel:	We have explained your right to cancel this Agreement in the YOUR RIGHT TO CANCEL section on page 2 of these Commercial Terms. 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 will charge you a fee for this - see the attached FEE SCHEDULE.
		Statements:	

EXECUTION

You and the Guarantor confirm that:

- you have received a copy of this Agreement and have read, understood and agree to the terms of this Agreement – **if you do not understand anything in this Agreement you should seek legal advice before you sign.**
- 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.

EXECUTED as a Deed

FIRST BORROWER'S SIGNATURE	Date of Agreement
<hr/>	
SECOND BORROWER'S SIGNATURE	Date of Agreement
<hr/>	
WITNESS SIGNATURE	Signed by each Borrower in the presence of
	<hr/>
	Witness
	<hr/>
	Name
	<hr/>
	Address
	<hr/>
	Occupation
	<hr/>

FEE SCHEDULE

SCHEDULE OF STANDARD FEES AND CHARGES APPLIED TO CONSUMER LOANS

APPLICATION / APPROVAL / ACCOUNT MAINTENANCE

Establishment Fee (Direct) \$425.00

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

Establishment Fee (Intermediary) \$225.00

We will charge you a fee of up to \$250.00 for processing a new loan application via an intermediary, including approval and acceptance.

Dealer/Broker/Introducer Fee \$350.00

We will charge you a fee of up to \$250.00 which we will pay to any dealer/ broker/introducer who refers you to us in relation to the Loan.

PPSR Fee \$10.00

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

Refund Fee \$16.00

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

Statement Fee \$5.00

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.

Transfer Fee \$425.00

We will charge you this fee if you or the guarantor assign or transfer any of your rights or obligations under this Agreement (with our prior written consent).

Caveat Fee \$163.00

If we register a caveat over any of your property at any time, we will charge you caveat registration and release costs, up to a maximum of \$163.00 for each property.

Mortgage Fee \$401.50

If we register a mortgage over your property at any time, we will charge you mortgage registration costs, up to a maximum of \$401.50 for each property.

Credit Card Transaction Fee up to 3.50 %

We will charge you this fee if you pay us using your Credit Card (Payment amount plus up to 3.50% merchant fee).

MODIFICATIONS

Variation Fee \$150.00

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 on page 1 of these Commercial Terms as a result.

Refinance Fee \$425.00

We will charge you this fee if we change the terms of the Loan to help you if you are having difficulty keeping up with your payments, or if you want to change the term (length) of the Loan.

COLLECTIONS

Reminder Letter Fee \$55.00

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

Telegram \$3.00

We will charge you this fee if we have to send a Telegram. (We usually only send Telegrams after expiry of Pre-Possession Notices when we are having difficulty contacting a customer. The Telegram would ask you to contact us to avoid further 'enforcement action'.)

Dishonoured payment Fee \$5.00

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

Repossession Warrant Fee \$75.00

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 \$200.00

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

Repossessed Vehicle Sales Fee \$870.00

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

Recovery Costs

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.

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 15).

Clause 2: Getting your Loan

2.1 When we will make the Loan to you

We will make the Loan in one amount once you have signed and returned this Agreement to us and given us all the other information and documents we have asked for.

2.2 When we will pay the Loan money to someone else

We will make the Loan to you, 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.

Clause 3: Paying us back

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

(a) You Promise to:

- 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; and
- 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. (Those Payment Dates and/or Payment Amounts will only change if you ask us to alter the length of the Loan and we agree to do that, or if we increase our fees or the Annual Interest Rate under clause 12.2(b)(iii)).

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

- the average unpaid daily balance of the Loan for the period ending on that Payment Date (and starting on the day immediately after the prior Payment Date); by
- the **average period interest rate**.

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 Payments Dates is a fortnight), or 52 (where the period between Payment Dates is one week).

(c) Interest is payable in arrears on each Payment Date. *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 3.00 pm 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?

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

- 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
- any administrative costs we incur due to your prepayment; and
- 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 a refund of any consumer credit insurance premium you have already paid that relates to the remainder of the Loan period that we have financed under this Agreement (if any).

- 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.
- 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
- 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 one of the fees listed in the "Modifications" section 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" on page 2 of the Commercial Terms).

Clause 4: You give us a security interest in the Goods

4.1 You give us a security interest

- You grant us a security interest in the Goods to secure payment of the Secured Debt.
- You agree that each Related Security Agreement that you give secures all of your obligations, and any Guarantor's obligations, under this Agreement. The Guarantor agrees that each Related Security Agreement that he or she (or it) gives secures all of your obligations, and 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 You will give effect to your promises

You promise to sign and deliver to us 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 your promises and the rights we are intended to have under this Agreement or a Related Security Agreement.

4.3 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).

4.4 Your promises in relation to the Goods

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

- the Goods are and will remain in your possession in New Zealand;
- you alone own the Goods legally and beneficially *that is, they will not be owned by a trust*;
- you have not given and will not give a security interest in the Goods to anyone other than us;
- you will not sell, lease, sub-lease or unreasonably part with possession or otherwise dispose of any Goods;
- 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;
- you will not change your name without giving at least 14 days' prior notice;**

- (g) you will keep the Goods insured against all risks that should sensibly be insured against for the full replacement value (unless we agree to a lesser amount) 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);
- (h) 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
- (i) you will promptly give us any other information about yourself, your business, your financial condition or the Goods that we reasonably request.

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. The **Default Interest Rate** is a rate equal to the **higher of**:
 - (i) the **Annual Interest Rate at the time of the default plus 6 per cent per annum; and**
 - (ii) **18 per cent per annum** (as amended under clause 12.2(b)(iv)).
- (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. *(This means that default interest is added on the overdue amount as soon as it becomes due 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 6 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 control and we receive payment within 2 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 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 bankrupt or insolvent, or you are deemed to be unable to pay your debts as they fall due or 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, including 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

(g) 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). 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 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.)*

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 some of the fees in the Fee Schedule under clauses 12.2. We will notify you of any changes as soon as we can in the particular circumstances.**

Clause 10: Our extra rights and protections

10.1 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.

10.2 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.

10.3 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 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.

10.4 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.

10.5 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 consent:

- (a) to any person whom we genuinely believe can perform all of our obligations under this Agreement; or
- (b) if we believe it is sensible or necessary to do so to comply with the law (including statutes, directives, case law or official guidance),

and each of our assignees and transferees has the same rights against you and each 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.*

12.2 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, 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 (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 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 increase any of the fees you have to pay us if our underlying costs increase (for example, if a third party providing collection services charges us more to provide those services) so that we can maintain our rate of return on the Loan.
 - (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 increase the Default Interest Rate 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. This does not limit sub-paragraph (iii) above.
 - (v) **Changes to our Privacy Statement:** We can change our Privacy Statement under clause 14.1.

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 for the Goods at your expense if you fail to keep your promise to do so under clause 4.4(g). 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 agree to give up some of your rights under Part 9 of the PPSA (which deals with the enforcement of security interests in personal property). This means you agree not to receive a statement of account under section 116, you agree not to receive our proposal to retain any Goods under section 120(2), and you agree not to receive a copy of a verification statement under section 148 relating to any financing statement or financing change statement that we register in connection with our security interest in the Goods.

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 sign

You and the Guarantor agree that we can enforce our rights, and hold you both to your promises and obligations, under a Relevant Document even if we have not signed the Relevant Document for the purposes of the Contracts (Privity) Act 1982.

12.7 Governing law

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

Clause 13: Notices

13.1 Addresses and references

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 Commercial Terms. You or the Guarantor can change your address by letting us know via phone, email or in writing.

13.2 When a notice or communication is effective

A communication is not effective until the party it is addressed to receives it. For this purpose, we treat a communication we send to you or to the Guarantor as being received:

- (a) in the case of a letter, on the third business day after we posted it; 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.

Clause 14: Privacy and information sharing

14.1 Our Privacy Statement

You and the Guarantor agree that we can ask for any information about you and the Guarantor in accordance with the Privacy Act and our Privacy Statement. To find out more, you can see our Privacy Statement on our website www.ifinance.co.nz. We can change our Privacy Statement from time to time to reflect changes in the law and also our business needs so long as the changes do not disadvantage you. Key terms of our current Privacy Statement are summarised below.

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

You and the Guarantor agree that we can use any information we get for the following purposes:

- (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) our and our related companies' business functions and activities, including marketing products and services to you by mail, email and telephone (including SMS) - **you can opt-out of this by telling us in writing;**
- (d) collecting amounts you owe us under the Relevant Documents, including by taking enforcement action;
- (e) making sure any Goods are properly insured; and
- (f) exercising our rights under the Relevant Documents and fulfilling our obligations under any Relevant Document or at law.

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

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) 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;

(d) the New Zealand Transport Agency's 'Driver Check' service;

(e) insurers;

(f) any person providing us with guarantees or security for the Loan;

(g) anyone that we consider assigning or transferring the Loan to under clause 11.1;

(h) anyone that we engage with about selling all or part of our business to; and

(i) government agencies and regulators, or anyone else who has rights under a Relevant Document or that we are legally required to share your information with.

14.4 Your rights to your information

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 on 0800 85 30 30.

Clause 15: Dictionary

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

accrued (interest)

interest which is calculated and grows on the principal amount of the Loan

Agreement

these General Terms and the Commercial Terms (including the Fee Schedule)

Annual Interest Rate

the rate stated in the "Annual Interest Rate" section on page 1 of the Commercial Terms (or the updated Annual Interest Rate if we have updated it in accordance with clause 12.2(b)(iii))

assign

to pass rights to another person (but not obligations)

bankrupt

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

Borrower

the person or persons named as a "Borrower" on the front page of the Commercial Terms

business day

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

Commercial Terms

the terms set out under the heading "Commercial Terms" at the beginning of this Agreement

cost

includes all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes that we incur

debt

includes any obligation you have to us now or in the future in any capacity relating to the payment of money

Default Interest Rate

is defined in clause 5.1 as the higher of the rate per annum equal to (a) the Annual Interest Rate at the time of the default plus 6 per cent per annum and (b) 18 per cent per annum (as amended under clause 12.2(b)(iv))

dispose

includes any assignment, transfer, lending arrangement, variation of terms, lease, sub-lease and sale and anything that has the same effect as any of those things

due

owed to us on a specific date

Event of Default

any event listed in clause 6.1 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

financing statement

has the meaning given in the PPSA

financing change statement

has the meaning given in the PPSA

Goods	<p>(a) all "Goods" specified on page 1 of the Commercial Terms;</p> <p>(b) all other property, including any after-acquired property, which you agree is "Goods" for the purposes of the Relevant Documents;</p> <p>(c) all attachments, accessories, replacements or spare-parts relating to the property in paragraphs (a) and (b); and</p> <p>(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</p>	INTERPRETING THIS AGREEMENT The Agreement must be interpreted using the following rules (unless it would not make sense to do so): <ul style="list-style-type: none"> Ignore all headings, bolded text and <i>italicised</i> text when interpreting this Agreement. Where we have provided an explanation of a legal word (<i>in brackets</i>), 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 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 11.1. Nothing in this Agreement should be interpreted as an agreement that a security interest under this Agreement or a Related Security Agreement attaches (for PPSA purposes) at a later time than the time specified in the PPSA, or as an agreement to subordinate a security interest under this Agreement in favour of any person.
Guaranteed Debt	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	
liable	legally responsible	
Loan	the principal amount that we pay you under this Agreement (the "Amount of Credit" listed on page 1 of the Commercial Terms) and, depending on the context, may also include all accrued and unpaid interest and fees	
Payment Amount	is defined in clause 3.1(ii)	
Payment Date	is defined in clause 3.1(ii)	
person	an individual and any entity, such as a company, whether or not it exists as a separate "person" at law	
PPSA	the Personal Property Securities Act 1999	
principal	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)	
Property	includes any legal or present and future property, revenue and rights, and any legal or equitable interest in it	
Related Security Agreement	each security agreement, guarantee or other agreement or document (present or future) that is (a) expressed to be a security for the Loan; or (b) that you and we otherwise agree in writing is a "Related Security Agreement" for the purposes of this Agreement.	
Relevant Documents	this Agreement, each Related Security Agreement and each other agreement (present or future) evidencing or relating to the Secured Debt	
Schedule of Payments	the SCHEDULE OF PAYMENTS on page 1 of the Commercial Terms	
Secured Debt	the Loan, and all other debt you and the Guarantor owe us under any Relevant Document (including <i>future advances</i> for the purposes of sections 71 and 72 of the PPSA)	
security interest	an interest in personal property that, in substance, secures payment or performance of an obligation	
sue	take legal action (such as taking you to court)	
unpaid (interest)	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, i-finance, a division of Heartland Bank Limited	
you	the Borrower or, if there is more than one Borrower, all Borrowers equally	