

Standard Facility Terms and Conditions

1. The Facility Schedule, these Standard Facility Terms and Conditions, the Facility Agreement and the CCCFA

- 1.1 These Standard Facility Terms and Conditions, together with the applicable Facility Schedule, form the Facility Agreement for the Facility.
- 1.2 In these Standard Facility Terms and Conditions, terms defined in:
 - (a) the Facility Schedule have the same meaning given to them in that Facility Schedule; and
 - (b) these Standard Facility Terms and Conditions have the meaning given to them in the definition.
- 1.3 In these Standard Facility Terms and Conditions a Facility which is a Consumer Credit Contract is subject to the CCCFA unless it is stated in the Facility Schedule as being a Business Loan, a Business RCF or a Business OD. For example, a home loan or a personal loan will likely be a Consumer Credit Contract subject to the CCCFA. A Business Loan, a Business RCF or a Business OD will likely not be a Consumer Credit Contract subject to the CCCFA, although parts of the CCCFA will apply and all of it may apply to the related security arrangements (especially if they include a mortgage over your, or any Guarantor's, home).
- 1.4 In these Standard Facility Terms and Conditions, unless a clause is stated to apply to a particular kind of Facility, it applies to all kinds.
- 1.5 These Standard Facility Terms and Conditions are available on our website (www.co-operativebank.co.nz). However, if at any time the Standard Facility Terms and Conditions on our website differ from the version of the Standard Facility Terms and Conditions as at the date of, and attached to, any particular Facility Schedule, then the version of the Standard Facility Terms and Conditions referred to in, and attached to, the relevant Facility Schedule apply.

2. Date of Availability

- 2.1 We will make, or be ready to provide, the first payment of the whole or part of the Facility Amount (for a Loan) or the Facility Limit (for an RCF or a Business OD) to you or on your behalf, on the Date of Availability.
- 2.2 We are not obligated to allow drawdown or make the Facility Amount or the Facility Limit, or any part of them, available if:
 - (a) you have not satisfied all Conditions in the Facility Schedule; or
 - (b) an Event of Default as stated in clause 12.1 has occurred; or
 - (c) we consider that it is unlawful or contrary to any directive to make the Facility Amount or Facility Limit available; or
 - (d) the Date of Availability has not occurred on or before the date stated in the Facility Availability Date section of the Facility Schedule.

3. Purpose of Facility and Drawdown

- 3.1 You agree to use the Facility solely for the purpose(s) stated in the applicable credit application approved by us for the Facility and, until so used, you will hold any Facility Amount on trust for us.
- 3.2 If the Facility Schedule states that the Facility is a Business Loan, a Business Revolving Credit Facility, or a Business OD, then:
 - (a) you acknowledge that you have already declared in our favour, before entering into the Facility Agreement, that the Facility is to be used wholly or predominantly for business or investment purposes (or both purposes) as contemplated in the CCCFA; and

- (b) since the Borrower and The Co-operative Bank are both in trade, and the Facility is being supplied and acquired in trade, the Borrower and The Co-operative Bank agree that the Consumer Guarantees Act 1993 will not apply to the Facility Agreement.

3.3 If the Facility Schedule or the relevant credit application approved by us for the Facility states that any part of the Facility Amount or the Facility Limit is to be applied in or towards payment for Works in connection with a Works Contract(s) on the Security Property, or a Welcome Home Construction Loan, then despite anything else in the Facility Agreement:

- (a) you may only draw-down the Facility in such amounts and on such dates which we determine in our absolute discretion taking into account the amount(s) of the invoice(s) issued by the builder in accordance with the Works Contract(s) which is or are, at the time, due and payable, and, if we require, the value of the land on which the buildings are situated and the Works which are being constructed and the cost to complete the Works as certified to us by a registered valuer (acceptable to us and whose costs you must pay) or such other evidence as is satisfactory to us;
- (b) when determining the amounts and dates of drawdowns under the Facility, and, in the case of a Welcome Home Construction Loan, reviewing and approving the amounts and dates of the proposed payments to the builder under the Works Contract(s), we may, in our discretion, also require confirmation from a registered valuer (acceptable to us and whose costs you must pay), or such other evidence as is satisfactory to us (including obtaining any written confirmation required from the builder) that, in his or her opinion, as at the date of the proposed drawdown:
 - (i) there have not been any variations or amendments or supplements to the Works Contract(s);
 - (ii) there are no actual or anticipated cost over-runs, or to the extent that any cost over-runs have occurred or are expected to occur, they have been or will be met from your other funding sources;
 - (iii) the aggregate amount previously paid under the Works Contract(s) for that part of the Works, and the amount of the then anticipated drawdown, does not exceed the certified aggregate cost of that part of the Works completed to that date; and
 - (iv) the estimated aggregate cost to complete the Works in accordance with the plans and specifications for the Works (as stated and incorporated in the Works Contract(s)) once the drawdown has been made will not exceed the then available amount under the Facility;
- (c) prior to the final drawdown, we will require confirmation that a Code Compliance Certificate has issued pursuant to the Building Act 2004 and a final completion certificate from the registered valuer (acceptable to us and whose costs you must pay), or such other evidence as is satisfactory to us;
- (d) we will, unless we agree otherwise, require not less than 1 Working Day's advance notice of any proposed drawdown or, in the case of a Welcome Home Construction Loan, any proposed payment under the Works Contract(s);
- (e) you must ensure that the Works are carried out and completed in accordance with the plans and specifications in the Works Contract(s);
- (f) you must provide us with details, immediately on request, and immediately on becoming aware of the occurrence or likely occurrence of any event(s) or circumstance(s) which adversely affect or which would reasonably be expected to adversely affect, the Works or the progress or the conduct of the Works;
- (g) you must use the Facility solely for the purpose of paying the (progress) payments under the relevant Works Contract(s) for the residential dwelling to be situated on the Security Property, and for this purpose you will provide the necessary instructions to your solicitor to enable them to make the necessary payments under the Works Contract(s);
- (h) subject to sub-clause (i) below, you must arrange for your solicitor to arrange for each (progress) payment under the Works Contract(s) to be paid in accordance with the Works Contract(s) by no later than 1 Month after the date scheduled for such (progress)

payment under the relevant Works Contract(s); and

- (i) despite sub-clause (h) above, you acknowledge that no such (progress) payments are permitted under any Works Contract(s) unless and until such time as we have authorised them in writing.

3.4 If the Facility Schedule states that the Facility is a Welcome Home Loan or a Welcome Home Construction Loan, then:

- (a) you must not, as at the Date of Availability, already own a residential home;
- (b) you must reside in the Security Property for the full duration of the Facility;
- (c) the Security Property must not be an investment property; and
- (d) if the Facility is a Deposit Advance under a Welcome Home Loan or a Welcome Home Construction Loan, you must not seek or obtain any other funding from another lender to fund the purchase of the Security Property.

3.5 If the Facility Schedule states that the Facility is a Welcome Home Construction Loan, then:

- (a) all amounts drawn-down under the Facility must be held in your solicitor's trust account until paid to the builder in accordance with the Works Contract(s), and you will not have direct access to them;
- (b) you must ensure that the construction of the dwelling is completed within 12 Months of the first Date of Availability;
- (c) you agree that if:
 - (i) you are in breach of the Facility Agreement; and

- (ii) we, or Housing New Zealand Corporation (as the provider of the Welcome Home Loan lender's mortgage insurance) are not satisfied, acting reasonably, that the progress of construction is in accordance with the programme in the relevant Works Contract(s)

we, or Housing New Zealand Corporation, may step in and complete construction, with all costs arising from completing construction to form part of the Facility Balance. Your agreement in this clause 3.5(c), is given for the benefit of, and is enforceable in terms of the Contracts (Privity) Act 1982 by, Housing New Zealand Corporation; and

- (d) clauses 3.3 and 3.4 also apply.

3.6 If you are purchasing the Security Property, or any part of it, whether at the commencement of, or during, the term of the Facility, with the Facility Amount or Facility Limit or any part of them, then you authorise and direct us to transmit from the Facility Account the amount of the purchase price notified to us by your solicitor direct to your solicitor's trust account.

4. Interest

4.1 If the Facility is a Loan, then:

- (a) you will pay us, from the Date of Availability, interest at the applicable Annual Interest Rate, as stated in the Facility Schedule, calculated on the Unpaid Balance; and
- (b) interest shall be charged for the period up to and including the day prior to each Instalment payment date (stated in the Facility Schedule) on that date (or at such other intervals as we may select) and shall be added to the Unpaid Balance. Interest charges are calculated by multiplying the Unpaid Daily Balance, at the end of each day, by the daily interest rate (which is the applicable Annual Interest Rate divided by 365).

4.2 If the Facility is an RCF or a Business OD, then:

- (a) you will pay us, from the Date of Availability, interest on the Facility Balance at the applicable Annual Interest Rate calculated on the Unpaid Daily Balance;

- (b) interest shall be charged for the period up to and including the day prior to the date on which each Minimum Payment is due, on that date (or at such other intervals as we may select) and shall be paid by you as part of the Minimum Payment. Interest charges are calculated by multiplying the Unpaid Daily Balance, at the end of each day, by the daily interest rate (which is the applicable Annual Interest Rate divided by 365); and
 - (c) if and in the event that the Facility Account shall from time to time have a credit balance, we will not pay any interest in respect of such balance.
- 4.3 For all Facilities, for the purposes of calculating the interest charges that have accrued at the time of Part Prepayments accepted by us or Full Prepayments, the end of the day shall be the time 1 hour before the time at which you make the Part Prepayment or Full Prepayment to us.
- 4.4 You may at any time, except during a current Loan Instalment care claim, request, and we may in our discretion (but shall not be required to) agree, for a Home Loan, subject where relevant to the prior agreement of any Guarantor, and subject to you paying any applicable Credit Fee, to:
- (a) an interest rate switch (from fixed to floating or floating to fixed) for all or part of the Facility Amount for such period as we may agree. Where the Facility is being switched to a fixed interest rate, unless the Facility Amount has been repaid in full by the end of the fixed rate Period, the Annual Interest Rate, unless we agree otherwise, will automatically revert to The Co-operative Bank's Floating Interest Rate applicable from time to time; and/or
 - (b) temporarily suspend the principal component of the Instalments for such period as we may agree (the "Interest Only Period"). If this happens, then:
 - (i) we will notify you and any Guarantor of the applicable terms and conditions which have been agreed (including the revised amounts of the required Instalments, noting that where you have previously agreed with us that there will be regular payments of the premium for any insurance products, those payments will continue to be made);
 - (ii) you will be entitled to make pre-payments subject to and in accordance with clause 8;
 - (iii) at the end of the Interest Only Period, the amount of the remaining Instalments will, unless we agree otherwise, be increased by the amount required to ensure that the Facility Amount is repaid in full by no later than the date when the Facility would otherwise had been repaid (if there had been no interest Only Period);
 - (iv) if you are paying your Instalments Monthly, the loan instalment care premium will be calculated on an average Instalment amount (being the annual interest amount divided by 12) and if there is a valid claim then the actual (and not necessarily the average) Instalment amounts will be paid; and
 - (iv) we will review your conduct of the Facility and the appropriateness of continuing to make the Facility available on an Interest Only basis within the period notified to you (subject to a maximum interval between reviews of 5 years), as contemplated in clause 10.
 - (c)
- 4.5 Despite anything else in the Facility Agreement, we may at any time change any aspect of how any interest charge under the Facility Agreement is calculated or applied under the Facility Agreement. We will notify any such alteration to you and any Guarantors.

5. Instalments, Required Payments and Minimum Payments

- 5.1 You must make each payment due to us under the Facility Agreement at the time specified for such payment in the Facility Schedule. All amounts will be deducted from the Facility Account or paid in any other manner we notify you from time to time. If there are insufficient funds in the Facility Account, you and any Guarantor irrevocably authorise us to deduct such amount from any one or more of your, or any Guarantor's, accounts with us any amounts due and payable, and we will notify you and any Guarantors of any such details.

- 5.2 If the Facility is a Loan, then the Facility Amount and interest shall be payable by Instalments as stated in the Facility Schedule (or at any other time we may notify in accordance with clause 5.6 below). You must pay any remaining Facility Balance at the time of the final scheduled Instalment.
- 5.3 If the Facility is an RCF or a Business OD, then you must pay as a minimum in respect of each Month that the Facility continues ("Minimum Payment"):
- (a) the interest at the Annual Interest Rate on the Facility Balance;
 - (b) a regular Facility Fee from the Date of Availability (irrespective of whether the Facility Account is in credit or in debit);
 - (c) other Charges and Credit Fees as shall apply to the Facility and/or the Facility Account from time to time. As at the date of the Facility Agreement these fees include, without limitation, an Excess Credit Limit Fee on each occasion that the Facility Balance exceeds the Facility Limit (if applicable), and a Missed Payment Fee on each occasion that you fail to make the Minimum Payment in accordance with the terms and conditions of the Facility Agreement (if applicable);
 - (d) any other applicable Credit Fees and/or Default Fees that may from time to time apply to the Facility and/or the Facility Account;
 - (e) the Minimum Payment for any previous Months which you have not paid in accordance with this Facility Agreement; and
 - (f) any interest at the Default Interest Rate payable by you in respect of that, or any previous, Month in accordance with the Facility Agreement.
- 5.4 The Charges, Credit Fees and Default Fees applying to the Facility and/or the Facility Account from time to time shall be paid at the rate stated on our website (www.co-operativebank.co.nz), as varied from time to time by us.
- 5.5 If the Facility is an RCF or a Business OD, then despite anything else in the Facility Agreement you must repay the Facility Balance in full immediately in the event that:
- (a) we make demand for the repayment of the Facility Balance pursuant to clause 7.2(b);
 - (b) we require payment of the whole or any part of the Facility Balance pursuant to clause 10; or
 - (c) you are in default of the Facility Agreement pursuant to clause 12.
- 5.6 Despite anything else in the Facility Agreement, we may at any time change any aspect of how the amount, number, frequency, or time for payment, or method of calculation of any payment to be made, under the Facility Agreement. We will notify you and any Guarantors of any such alteration.

6. Review of Interest Rates, Instalments, Frequency of Payments, Credit Fees and Default Fees

- 6.1 We may at any time or times (except to the extent provided to the contrary in the Facility Schedule), vary:
- (a) the Interest Rate and/or the Margin or any component of the Margin, with the result that the Annual Interest Rate, the Default Interest Rate and/or the amount of the Instalments may also vary;
 - (b) the amount of the Instalments, or the frequency or number of the Instalments;
 - (c) any Credit Fee or Default Fee payable under the Facility Agreement or introduce any new Credit Fee or Default Fee.
- 6.2 We will notify you and any Guarantor of any variation to an existing, or introduction of a new, Credit Fee or Default Fee payable under the Facility.
- 6.3 If the Facility Schedule states that a Low Equity Interest Rate Premium has been applied to the

Margin, then we may, upon receiving your request, in our discretion review the application, or amount, of the Low Equity Interest Rate Premium only if you have provided us a valuation or valuations of the Security Property referred to in the Facility Schedule that:

- (a) has/have been prepared by a registered valuer (acceptable to us and whose costs you must pay);
- (b) is/are not more than 12 Months old;
- (c) is/are addressed to "The Co-operative Bank"; and
- (d) demonstrate(s) to our satisfaction:
 - (i) in the case of a request to review the application of the Low Equity Interest Rate Premium, that the Facility Balance is, and will remain, less than or equal to 80% of the value of the Security Property; or
 - (ii) in the case of a request to review the amount of the Low Equity Interest Rate Premium, that the Facility Balance as a percentage of the value of the Security Property, is and will remain below the minimum percentage of the Low Equity premium tier then currently applied by us.

6.4 Despite anything else in this clause 6, we will not review the application or the amount of any Low Equity Interest Rate Premium during any period in which this Loan is not a Floating Interest Rate Loan.

7. Late Payment of Instalments, Minimum Payment of the Facility Balance, and the Facility Balance exceeding the Facility Limit

7.1 If the Facility is a Loan and you fail to pay on the due date any Instalment or any part of any Instalment, or the Facility is an RCF or a Business OD and you fail to pay on the due date any Minimum Payment, then in either case when due under the Facility Agreement, you must pay us interest on the amount of that payment you failed to make from the due date until the date of payment of that amount to us, at the Default Interest Rate. Default interest will be debited to the Facility Account or, where the Facility is a Loan, the Facility Amount, and form part of the Facility Balance, at the same frequency and at the same times and in the same manner as interest is charged pursuant to clause 4.

7.2 If the Facility is an RCF or a Business OD, then:

- (a) you are, subject to clauses 5.5 and 10, entitled to repay the Facility Balance at any time and from time to time;
- (b) in the event that we make demand in writing for such repayment (without the requirement to state any reason or reasons), you must immediately repay the whole of the Facility Balance together with any other amount owing from time to time under the Facility Agreement. Nothing in the Facility Agreement shall be construed as limiting our right to make demand at any time;
- (c) if you fail to pay the whole or any part of the Facility Balance on the due date, you must pay us interest on the amount of that payment you failed to make from the due date until the date of payment of that amount to us, at the Default Interest Rate; and
- (d) if in the event that:
 - (i) you make or purport to make a drawing or drawings under the Facility which would cause the Facility Balance to exceed the Facility Limit, we may (in our absolute discretion) pay all or some of such drawing or drawings. If we make any such payment or payments, then the making of such payment or payments shall in no way constitute our agreement to any increase in the Facility Limit; and
 - (ii) the Facility Balance exceeds the Facility Limit, you must pay us interest at the Default Interest Rate on the amount by which the Facility Balance exceeds the Facility Limit until the date of payment of such an amount that results in the Facility Balance being less than or equal to the Facility Limit, together with interest otherwise payable pursuant to clause 4.2.

- 7.3 If any payment to us is avoided by law, or is recovered from us, then your obligation to have made such payment will be deemed not to have been affected or discharged. In any such case The Co-operative Bank and the Borrower will each be deemed to be restored to the position in which they each would have been, and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.
- 7.4 You must make all payments without any restriction or condition and must be in full without any deduction or withholding (whether in respect of tax, set-off, counterclaim or otherwise) unless such deduction or withholding is required by law.
- 7.5 If a law requires you to make any deduction, withholding or payment in respect of any amount payable by you to us, then the amount payable by you in respect of which such deduction, withholding or payment is made must be increased, when the payment is due and by whatever additional amount is needed, to ensure that we actually receive and retain, free from liability, after the deduction, withholding or payment has been made, the amount which we would have been entitled to receive if the deduction, withholding or payment had not been made.

8. Prepayments

- 8.1 If the Facility, at any time during its term, is a Floating Interest Rate Loan, then during that time:
- (a) you may at any time make a Part Prepayment at no additional cost; and
 - (b) you may at any time make a Full Prepayment, comprising the Unpaid Balance at the time of the Full Prepayment (calculated, if the Facility is a Consumer Credit Contract subject to the CCCFA, in accordance with section 51(2) of the CCCFA) (less, if relevant, any rebate of insurance premium under section 52 of the CCCFA).
- 8.2 If the Facility, at any time during its term, is a Fixed Interest Rate Loan, then during that time:
- (a) we may, in our discretion, decline to accept any Part Prepayment. If we elect to accept any Part Prepayment, then you may, at our discretion, be required to pay:
 - (i) the administrative costs we incur arising from the Part Prepayment; and
 - (ii) a fee or charge that does not exceed a reasonable estimate of our loss arising from the Part Prepayment, determined by us (if the Loan is a Consumer Credit Contract subject to the CCCFA, in accordance with clause 8.3).
 - (b) you may make a Full Prepayment, comprising the sum of the following (less, if the Facility is a Consumer Credit Contract subject to the CCCFA, any rebate of insurance premium under section 52 of the CCCFA):
 - (i) the Unpaid Balance at the time of the Full Prepayment (calculated, if the Facility is a Consumer Credit Contract subject to the CCCFA, in accordance with section 51(2) of the CCCFA);
 - (ii) the administrative costs we incur arising from the Full Prepayment or a charge equal to our average administrative costs arising from Full Prepayment of credit contracts in the same class as this Facility Agreement; and
 - (iii) a fee or charge that does not exceed a reasonable estimate of our loss arising from the Full Prepayment, determined by us (if the Loan is a Consumer Credit Contract subject to the CCCFA, in accordance with clause 8.3).
- 8.3 If the loss for any Facility which is a Consumer Credit Contract subject to the CCCFA needs to be determined:
- (a) we will:
 - (i) calculate the interest amount that we would have received from the date of Full Prepayment or Part Prepayment to the scheduled expiry of the fixed interest period of the Facility, if the required remaining Instalments had been paid as stated in the Facility Agreement. The interest rate used for this calculation is the Annual Interest Rate applied to the Facility at the Date of Availability (or, if relevant, the commencement of any other Fixed Rate Period during the term of the Facility). For

Part Prepayments, the result of this calculation will be adjusted so that it reflects only the interest amount that we would have received on an amount equal to the Part Prepayment; and

- (ii) calculate the interest amount that we would expect to receive if we lent an amount equal to the Unpaid Balance as at the date of Full Prepayment or Part Prepayment, to a new customer, under the same or similar loan, for a term equivalent to the remainder of the Fixed Rate Period of the Facility. The interest rate used for this calculation is an adjusted interest rate we determine, based on the prevailing annual interest rates we usually offer, at the date of Full Prepayment or Part Prepayment, on new loans of the same or a similar type as the Facility. If the remainder of the Fixed Rate Period of the Facility is:
 - A. equal to or more than 6 Months, then the adjusted interest rate will be based on the rates for loans of the same or similar type as the Facility for terms we usually offer that are immediately less than, and exceeding, the outstanding Fixed Rate Period of the Facility as at the date of Full Prepayment or Part Prepayment; and
 - B. less than 6 Months, then the adjusted interest rate will be based on the rate for loans of the same or similar type as the Facility for a term of 6 Months, and The Co-operative Bank's then applicable Standard Floating Interest Rate.

For Part Prepayments, the result of this calculation will be adjusted so that it reflects only the interest amount that we would have expected to receive if we lent an amount equal to the Part Prepayment.

- (b) The formula we use to calculate the early repayment charge:
 - (i) is not the statutory procedure prescribed by the Credit Contracts and Consumer Finance Regulations 2004, because the formula we use incorporates an adjusted interest rate which we consider results in a more accurate and fair calculation of the loss we incur as a result of the early Part Prepayment or Full Prepayment; and
 - (ii) is available on our website (www.co-operativebank.co.nz) under 'Home Loans' and at any of our branches.

8.4 If the loss for any Facility which is not a Consumer Credit Contract subject to the CCCFA needs to be determined, then we may take into account, then:

- (a) the term of the Facility Agreement and the period over which the principal is amortised as at the date of prepayment;
- (b) the unexpired period of any fixed rate of the Facility;
- (c) the relevant prevailing market rate or rates at which we can reinvest or re-lend the amount of the prepayment on terms the same as or similar to the Facility Agreement; and
- (d) the expenses that we incur or may incur, in relation to the reinvestment of the amount of the prepayment.

9. Costs

You and any Guarantor shall jointly and severally indemnify us in respect of all costs and expenses (including legal fees on a full solicitor/client basis and GST) we incur in connection with the processing and administration of the Facility, in the event of any default under the Facility Agreement and in the recovery or attempted recovery of any amount owing under or relating to the Facility Agreement by you or any Guarantor. Subject to any applicable requirements of the CCCFA, you shall pay us all such amounts immediately upon demand.

10. Review of RCFs, Business ODs, Fresh Start Home Loans and Interest Only Loans

10.1 If the Facility is an RCF, a Business OD or a Loan during an Interest Only Period, then:

- (a) without prejudice to our right to demand payment of the Facility Balance at any time in accordance with the Facility Agreement, we may review the Facility at intervals we determine as from the Date of Availability (for Interest Only Loans at the interval stated in

the Facility Schedule). When reviewing the Facility, we may require a valuation to confirm the then current market value of any property forming (part of) the Security Property. If this occurs, we may charge you, and you must promptly pay us, a fee of any external valuation which is commissioned, such fee payable on the date such valuation fee is invoiced to us;

- (b) if we are (in our absolute discretion) satisfied with the result of such review then we may elect to renew the Facility for a further period of, for RCFs, 1 year and, for Interest Only Loans, a period we determine of up to 5 years, on the terms and conditions of the Facility Agreement. If we are not (in our absolute discretion) for any reason whatsoever satisfied with the result of such review we may, by giving you 14 days' written notice:
 - (i) refuse to allow you to renew the Facility, and require the immediate repayment of the Facility Balance or any part thereof (including all accrued but undebited interest and fees); or
 - (ii) in all respects at your cost, permit you to renew the Facility but reduce the Facility Limit and require that you immediately repay the amount by which the Facility Balance (including all accrued but the undebited interest and fees) exceeds the revised Facility Limit at that time; and/or
 - (iii) in all respects at your cost, convert the Facility Balance or any part thereof to a loan on a Principal and Interest repayment basis on terms and conditions that we use at the time.
- (c) for the purposes of calculating interest charges that have accrued at the time of payments pursuant to this clause, the end of day shall be the time 1 hour before the time at which you make the payment.

10.2 If the Facility Schedule states that the Facility is a Fresh Start Home Loan, then we will review the Facility and any other Facilities you may have from time to time with us within 12 Months of the Date of Availability. When carrying out this review, we will have regard to whether or not you have operated the Facility and/or any other Facilities you may have from time to time with us in accordance with the applicable terms and conditions applying to the Facility. If you have not been in arrears during this period under this Facility or any other facility you have with us then we will remove the Margin and therefore the Annual Interest Rate will reduce to The Co-operative Bank's then applicable Standard Floating Interest Rate. Any such reduction shall apply as from the date of the review, for the remainder of the term of the Facility. If the reduction is not implemented, then we will review the Facility and any other facilities you have with us at 12 Monthly intervals after the first review.

10.3 If the Facility is an RCF, then we may at any time agree to a request from you, to vary (either increase or decrease) the Facility Limit. If we agree to any such request (which we may do at our sole discretion and subject to the payment of any applicable Credit Fee) then we will notify you and any Guarantors of our agreement.

11. Right to cancel Facility Agreement, and right to make an application on grounds of Unforeseen Hardship

11.1 If the Facility is a Loan which is a Consumer Credit Contract, you are entitled to cancel the Facility Agreement by giving written notice to us within 5 Working Days of the date on which you received the Facility Agreement, and if the following conditions are met:

- (a) the written notice must state that you wish to cancel the Facility Agreement;
- (b) the written notice must be delivered or posted to one of our branches; and
- (c) you must, within 5 Working Days of the date on which you received the Facility Agreement, return to us any advance you have received under the Facility Agreement.

If you cancel the Facility Agreement in accordance with this clause, we are entitled to charge you:

- (a) a credit fee equivalent to any reasonable expenses that we had to pay in connection with the Facility Agreement and its cancellation (including legal fees and fees for credit reports); and

- (b) interest for the period from the day you receive the Facility Amount or any part of it until all such amounts are repaid to us in full as provided for in the Facility Agreement.

11.2 If you are unable reasonably to keep up your payments or other obligations because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, you may be able to apply to the creditor for a hardship variation. You should do this as soon as possible. After receipt and consideration of an application to vary the terms of the Facility Agreement on grounds of unforeseen hardship, we may vary the terms of the Facility Agreement. We can vary the Facility Agreement in 1 of the following ways (without a consequential change being made to the Annual Interest Rate or Annual Interest Rates):

- (a) extending the term of the Facility Agreement and reducing the amount of each Instalment or Minimum Payment due under the Facility Agreement accordingly;
- (b) postponing for a specified period the Instalments or Minimum Payments due under the Facility Agreement;
- (c) extending the term of the contract and postponing, during a specified period, the dates on which Instalments or Minimum Payments are due under the contract.

To apply for a hardship variation, you must:

- (a) make an application in writing; and
- (b) explain your reason(s) for the application; and
- (c) specify which of the variations above you are request, along with specifying the appropriate term of the amendment; and
- (d) give the application to us.

11.3 This clause contains only a summary of your rights and obligations in relation to your rights to cancel the Facility Agreement under the CCCFA, and your rights to make an application on grounds of unforeseen hardship. If you or any Guarantor are unsure about any of your rights or obligations under the CCCFA, or if there is anything you or any Guarantor do not understand, or if there is a dispute about any of your rights, or if you or any Guarantor considers that we are being unreasonable, then you should seek and obtain legal advice immediately. You are also able, at any time during working hours, to ask us at any branch for any clarification or assistance.

12. Default

12.1 An Event of Default occurs if any of the following occur:

- (a) any of you or any Guarantor defaults in the payment of any amount due under the Facility Agreement, or on any of your or any Guarantor's accounts with us, or under any liability you or any Guarantor have to us;
- (b) default is made in the compliance with any term or condition of the Facility Agreement or of any Security held by us;
- (c) any of you or any Guarantor, being a person (including as a trustee or a partner):
 - (i) die; or
 - (ii) become insolvent or unable or presumed unable to pay their debts as they become due in the normal course of business;
 - (iii) do any of the following things, or are the subject or focus (alone or with others) of any of the following events, actions or things, under the Insolvency Act 2006 (the "Insolvency Act") or another law, statutory or otherwise:
 - A. are adjudicated bankrupt;
 - B. make a proposal to creditors;

- C. pay creditors in instalments under a summary instalment order;
 - D. enter the no asset procedure;
 - E. commit, or are charged with, an offence under Part 7 of the Insolvency Act; or
 - F. if an order is made or any step is taken toward dissolution or a receiver, liquidator, trustee, administrator or similar officer is appointed in respect of any of you or any Guarantor or their assets; or
- (iv) fail to pay punctually a premium on any life insurance policy which is being assigned to us as Security;
- (d) any of you or any Guarantor, being a Trustee, without our prior consent, cease to be a Trustee of the Trust, or a resolution is passed by the Trustees or beneficiaries of the Trust or any other action is taken to wind up, dissolve or terminate the Trust, or the Trust Deed is amended, varied or revoked;
- (e) any of you or any Guarantor, being a Partner, without our prior consent, cease to be a Partner of the Partnership, or a resolution is passed by the Partners or any other action is taken to wind up, dissolve or terminate the Partnership, or the Partnership Agreement is amended, varied or revoked;
- (f) any of you or any Guarantor, being a company, do any of the following things, or are the subject or focus (alone or with others) of any of the following events, actions or things, under the Companies Act 1993 (the "Companies Act") or another law, statutory or otherwise:
- (i) are insolvent or unable to pay their indebtedness as it falls due;
 - (ii) suspend, stop or threaten to suspend or stop payment of a material part of their indebtedness;
 - (iii) commence negotiations, or take any proceedings with a view to the general deferral, readjustment or rescheduling of their indebtedness or a material part of their indebtedness;
 - (iv) make, or propose to make, any assignment, arrangement, or composition for the benefit of their creditors generally or a moratorium is agreed or declared in respect of or affecting all or any material part of their indebtedness; or
 - (v) if an order is made or any step is taken toward dissolution or a receiver, liquidator, trustee, administrator or similar officer is appointed in respect of you or any Guarantor or their assets;
 - (vi) there is any change in the ownership in or control of the Borrower or any Guarantor, or any person controlling the Borrower or any Guarantor;
- (g) in our opinion your financial position or the financial position of any Guarantor or the value of any Security Property or any Securities held by us changes adversely to a material extent, or any event or circumstance occurs which, in our opinion, may materially adversely affect any of you or any Guarantor, or their business or assets, their overall financial position or general creditworthiness, or their ability to comply with their obligations under the Facility Agreement;
- (h) any of you or any Guarantor fail to complete to our satisfaction any Securities required to be given under the Facility Agreement;
- (i) any legal process is levied or enforced against any of you or any Guarantor or either of your respective assets, and is not discharged or stayed within 5 Working Days, or a receiver, trustee, official assignee, statutory manager, administrator or similar officer is appointed in respect of you or any Guarantor or any of their assets;
- (j) any of your, or any Guarantor's, indebtedness exceeding \$5,000.00 is not paid when due or becomes due, or capable of being declared due or any security interest affecting any

of your or any Guarantor's assets become enforceable;

- (k) any property which forms part of any Security held by us now or at any time in the future is disposed of;
- (l) any property which forms part of any Security held by us now or at any time in the future is further encumbered without our consent (which we may, but are not required to, give); or
- (m) any of you or any Guarantor, or anyone on their behalf, provide us information, whether before or during the term of the Facility, which is untrue, inaccurate, deceptive, incomplete or misleading in any material particular.

12.2 When, or at any time after, an Event of Default occurs, and without prejudice to any other rights that we may have, we may, with immediate effect, by giving notice to you and any Guarantor:

- (a) cancel the Facility Agreement;
- (b) declare that all or any part of the Facility Balance, and/or such other amount under the Facility Agreement, are immediately due and payable, in which case the debt will be immediately due and payable;
- (c) apply any credit balance of any account which you or any Guarantor may have with us, to satisfy any debt owing by you (including by setting off against the credit balance the maximum amount which may become due to us, stopping the withdrawal or payment of the credit balance if an amount is contingently due to you, and to break any term deposit); and/or
- (d) exercise all or any of our rights under the Facility Agreement, any guarantee and any of the Securities or at law.

12.3 If you are in default, we are entitled to recover from you any reasonable costs which we incur in remedying the default, including any reasonable legal costs we incur, and if we engage a collection agency to recover from you any amount that you are in default, we are entitled to recover any reasonable costs we incur in recovering the amount in default.

13. Indemnities and limited liability of Independent Trustee

13.1 You and any Guarantor unconditionally and irrevocably jointly and severally indemnify us in respect of all costs and expenses (including legal fees on a full solicitor/client basis and GST) we incur in connection with:

- (a) the processing and administration of the Facility;
- (b) the occurrence of any Event of Default under the Facility Agreement and in the recovery or attempted recovery of any amount owing under the Facility Agreement by you or any Guarantor; and
- (c) costs, claims, losses, expenses or liabilities (together with any taxes on them) we sustain or incur as a result of our being required to refund a payment received or recovered under the Facility Agreement that is avoided by law.

13.2 Despite anything expressed or implied in the Facility Agreement or in the Property Law Act 2007 or in the Land Transfer Act 1952 or in any enactment passed in substitution for those Acts, the liability of any Independent Trustee shall (except only in the event that such Independent Trustee is in breach of trust due to the willful default or dishonesty on the part of that Independent Trustee, or that the person stated above as being the Independent Trustee acquires a right to or interest in any of the Trust Assets other than solely in the capacity as a trustee of the Trust) be construed not as a personal liability but as a liability to pay the amount hereby secured and other amounts payable under the Facility Agreement and to observe and perform the provisions of the Facility Agreement only out of and so far as will extend the land and the assets for the time being in his or her hands or to which he or she is entitled as trustee of the Trust. For the purposes of this clause 13.2:

- (a) the term "Independent Trustee" means a Trustee who has no right to or interest in any of the Trust Assets, except in the capacity as a trustee of the Trust; and

- (b) the person stated in the Facility Schedule as being an Independent Trustee, by signing the Facility Agreement as one of the Trustees, confirms that he or she falls within the definition of Independent Trustee stated in clause 13.2(a).

14. Representations and Warranties

14.1 You and any Guarantor represent and warrant to us that:

- (a) the obligations under the Facility Agreement are the legal, valid, binding and enforceable obligations of you and any Guarantor, in accordance with their terms;
- (b) your and any Guarantor's entry into, and the exercise of your and any Guarantor's rights and performance of your and any Guarantor's obligations under, the Facility Agreement and any of the Securities does not and will not contravene any laws and, if applicable, your or any Guarantor's constitution or other constitutive documents;
- (c) other than as disclosed to us and accepted in writing, no Event of Default has occurred and is continuing;
- (d) all information provided by you and any Guarantor to us in connection with the Facility Agreement was true, accurate and complete in all material respects and not misleading when provided to us, and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate, incomplete or misleading;
- (e) other than as disclosed to us and accepted in writing, no litigation, arbitration, claim or administrative proceeding of or before any court, arbitrator, tribunal or governmental agency is current, pending or (to the best of your knowledge and belief) has been started or threatened against you or any Guarantor; and
- (f) you and any Guarantor have the power, and all necessary action (including passing all resolutions) has been taken to authorise you and any Guarantor, to enter into, execute, exercise your rights and perform your and any Guarantor's obligations under the Facility Agreement.

14.2 If the Borrower or any Guarantor is a company, then it represents and warrants that it is a legal entity validly existing under the laws of New Zealand and has the power and authority to own its own assets and carry on business.

14.3 If the Borrower or any Guarantor is a trust, then the Trustees represent and warrant that:

- (a) the Trust has full power, authority and legal right to enter into, deliver and execute the Facility Agreement and any Security to which it is a party, and to hold in trust the assets now held by the Trust ("Trust Assets"), and has taken all necessary action to authorise the execution of, and has duly executed, the Facility Agreement and any Security;
- (b) the Trustees are validly appointed as the trustees of the Trust and there are no trustees of the Trust other than the Trustees;
- (c) the Trustees are entering into the Facility Agreement and any Security for a proper purpose of the Trust and as part of the due and proper administration of the Trust and for the behalf of all the beneficiaries of the Trust, in compliance with the Trust Deed; and
- (d) the Trustees are entitled to be fully indemnified out of the Trust Assets in respect of their liability for the Facility Balance and other amounts payable under the Facility Agreement and any Security and that the Trustees will not release or otherwise prejudice such rights of indemnity.

14.4 If the Borrower or any Guarantor is a partnership, then:

- (a) the Borrower and any Guarantor warrants that the entering into the Facility Agreement is in accordance with the applicable laws and the Partnership Agreement;
- (b) the Partnership is constituted properly and validly existing under the Partnership Deed and the Borrower includes all current partners of the Partnership; and

- (c) all of the assets of the Partnership are, and will be during the term of the Facility Agreement, legally owned by the partners of the Partnership.

14.5 These representations and warranties are deemed to be made by the Borrower and any Guarantor (by reference to the facts and circumstances then existing) on the date of each drawdown and on the first day of each Month so long as any Facility Balance is outstanding.

14.6 You and any Guarantor acknowledge that we have entered into each of the Securities, and will make the Facility Amount available, in reliance on the representations and warranties in this clause 14.

15. Undertakings and Covenants

15.1 You undertake to us that you will:

- (a) duly and promptly comply with all laws and mandatory obligations applicable, the non-compliance with which might have a material adverse effect on you;
- (b) duly and promptly perform and comply with your obligations under the Securities to which you are a party and the transactions contemplated by you;
- (c) notify us of the occurrence of any Event of Default or any event or circumstance which may have a material adverse effect on you, immediately upon becoming aware of it (providing us with full details of it and any action taken or proposed to be taken in relation to it);
- (d) promptly give to us, on reasonable request, any information relating to your business, financial condition or operations;
- (e) at all times:
 - (i) insure and keep insured all of your assets of an insurable nature which are customarily insured against loss or damage by fire, earthquake and war damage, and other risks normally insured against by persons carrying on the same class of business as that carried on by you (and any other risks which we may from time to time reasonably require) for their full insurable value; and
 - (ii) take out and maintain such other insurance against liability on account of injury or damage sufferance by the public and against such other risks that are considered prudent and in accordance with best commercial practice to insure against,

in each case with reputable insurers approved by us, noting our and your names for each other's respective rights and interest with all payments on account of loss or otherwise to be made to our order. You must, at such times as we may reasonably require, provide a certificate from an insurer approved by us confirming that you are complying with your insurance obligations under this clause; and

- (f) if the Borrower is a company do all things necessary to maintain your corporate existence in the same form as at the date of the Facility Agreement.

15.2 In addition to any undertaking stated in the Facility Agreement, you undertake to us that you will not, without our prior written consent:

- (a) create or permit to exist any security interest over the whole or any part of your assets;
- (b) lend or otherwise provide any other financial accommodation to, give any guarantee or indemnity in respect of, or otherwise assume, the indebtedness or the obligations of any person;
- (c) make a material change in the nature or scope of your business as it is conducted as at the date of the Facility Agreement;
- (d) either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary and whether one at a time or over a period of time, dispose of all or any material part of your assets;

- (e) incur any indebtedness for borrowed money other than indebtedness under or permitted by us;
- (f) if the Borrower is a company, subject to the provisions of the Facility Agreement (from time to time), make any distribution;
- (g) if the Borrower is a company, enter into a major transaction (as defined in section 129 of the Companies Act); or
- (h) if the Borrower is a company, enter into any transaction with any person except for value in the ordinary course of business on an arm's length basis and on normal commercial terms.

15.3 If the Borrower or any Guarantor is a trust, then the Trustees covenant that:

- (a) they shall, forthwith on receiving our request, exercise the Trustees' right of indemnity against the Trust Assets and all rights the Trustees may have against any beneficiary to enable repayment of the Facility Balance and other amounts payable pursuant to the Facility Agreement to us;
- (b) they shall not (either in a single transaction or in a series of transactions, whether related or not) without our prior written consent sell, convey, transfer or otherwise dispose of any part of the undertaking of the Trust or the Trust Assets if and to the extent that such sale, conveyance, transfer or other disposal could reasonably be expected to adversely affect our ability to exercise our rights, or your ability to comply with your obligations, under the Facility Agreement or any Security, or the value of any Security; and
- (c) they shall not, without our prior written consent, exercise or consent to the exercise of:
 - (i) any power to alter, amend, vary or revoke the terms of the Trust Deed;
 - (ii) any power to make any capital distribution of any Trust Assets;
 - (iii) any power to wind up the Trust;
 - (iv) any power for the Trust to incur any liability for less than full consideration; or
 - (v) any power for the Trust to repay any indebtedness to any settler or beneficiary of the Trust.
- (d) the Trustees shall:
 - (i) immediately notify us in writing if and in the event any of the Trustees shall cease to be a trustee of the Trust; and
 - (ii) ensure that any person who becomes a trustee of the Trust (whether in replacement or addition to the Trustees) enters into a deed with us whereby such person(s) agrees to perform the obligations of the Trustees under this Facility Agreement and any Security.

15.4 If the Borrower or Guarantor is a partnership, then the Partners undertake that:

- (a) they will ensure that no person is appointed as a partner of the Partnership other than a person who assumes all of the obligations and liabilities of an existing but exiting Partner under the Facility Agreement on terms acceptable to us, and is reasonably acceptable to us;
- (b) that they will not amend or revoke, or permit the amendment or revocation of the Partnership Agreement without our prior consent;
- (c) they will not permit any or all of the capital of the Partnership to be distributed to or on behalf of the Partners; and
- (d) they will notify us immediately upon the appointment of any new partner and the retirement or death of any Partner.

15.5 If the Facility is a Business OD, then you and any Guarantor shall, immediately on receiving our written request, at any time during the term of the Facility, provide such further financial information as and when we require, including (without limitation), statements of assets, liabilities, income and expenditure, balance sheets, accounts and cash flow forecasts. Such financial information produced by you pursuant to this clause 15 must be sufficient in the circumstances to indicate whether or not there has been any adverse change in your or any Guarantor's financial position which may be reasonably expected to affect your or any Guarantor's ability to continue to comply with your obligations under this Agreement.

16. Insurance and EQC Claim proceeds

16.1 You must insure any Security Property with an insurance company approved by us and "The Co-operative Bank" is to be noted on the insurance policy as the "Interested Party".

16.2 Where there is any claim or Earthquake Commission proceeds relating to the land comprising the Security Property, then (despite anything else to the contrary in any mortgage) if you or any Guarantor becomes entitled to receive any amounts whatsoever payable by the Earthquake Commission, or any replacement body, in respect of the destruction of or damage to any building or other improvements on the land or in respect of the destruction of or damage to the land itself comprising any property owned by you or any Guarantor, over which we have a mortgage, then we may, at our sole option, apply the amounts or direct that they be applied either in or towards rebuilding or repairing the building and improvements, or repairing the land, or in or towards payment of the Facility Amount or so much thereof as may from time to time be owing to us, or if the Facility is an RCF the Facility Balance (even though those amounts may not have otherwise fallen due). If we exercise the latter option, then you or any Guarantor giving the mortgage may, at any time within 2 Months after the insurance proceeds have been so applied, pay to us any Facility Balance remaining under the Facility Agreement. Interest will cease to accrue on any part of the Facility Balance repaid pursuant to this sub-clause. You or any Guarantor giving the mortgage, immediately on the happening of loss or damage to the mortgaged property, must notify us of the loss or damage and furnish us, at your or any Guarantor's expense, any necessary proof and do any necessary act to enable us to obtain payment of the insurance proceeds.

17. Security

17.1 The Securities referred to in the Facility Agreement will secure your obligations in respect of the Facility Agreement. If you fail to meet your commitments under the Facility Agreement, then to the extent of any Securities, we may be entitled to take possession of and sell any Security.

17.2 You will do all things reasonably required by us to ensure that we have adequate security for those obligations, which may include providing us with further security or charges, updates and replacements of the security.

17.3 If you take out any additional loans or receive any additional facilities from us, the Securities may secure payment on those future loans or facilities. If we have a security interest over any of your other property (for instance, in relation to an earlier loan or facility with us), that secured property may also secure payment in relation to this Facility Agreement. Please read the Facility Agreements for those other facilities to determine whether this applies to you.

17.4 If the amount we are able to recover by selling security isn't enough to cover the amount that you owe us, you must still repay any amount owing.

18. Service of Notices

18.1 Subject to clause 19, notices under the Facility Agreement must, without prejudice to any other means of service, be served by us by personal delivery, sending them by post, fax or e-mail to your, or any Guarantor's, place of residence or business (as applicable) last known to us, or (if applicable) the registered office or to any other address notified by you, provided that not less than 5 Working Days' prior notice of the new address has been given to us. You must give any notice to us in writing to any of our branches.

18.2 A communication to us will be effective only when actually received. A communication to you will be effective when received and will be deemed to have been received:

- (a) in the case of personal delivery, when delivered to the stated address;

- (b) if sent by post, 3 Working Days after the date of posting;
- (c) if faxed, on production of a transmission report by our fax machine of transmission in full to your fax machine;
- (d) if e-mailed, at the time the sender receives an acknowledgement of receipt of delivery from your e-mail address or (if earlier) at the end of 2 Working Days after the day the e-mail was sent, unless a notice of non-delivery is received by the sender,

provided that if any communication is received after 5.00pm on a Working Day, or on a day which is not a Working Day, it will be deemed to have been received on the next Working Day.

19. Methods of Disclosure, Continuing Disclosure and Variation Disclosure

19.1 Without limiting the methods of disclosure permitted under section 35 of the CCCFA, you and any Guarantor consent to all forms of disclosure and any notice from us being made, if we so choose, in Electronic form by means of an Electronic Communication. You and any Guarantor acknowledge that, in respect of such disclosure, neither of you have imposed any conditions regarding the form of the information or the means by which the information is produced, sent, received, processed, stored or displayed. You and any Guarantor must specify your respective information systems from time to time for any such Electronic Communication. You and any Guarantor agree that we may make disclosure by sending the relevant person an Electronic Communication that allows the disclosure statement to be accessed from a website or by means of the Internet. Unless we notify you otherwise in writing, we do not consent to cancellation or other notices being given by you or any Guarantor in Electronic form.

19.2 You consent to continuing disclosure of the information stated in section 19 of the CCCFA being made, at our discretion, either by way of a website in accordance with section 21(1)(b) of the CCCFA or in accordance with the methods stated in section 35 of the CCCFA.

19.3 Notice of any variation to the Facility Agreement will be provided in accordance with section 23 of the CCCFA.

20. Manager's Certificate

A certificate signed by, for, or on behalf of any Manager of The Co-operative Bank stating the amount of the Unpaid Balance or Facility Balance or any other amounts owing under the Facility Agreement at the date mentioned in any such certificate, shall, subject to the requirements of the CCCFA, and except in the case of manifest error, be conclusive evidence against you that the amount so stated is the amount due or owing by you under the Facility Agreement as at the date mentioned in the certificate.

21. Personal Property Securities Act 1999

You waive the right to receive a verification statement confirming the registration of a financing statement in respect of the Facility Agreement or any Securities under the Personal Property Securities Act 1999.

22. Inconsistency with terms of CCCFA

22.1 If the Facility Agreement is a Consumer Credit Contract, and the terms of the Facility Agreement are inconsistent with the terms of any relevant provisions of the CCCFA, then the terms of the relevant provisions of the CCCFA will apply.

22.2 If a security agreement entered into by us and you and/or any Guarantor is a Consumer Credit Contract, and the terms of that security agreement are inconsistent with the terms of any relevant provisions of the CCCFA, then the terms of the relevant provisions of the CCCFA will apply.

23. General

23.1 Where more than one person signs the Facility Agreement, whether as a Borrower or a Guarantor, their liability under the Facility Agreement shall be joint and several.

23.2 No waiver or failure to act by us in respect of any default by you or any Guarantor shall operate as a waiver of any other default.

- 23.3 Where the context requires or permits, words importing the singular shall import the plural and vice versa.
- 23.4 The indemnities and obligations in the Facility Agreement in respect of the Facility survive payment or repayment of the amounts due under this Facility Agreement or termination of the Facility Agreement for any reason whatsoever and will continue in full force and effect despite any such payment, repayment or termination.
- 23.5 We may at any time, and by providing any notice required, assign or transfer any or all of our rights, interest, benefits and obligations under the Facility Agreement or any Security, to any party, without your, or any Guarantor's, consent. If we do, then the assignee or transferee will have all the rights and remedies under the Facility Agreement and any Security and any related document as if it was us. You and any Guarantor agree that you will not assert any right of set-off or enter a claim which you have or acquire against us or any assignee or transferee, and will pay all amounts owing under the Facility Agreement or any Security and any related document to the assignee or transferee.
- 23.6 Reference to The Co-operative Bank or we or us or our or any other party to the Facility Agreement or another agreement or document includes the successors, assignees or transferees of The Co-operative Bank or that other party.
- 23.7 You and any Guarantor authorise us to collect, use and disclose information about any of you for any purpose related to your relationship with us including in relation to any assignment or transfer of any or all of our rights, interests, benefits and obligations under the Facility Agreement and any related documents.
- 23.8 For clarity and despite anything else in the Facility Agreement, any all obligations mortgage which you have previously given or may in the future give in favour of us in connection with a mortgage secured Facility or a small business loan does not secure your non-mortgage obligations under the Facility Agreement or any other facility agreement with us, unless either the Facility Schedule or the other facility agreement explicitly states that it does.
- 23.9 References in these Standard Facility Terms and Conditions to:
- (a) the term "you" means the Borrower and where the context allows any Guarantor and the term "your" has a corresponding meaning;
 - (b) the terms "we" and "us" mean The Co-operative Bank and its assigns and successors, and the term "our" has a corresponding meaning;
 - (c) the term "CCCFA" means the Credit Contracts and Consumer Finance Act 2003, as amended or replaced from time to time, and any regulations;
 - (d) the following terms defined in the CCCFA have the meanings given to them in the CCCFA, unless the context otherwise requires: "Annual Interest Rate", "Consumer Credit Contract", "Credit Fees", "Credit Limit", "Daily Interest rate", "Default Fees", "Electronic", "Electronic Communication", "Full Prepayment", "Part Prepayment", "Unpaid Balance", "Unpaid Daily Balance", and "Working Day";
 - (e) the term "Facility Schedule" means the facility schedule applying to the relevant Facility;
 - (f) the term "Facility Amount" means the amount of principal that we will provide or have provided to you under a Loan;
 - (g) the term "Facility Balance" means the amount of credit that you have drawn down under a Facility, and any other amounts due to us and outstanding under the Facility from time to time;
 - (h) the term "Facility Limit" shall mean the credit limit available at any time to you under an RCF or a Business OD;
 - (i) the term "Month" shall mean:
 - (i) the period of 1 month beginning on the Date of Availability;

- (ii) each successive period of 1 month thereafter during the term of the Facility; and
- (ii) (if relevant) the final period of less than 1 month, such period beginning on the date falling 1 day after the expiry of the last whole month, and ending on the date on which the Facility is terminated and the word "Monthly" shall bear the corresponding meaning.

(By way of example only, if the Date of Availability is on 15 February in any year, the first Month shall begin on that date and end on 14 March that year, the second shall begin on 15 March and shall end on 14 April that year, and so on);

- (j) the term "Working Day" means a day other than a Saturday, a Sunday, Waitangi Day (or if it falls on a weekend the following Monday), Good Friday, Easter Monday, Anzac Day (or if it falls on a weekend the following Monday), the Sovereign's Birthday, Labour Day, a day in the period 25 December to 2 January the following year, if 1 January falls on a Friday the following Monday, and if 1 January falls on a weekend the following Monday and Tuesday;
- (k) in these Standard Facility Terms and Conditions, a reference to a clause is, unless otherwise stated, a reference to a clause in these Standard Facility Terms and Conditions; and
- (l) The Co-operative Bank being permitted to do or not to do something, or having the discretion to do or not to do something, means that in exercising any right or discretion, we will:
 - (i) exercise the care, diligence, and skill of a responsible lender;
 - (ii) ensure we treat you, and any Guarantor, reasonably and in an ethical manner;
 - (iii) if the context permits, take into account your credit and financial circumstances, any then current lending criteria, and the value of any security provided; and
 - (iv) any other factors referred to in the applicable clause.