



**Home Loan Agreement  
General Terms and Conditions  
Version 1/2005**



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**Home Loan Agreement  
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*Please note that this document sets out the general terms and conditions of your home loan. If you want to look at specific details of your loan such as the principal amount and interest rates, please refer to the Loan Summary.*

**1. THE AGREEMENT**

1.1 **Terms:** NZF Mortgages Limited ("NZF") has agreed to advance your Loan on the terms and conditions contained in this document, the Loan Summary (together, the "Agreement") and the Securities granted to NZF that secure the Loan.

**2. DRAWING THE LOAN**

2.1 **Drawdown:** You may only draw the Loan in one amount (the "Drawdown"), and the Drawdown must not be for an amount more than the Available Loan.

2.2 **Availability:** The Drawdown will be available to you once you have signed and returned the Loan Summary to NZF and fulfilled NZF's pre-settlement conditions and any requirements of NZF's solicitors.

2.3 **Purpose:** You can only use the Loan for the purpose you have disclosed to NZF, unless you have obtained NZF's prior written consent to use it for another purpose.

2.4 **Authorisation to Deduct Ancillaries:** You acknowledge that NZF has your full authorisation to deduct from the Drawdown any fees, costs or expenses payable to or by NZF in relation to the Loan or as provided in this Agreement.

**3. STATEMENT OF RIGHT TO CANCEL**

3.1 **Right to Cancel:** Where this Agreement is a Consumer Credit Contract, the Credit Contracts and Consumer Finance Act 2003 gives you a right for a short time after the terms of this contract have been disclosed to you to cancel the contract.

3.2 **How to Cancel:** If you want to cancel this contract you must give written notice to NZF. You must also return to NZF any advance and any other property received by you under the contract.

3.3 **Time Limits for Cancellation:** The following time limits apply:

(a) If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 3 working days after you receive the documents.

(b) If the disclosure documents are sent to you by electronic means (for example, email), you must give notice that you intend to cancel within 5 working days after the electronic communication is sent.

(c) If the documents are mailed to you, you must give the notice within 7 working days after they were posted.

Saturdays, Sundays and national public holidays are not counted as working days.

3.4 **What You May Have to Pay if You Cancel:** If you cancel the contract NZF can charge you:

(a) The amount of any reasonable expenses NZF had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports, etc); and

- (b) Interest for the period from the day you received the advance until the day you repay the advance.

This statement contains only a summary of your rights and obligations in connection with the right to cancel. If there is something about your rights under the Credit Contracts and Consumer Finance Act 2003 that you do not understand, if there is a dispute about your rights, or if you think NZF is being unreasonable in any way, you should seek legal advice immediately.

#### 4. PAYMENTS

- 4.1 **Interest Payable:** You will pay NZF interest at the Applicable Interest Rate on the balance of the Loan due to NZF as at the end of each day. Interest shall be calculated and shall accrue on a daily basis of days elapsed in a 365 day year. Unless otherwise specified in the Agreement, interest payments are to be made monthly in arrears from the Drawdown Date.
- 4.2 **Payments as NZF Directs:** You must make all payments under the Agreement in the manner specified by NZF. Unless otherwise agreed by NZF, payments are to be made in arrears at the Applicable Interest Rate on the amount outstanding to NZF. Where no payments are specified, your payments are to comprise principal and interest calculated so as to pay the interest due as specified in clause 4.1 and to repay the Loan in full over the course of the Term. Repayments of principal may not be re-drawn except where you have obtained NZF's prior written consent.
- 4.3 **Final Repayment:** On the day the last payment is due, you must pay NZF the balance of the Loan owed to NZF by you and all money due to NZF under the Agreement.
- 4.4 **Application of Proceeds:** NZF can apply any of your payments or any other credit to any amount you owe to NZF in any order NZF determines in its sole discretion.
- 4.5 **No Set-Off or Counterclaim:** All payments you make to NZF under this Agreement must be, to the extent permitted by law, free of set-off or counterclaim.
- 4.6 **Principal Reductions:** You acknowledge that the Available Loan will reduce by the amount of all principal payments made in reduction of the Loan.
- 4.7 **Public Holiday:** If the date for your payment falls on a weekend or a public holiday in either Auckland or Wellington in New Zealand, you shall calculate your payment to include all dates leading up to the next Business Day. In most cases this will be the following Monday.
- 4.8 **Currency:** If, for any reason NZF receives or recovers an amount under the Agreement in a currency other than the currency in which it should have been paid, and after NZF has converted that other currency to the correct currency there is not enough to pay in full the amount then due under the Agreement, you must pay NZF the amount of the shortfall.
- 4.9 **NZF May Vary Rate:** You acknowledge that NZF may at any time vary the Variable Interest Rate advised to you as at the date of the Agreement. If NZF does this, it will either notify you directly, advertise the change in the media, or advertise the change on its website at [www.nzf.co.nz](http://www.nzf.co.nz). Other products, including fixed rates on offer by NZF, at any time are also subject to change as notified on NZF's website.
- 4.10 **NZF May Capitalise Unpaid Amounts:** If you do not pay the interest due at the Applicable Interest Rate on the due date as specified by NZF, or other amounts payable by you under this Agreement, such interest and other amounts may be capitalised in NZF's sole discretion, and on capitalisation shall be added to the Loan balance and bear interest under this Agreement. For the purposes of this clause, NZF may at any time determine when a day ends under the Agreement.
- 4.11 **Default Interest – Consumer Credit Contract:** If the Agreement is a Consumer Credit Contract, you agree to pay to NZF Default Interest on all overdue amounts payable under the Agreement from the date of the default up to and including the date of actual payment. In addition, if you do not comply with the terms of the Agreement relating to payments due to NZF or if you exceed the Available Loan, then the Applicable Interest Rate may be increased to the Default Rate. Default Interest will be calculated from the date of the default up to and including the date you remedy the default.
- 4.12 **Default Interest – Commercial:** If the Agreement is not a Consumer Credit Contract, the following applies:
- (a) You agree to pay to NZF interest calculated on a daily basis at the Default Rate on all overdue amounts payable under the Agreement up to and including the date of actual payment. In

addition, if you do not comply with the terms of the Agreement relating to payments due to NZF or if you exceed the Available Loan, then the Applicable Interest Rate may be increased to the Default Rate. Default Interest will be calculated from the date of the default up to and including the date you remedy the default.

- (b) If you do not comply with the terms of the Agreement other than the terms relating to payment of money to NZF, and you have not remedied your failure to comply on or before the 14<sup>th</sup> day after the Agreement required you to comply, then the Applicable Interest Rate may be increased at the NZF's discretion to the Default Rate. Default Interest will be calculated from the date of the default to the date you properly comply with the Agreement.

## 5. COSTS AND EXPENSES

5.1 **What You Agree to Pay:** You agree to pay NZF's fees, costs and expenses to NZF as described or specified in this clause 5 and the Loan Summary. You acknowledge that any amounts specified in this clause shall be subject to clause 5.9.

5.2 **Deferred Establishment Costs:** Where you repay all or part of the Loan early within the first 24 months of the Term, you shall pay deferred establishment costs to NZF. Deferred establishment costs shall apply as follows:

- (a) Where your repayment is within 0 to 12 months of the Drawdown Date, you shall pay 2 further months' interest at the Applicable Interest Rate on the amount repaid to NZF; or
- (b) Where your repayment is within 12 months and 1 day to 24 months of the Drawdown Date, you shall pay 1 further month's interest at the Applicable Interest Rate on the amount repaid to NZF.

5.3 **Fixed Rate Break Costs:** Where you repay all or part of the Loan early during a Fixed Rate Period, you shall pay a fixed rate break cost to NZF. The fixed rate break cost shall at NZF's sole discretion be the higher of:

- (a) Up to 3 months' interest at the Applicable Interest Rate on the amount repaid by you; or
- (b) The actual cost incurred by NZF as a result of having to break its funding arrangements at the time of repayment (including the cost of breaking any interest rate swap contract) in relation to the Loan.

The fixed rate break costs shall also include NZF's standard administration charges in relation to the early repayment. Details of this charge are available on NZF's website at [www.nzf.co.nz](http://www.nzf.co.nz) from time to time. NZF's certificate as to the amount of the fixed rate break costs payable by you pursuant to this clause shall be conclusive and binding upon you except in the case of manifest error or fraud.

5.4 **Switch Fee:** This fee is payable by you as a result of a request by you to switch between NZF's products or interest rates as advertised by NZF or as otherwise agreed by NZF from time to time. At the date of this Agreement this fee is up to \$250 per request.

5.5 **Default Attendance Fee:** Where you commit any act of default under this Agreement, you will be liable for any costs incurred by NZF in relation to the default. At the date of this Agreement the fee is \$30 per attendance required by NZF, including without limitation each phone call, letter or discussion in relation to your default. Each default attendance fee shall be charged in NZF's sole discretion.

5.6 **Redocumentation Fee:** Where NZF is required for any reason to re-issue documentation to comprise the Agreement or the Securities, you will be required to pay a fee for redocumentation. This fee shall be payable by you at the Drawdown Date, and at the date of this Agreement is up to \$250 in NZF's sole discretion.

5.7 **Costs Incurred on Release:** Where NZF releases any of the Securities, you will pay to NZF a security release fee. This fee will be up to \$250 for the first Security released by NZF, and up to \$100 per additional Security released by NZF (if applicable). NZF is not obliged to release any Security unless the Loan and other moneys secured by the Securities are repaid in full.

5.8 **Service Costs:** You will be required to pay to NZF all other fees and charges for incidental services provided to you by NZF relating to the Loan, any account you have with NZF, NZF's costs or expenses (including legal costs on a full indemnity basis) incurred in respect of any default under the Agreement, the Securities, or any costs or expenses incurred in accordance with NZF's usual practice from time to time.

5.9 **Preparation Costs:** Where you enter into the Agreement but do not draw the Loan, you shall pay NZF's fees, costs and expenses incurred in relation to the preparation of the Agreement and Securities.

5.10 **Subject to Change:** All of NZF's fees, costs and expenses in relation to the Loan including those specified in clause 5, are subject to change at any time. NZF shall advise you of any such changes by amending the details of the fees, costs, and expenses as listed upon its website at [www.nzf.co.nz](http://www.nzf.co.nz) from time to time.

## 6. EARLY REPAYMENT

6.1 **Early Repayment Generally:** You may repay part or all of the Loan early at any time provided that you pay all costs, fees and expenses payable by you in accordance with clause 5 above. Where you repay the whole Loan, you must also pay interest charges calculated to and debited on (but excluding) the date of repayment. Any amount prepaid by you may not be redrawn except in accordance with clause 7.

6.2 **Interest to Accrue on Balance:** If you prepay part of the Loan, interest will continue to accrue at the Applicable Interest Rate on the balance of the Loan due to NZF following the part-prepayment. The balance owing will be payable to NZF in accordance with the Agreement.

## 7. REDRAWING THE LOAN

7.1 **Request to Redraw:** Subject to no event of default under the Agreement or the Securities having occurred, you may at any time during the Term request to you an amount up to but not exceeding the amount by which the Scheduled Balance on the date NZF processes your request exceeds:

- (a) The balance of the Loan as at the close of business on a Business Day before the date NZF process your request (but excluding any payments you have made 5 working days prior to that date; plus
- (b) NZF's redraw fee as published on its website [www.nzf.co.nz](http://www.nzf.co.nz) (being \$30 as at the date of preparation of these general terms and conditions), together with any other fees, costs, or expenses payable in respect of your request.

7.2 **Form of Request:** A request by you made under clause 7.1 may be made as follows:

- (a) By you submitting to NZF a duly completed application form for the redraw request. This form must be submitted not less than 5 working days prior to the date on which you have proposed that the redrawing is to take place.
- (b) By way of any Email Instruction, which is from (or appears to be from) you.
- (c) By way of Telephone Instruction from you.

7.3 **Minimum Amount of Redraw Advance:** The minimum amount of a redraw advance under this clause shall be \$5,000, or such other amount as advised to you by NZF from time to time.

7.4 **Redraw Subject to NZF's Approval:** You acknowledge that NZF may approve or reject your redraw request in NZF's sole discretion. If NZF approves the redraw request, NZF will debit the amount of your redraw advance to your Loan and make the redraw advance available to you by way of transfer to the account from which the direct debit payments in relation to the Loan are received.

7.5 **No Redraw during Fixed Rate Period:** You may not request to redraw any amount of your Loan during a Fixed Rate Period.

## 8. SALE OF ASSETS

8.1 **Sale Proceeds:** If you sell any of the assets charged by the Securities, you agree to use the entire net sale proceeds to reduce the amount outstanding to NZF. Any repayment by you in accordance with this clause will be subject to clause 6.1. NZF is not obliged to provide any release of the Securities to you where the amount to be received by NZF in reduction of the amount outstanding to NZF is not approved by NZF or is insufficient to repay the Loan and other amounts outstanding to NZF under the Agreement.

## 9. SECURITY

- 9.1 **Security for all Amounts Owed:** The Agreement is a loan agreement for the purposes of the Securities. Each Security is security for all the amounts you owe to NZF under the Agreement and the performance of all obligations you or any other person owe NZF in relation to the Loan, this Agreement, and any Security. The Loan and any amounts you owe to NZF as at the date of the Agreement as well as in the future under any existing or future agreements with NZF (including amounts owed under any guarantees you have granted to NZF) will be secured by all present and future securities granted by you as any other party to NZF, including the Mortgage and Guarantee listed in the Loan Summary.
- 9.2 **Mortgages:** You must ensure that each mortgagor complies with the terms of each mortgage forming part of the Security.
- 9.3 **Guarantees:** You must ensure that each Guarantor complies with the terms of each guarantee forming part of the Security.

## 10. YOUR CONFIRMATIONS

- 10.1 **Warranties:** You and any Guarantor each confirm the following:
- (a) You are solvent, and if you are a company or a trust, you are a properly established and legal entity and you have all necessary legal powers to enter into the Agreement and Securities, and that the Agreement and the Securities bind you to the full extent required by law.
  - (b) No default under the Agreement or Securities will result from your drawing of the Loan, and neither will the drawing of the Loan affect you in an adverse manner that would prejudice NZF's interests under the Agreement or the Securities.
  - (c) No charge or security interest over all or any part of the property subject to the Securities or any of your other assets exists which you have not previously disclosed to NZF.
  - (d) If you or the Mortgagor were to sell the property charged by the Securities, neither you nor the Mortgagor would be liable to pay GST on the sale price. The reasons for this are that neither you nor the Mortgagor are registered for GST, or if you are registered for GST, no part of the property subject to the Securities is used by you or the Mortgagor for a taxable activity.
  - (e) All of the information you have provided to NZF is true and correct.
  - (f) There are no pending actions against you or other circumstances which threaten your solvency.
  - (g) All of the above confirmations will be true on the date of the Agreement, the Drawdown Date, and also on any prospective date for payment of any amount under this Agreement, as if each confirmation on a given date were made by you with reference to the facts and circumstances then applicable.

## 11. YOUR COMMITMENTS

- 11.1 **Negative Covenants:** You agree that you and any Guarantor, if a company, will not:
- (a) Amend your company constitution without NZF's prior written consent.
  - (b) Purchase, acquire or redeem any of your own shares.
  - (c) Make any distribution to shareholders other than dividends paid solely from company profits.
  - (d) Reduce or cancel any shareholder's liability.
  - (e) Provide financial assistance to any party for the purchase of your company's shares whether you are doing this by direct or indirect means.
  - (f) Amalgamate or merge with any other company or entity.
  - (g) Enter into any major transaction as per section 129 of the Companies Act without the prior written consent of NZF.

11.2 **Covenants:** You and any Guarantor agree to:

- (a) Tell NZF about any default under the Agreement or the Securities as soon as you know one has occurred, or to tell NZF about any factor that might lead to a default.
- (b) Maintain and keep current all permissions, consents and authorities that permit you to uphold your obligations under the Agreement and the Securities.
- (c) Comply with all laws pertinent to your obligations under the Agreement and Securities and to pay all taxes when due.
- (d) Allow NZF or any of NZF's representatives to inspect your records within a reasonable time when requested.
- (e) Promptly advise NZF by way of notice under this Agreement if the GST position in respect of the property subject to the Securities as represented by you in clause 11.1(d) above changes at any time. If the change to the GST position has any effect on the ratio that the total amount of the Loan outstanding bears to the property subject to the Securities, you shall reduce the Loan balance or provide further security as NZF directs.
- (f) Promptly tell NZF of any proceedings, civil, criminal or otherwise, which might affect your status or your ability to perform your obligations to NZF under the Agreement and Securities.
- (g) Provide NZF with the necessary assurances and security documents to sufficiently secure your obligations under the Agreement, including any further security documents or performing further actions that are necessary in NZF's sole discretion to perfect NZF's interests under the Agreement and the Securities.
- (h) Provide NZF with all applicable financial information in relation to your affairs, including statements of financial position, as and when requested by NZF.
- (i) Pay NZF all costs, losses and expenses that NZF incurs in the exercise of NZF's rights or otherwise in the event of default by you under the Agreement or the Securities. You agree to indemnify NZF completely in respect of any detriment to NZF in respect of your default. To the extent permitted by law, enforcement expenses under this clause may include any expenses reasonably incurred by NZF's use of its staff and facilities.

11.3 **Insurance:** Insure and keep insured all of your assets charged by the Securities in accordance with the provisions of the Securities, and otherwise for full replacement value against all usual insurable risks with NZF's interest noted as an interested party, and as co-insured and as loss payee for all claims if required by NZF, on the policy. These sorts of risks will include without limitation loss or damage by fire, earthquake, theft, riot, aircraft accident, flood and weather damage. You shall provide NZF a copy of the insurance policy and certificate of currency as requested by NZF at any time. If you do not insure the assets charged by the Securities in accordance with this clause, NZF may take out such insurance and the amount NZF pays for doing so will be a cost and expense payable by you under the Agreement.

11.4 **Dilution:** You agree you will not:

- (a) Make a loan or advance to any related party or associated person without the prior written consent of NZF.
- (b) Incur or agree to incur any further debts without the prior written consent of NZF.
- (c) Destroy, dispose of or otherwise deal with any property or improvements in which NZF has an interest without NZF's prior written consent.
- (d) Claim GST in respect of any property over which NZF has a mortgage without NZF's prior written consent. Where permission is granted you agree to pay NZF the full amount of any GST refund in reduction of any money owed to NZF unless otherwise specified by NZF.

## 12. DEFAULT

12.1 **Events of Default:** You will be in default under the Agreement if the following occurs:

- (a) You fail to make a payment when it is due under the Agreement and the Securities.
- (b) You fail to comply with and observe your obligations under the Agreement and the Securities.
- (c) Your balance exceeds the Available Loan under the Agreement, even where NZF in its discretion allows you to exceed the Available Loan, or permits you to have access to the credit advanced after the Term has expired.
- (d) Where anything you or the Guarantor have told NZF, or any information, financial or otherwise, you or a Guarantor have provided to NZF is shown to be materially false, untrue, or deceptive to NZF.
- (e) Where an encumbrancer, statutory manager, receiver, trustee, manager, inspector, or similar official is appointed whether by statute, court order or otherwise in respect of you, the Guarantor, your assets, or the assets of the Guarantor.
- (f) Where any step by any party is taken to appoint a statutory manager under the Corporations (Investigations and Management) Act 1989 in respect of you or the Guarantor.
- (g) Where you or the Guarantor are in default with any other lender or in respect of any other indebtedness to anyone else other than NZF.
- (h) Where the Guarantor or any other person who has given a guarantee or security in respect of your obligations is in default under the guarantee or security provided.
- (i) Where you or the Guarantor are a company and there is a material change in the nature of either its business, or if there is any change in the beneficial ownership of the shares, share capital or control in the company.

## 13. NZF'S ACTIONS ON DEFAULT

13.1 **NZF's Remedies:** If you are in default, you agree that NZF may do all or any of the following:

- (a) Require you to repay all amounts owed to NZF under the Agreement including principal, interest, Default Interest, costs, fees, expenses and any other amounts payable by you to NZF.
- (b) Enforce its rights and remedies under the Agreement and Securities in whatever order it sees fit.
- (c) Cancel any part of the Loan you haven't yet drawn.
- (d) Use any credit balance held for you by NZF or any Guarantor to assist with remedying the default. You and any Guarantor authorise NZF to make any transfer, credit, debit, or to complete any transaction for the purposes of this clause.

## 14. NOTICES

14.1  **Service Terms:** You and the Guarantor agree as follows:

- (a) That all notices (other than public notices) under the Agreement and the Securities will be in writing and signed by the party directly responsible or authorised by the person giving the notice.
- (b) That the notice address for NZF, together with its fax number, email address and website are noted in the Loan Summary.
- (c) That your address for notices is to be the last address as notified by you to NZF by way of notice in writing.
- (d) Subject to sections 99 to 102 of the Credit Contracts and Consumer Finance Act 2003, notice sent by post or by means of electronic communication or facsimile is deemed made on the day on which the notice is posted or sent.

- (e) That regardless of clause 14.1(c) above, NZF may at its discretion serve any notices for you under this Agreement upon your nominated solicitor as your service agent. Your nominated solicitor will be the solicitor you use for the Drawdown (unless you advise NZF otherwise in writing), and NZF may choose to serve either your nominated solicitor, or the firm for which your nominated solicitor works.
- (f) That this clause 14.1 will apply to all notices under this Agreement and the Securities, including notices under the Property Law Act 1952 and to all disclosure required under the Credit Contracts and Consumer Finance Act 2003.
- (g) Public notice may be given for the purposes of the Agreement in any manner chosen by NZF, including by advertisement or statement in any newspaper or other media forum.

## 15. TRUSTEES

15.1 **Liability of Trustees:** If you have entered into the Agreement in the capacity of a trustee of a trust, you acknowledge that notwithstanding that capacity you are personally liable to NZF to the full extent of your obligations under the Agreement and the Securities, and your liability is not limited to the assets of the trust. You also agree that you will:

- (a) Notify NZF immediately in writing if you cease to be a trustee of that trust or the trust is terminated or ceases to exist.
- (b) Not distribute any capital from the trust fund until the balance of the Loan has been repaid to NZF in full, together with all interest, costs and expenses due to NZF under the Agreement.
- (c) Provide financial statements and information of any type or description concerning the business or financial condition of the trust as and when requested by NZF.
- (d) Not do anything which limits, prejudices or disposes of all, part of, or an interest in your right to be indemnified, exonerated, or otherwise reimbursed from the trust fund. You may not resign as a trustee without a successor being appointed to your position as trustee who must sign all documents required by NZF. You may not amend the trust deed or do or allow anything to be done which in NZF's opinion may prejudicially affect NZF's recourse against the assets of the trust.
- (e) Comply with all of the terms of the trust deed.

15.2 **Independent Trustee:** You are an independent trustee for the purposes of this clause if your only right to or interest in any of the assets of the trust is in your capacity as a trustee of the trust. If you are an independent trustee, then notwithstanding the statements made concerning your liability in clause 15.1 above, your liability under the Agreement and the Securities will not be personal and shall be limited to the value of, and shall be satisfied out of the assets of the trust unless you have done or omitted to do anything which results in the revocation of your right to be indemnified from the assets of the trust, including acting in a fraudulent or criminal manner.

## 16. GENERAL

16.1 **Acknowledgements:** You and the Guarantor agree as follows:

- (a) That no delay or failure to act by NZF by any stage will be a waiver of NZF's rights, and no manner of dealing with you adopted by NZF will mean that NZF may not enforce its rights under the Agreement and the Securities.
- (b) That if there is more than one Borrower or Guarantor, each of you is both jointly and severally liable under the Agreement and the Securities. The word "you" in the Agreement and the Securities refers to each of you.
- (c) NZF's rights, powers and remedies provided in the Agreement and the Securities do not exclude NZF from pursuing or using any rights, powers or remedies at law or any rights granted to NZF before the date of the Agreement.
- (d) You and any Guarantor irrevocably appoint NZF as your attorney to perform any of your obligations to NZF, sign any documents on behalf of you or the Guarantors, and do anything necessary or desirable to protect NZF's interest under the Agreement. NZF as attorney:

- (i) Is not obliged to exercise any of its powers of attorney; and
  - (ii) Will not be responsible for any damage, loss or cost to you, the Guarantor, or any other person.
- (e) Each of the provisions of the Agreement and the Securities is separate and distinct from the others. If at any time one or more of those provisions is or becomes invalid, illegal or unenforceable, then none of the other provisions of the Agreement and the Securities shall be affected or impaired.
- (f) Prior to your execution of the Agreement, the Agreement has the status of an offer, and NZF may change the terms of the offer without your consent at any time before you sign the Agreement.
- (g) The Agreement and the Securities, once fully executed, can only be varied in writing as signed between you and NZF.
- (h) NZF shall be entitled to rely on any notice, document and other instrument signed by you or any agent appointed by you, or any of your directors if you are a company, or any other person that you have appointed as an authorised signatory by written notice to NZF or by any person that is otherwise held out by you as authorised to sign for and bind you, and any notice, document or instrument so signed by or for you shall be fully binding on you.
- (i) The Agreement and the Securities set out the entire agreement between you and NZF in relation to the Loan provided under this Agreement. This Agreement and the Securities override any prior representations made by NZF, the Mortgage Servicer or anyone else whether contained in advertising, approval letters, disclosure statements or otherwise. This is subject to any rights you or NZF may have at law and under any later agreements between you, NZF, and any Guarantor.
- (j) The Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and the following shall apply:
- (i) You may enter into the Agreement by signing any counterpart; and
  - (ii) You acknowledge that the Agreement may be executed on the basis of an exchange of facsimile copies and confirm that your execution of the Agreement by such means shall be a valid and sufficient execution. You acknowledge that any execution of the Agreement by facsimile shall be followed by execution of the grossments of the Agreement.
- 16.2 **Mortgage Servicer:** You acknowledge NZF has appointed the Mortgage Servicer to manage the Agreement and the Securities, and to exercise all NZF's powers, rights and functions under the Agreement and the Securities on NZF's behalf. NZF may at any time appoint any other person to perform similar or identical functions to the Mortgage Servicer. In all instances, the Mortgage Servicer for the purposes of the Contracts (Privity) Act 1982 shall have privity under this Agreement and the Securities as if it were NZF.
- 16.3 **Personal Information:** You consent to NZF and the Mortgage Servicer obtaining information and making enquiries about you from any source, and disclosing information about you to credit reference agencies, companies related to NZF, sureties, financiers of NZF, the trustee under any securitisation arrangement entered into by NZF or its assignees or anyone who is considering becoming a surety or assignee. You have the right to access personal information (within the meaning of the Privacy Act 1993) held by NZF and request correction of any errors in that information.
- 16.4 **Electronic Disclosure:** You and the Guarantor consent to any legal requirement for NZF to give information in writing to you, including disclosure required by the Credit Contracts and Consumer Finance Act 2003 or any enactment replacing it, being satisfied by NZF giving that information to you in electronic form and by electronic means, including without limitation, by referring you to NZF's general terms and conditions as posted on NZF's website at [www.nzf.co.nz](http://www.nzf.co.nz) from time to time.
- 16.5 **Telephone Instructions:** You agree that you are bound by all Telephone Instructions even if a Telephone Instruction is not later confirmed by you and NZF. You acknowledge that the following shall apply in respect of Telephone Instructions:

- (a) To verify the identity of the caller giving the Telephone Instruction, NZF is only obliged to request that the caller provide his or her name. If the caller identifies him or herself as you, NZF is entitled to assume that the caller is you.
  - (b) In relation to any Telephone Instruction received from you, NZF will be entitled to ask you to confirm on the same day the details of that instruction by facsimile or email, but is not obliged to do so.
  - (c) You consent to NZF recording all Telephone Instructions or communications, but is not obliged to do so. You confirm that if NZF does record any Telephone Instruction or any other telephone communications, NZF is not obliged to keep the recording or its contents for any particular period, and the recording and its contents are NZF's property.
- 16.6 **Email Instructions:** You agree that NZF may act on any Email Instruction which is from (or appears to be from) you. You acknowledge that you are solely responsible for the security and integrity of the information that you send to or receive from NZF by electronic means. NZF will not be liable to you in any way for any loss, disclosure or alteration to any electronic communication.
- 16.7 **Assignment:** You and the Guarantor acknowledge and agree as follows:
- (a) You may not assign or transfer any of your respective rights under the Agreement and the Securities unless NZF consents to the assignment in writing.
  - (b) NZF may transfer or assign to another party all or part of its rights and benefits under the Agreement, the Securities, and the Loan without your consent, and may give any prospective transferee or assignee all information concerning you and the Guarantor that is permitted by applicable privacy laws.
  - (c) If NZF transfers or assigns its rights under the Agreement and the Securities, such rights will apply to the transferee or assignee as if the transferee or assignee were NZF.
  - (d) To the maximum extent allowed by law, any transfer or assignment pursuant to this clause will be free from set-off, equity or cross claim which you would have had against NZF, the assignee, or transferee under this Agreement but for this paragraph (d).
- 16.8 **Governing Law:** You and the Guarantor agree that the Agreement will be governed by and construed in accordance with New Zealand law.
- 16.9 **Loan Summary Terms:** You and the Guarantor acknowledge that the terms in the Loan Summary including but without limitation, "Drawdown Date", "Borrower", "Mortgagor", "Guarantor", "Loan Details", "Available Loan", "Variable Interest Rate", "Default Rate", "Mortgage", "Guarantee" and "Special Conditions" all have their meanings as set out and designated in the Loan Summary and are accordingly defined as such in the Agreement.
- 16.10 **NZF Not Liable:** You and the Guarantor agree that to the extent permitted by law, neither NZF nor any of its officers, representatives or agents will be liable to you in contract or in tort in respect of any conduct, omission, delay, negligence or breach of duty in the exercise or failure to exercise any of NZF's rights or powers (whether exercised by or on behalf of NZF) or for any loss (including consequential loss) which results. NZF, its officers, representatives and agents will only be liable to you for loss which arises directly from its, his or her own fraud or willful misconduct.

## 17. INTERPRETATION

- 17.1 **Defined Terms:** The following words used in the Agreement have the meanings as specified or set out below:
- (a) "Agreement" means the agreement as defined in clause 1.1.
  - (b) "Applicable Interest Rate" means the interest rate which, at any given time, is applicable to the relevant amount owed to NZF by you under the Agreement and as set out in the Loan Summary; and includes, where relevant, the Fixed Interest Rate, the Variable Rate, and any combinations of each of these interest rates as are specified under the Agreement.
  - (c) "Business Day" means any day that the registered banks are generally open for business in Auckland and Wellington, but not including weekends.

- (d) "Companies Act" means the Companies Act 1993.
- (e) "Consumer Credit Contract" means a consumer credit contract as defined under the Credit Contracts and Consumer Finance Act 2003.
- (f) "Drawdown" is as defined in clause 2.1.
- (g) "Default Interest" is interest at the Default Rate calculated on the basis of days elapsed over a 365 day year and over and above the Applicable Interest Rate.
- (h) "Email Instruction" means any written communication transmitted to NZF by way of any electronic means, and may at NZF's sole direction include without limitation email messages and text messages.
- (i) "Fixed Interest Period" means the fixed interest period specified in the Loan Summary, or any subsequent period applied to a fixed interest rate applicable to the Loan as agreed to by NZF.
- (j) "GST" means goods and services tax within the meaning of the Goods and Services Tax Act 1985.
- (k) "Interest Only Period" means the interest only period specified in the Loan Summary or any subsequent or amended interest only term agreed to by NZF.
- (l) "Loan" means the loan as specified in the Loan Summary including any interest and other amounts payable by you but unpaid which have been capitalised by NZF.
- (m) "Loan Summary" is the loan summary provided to NZF and signed by you in respect of the Loan.
- (n) "Mortgage Servicer" means NZF Homeloans Limited, and any other person NZF appoints to manage or service this Agreement and the Securities.
- (o) "NZF" means NZF Mortgages Limited as defined in clause 1.1 and in the Loan Summary.
- (p) "Scheduled Balance" means on any given date, the amount which would have been the balance of the Loan if:
  - (i) You had made each repayment on the date it was due to be made under the Agreement; and
  - (ii) You had not made any early repayments of principal.
- (q) "Securities" means any security granted to NZF by you or any other party including without limitation the Mortgage, Guarantee, and any additional security granted to NZF to which clause 9.1 applies.
- (r) "Telephone Instruction" means any communication or request transmitted by you to NZF or any voice communication network in respect of the Loan, the Agreement, and the Securities.
- (s) "Term" means the term specified in the Loan Summary or any amended term agreed to by NZF.

17.2 **General:** In this Agreement the following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) singular includes the plural and converse;
- (c) a gender includes all genders;
- (d) reference to "law" includes present or future common or customary law and any statute, regulation, bylaw, order or other legislative requirement or any judgment or judicial order or decision in any jurisdiction;
- (e) reference to a "person" includes a natural person, company, corporation, trust, partnership, firm, joint venture or governmental agency, in each case whether or not having separate legal personality, and any association of entities.