

GENERAL TERMS AND CONDITIONS

Reference Number: SHL11/2021

1. INTERPRETATION

1.1 Definitions:

In these General Terms and any Facility Agreement, unless the context otherwise requires:

"Adverse Credit Event" means if you commit an act of bankruptcy or if you are insolvent and are unable to pay your debts as they fall due or legal proceedings are commenced (and not dismissed within 30 days) or, if you are a company 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 of your assets;

"ASB" means ASB Bank Limited and its successors, assigns and transferees;

"Base Rate" means, in relation to a Facility, the interest rate specified in the applicable Facility Schedule as the "Back My Build Variable Rate", "Floating Rate" or "Fixed Rate" and such other rates which we specify as our Base Rates from time to time, each as determined by us in our sole discretion;

"Borrower" means the person referred to as the "Borrower" in a Facility Agreement and is also referred to in these General Terms as "you" and "your";

"Business Day" means a day (not Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Wellington;

"Discount Margin" means, in respect of a Facility, the discount margin (if any) applicable to that Facility, as specified in the Facility Schedule and is subject to change by us in our absolute discretion at any time and from time to time;

"Discount Margin Term" means, in respect of a Facility, the period (if any) specified as such in the Facility Schedule;

"Default Interest Rate" means the Interest Rate which applies to your Facility from time to time plus an additional five (5) per cent per annum.

"Documents" means these General Terms, each Facility Agreement, Facility Schedule, Security Document and any other deed or agreement, present or future, required by or relating to a Facility and **"Document"** means any of them;

"Drawdown" means the advance of all or part of a Facility to you or the establishment of a Facility Limit on your Facility Account;

"ERA" means early repayment adjustment as set out in clause 9.1;

"Event of Default" means any of the events specified in clauses 10, 17.2(d) and 17.3(b) and any other event or circumstance which, with the giving of notice, lapse of time or fulfillment of any other requirement, would constitute such an event;

"Facility" means any credit facility or any other facility for financial accommodation which we provide or have agreed to provide to you;

"Facility Account" means the transactional account provided by ASB Bank Limited which, among other things, records the amount owing by you to us from time to time and against which any moneys which may become due to us under any Document may be charged;

"Facility Agreement" means the facility agreement entered into between you and us incorporating these General Terms and one or more Facility Schedules, (where the context requires, references to a Facility Agreement includes references to the Facility Schedules attached to that Facility Agreement);

"Facility Amount" means the principal amount we advance to you under a Facility;

"Facility Limit" means, at any time, the maximum amount that you may drawdown on your Facility Account at that time;

"Facility Schedule" means, in relation to each Facility Agreement, the schedule setting out the specific terms of each Facility as attached to the Facility Agreement;

"Fixed Rate Period" means in respect of a Facility, the period specified as the "Fixed Rate Period" in the applicable Facility Schedule or any other fixed rate period we agree with you during the Term;

"General Terms" means these General Terms and Conditions;

"Guarantor" means the person or persons referred to as the "Guarantor" in a Facility Agreement;

"Instalment" means any payment of principal, interest or any other payment due under the Facility Agreement or any Document;

"Interest Only Period" has the meaning given to that term in clause 8.2;

"Interest Rate" is the annual interest rate or rates specified in the Facility Schedule as being applicable to your Facility and as adjusted from time to time in accordance with clauses 3.2, 3.3 and 3.4 or an Interest Rate Switch;

"Interest Rate Switch" means, in relation to a Facility, the switch of the Interest Rate applicable to all or part of that Facility to another annual interest rate;

"Lender" means Mortgage Holding Trust Company Limited as nominee for ASB Bank Limited, and its successors, assigns and transferees and is also referred to in these General Terms as **"we"**, **"us"**, **"our"** and **"creditor"**;

"Limited Liability Trustee" has the meaning set out in clause 17.2(c);

"Low Equity Margin" means, in respect of a Facility, the low equity margin (if any) applicable to that Facility, as specified in the Facility Schedule and is subject to decrease by us in our absolute discretion at any time and from time to time;

"Low Equity Margin Bands" means our low equity margin bands that apply on a graduated scale (as determined by us from time to time) when you borrow more than 80% of the value of the property which is secured by a mortgage in favour of us and are available at asb.co.nz;

"LVR" or **"Loan-to-value Ratio"** refers to the amount of your Outstanding Money and available commitments (portions of any Facility that have not been utilised) under any Facility as at any date compared to the value, as determined in accordance with our property valuation policy, of any property (which is secured by a mortgage in favour of us) relevant to that Outstanding Money and available commitments as at such date;

"Margin" means, in respect of a Facility, the aggregate margin (if any) applicable to that Facility, as specified in a Facility Schedule and is subject to change by us in our absolute discretion at any time and from time to time;

"Outstanding Money" means, on any date and in relation to a Facility, the aggregate of the principal amount outstanding under the Facility and all other money payable by you to us under the Facility and outstanding at such date including accrued interest (including default interest), fees, indemnities, costs and expenses;

"Progress Payment Facility" has the meaning given to that term in clause 6.2(b);

"Reducing Limit" means, in respect of a Revolving Credit Facility, the Facility Limit applicable to that Facility which reduces in accordance with the applicable Facility Schedule;

"Relevant Party" means you and each of the other parties to the Documents (other than us);

"Revolving Credit Facility" means a Facility where subject to clause 7.4 you are able to deposit money into, or withdraw funds from, your Facility Account up to your Facility Limit or Reducing Limit, as applicable, provided all funds are cleared available funds;

"Secured Property" means the property which is subject to a security interest created under a Security Document;

"Security Document" means each agreement at any time executed or delivered to evidence or secure your indebtedness under a Facility whether or not it secures other obligations as well, (including any guarantee and all other documents which the parties agree shall be a Security Document);

"Term" means, in respect of a Facility, the term of that Facility as specified in the applicable Facility Schedule; and

"working day" for the purposes of clause 14, has the same meaning given to that term in the Credit Contracts and Consumer Finance Act 2003.

1.2

Interpretation:

In these General Terms, unless the context otherwise requires:

"assets" includes the whole and any part of the relevant person's business, undertaking, property, revenues and rights (in each case, present and future), and reference to an asset includes any legal or equitable interest in it;

the **"dissolution"** of a person includes the winding-up, liquidation, removal from the relevant register or bankruptcy of that person or an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, has carried on business or has assets;

"indebtedness" includes any obligation (whether present or future, actual or contingent, secured or unsecured, and whether incurred alone, jointly and severally, as principal, surety or otherwise) relating to the payment or repayment of money;

something having a **"material adverse effect"** on a person is a reference to it having, in our opinion, a material adverse effect on that person's commercial or financial prospects including a deterioration in that person's creditworthiness or on its ability to comply with its obligations under a Security Document, or, as the context may require, on our ability to recover any amount payable by you under any Security Document or to enforce performance of that person's obligations under the Security

Documents and references to "**material adverse change**" shall be construed accordingly;

a "**person**" includes an individual, firm, company, corporation, an association of persons (whether corporate or not), a trust, or governmental agency and any other entity (in each case, whether or not having a separate legal personality);

a "**solicitor**" means a practitioner as that term is defined in the Lawyers and Conveyancers Act 2006;

"**taxes**" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature or whatever called (including interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed; and

"**trust deed**" means the trust deed constituting the relevant trust.

1.3 **Construction of Certain References:** In these General Terms unless the context otherwise requires:

If more than one person is named as the **Borrower**, each reference to the Borrower, "you" or "your", is a reference to each Borrower and each of you separately and to all Borrowers and you all together;

If more than one person is named as the **Guarantor**, each reference to the Guarantor is a reference to each Guarantor separately and to all Guarantors together;

the **headings** to clauses shall be ignored in construing these General Terms;

a reference to any **legislation** is a reference to that legislation as from time to time amended, re-enacted or substituted, includes regulations, orders-in-council and other instruments from time to time issued or made under, that legislation and, unless otherwise stated, is a reference to New Zealand legislation;

a **party** to any Document, if an individual, includes that person's executors and administrators and, in the case of a body corporate or any other person, its successors and permitted assignees and transferees, and in our case our transferees and assigns; and

the **singular** includes the **plural** and vice versa.

2. AVAILABILITY

2.1 **Availability of Accommodation:** We are not obliged to provide accommodation under a Facility if:

- (a) **Conditions Precedent:** we have not received and are not satisfied in all respects with the Documents and evidence we require prior to Drawdown or we are not satisfied that any condition we have specified has been fulfilled;
- (b) **Event of Default:** an Event of Default has occurred, or is likely to occur as a result of the accommodation being provided;
- (c) **Statements:** any statement made or information provided in or in connection with a Facility or Document is untrue, inaccurate, or misleading in any material respect;
- (d) **Material Adverse Change:** a material adverse change has occurred in relation to you or a Relevant Party; or
- (e) **Illegality:** it is unlawful or contrary to any directive to make the accommodation available.

2.2 **Purpose:** You agree to use each Facility for the purpose (if any) set out in the relevant Facility Schedule.

2.3 **Termination of Offer:** If you do not draw down the Facility by the "Termination of Offer Date" specified in the Facility Schedule, we may in our absolute discretion cancel all or part of the Facility either immediately or at any time afterwards and retain any fee charged in relation to it. For a Progress Payment Facility, if you do not return to us your signed Facility Agreement by the Termination of Offer Date and fully draw down any Progress Payment Facility within 10 months of the Termination of Offer Date, we may in our absolute discretion, cancel all or part of the Facility either, immediately or at any time from the Termination of Offer Date and retain any fees charged.

3. INTEREST AND PAYMENTS

3.1 **Interest:** Interest will be calculated at the Interest Rate from the date of advance of the Facility and will accrue on a daily basis on the principal amount outstanding from time to time. Interest due and payable will be charged to your Facility Account on the interest payment dates specified in the Facility Agreement.

3.2 **Interest Rate Alteration:** Unless otherwise agreed in writing, the rate of interest applicable to any Facility may be increased or reduced by us at any time and from time to time without prior notice to you (including at any time prior to a Facility being advanced). We will notify you of any change by direct communication with you or otherwise in accordance with any applicable law. Our interest rates are available at asb.co.nz.

3.3 **Alteration of Discount Margin:** Subject to clause 3.5, we may alter the Discount Margin at any time and from time to time upon giving written notice to you, which shall be effective immediately from the date specified in such notice, other than where a Discount Margin Term is specified, in which case an alteration in the Discount Margin will not be effective until the expiry of the Discount Margin Term.

3.4 **Alteration of Low Equity Margin:**

(a) We may periodically review (such periods to be determined by us in our sole discretion) your Low Equity Margin against your LVR to ensure it is still applicable to your Facility. We may change your Low Equity Margin to a lower margin in accordance with our Low Equity Margin Bands or remove the Low Equity Margin entirely if it no longer applies based on your LVR. We will notify you in writing of any change to, or removal of, your Low Equity Margin as the case may be.

(b) At any time six months after the date of initial Drawdown you may request a reduction or removal, as the case may be, of the Low Equity Margin applicable to a Facility. We can choose whether or not to approve your request. We will determine such request on the basis of your applicable LVR at the date of such request. To make such determination we may require you to provide us with a current registered valuation of the relevant property or properties at your expense. If your request is approved we will give you written notice confirming the details of the change.

3.5 **Discount Margin Term:** If a Discount Margin Term applies to a Facility, we agree that we will not alter the Discount Margin applicable to the Facility during that Discount Margin Term. The Discount Margin Term will commence from the earlier of the initial Drawdown date or the date of availability of the Facility Limit. For the avoidance of doubt, a Discount Margin Term will expire if an Interest Rate Switch is agreed to in accordance with clause 8.1.

3.6 **Interest Periods:** Any Fixed Rate Period will, in respect of the initial Drawdown of the Facility, commence on the date of Drawdown and any subsequent Fixed Rate Period will commence on the date agreed by us.

3.7 **Method of Calculating Interest:** All interest will be calculated on the basis of the number of days elapsed and a 365 day year. You agree that we may alter the method of calculating interest at any time with prior notice.

3.8 **Mode of Payments:** Each payment due to us under any Document is to be made at the time specified in the relevant Document or, if no time is specified, during normal banking hours, in each such case on the due date, in immediately available freely transferable cleared funds and to the bank account which we specify from time to time.

3.9 **Business Days:** Subject to the provisions of each Facility Agreement, if any payment is due to be made under any Document on a day which is not a Business Day, that payment shall be made on the next succeeding Business Day and any interest will be adjusted accordingly.

3.10 **Payments to be Free and Clear:** Each payment under any Document shall be unconditional and free and clear of any restriction, and shall be in full, without any deduction or withholding whatsoever (whether in respect of tax, set-off, counterclaim, charges or otherwise) unless such deduction or withholding is required by law.

3.11 **Reinstatement:** If any payment to us under any Document is avoided by law, your obligation to have made such payment will be deemed not to have been affected or discharged and you shall on demand indemnify us against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by us as a result of us being required for any reason to refund all or part of any amount received or recovered in respect of such payment and in any event pay to us on demand the amount so refunded. In any such case we each will be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights we respectively would have had, if that payment had not been made.

3.12 **Payments of Principal and Interest:** Unless otherwise agreed in writing (including without limitation, under a Facility Agreement), the Facility is repayable on demand by us (which demand may be made by us at any time at our absolute discretion). Until such demand is made, you agree to pay the Instalments and any other amounts owing as detailed in the Facility Schedule or as otherwise agreed by us. Because the Facility is repayable on demand, the number of payments to be made may differ from those detailed in the Facility Agreement.

3.13 **Fees and Charges:** You must pay us the fees and charges included in the Facility Schedule, together with all other fees and charges for incidental services provided by us to you relating to the Facility or the Documents, including default fees, in the amounts notified by us to you from time to time. Our fees are available at asb.co.nz.

3.14 **Authority to Charge:** Your Facility Account or any other account you have with ASB may be charged with any amount due and payable under a Facility, including but not limited to, any Instalment, any interest payable under clause 4.1, and any costs for which we are entitled to be indemnified or reimbursed either under a Facility Agreement, any Document or any other agreed terms and conditions. This may occur even if the amount charged exceeds the Facility Amount or takes the balance of your Facility Account or other account over any permitted limit.

3.15 **Compound Capitalisation of Interest:** Unless we otherwise agree in writing, we may at any time add any interest arrears amount (including any unpaid default interest) to the principal amount and charge interest on the new total principal amount at the same rate as applies to the Facility ("capitalisation"). The capitalisation will increase the amount of the Facility. This means that we will need to recalculate an Instalment to ensure that the Facility is repaid within the nominal Term. We will give you notice in writing of the new required Instalment. Payment of this new Instalment shall commence on the date specified in our notice.

4. DEFAULT INTEREST

4.1 If at any time the balance owing under your Facility Account exceeds the Facility Limit or Reducing Limit, then you shall pay interest (both before and after judgment) calculated on a daily basis on that overdrawn amount or excess at the Default Interest Rate until the date such overdraft or excess is paid in full. The interest which accrues under this clause will be charged to your Facility Account on each interest payment date. Any such overdrawn or excess amount shall be regarded as remaining due and payable under the applicable Facility Agreement until the amount has been paid or satisfied in full. This obligation to pay interest at the Default Interest Rate shall arise without the need for notice or demand.

5. SECURITY

5.1 **Security:** You will provide or procure the provision of the securities specified in the Facility Agreement prior to initial Drawdown of the Facility, and any future securities required by us to secure your indebtedness to us.

5.2 **Extent of Security:** Unless otherwise agreed in writing with us, all securities are to be first in priority. All existing and future securities granted by you or any other person as security for your indebtedness or performance of your obligations to us also secure your indebtedness to us for all amounts owing under an existing or future Facility Agreement. If we exercise our rights of enforcement under the Documents to sell any Secured Property and the proceeds of that sale are insufficient to repay the total of the Outstanding Money at that time, you will remain indebted to us for the balance of the Outstanding Money. Unless otherwise agreed in writing with us, if you create or permit to exist a security interest over any Secured Property, it will be an Event of Default in accordance with clause 10 and we will be entitled to exercise our rights in accordance with that clause.

5.3 **Updated Valuation:** If we reasonably request, you agree at your expense to provide or procure the provision to us of a current registered valuation of any property given as security and other financial information to verify current income or servicing requirements.

5.4 **Insurance:** You must insure and keep insured all of the property which we require as security for the Facility for full insurable value in accordance with our insurance requirements as advised to you from time to time including that our interest as mortgagee must be noted on each policy.

6. DRAWDOWN

6.1 **Conditions Precedent:** A Facility may not be drawn down until we have received and found the following satisfactory:

- (a) the Documents or a completed solicitor's certificate from your solicitor and our solicitor (as applicable) in relation to the Documents;
- (b) details of your insurance in accordance with our requirements;
- (c) payment of any fees or other amounts payable in relation to the Facility; and
- (d) any other conditions precedent recorded in the Facility Agreement.

6.2 **Drawdown:**

- (a) **All Facilities:** Subject to satisfaction of the applicable conditions precedent and any other requirements that we may specify, you may make drawings from time to time during the Term by debiting your Facility Account, provided that the making of the drawing will not cause the Outstanding Money to exceed your Facility Limit at that time. Any amount repaid may be redrawn by you up to your Facility Limit or Reducing Limit, as applicable. Debits to your Facility Account by us for interest, fees and bank charges will be deemed to be drawings under the Facility. You can instruct us to reduce your Facility Limit or Reducing Limit (as applicable) at any time, provided such reduction does not cause the Outstanding Money for that Facility to exceed the new Facility Limit or Reducing Limit (as applicable).
- (b) **Progress Payments:** If the Facility Agreement provides for "progress payments" (a "Progress Payment Facility"), subject to the applicable conditions precedent and any other requirements that we may specify being satisfied the Facility Amount will be made available in your Facility Account on request by you or your solicitor by no more than four Progress Payments (unless otherwise agreed with us).
- (c) **Progress Payments Costs to Complete:** if the Facility Agreement provides for "Progress Payments Costs to Complete" then, notwithstanding clause 6.2(b), the amount of any drawing will be determined by us in our absolute discretion taking into account the value of the land on which the buildings are being constructed and the cost to complete such buildings as certified to us by a registered valuer or such other person as we may agree. The undrawn principal amount of the Facility following such drawing (other than the final drawing) must be equal to or greater than the amount it will cost to complete the buildings in accordance with the plans and specifications for the construction. Prior to the final Drawdown we require confirmation that a Code Compliance Certificate has issued pursuant to the Building Act 2004.

6.3 **Authority to Disburse:**

- (a) Any Drawdown of a Facility will be applied by us, first, in payment of any fees payable under the Facility Agreement and, secondly, in repayment of any outstanding indebtedness specified under the

heading "Conditions Precedent/Subsequent" in the relevant Facility Agreement.

- (b) If we have instructed your solicitor, you authorise and direct us to make the first drawdown by debiting the Facility Account and issuing funds in favour of your solicitor. If a solicitor has not been instructed, the Facility Amount will be made available in your Facility Account.

6.4 **Conditions Subsequent:** You agree to comply with any conditions subsequent recorded in your Facility Agreement.

7. REDRAW

7.1 By paying each Instalment (which may change as Interest Rates change), you will repay the Facility Amount (together with interest) over the Term.

7.2 If you make a payment to your Facility Account which is additional to your required Instalment this will further reduce the amount owing under the Facility. This additional payment does not reduce the required Instalments but, provided that you are not in default, it does entitle you to redraw on your Facility Account (to the extent set out in clause 7.3).

7.3 If on any date your Facility Account balance (excluding uncleared funds) is less than the amount which would be owing at that time if all required Instalments from the commencement date of the Facility have been paid on the due date, you may redraw the difference. Your monthly Facility Account statement will show the "funds available for redraw" as at the last day of the statement period. Payments made to and from your Facility Account after the last day of the monthly statement will change the redraw amount available from time to time.

7.4 Notwithstanding clause 7.3, the ability to redraw funds under your Facility is not available to you during any Fixed Rate Period of the Facility.

7.5 **Amounts Charged are Deemed Advances:** Any amounts charged to your Facility Account in accordance with the terms of a Facility Agreement or any Document, including but not limited to any redraws on your Facility Account made in accordance with the redraw provisions in clause 7.3 are deemed to be advanced or paid by and owing to us and secured by each Security Document.

8. INTEREST RATE SWITCH AND INTEREST ONLY PERIODS

8.1 **Interest Rate Switch:** In relation to a Facility, you may request an Interest Rate Switch. We can choose whether or not to approve your request for an Interest Rate Switch. If the applicable Facility is not repaid in full on the last day of the final interest period to which the Interest Rate Switch applies, the Interest Rate applicable to that Facility will automatically revert to our standard variable interest rate as at that date plus any Low Equity Margin unless it is agreed that a different Interest Rate will apply.

8.2 **Interest Only Period:** In relation to a Facility, you may request to suspend the principal component of your Instalments payable in respect of that Facility for such period as we may agree (the "Interest Only Period"). We can choose whether or not to approve your request for an Interest Only Period. Unless otherwise agreed by us, at the completion of the Interest Only Period, the amount of the remaining Instalments payable in respect of the Facility will be increased as necessary to ensure repayment of that Facility in full by the last day of the Term.

8.3 If your request under clause 8.1 or 8.2 above is approved by us, we will give you and all Guarantors notice confirming the details of the Interest Rate Switch or Interest Only Period, as the case may be.

8.4 **Acknowledgement:** You acknowledge and agree that:

- (a) if more than one person is named as the Borrower, a request for an Interest Rate Switch or Interest Only Period may be made by any one of you and we may act upon that request which will bind all of you, subject to clause 17.1(d);
- (b) if you request an Interest Rate Switch during a Fixed Rate Period or a change to a fixed interest rate we have otherwise agreed with you, and we approve such request, this will be an early repayment during a Fixed Rate Period and for this reason we will assess and you will pay an ERA fee in accordance with the procedure set out in clause 9. The amount of such early repayment will be immediately reborrowed under the Facility Agreement with the changed Interest Rate (if applicable); and
- (c) the terms of the Facility Agreement will continue to apply in all other respects.

9. EARLY REPAYMENT AND REDRAWING

9.1 **Early Repayment:** You may repay the Facility in full or in part at any time provided that:

- (a) any amount repaid will be applied first in payment of outstanding interest and other amounts owing to us and secondly in payment of principal;
- (b) a part payment during any Fixed Rate Period must be a minimum of \$1,000.00;
- (c) you pay our early repayment adjustment administration fee and, if applicable, an early repayment adjustment ("ERA") fee which may be payable if you:
 - (i) repay early during a Fixed Rate Period; or
 - (ii) request an Interest Rate Switch during a Fixed Rate Period or a change to a fixed interest rate we have otherwise agreed with you and we approve such request;

- (d) the ERA fee will be charged to the Facility Account, or any bank account charged with an amount pursuant to clause 3.14, as applicable; and
- (e) if the Facility is repaid during a Fixed Rate Period as a result of us exercising our rights as mortgagee, we may charge an ERA fee as if the repayment was made by you during a Fixed Rate Period.
- 9.2 **Early Repayment Adjustment Fee:** An ERA fee is an amount we charge to compensate us for any loss we may suffer as a result of the early repayment of your Facility during a Fixed Rate Period.
- 9.3 **Calculation of Early Repayment Adjustment Fee:** While the ERA fee is not calculated in accordance with the formula prescribed in the Credit Contracts and Consumer Finance Regulations 2004, the amount of the ERA fee is assessed to compensate us for a reasonable estimate of the loss (if any) arising when you repay your Facility early. We calculate our loss by reference to wholesale interest rates. Wholesale interest rates are rates used by banks when they borrow and lend money on the wholesale money market.
- (a) To calculate an estimate of the loss arising when you repay the Facility early, we compare:
- (i) all of the scheduled payments and interest charges that would have been made over the remaining part of the Fixed Rate Period using the wholesale interest rate that applied either at the date the Facility Agreement was documented or at the date your interest rate was accepted, as the case may be (as calculated by us); and
- (ii) all of the scheduled payments and interest charges that would have been made over the remaining part of the Fixed Rate Period using the wholesale interest rate that would apply to the remaining fixed rate period on the date of the early repayment (as calculated by us).
- (b) We adjust the amounts in (i) and (ii) above to recognise that we receive the money now, instead of receiving it as income over the term of the loan. We will charge you the difference between (i) and (ii) (after adjustment) as the ERA fee. If (ii) is greater than (i) you will only be charged the early repayment adjustment administration fee.
- (c) The ERA fee is assessed as a notional transaction and may not be a true reflection of the actual transactions we enter into at the time of your early repayment, or the transactions entered into when you agreed a Fixed Rate Period. This is because the loans and interest rates are managed on a portfolio basis.
- (d) You may request from us a detailed description of the method we use to reasonably estimate our loss as a result of the early repayment.
- 9.4 **Redrawing:** Unless you have a Revolving Credit Facility or unless otherwise agreed with us, any amount repaid under a Facility Agreement will not be available for re-borrowing.
- 10. EVENTS OF DEFAULT**
- 10.1 **Events of Default:** If at any time and for any reason, whether or not within the control of any party:
- (a) **Non-Payment:** You fail to pay on its due date any amount payable under any Document; or
- (b) **Breach of obligations:** You do not perform or comply with any of your obligations under any Document; or
- (c) **Statements:** You give us untrue inaccurate, or misleading information; or
- (d) **Adverse Credit Event:** An Adverse Credit Event occurs; or
- (e) **Enforcement:** Any legal process is levied or enforced against you or your assets, and is not discharged or stayed within five (5) days, or a receiver, trustee, official assignee, statutory manager, administrator or similar officer is appointed in respect of you or any of your assets; or
- (f) **Material Adverse Change:** In our opinion, a material adverse change occurs in relation to you; or
- (g) **Incapacity:** You, being an individual, die or become insane or become in any way legally incapacitated; or
- (h) **Avoidance or Repudiation:** It is or becomes unlawful for you to perform any of your obligations under any Document to which you are a party or any Document becomes or is claimed to be invalid or unenforceable in whole or in part or is claimed to have effect otherwise than in accordance with its terms; or
- (i) **Security Documents:** Unless otherwise agreed by us in writing any Security Document is withdrawn or revoked; or
- (j) **Cross Default:** An event of default or termination event (however described) occurs under any Document; or
- (k) **Trustee:** Unless otherwise agreed by us in writing, if you are a trustee of a trust, you cease to be a trustee of that trust, or a resolution is passed by the trustees or beneficiaries of that trust, or any other action is taken, to wind up that trust; or the trust deed is amended, varied or revoked; or
- (l) **Relevant Parties:** Any event specified in the preceding sub-clauses of this clause 10.1 occurs with respect to each other Relevant Party
- (as if references in those sub-clauses to you were references to that Relevant Party),
- then we may, at any time, by notice to you:
- (i) cancel each or any Facility;
- (ii) declare any or all of the Outstanding Money to be due and payable either immediately or at such later date as we may specify whereupon that indebtedness will become so due and payable; and
- (iii) exercise all or any of our rights under any Security Document.
- 11. CHANGE IN CIRCUMSTANCES**
- 11.1 **Illegality:** If, at any time, it is or is likely to become unlawful to provide all or part of a Facility or allow all or part of the Outstanding Money to remain outstanding or to receive interest or to comply with any of our obligations or exercise any of our rights under any Document then we will not be obliged to provide or to continue to provide that Facility and we may, at any time, by notice to you:
- (a) cancel each Facility; and/or
- (b) declare all or any part of the Outstanding Money to be due and payable either immediately or at such later date as we may specify and you shall, on such date, repay such Outstanding Money.
- 12. INDEMNITY**
- 12.1 **General Indemnity:** You will on demand indemnify and hold us harmless against each loss (including loss of profit), expense and liability sustained or incurred by us as a result of:
- (a) the occurrence or continuation of an Event of Default, or a Relevant Party not complying with its obligations under a Facility or a Document;
- (b) an amount payable to us under a Facility or a Document not being paid when due;
- (c) any accommodation not being drawn on the intended date for drawing; or
- (d) any Outstanding Money being paid earlier than originally due (even if that prepayment is permitted by the Documents or is required by us),
- by payment to us of the amount we certify is required to indemnify us for that loss, expense or other liability.
- 13. SET OFF**
- 13.1 **Set-Off:** You irrevocably authorise ASB to apply (without prior notice or demand) any credit balance (whether or not due and payable) to which you are entitled on any account (in any currency) and at any of ASB's offices, in or towards satisfaction of any indebtedness then due and payable by you to the Lender but unpaid.
- 13.2 **Contingent Liabilities:** If, at any time after the occurrence of an Event of Default and while it is continuing, an amount that is contingently owing to the Lender or an amount owing is not quantified, ASB may retain and withhold repayment of any such credit balance you have with ASB and the payment of interest or other moneys in relation thereto pending that amount becoming due and/or being quantified. ASB may set-off against such credit balance, the maximum liability which may at any time be or become owing to the Lender by you and in each case without prior notice or demand.
- 13.3 **ASB's Rights:** For the foregoing purposes, ASB:
- (a) **Break Term Deposits:** Is authorised to break any term deposit;
- (b) **Purchase Currencies:** May use all or any part of any credit balance to buy such other currencies as they reasonably consider may be necessary or desirable to effect the application; and
- (c) **Without Prejudice:** Need not exercise their rights under this clause, which are without prejudice and in addition to any other rights we or they have under any Security Document and any right of set-off, combination of accounts, lien or other right to which we or they are at any time otherwise entitled (whether by law, contract or otherwise).
- 14. STATEMENT OF RIGHT TO CANCEL**
- 14.1 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.
- 14.2 **How to Cancel:** If you want to cancel this contract you must give written notice to us. You must also return to us any advance and any other property received by you under the contract.
- 14.3 **Time Limits for Cancellation:**
- (a) If the disclosure documents are handed to you directly you must give notice that you intend to cancel within 5 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 7 working days after the electronic communication is sent.
- (c) If the documents are mailed to you, you must give the notice within 9 working days after they were posted.

- 14.4 **What You May Have to Pay if You Cancel:** If you cancel the contract we can charge you:
- (a) the amount of any reasonable expenses we 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 only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations 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 that the creditor is being unreasonable in any way, you should seek legal advice immediately.
15. **UNFORESEEN HARDSHIP VARIATION**
- If you are unable to keep up your payments because of an unexpected event that causes you hardship, for example illness, injury, loss of employment or the end of a relationship, you can apply to us for a hardship variation of the Facility. Further information on how a hardship application can be made and the type of variations to your Facility that can be requested are set out in detail in the Facility Schedule.
16. **DISCLOSURE**
- 16.1 **Disclosure:** You authorise us to disclose and discuss your financial statements and financial affairs at any time with:
- (a) **Advisers:** Both our and your respective accountants, auditors, legal and financial advisers;
 - (b) **Guarantors:** Any guarantor of your indebtedness or other obligations to us;
 - (c) **ASB:** ASB and its parent, subsidiaries or related companies; and
 - (d) **Related Entities:** Our parent, subsidiaries or related companies.
- Nothing in this clause shall oblige us to provide any of your information to any person.
17. **TYPE OF BORROWER**
- 17.1 **Two or More Borrowers:** If more than one person is named as the Borrower, then:
- (a) each of you is jointly and severally liable for all obligations under a Facility Agreement and the Documents including without limitation for the amount of any redraw;
 - (b) in the event of a dispute arising between any of you and/or any Guarantors we may, at our own discretion, refuse to allow the Facility Account to be operated until agreement has been reached between the disputing parties and notified to us by all of you;
 - (c) we may, in our discretion, release any one or more of you from your obligations under a Facility Agreement provided that:
 - (i) no release shall be of any effect unless it is in writing and signed by us;
 - (ii) the rest of you shall not be discharged, nor shall your obligations be affected by such release; and
 - (iii) we shall not be under any obligation to any of you in respect of such release even though your rights in subrogation, contribution or otherwise may be prejudiced as a result;
 - (d) subject to sub-clause (e), until we receive written notice from any one of you to the contrary, we may act on instructions received from any one of you as if that instruction had been given by all of you;
 - (e) we may only act on instructions received from one of you for the purposes of clauses 8.1 and 8.2 if you have all previously confirmed that we may do so in writing; and
 - (f) you appoint each other joint Borrower as your agent to receive Credit Contracts and Consumer Finance Act 2003 disclosures, notices, and other communications on your behalf. The joint Borrower receiving the disclosures, notices, and other communications acknowledges that it is receiving these on behalf of the other joint Borrowers. A joint Borrower may, by notifying us, terminate the appointment of another joint Borrower as their agent for receiving these disclosures, notices and other communications.
- 17.2 **Trustee:** In relation to any Document to which you are a party if you are described as a trustee of a trust:
- (a) **Warranties and Undertakings:** You warrant and undertake to us that:
 - (i) your entry into the Documents is authorised by the trust deed and the Trusts Act 2019; and
 - (ii) the trust is properly constituted and validly exists under the applicable law; and
 - (iii) the trust is solely constituted by the trust deed and you are all of the trustees of the trust.
 - (b) **Enforcement:** In enforcing any of our rights under or in respect of the Documents, we:
 - (i) **Recourse to Trust Assets:** may have full recourse to the assets of the trust and will be indemnified from those assets and/or subrogated to each trustee's right to be indemnified from those assets or by any other person (including any beneficiary of the trust); and
 - (ii) **Personal Assets:** except as provided in clause 17.2(c), may have full recourse to the personal assets of any trustee.
- (c) **Limited Liability Trustee:** If we have agreed in writing that a trustee is a "**Limited Liability Trustee**" in respect of the trust, then the personal liability of that trustee is limited to the assets of the trust. However, this limitation of personal liability will not apply, if the Limited Liability Trustee:
- (i) has acted dishonestly or is in willful breach of trust; or
 - (ii) loses his or her right to be indemnified out of the assets of the trust for any reason;
- and in such circumstances the Limited Liability Trustee will have full personal liability under and in respect of the Documents.
- (d) **Trustee Retirement:** Each trustee confirms and undertakes that the retirement of a trustee shall be effected in terms of section 101 of the Trusts Act 2019 and that it will notify us in writing that a trustee intends to retire in accordance with those provisions. Each trustee remains liable under and in respect of a Document after ceasing to be a trustee until released in writing by us. We will release a trustee (in its capacity as trustee and not, if applicable, in its personal capacity) when we are satisfied that all things required to vest the assets of the Trust (including the Secured Property) in the continuing or new trustee(s) have been executed and done.
- 17.3 **Partnership:** Where you have entered into a Facility Agreement as a partnership, each of you acknowledges that:
- (a) **Acknowledgement: Each of you acknowledges that:**
 - (i) distinct from your joint liability as a partner, you have separate personal liability for all the obligations of the partnership so that we may have recourse to your personal assets on the same basis as any other personal creditor; and
 - (ii) you will notify us immediately upon the appointment of each new partner and the retirement or death of any partner.
 - (b) **Events of Default:** It shall be an Event of Default if any of the following occur without our prior written consent:
 - (i) you cease to be a partner of the partnership;
 - (ii) a resolution is passed by the partners or any other action is taken to wind up, dissolve or terminate the partnership; or
 - (iii) the partnership agreement is amended, varied or revoked,
 and in such circumstances, we will be entitled to exercise our rights under clause 10.
18. **REVIEW OF A FACILITY**
- 18.1 We may periodically review your Facility and where we believe we have reasonable grounds, including where we are not satisfied:
- (a) with the operation of the Facility Account; or
 - (b) with the value of any property given as security; or
 - (c) that your current income levels satisfy our Facility servicing requirements,
- then we retain the right to amend the terms and conditions of any Facility Agreement including the right to require you to repay all or part of any outstanding principal, interest and fees.
19. **LENDER'S MORTGAGE INSURANCE**
- 19.1 We may require lender's mortgage insurance. If this insurance is required, then any premium amount payable by you will be specified in the Facility Agreement. This insurance protects us as the Lender and not you as the borrower. If you default in payment of your Facility and we exercise our mortgagee's power of sale of the Security and the sale proceeds are insufficient to repay the Facility in full, we may recover the amount outstanding under our lender's mortgage insurance policy. If this occurs, our rights against you will be assigned to the insurer. You will remain legally liable for repaying the amount outstanding under Facility to the insurer.
20. **MISCELLANEOUS**
- 20.1 **Certificate Conclusive:** You agree that a certificate from us setting out the amount which you owe under a Facility Agreement is proof that you owe the amount stated, unless you prove the contrary.
- 20.2 **Assignment:** We may assign or transfer any of our rights or obligations under a Facility or any Document without your consent. You may not assign or transfer any of your rights or obligations under a Facility or any Document without our prior written consent.
- 20.3 **Disclosure of Information:** We may disclose to a potential assignee, potential transferee, assignee, transferee or other person with whom we have or may contemplate having contractual relations in connection with a Facility or any Document, any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available.

- 20.4 **Loan Administrator:** We may appoint an administrator to manage the Facility and the Document(s) for us and to exercise all our rights, powers and remedies under the Facility and any other Document on our behalf.
- 20.5 **Liability of the Lender:** Mortgage Holding Trust Company Limited holds the Facility and the Documents as a nominee and bare trustee for ASB. Mortgage Holding Trust Company Limited's liability under the Facility and the Documents is limited at all times to the value of the unsecured assets of ASB at the time any claim is made against Mortgage Holding Trust Company Limited.
- 20.6 **Amendments:** Except as otherwise provided in these General Terms, no amendment to any Document will be effective unless it is in writing signed by all the parties to that Document.
- 20.7 **Time of the Essence:** Time is of the essence in respect of all dates and times for performance by you of your obligations under a Facility Agreement and each Document.
- 20.8 **Waivers:** No failure to exercise any right under a Document will operate as a waiver of that right. No waiver by us of our rights under a Facility Agreement or other Document will be effective unless it is in writing signed by us.
- 20.9 **Electronic Communication:**
- (a) You consent to us giving to you documents, notices and communications (including disclosure required by the Credit Contracts and Consumer Finance Act 2003) in relation to your products and services in electronic form by electronic communication, for example:
 - (i) by email, sent to the most recent email address we hold for you; or
 - (ii) by text message, sent to the most recent mobile phone number we hold for you; or
 - (iii) through FastNet Classic (for example via your messaging inbox and/or document storage function); or
 - (iv) through any internet banking system provided by us; or
 - (v) through any application available through your mobile device approved by us for this purpose.
 - (b) If more than one person is named as the Borrower, where the most recent email address we hold for two or more such persons is the same, any document, notice or communication sent to that email address is to be treated as having been given to all of those persons.
 - (c) You agree that any such electronic communication is taken to be dispatched by us and received by you at the time it is uploaded to the relevant system.
 - (d) You consent to any such documents, notices and communications being in a commonly used format (for example, PDF) and being accessible by commonly used software (for example Internet Explorer).
- 20.10 **Notices:** In addition to any notice provision contained in these General Terms or any other Document, written notice may be sent to you under a Facility Agreement at the address or facsimile number last known to us. In the case of a letter, notice will be deemed to be received by you on the third Business Day after posting. In the case of a facsimile, notice will be deemed to be received by you on the Business Day on which it was dispatched or, if dispatched after 5.00pm, on the next Business Day. By being so delivered notice will be deemed to have been served on you personally, without prejudice to any other lawful means of service.
- 20.11 **Expenses:** You agree to pay, on demand and on a full indemnity basis, all costs and expenses and administration fees (including all legal expenses on a solicitor and own client basis) associated with the preparation, early repayment, variation, enforcement, or exercising of any rights we may have under a Facility Agreement or any Document.
- 20.12 **Survival of Covenants:** Your payment and indemnity obligations under these General Terms, including, without limitation, under clauses 3.11, 12.1 and 20.11, shall be separate and independent obligations giving rise to independent causes of action and will survive the termination of any Facility and payment of all other indebtedness under any Document.
- 20.13 **Partial Invalidity:** The illegality, invalidity or unenforceability of a provision of a Facility Agreement or any Document under any law will not affect the legality, validity or enforceability of another provision.
- 20.14 **Counterparts:** Any Facility Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute any Facility Agreement by signing any such counterpart.
- 20.15 **Conflict:** If there is any conflict between any Facility Agreement and the General Terms, the terms of the Facility Agreement shall prevail. Furthermore, if there is any conflict between any Facility Agreement and a Facility Schedule, the terms of that Facility Schedule shall prevail over the Facility Agreement.
- 20.16 **Governing Law:** This Agreement is governed by and to be construed in accordance with New Zealand law and each of the parties submit to the exclusive jurisdiction of the courts of New Zealand.
- 21 DISPUTE RESOLUTION SCHEME AND REGISTRATION AS FINANCIAL SERVICE PROVIDER**
- 21.1 ASB Bank Limited is a member of the Banking Ombudsman dispute resolution scheme. You can contact the Banking Ombudsman at:
- Address: Freepost 218002
PO Box 25327
Wellington 6146
- Phone: 0800 805 950
Email: help@bankomb.org.nz
- 21.2 We are registered on the register of financial service providers as ASB Bank Limited (registration number FSP29003).