General Lending Terms

December 2021 Version 2021-1

NBS Banking for life

These General Lending Terms, together with the Specific Terms and Collateral Documents, contain the terms and conditions on which you have agreed to borrow the Loan from Nelson Building Society (which may also be referred to as, or mean, **"NBS", "we", "our"** and **"us"**) and together comprise your **"Agreement"** with us.

The Specific Terms describe the commercial terms of your Loan and the security to be provided in support of the Loan.

These General Lending Terms describe your obligations under the Loan and what we can do if you do not fulfil those obligations.

A number of these General Lending Terms will only apply if your Loan is a **"consumer credit contract"** for the purposes of the CCCFA. The meaning of a **"consumer credit contract"** is set out in section 11 of the CCCFA. Generally, the Loan will be a consumer credit contract if the Borrower is an individual and the Loan is being used solely or mainly for personal use (for example, buying a residential property). If the Borrower is a company (or other incorporated entity or group of persons) or a trustee of a family trust, or the Loan will be used solely or mainly for business or investment purposes, then the Loan will not be a consumer credit contract. This summary is provided to assist with determining what provisions of these General Lending Terms apply to the Loan. It does not constitute, and is not a substitute for, legal advice.

General Lending Terms

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

"Address for Service" means the address for service for each party as set out in the Specific Terms, or as otherwise notified by one party to the others in writing;

"Agreement" means in relation to a Loan the agreement comprised of the Specific Terms, these General Lending Terms and includes any schedules to those documents;

"Amount Outstanding" means, at any time, the aggregate principal amount of the Loan outstanding at that time together with all unpaid interest, costs, fees and other amounts payable by any Obligor to NBS under these General Lending Terms and any Collateral Document;

"Borrower" means each person named as a Borrower in the Specific Terms. Where there is more than one person named as a Borrower in the Specific Terms, the term "Borrower" refers to each of them separately and all of them together;

"Build / Building Loan" means a Loan which is provided to finance the building of a residential property. The Loan funds will be advanced by way of "Progress Payments Cost to Complete" as set out in these General Lending Terms. It will be deemed to be fully drawn after NBS has received a Code Compliance Certificate and confirmation of full replacement insurance cover over the building constructed. Build Loans will be Interest Only at the Variable (or "Floating") Rate until they are fully drawn down, at which time the Interest Rate can be Fixed as agreed between the Borrower and NBS.

"CCCFA" means the Credit Contracts and Consumer Finance Act 2003;

There is a **"Change in Circumstance"** if any of the events described in clause 19 occur;

"Collateral Document" means each document held by us as security for the repayment of the Secured Money or the performance of the Secured Obligations;

"Date of Advance" means the date on which the Loan is first advanced either in full or in part to the Borrower;

"Date of Final Payment" means the date on which the final Payment is due under the Agreement, as set out in the Specific Terms or as otherwise determined in accordance with the Agreement;

"Date of First Payment" means the date on which the first Payment is due under the Agreement, as set out in the Specific Terms;

"Date for Payment" means each date on which any Payment is due under the Agreement as set out in the Specific Terms, other than the Date of First Payment and Date of Final Payment;

"Deduction Account" is the account nominated by the Client as specified in the Agreement for the deduction of Instalments for this Loan.

"Default Rate" means the default interest rate set out in the Specific Terms;

"Deferred Payment Loan" means a loan repayable in accordance with clause 6.6(d);

"Demand" means a written demand made by NBS to an Obligor following the occurrence of an Event of Default or a Change in Circumstance;

"Due Date" means the date on which any Payment is due to be paid in accordance with the Agreement;

"Event of Default" means each of the events set out in clause 13.2;

"Fees" means the fees described in the Specific Terms;

"Fixed Interest Rate Period" means any period set out in the Specific Terms as a fixed interest rate period, or any other period which the Borrower and NBS agree in writing shall be a fixed interest rate period;

"Funds in Advance" means any principal repaid under this Loan exceeding the minimum required to be paid by us under this Loan Agreement;

"General Lending Terms" means the general terms and conditions as set out in this document;

"Guarantor" means each person named as a guarantor in the Specific Terms. Where there is more than one person named as a Guarantor in the Specific Terms, the term **"Guarantor"** refers to each of them separately and all of them together;

"Instalments" means any payment of principal and/or interest (if any) set out in the Specific Terms;

"Interest Only Loan" means a Loan repayable in accordance with clause 6.6(a);

"Interest Only Period" means any period of time during which only interest is payable on the Loan, as described in the Specific Terms;

"Interest Rate" means the interest rate set out in the Specific Terms;

"Interest" means interest charged on the Loan in accordance with the Agreement;

"Land" means any part of the Secured Property which consists of an interest in land;

"Lender" means NBS as named and outlined in the Specific Terms;

"Loan" means the loan described in the Specific Terms;

"Material Adverse Effect" means in relation to a person something which, in the opinion of NBS, is likely to have a material adverse effect:

(a) on that person's financial condition or operations; or

(b) on that person's ability to comply with his or her obligations under these General Lending Terms or any Collateral Document; or

(c) on the rights of NBS against that person under these General Lending Terms or a Collateral Document,

and references to **"Material Adverse Change"** are to be construed accordingly;

"Maximum Amount" means the maximum amount of the Loan as specified in the Specific Terms;

"Maximum Credit Limit" means, in relation to a Revolving Credit Loan, the maximum credit limit set out in the Specific Terms, as reduced in accordance with these General Lending Terms;

"Mortgagor(s)" means every person or persons who executes a mortgage as Mortgagor or is a Mortgagor by virtue of an electronic instrument pursuant to section 164A of the Land Transfer Act 1952 and their respective executors, administrators, successors and permitted assigns, owns the Secured Property provided to NBS;

"Obligor(s)" means, together, the Borrower, the Guarantor, the Mortgagor and each and any person or entity providing any form of security to NBS, or is party to a Collateral Document;

"Payments" means the payments described in the Specific Terms, together with any other payments due in accordance with these General Lending Terms;

"Personal Property" means in relation to an Obligor, all of that Obligor's property other than Land;

"PPSA" means the Personal Property Securities Act 1999;

"Principal and Interest Loan" means a Loan repayable in accordance with clause 6.6(b);

"Principal" means that part of the Loan made available on the Date of Advance, and any amounts added to the Loan in accordance with these General Lending Terms;

"Principal Payments" means the principal payments set out in the Specific Terms and all other Payments that are, or are to be, applied in reduction of the Principal;

"Progress Payments Cost to Complete" is where disbursements are made from the Loan in relation to the value of the security as determined by NBS and in regard to any building contract;

"Receiver" means a receiver or receiver and manager appointed under these General Lending Terms or a Collateral Document;

"Redraw Loan" means a Loan which allows the Borrower to redraw funds which are repaid in excess of the Borrower's scheduled Principal Payments and which is repayable in accordance with clause 6.6(d);

"Revolving Credit Loan" means a Loan which may be borrowed, repaid and borrowed again during the Term, in accordance with the Agreement, and may include Overdraft and Flexi Loan facilities;

"Schedule" means any schedule referred to in the Agreement;

"Secured Money" means all money which any Obligor owes to NBS whether under the Agreement or any other arrangement (including amounts that may be advanced after the date of the Agreement);

"Secured Obligations" means all obligations of each Obligor to NBS under these General Lending Terms or any Collateral Document;

"Secured Property" means in relation to an Obligor:

(a) all of the Obligor's rights in the relevant property set out in the Specific Terms; and

(b) any property obtained in replacement of that Secured Property or which is joined to and becomes part of that Secured Property;

"Security Interest" means an interest in personal property that in substance secures payment or performance of an obligation, and includes a mortgage, charge, lien and any other arrangement of any kind, the economic effect of which is to secure a creditor;

"Specific Terms" in relation to a Loan means the specific terms applicable to that Loan as set out in the document entitled 'Specific Terms' related to that Loan;

"Specified Principal Amount" means the maximum amount of the Loan as specified in the Specific Terms and is as it is applied in the Property Law Act s90;

"Term Loan" means a Loan which may be advanced in one or more Instalments;

"Term" means the term of the Loan as set out in the Specific Terms; and

"Working Day" means a day other than a Saturday or Sunday or nationally observed holiday or the regional anniversary for the region which includes NBS' Address for Service.

1.2 Construction of Certain References: Unless the context otherwise requires, any reference to:

(a) **Gender:** a gender includes the masculine gender, feminine and the neuter gender as the case may be;

(b) **Personal Pronouns:** personal pronouns shall include an individual, body corporate, an association of persons (whether corporate or not), a trust and a state or agency of state;

(c) **Plural and Singular:** the singular includes the plural and vice versa;

(d) **Parties:** a party to the Agreement includes its successors and, in the case of NBS someone who assumes our rights or obligations and in the case of an Obligor, anyone NBS allows to assume the rights or obligations of that Obligor;

(e) **Legislation:** any legislation includes the legislation as amended, re-enacted or substituted and any regulation, order-in-council and other instrument from time to time issued or made under that legislation;

(f) **Construction of certain terms:** in the Agreement, the term:

(i) **including** does not imply any limitation;

(ii) **indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, and whether as Borrower, Guarantor or otherwise) relating to the payment of money; and

(iii) **rights** includes all powers, remedies, authorities and discretions.

1.3 Guidance: The headings to the clauses in the Agreement are by way of guidance only and do not affect the interpretation of these General Lending Terms. Some wording has been included in italics to explain some of the legal terms in these General Lending Terms. These explanatory sentences are also by way of guidance only and do not affect the interpretation of the Agreement.

2 AVAILABILITY OF LOAN FACILITY

2.1 **Drawdown:** NBS is only required to make the Loan and each Instalment available to the Borrower if all our requirements in relation to the Loan have been met, including:

(a) **Documents:** the Borrower providing to NBS, in a form acceptable to us, signed copies of the Agreement and each Collateral Document, NBS' Solicitors Certificate, or Registered Conveyancers Certificate is completed, confirmation that all required insurance cover is in place and any other documentation reasonably required by NBS;

(b) **Conditions Precedent:** NBS having received, in a form acceptable to us, the documents specified in the Specific Terms, any Collateral Document NBS' Solicitors Certificate, or Registered Conveyancers Certificate, or any letter of offer in respect of the Loan, or as otherwise separately notified to the Borrower by us;

(c) **Event of Default:** NBS being satisfied that no Event of Default has occurred or is likely to occur following the advance of the Loan or the Instalment;

(d) **Drawdown Notice:** the Borrower sends a written request to NBS before 9:30 a.m. on the Date of Advance, provided such date is a Working Day; and

(e) **General:** NBS having received all information that we may, by notice to the Borrower, reasonably require to determine that the Borrower and the proposed funding to the Borrower is satisfactory in all respects.

2.2 **Availability:** If the Borrower has met the requirements set out in clause 2.1 NBS shall make the Loan available to the Borrower on the Date of Advance and each Instalment available to the Borrower at the times set out in the Specific Terms.

2.3 **Disbursement:** The Loan will be disbursed by and at the discretion of NBS direct to the Borrower, to the Borrower's solicitor or registered conveyancer or to any other party nominated by the Borrower in one amount or in amounts and at times requested by the Borrower.

2.4 **Priority:** Any disbursement of the Loan (including Progress Payments Cost to Complete) will be applied by NBS, firstly in payment of any fees payable under the Agreement and secondly in repayment of any indebtedness that is to be repaid from the Loan Amount. The balance of the Loan Amount will be advanced in terms of Clause 3.1 of these General Lending Terms.

2.5 **Failure to Drawdown:** If the Loan is not advanced within thirty (30) days of the funds becoming available to drawdown, then NBS may, by written notice to the Borrower, cancel the Agreement.

3 ADVANCES

3.1 **Instalments:** If the Loan provides for Progress Payments Cost to Complete, subject to NBS being satisfied that all security and all other requirements for the Loan have been met, the Loan may be disbursed at our discretion given the value of the land on which the construction is taking place and the cost to complete in line with the builder's contract and/or inspection by us or if required a registered valuer's certificate. Otherwise, all Instalments will be advanced in the manner set out in the Specific Terms.

3.2 **Re-advances:** If the Loan is a Revolving Credit Loan, the Borrower may throughout the Term, provided no Event of Default has occurred, borrow an amount equal to the Maximum Credit Limit less any amounts borrowed at that time.

3.3 **Redraw:** If the Loan is a Redraw Loan, the Borrower may throughout the Term, provided no Event of Default has occurred, Redraw all Funds in Advance no more than twice each calendar month. Each redraw shall be for a minimum amount prescribed by us from time to time. Any Funds in Advance requested by the Borrower are not to be in amounts less than $1,000.00 and will only be disbursed by us into an account at NBS, owned by the Borrower.

4 TERM

The Amount Outstanding must be repaid upon Demand. NBS agrees that it may only make Demand following the occurrence of an Event of Default or a Change in Circumstance. If no Demand is made, the Loan is available to the Borrower for the Term.

5 FEES

5.1 **Fees Payable:** All fees and charges (other than interest charges) that are, or may become payable in connection with the Loan are set out in the Specific Terms.

5.2 **Fees not Paid:** If any Fee is not paid when due, that Fee will be added to the Loan on the next Working Day. Interest will be payable on the amount of the unpaid Fee from (and including) that day in accordance with clause 6.

5.3 **Alteration of Fees:** NBS shall be entitled at any time to alter any Fee and introduce new Fees if its costs of providing the Loan increase or its expected returns on the Loan decrease, in a material respect. NBS will give the Borrower and, if required by law, each other Obligor at least 14 days' notice of any change to the Fees in the manner required by the CCCFA.

6 PAYMENTS

6.1 **Payment of the Loan:** The Borrower agrees to pay the Amount Outstanding in accordance with the terms set out in the Agreement and the Collateral Documents.

6.2 **Interest:** Interest will accrue on the Loan at the Interest Rate. If a Fixed Interest Rate Period applies the Interest Rate will be fixed for that period. At the end of the Fixed Interest Rate Period, the Interest Rate will change to the Variable rate set out in the Specific Terms (unless re-fixed by agreement with us).

6.3 **Default Interest:** If an Event of Default occurs under clause 13.2(a) of these General Lending Terms or if, at any time, the Maximum Amount or Maximum Credit Limit is exceeded, Interest shall be calculated on the unpaid amount or excess, as the case may be, at the Default Rate from the date on which such event occurs until the event is remedied.

6.4 **Alteration of Rates:** NBS agrees not to alter the Interest Rate applicable to a Loan during any Fixed Interest Rate Period. Where the Interest Rate is a variable rate, we may alter the Interest Rate from time to time to reflect changes to market interest rates. NBS will notify the Borrower and, if required by law, each other Obligor of any alteration to the Interest Rate, by giving 14 day' notice by any method we may deem appropriate including electronic media, regional and local newspapers or any other manner required or permitted by the CCCFA.

6.5 Calculation of Interest:

(a) **Calculation: Interest:** will be calculated at the Interest Rate on a daily basis from (and including) the Date of Advance. Interest on an Interest Only Loan or a Principal and Interest Loan will be added to the Loan on the last day of each month (or on such other date as we shall elect). Interest on a Revolving Credit Loan will be added to the Loan on the last day of each month (or on such other date as we shall elect).

(b) **Calculation of Default Interest:** Default Interest will be calculated at the Default Rate on a daily basis from (and including) the date the relevant Event of Default occurs or the date on which the Maximum Amount or Maximum Credit Limit is exceeded (as applicable). Default Interest on an Interest Only Loan or a Principal and Interest Loan will be added to the Loan on the last day of each month (or on such other date as we shall elect). Default Interest on a Revolving Credit Loan will be added to the Loan on the last day of each month (or on such other date as we shall elect).

6.6 Facility Types: If the Loan is:

(a) an Interest Only Loan, the Borrower will pay all Interest charged on the Loan, on the last day of each month during the Term and will pay the Amount Outstanding on the Date of Final Payment;

(b) a Principal and Interest Loan, the Borrower will pay the consecutive Principal and Interest Payments on the Date of First Payment and thereafter on each Date for Payment during the Term and will pay the Amount Outstanding on the Date of Final Payment;

(c) a Revolving Credit Loan, unless otherwise stated in the Specific Terms, the Borrower will make sufficient payments of Principal and Interest during the Term to ensure that the Loan does not exceed the Maximum Credit Limit and will pay the Amount Outstanding on the Date of Final Payment;

(d) a Redraw Loan, unless otherwise stated in the Specific Terms, the Borrower will make sufficient payments of Principal and Interest during the Term to ensure that the Loan does not exceed the Maximum Credit Limit and will pay the Amount Outstanding on the Date of Final Payment; or

(e) a Deferred Payment Loan, the Borrower will pay the scheduled Principal and Interest Payments during the Term and will pay the Amount Outstanding on the Date of Final Payment.

6.7 Date of Repayment: The Amount Outstanding must be paid on the earlier of:

(a) **Expiry of Term:** the Date of Final Payment; or

(b) **Demand:** the date on which Demand is made.

6.8 Mode of Payment: All Payments must be made direct to NBS, either by electronic transfer or by manual deposit at any NBS branch, into the Deduction Account specified in the Agreement:

(a) in person, on the Due Date not later than 30 minutes before the advertised closing time of the relevant NBS branch at which payment is made; or

(b) electronically, not later than 4pm on the Due Date in the manner we may specify.

The Deduction Account is not to be closed, nor go into unarranged overdraft or excess during the term of the Loan unless specifically agreed to by us. If any Payment is made on the Due Date but after the time specified above, the Payment may be treated as being received on the next Working Day.

6.9 Payments: Each Payment to NBS under the Agreement or the Collateral Documents is to be made free of any restriction and without any deduction whatsoever (whether in in respect of tax, set-off, counterclaim, charges or otherwise). If a deduction is required by law, the Obligor will pay to NBS an additional amount equal to the amount deducted.

7 EARLY REPAYMENT

7.1 Early Repayments: An Obligor may at any time prior to the end of the Term repay all or part of the Loan. The Obligor must give us five working days prior written notice of such payment.

7.2 Loss on Early Repayment: Where an Obligor repays all or part of the Loan at any time prior to the end of the Term or switches a fixed rate loan to another fixed or variable rate prior to the expiry of the fixed rate term, we shall be entitled to recover our estimated losses arising from such early payment.. This is known as the Early Repayment Recovery Amount. The Early Repayment Recovery amount is calculated using the formula prescribed by the Credit Contracts and Consumer Finance Regulations 2004 (regulation 9 and 11). A description of when and why we charge this fee is set out in the Loan. You may also have to pay a $50.00 administrative fee relating to the Early Repayment.

8 GUARANTEE AND INDEMNITY

8.1 Guarantee: The Guarantor guarantees to NBS the due payment by the Borrower and each other Obligor of the Secured Money and the due performance by the Borrower and each other Obligor of the Secured Obligations.

8.2 Payment: The Guarantor agrees that if, for any reason, any Obligor does not pay when due any of the Secured Money, it will pay the relevant amount immediately upon demand.

8.3 Unenforceability of Obligations: As a separate undertaking, the Guarantor agrees that, if NBS can't recover the Secured Money from the Guarantor under the Agreement or a Collateral Document for any reason, including if a provision of the Agreement or a Collateral Document becomes void or invalid, whether or not that reason is:

(a) **Defect in Authority:** a lack of authority by a person acting on behalf of an Obligor;

(b) **Legal Limitation:** a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of an Obligor; or

(c) **Death, Bankruptcy or Insolvency:** the death, bankruptcy or insolvency of an Obligor, the Guarantor will, as an independent obligation, pay to NBS on demand the amount which we would otherwise have been able to recover (on a full indemnity basis). This means the Guarantor agrees to be personally liable for repayment of the Loan even if NBS is prevented, for some technical reason, from enforcing its rights under the Agreement.

8.4 Suspense Account: All moneys received by NBS in respect of the Secured Money from a Guarantor may be placed in a separate suspense account until NBS has received the Secured Money in full in to preserve the liability of any other person and our right to provide for the whole of the Secured Money in the event of the insolvency of an Obligor.

8.5 Liability as Sole Principal Debtor: The Guarantor is liable under the Agreement as sole and principal debtor. This means each Guarantor is personally liable for repayment of the Amount Outstanding (even if the Borrower is not liable for some technical reason).

8.6 Continuing Guarantee: The Guarantor's obligations under the Agreement:

(a) **Continuing Security:** continue to apply even if payments are made during the Term;

(b) **Additional:** are in addition to any Security Interest, guarantee, indemnity or other agreement held by NBS, whether from the Guarantor or otherwise; and

(c) **Remain in Force:** are to remain in effect until the execution by NBS of an unconditional release.

8.7 No competition: At law, Guarantors have rights against the person they have guaranteed and any co-guarantors. To ensure NBS' rights against those same people are not affected, the Guarantor agrees that it will not, without the written consent of NBS:

(a) **Security Interest:** accept a Security Interest from another Obligor;

(b) **Recover:** take steps to recover money or other property of another Obligor; or

(c) **Payment:** claim, in any insolvency proceeding of another Obligor.

Until the Secured Money has been fully paid and the Secured Obligations have been fully satisfied, the Guarantor agrees not to exercise any rights of subrogation (being rights to seek reimbursement from the Borrower) to which it would otherwise be entitled. If the Guarantor holds or receives any Security Interest, money or property in breach of this clause, the Guarantor is to transfer it to NBS immediately and, until transferred, will hold it on trust for NBS.

9 REPRESENTATIONS AND WARRANTIES

9.1 **General:** Each Obligor confirms that:

(a) **Nature and Enforceability:** the Agreement and each Collateral Document is a binding obligation of each Obligor, and in the case of a company Obligor, each Obligor is duly established and validly existing under the laws of New Zealand and has the power to enter into and perform its obligations under the Agreement and each Collateral Document;

(b) **Solvency:** it is solvent and able to pay its debts as they fall due;

(c) **No Security Interest:** no Security Interest affects any property of an Obligor except as permitted by the Agreement;

(d) **No Default:** no Obligor is in default under:

(i) any agreement relating to money; or

(ii) any guarantee; or

(iii) any other agreement, to an extent which could have a Material Adverse Effect on any Obligor;

(e) **Information:** all information provided by each Obligor to NBS in connection with the Agreement and the Collateral Documents was true when that information was provided and remains so, and the Obligor has disclosed all material matters that it knows of which affect the Obligor's business, assets or financial condition (as applicable) or the Obligor's ability to perform obligations under the Agreement or any Collateral Document;

(f) **Documents:** each Obligor has received a copy of the Agreement and each Collateral Document and each Obligor (other than the Borrower) has been advised by NBS to seek independent legal advice in relation to the Agreement and each Collateral Document;

(g) **Litigation:** except as notified to NBS in writing, no litigation, arbitration or administrative proceedings exist or is pending in respect of any Obligor, and the Obligors do not know of any which is threatened that may have a material adverse effect on the Obligor's ability to perform its obligations under the Agreement or any Collateral Document or affect any Obligor's business, assets or financial condition (as applicable);

(h) **No contravention:** entering into this Agreement and any Collateral Document and carrying out its obligations under them will not contravene:

(i) a law or government requirement that applies to the Obligor or any of the Obligor's property;

(ii) an authorisation, licence or exemption that applies of the Obligor of any of the Obligor's property;

(iii) if the Obligor is a company, its constitution; or

(iv) if the Obligor is a partnership, its partnership agreement or any other partnership document; or

(v) if the Obligor is a trustee, any trust deed or other agreement constituting or affecting the trust.

9.2 **Repetition:** Each Obligor shall be deemed to repeat these confirmations on each day during the life of the Agreement, by reference to the circumstances existing on that day.

9.3 **Reliance:** Each Obligor acknowledges that NBS has relied on the confirmations in this clause.

10. TRUSTEES

10.1 If any party to this Loan Agreement is a trustee of a Trust then that person warrants and undertakes (both in his or her personal capacity and as trustee of the Trust) that:

(a) the party is a current and validly appointed trustee of the Trust and has powers and authority to enter into this Loan Agreement;

(b) the Loan Agreement has been signed in accordance with the terms of the Trust and pursuant to a valid resolution of the trustees and is binding on and enforceable against the Trust;

(c) the trustees have and will retain a right of indemnity from the Trust assets;

(d) NBS' rights under the Agreement against the Trust assets rank in priority to the claims of the beneficiaries against the Trust assets;

(e) NBS will be immediately notified if during the term of the Loan there is any alteration to the trustees or any change to the Trust which may adversely affect NBS. No trustee will be released from his or her liability under this Loan Agreement until this is confirmed in writing by NBS;

(f) if requested by NBS, the party will exercise all of his or her rights of indemnity in relation to the Trust and all rights it may have against a beneficiary of the Trust so as to cause payment of any Amount Outstanding owing to NBS under the Agreement;

(g) it will not, without the prior written consent of NBS:

(i) retire as a trustee of the Trust;

(ii) appoint new or additional trustees (unless that new trustee promptly joins in and becomes liable as a borrower under the Agreement);

(iii) commit any breach of trust; or

(iv) alter, amend or vary the trust deed.

10.2 If a party to this Loan Agreement is agreed by NBS to be an independent trustee, the liability of the independent trustee shall be limited to the net assets for the time being of the Trust under which the independent trustee has entered into this Loan Agreement and is not personal unless the loss is incurred by NBS due to the wilful default or the dishonesty on the part of the trustee or unless the warrantees in the forgoing paragraph are incorrect.

11. PARTNERSHIPS

11.1 If any party to this Loan Agreement, is a partner of a partnership then that person warrants and undertakes (both in his or her personal capacity and as partner of the partnership) that:

(a) the partnership has not been terminated or dissolved nor has any event for the vesting of any partnership assets occurred;

(b) its right to be indemnified out of the assets of the partnership has not been limited in any way;

(c) it legally owns all assets of the partnership; and

(d) it has not entered into any other agreement in relation to the partnership.

12 GENERAL COVENANTS

12.1 General Covenants: Each Obligor agrees that it will:

(a) **Performance of Obligations:** punctually perform the Secured Obligations;

(b) **Secured Property:** maintain the Secured Property in good order and condition and protect the Secured Property from theft, loss or damage;

(c) **Access:** provide to NBS, and ensure that each person in possession of any Secured Property will provide to NBS, access at all reasonable times to the Secured Property;

(d) **Notify:** promptly notify NBS in writing of any:

(i) event which might be an Event of Default;

(ii) matter which might adversely affect the Secured Property, or the ability of any Obligor to perform the Secured Obligations;

(iii) change to its name or Address for Service;

(iv) material change in the location of the Secured Property; and

(e) **Insurance:** ensure that throughout the life of the Agreement full replacement insurance cover is maintained in respect of the Secured Property. Any such insurance cover is to note the interest of NBS or their nominated representative and otherwise be on terms acceptable in all respects to NBS.

12.2 Information Covenant: Each Obligor agrees that it will provide to NBS any information reasonably requested by NBS. For this purpose, each Obligor authorises NBS to approach its financial, legal, banking or other advisors for the purposes of obtaining all information NBS may reasonably require.

12.3 Negative Covenants: Each Obligor agrees that it will not without the prior written consent of NBS:

(a) Security Interest: allow any Security Interest to exist over all or any part of the Secured Property;

(b) Disposal of Secured Property: sell or dispose of, or agree to sell or dispose of, or grant any lease or licence in respect of all or any part of its interest in the Secured Property; or

(c) Prejudice: do or permit or allow to be done anything which might adversely affect the rights of NBS under the Agreement or the Collateral Documents.

13 ENFORCEMENT

13.1 Acceleration: If, at any time and for any reason, an Event of Default occurs, then:

(a) **Payment:** the Amount Outstanding is due and payable immediately;

(b) **Charges:** each Security Interest created by the Agreement and each Collateral Document will become immediately enforceable (without the need for notice to or the consent of any Obligor);

(c) **Exercise of Powers of Enforcement:** NBS can exercise any of the powers described in clause 13.3; and

(d) **Cancellation:** NBS may cancel the Agreement.

13.2 Event of Default: An Event of Default occurs if:

(a) **Non-Payment:** any Obligor fails to pay any part of the Loan, any Fees, any Interest or any other part of the Secured Money on its Due Date;

(b) **Breach:** any Obligor fails to perform the Secured Obligations in any material respect;

(c) **Purpose:** any part of the Loan is applied to any purpose other than the purpose agreed between the Borrower and NBS (if applicable);

(d) **Maximum Amount of Loan:** the Amount Outstanding exceeds the Maximum Amount or the Maximum Credit Limit;

(e) **Insolvency:** an Obligor:

(i) if a natural person, is subject to bankruptcy proceedings;

(ii) if a company, is insolvent or unable to pay its debts as they fall due or is deemed to be so under any law;

(iii) stops payment of any of its debts or threatens to do so; or

(iv) if a company, makes any arrangements with its creditors with a view to avoiding insolvency;

(f) **Death or Incapacity:** an Obligor that is an individual dies or otherwise becomes physically or mentally incapacitated;

(g) **Representations or Warranties:** any statement made by an Obligor in or in connection with the Agreement or any Collateral Document, is found to be incorrect, inaccurate or misleading in any material respect;

(h) **Material Adverse Change:** a Material Adverse Change occurs in relation to an Obligor;

(i) **Illegality, Invalidity etc:** a material provision of the Agreement or any Collateral Document becomes unenforceable or it becomes unlawful or impractical for an Obligor or NBS to perform any of its obligations under the Agreement or any Collateral Document;

(j) **Litigation:** any legal proceedings, arbitration or administrative proceeding is pending or threatened against any Obligor which if adversely determined is likely to have a material adverse effect on any Obligor;

(j) **Receiver, Enforcement etc:** a Receiver, trustee, manager, administrator or similar officer is appointed in respect of an Obligor or any of its property or a Security Interest in property of an Obligor becomes enforceable; or

(k) **At risk:** in the opinion of NBS, any material item or items of the Secured Property is or are at risk.

13.3 Powers of Enforcement: If an Event of Default occurs, NBS may, in the name of the relevant Obligor or otherwise:

(a) take possession of and sell the Secured Property (and for this purpose NBS or its agents may enter any premises where the Secured Property is held and repossess the Secured Property);

(b) at any time, do anything that the Obligor could do in relation to the Secured Property and the Obligor's business and its operations generally;

(c) exercise all the rights of a natural person in relation to the Secured Property and the Obligor's business and its operations generally; and/or

(d) exercise all of its other legal rights in relation to the Secured Property.

14 PROCEEDS OF ENFORCEMENT

14.1 Application: All money received by NBS or any Receiver as the result of the exercise of an enforcement right under the Agreement is to be applied, subject to any restriction imposed by law, in or towards payment of:

First all costs and expenses (including legal expenses (on a solicitor/conveyancer and own client basis)) incurred by NBS, any Receiver or any Attorney in exercising their respective powers, under the Agreement;

Secondly any other part of the Secured Money outstanding, in the order determined by NBS at its absolute discretion; and

Thirdly subject to clause 14.2, anyone who is legally entitled to any surplus.

14.2 Contingent Amounts: If at the time of distribution of any money under clause 14.1, any part of the Secured Money is contingently owing to NBS, NBS or any Receiver may retain any surplus money until the amount of the Secured Money which is contingently due has been finally determined.

15 SERVICE OF DEMAND AND NOTICES

15.1 Addresses and References: Each notice, Demand or other communication under the Agreement is to be made in writing and may be sent by email, facsimile, personal delivery or by post to the addressee at the Address for Service, and marked for the attention of the person (if any), from time to time designated for that purpose in the Agreement or any Collateral Document.

15.2 Deemed Delivery: No communication shall be effective until it is received. Communication to an Obligor, however, will be treated as having been received:

(a) **Delivery:** in the case of physical delivery, on the day of delivery;

(b) **Post:** in the case of a letter, on the third Working Day after posting; and

(c) **Facsimile or Email:** in the case of a facsimile or email, on the Working Day on which the facsimile or email is sent or, if sent after 5.00 p.m. or on any day other than a Working Day, on the next Working Day after the date it is sent.

15.3 Validity of Service: Delivery or service in accordance with clause 15.2 will be valid even though the addressee may not actually receive the notice, demand or communication and even though the addressee may be in receivership or liquidation.

16 SET OFF

16.1 General Right: Each Obligor authorises NBS to:

(a) **Application:** apply (without prior notice or Demand) all or part of any money owing by NBS to an Obligor in repayment of the Secured Money; and

(b) **Contingent Liability:** retain any such money pending any part of the Secured Money which are contingently due being quantified.

16.2 Rights on Default: Each Obligor authorises NBS to, following the occurrence of any Event of Default (and without prior notice or Demand), transfer any money held in any account of an Obligor with NBS, or any money owing by NBS to an Obligor, to an account in NBS' name by way of security for the performance of the Secured Obligations.

16.3 Authority: For the purposes set out in sub-clauses 16.1 and 16.2, NBS is authorised to break a term deposit investment.

16.4 Contractual Rights: NBS' rights under this clause are contractual rights affecting the terms upon which a credit balance is held and the creation of those rights does not constitute the creation of a Security Interest in that credit balance.

17 PROTECTION PROVISIONS

17.1 Performance of Secured Obligations: If any Obligor fails to perform and comply with the Secured Obligations, then NBS may, but shall not be obliged to, pay any money, or perform any Secured Obligation on behalf of that Obligor.

17.2 Protection of Third Parties: Any person dealing with NBS or any Receiver under the Agreement or the Collateral Documents can assume NBS or such Receiver is acting properly and will be not be affected by notice that any such transaction or dealing is unnecessary or improper.

17.3 Indemnity: Each Obligor agrees to indemnify NBS, each Attorney and each Receiver and any of their respective agents, against all costs, losses and any other liability incurred as a result of:

(a) **Variation, Waiver etc:** any variation, waiver or discharge provided in respect of the Agreement or any Collateral Document;

(b) **Default:** the occurrence of any Event of Default; and

(c) **Review and Exercise:** any exercise or attempted exercise of any right under the Agreement or any Collateral Document,

in each case on demand and on a full indemnity basis. This means that each Obligor agrees to personally meet any of these costs and expenses and reimburse NBS for any of these losses. NBS will only exercise its rights under this clause in relation to costs and losses which it must reasonably incur to protect its interest and for which it is not compensated by any fees payable under the Agreement.

17.4 Indemnity Irrevocable: The indemnity provided in clause 17.3 is unconditional and cannot be revoked and will continue to apply following the termination and release of the Agreement and the payment of the Amount Outstanding.

17.5 More than One Borrower: Where more than one person is named as Borrower, or any part of the Loan has been made available to two or more persons (including the Borrower), each person shall be jointly and severally liable for the repayment of the Amount Outstanding and for the performance of the Secured Obligations. This means that all of them are liable together, and each of them is liable separately, for repayment of the Amount Outstanding and for the performance of the Secured Obligations.

17.6 Obligors: Each Obligor hereby acknowledges and agrees that:

(a) **Advance:** the Loan has been advanced to the Borrower at the Obligor's request;

(b) **Demand:** NBS may demand payment from any Obligor without first making demand on the Borrower;

(c) **NBS' Discretion to Release:** NBS may release any Obligor from its obligations under the Agreement or the Collateral Documents and that release shall not affect the obligations of any other Obligor;

(d) **Capacity:** no Obligor shall be released from its obligations under the Agreement or the Collateral Documents by any lack of legal capacity or other reason which would result in the Agreement or any of the Collateral Documents not being enforceable against the Borrower or any other Obligor; and

(e) **Subrogation and Indemnity:** the Obligor cannot be reimbursed by the Borrower or any other Obligor until NBS has received payment in full of the Amount Outstanding and each Obligor has performed and complied with the Secured Obligations.

17.7 Assignment

(a) **Benefit and burden of the Agreement and the Collateral Documents:** The Agreement and the Collateral Documents are binding upon and continue for the benefit of the parties and their successors and, in the case of NBS, someone who assumes NBS' rights and obligations and, in the case of each Obligor, anyone who NBS allows to assume the rights or obligations of that Obligor.

(b) **NBS:** Each Obligor agrees that NBS may transfer all or any of its rights or obligations under the Agreement and the Collateral Documents to any person who NBS reasonably believes can perform all of its obligations under the Agreement without the need for any further consent from any Obligor. Each such transferee is to have the same rights and obligations against each Obligor under the Agreement and the Collateral Documents (or a proportion of those rights and obligations if it is the transferee of part only) as if it was a party to the Agreement and the Collateral Documents in place of NBS.

(c) **Disclosure of Information:** NBS may disclose, on a confidential basis, to a potential transferee any information about an Obligor.

(d) **Obligors:** No Obligor may transfer any of his or her rights or obligations under the Agreement or the Collateral Documents without the prior written consent of NBS.

18 CHANGE OF CIRCUMSTANCES

If as a result of any action taken by any government body:

(a) **Lawful Nature:** it becomes unlawful for NBS to make the Loan available, or to charge or receive interest at any applicable rate or otherwise give effect to its rights and obligations in the manner contemplated under the Agreement or the Collateral Documents; or

(b) **Imposition of Levy etc:** the cost to NBS of making the Loan available, is significantly increased, or the net return to NBS on the Loan is significantly reduced,

NBS may by written notice to the Borrower terminate its agreement to make the Loan, and may require that the Amount Outstanding be repaid immediately or at such other time as may be set out in any such notice.

19 DISCLOSURE AND USE OF INFORMATION

19.1 Use and Disclosure: Each Obligor authorises NBS to:

(a) **Use:** use any information received about an Obligor for any purpose in relation to the business functions and activities of NBS which include, without limitation, assessing that Obligor's credit risk and ability to repay their debts, registering any Security Interest granted to NBS, assisting in the recovery of the Amount Outstanding and for marketing and promotional purposes; and

(b) **Disclosure:** share information about any Obligor with:

(i) any other party to the Agreement;

(ii) any insurer of the Secured Property;

(iii) any person providing credit support to NBS;

(iv) any holder of any Security Interest over the Secured Property;

(v) any person performing services in connection with the Secured Property;

(vi) any potential transferee or any other person with whom NBS may wish to enter into contractual relations in connection with the Agreement or a Collateral Document;

(vii) credit reporting agencies (such as Centrix Group Limited, Level 1, Tower 1, 646 Great South Road, Ellerslie, Auckland 105; or Equifax New Zealand Information Services and Solutions Limited Level 8, 22 Fanshawe Street, Auckland, 1010) or others, and debt collection agencies;

(viii) such individual agencies and public registers (as defined in the Privacy Act 2020) which NBS in its absolute discretion deems necessary;

(ix) any government agency, regulator or law enforcement agency (in New Zealand or overseas) which satisfies NBS that disclosure is necessary for law enforcement, compliance or regulatory purposes; and

(x) any third party for the purpose of assessing an application for credit, enforcing its rights under the Agreement or a Collateral Document and/or administering an account.

Any such disclosure must be limited to information that is reasonably required by any such person. Information disclosed to credit reporting agencies (including default information) will be held by each agency on its system, accessed by the clients of the credit reporting database and used by that agency to provide its credit reporting services (including the maintenance of credit information files and supplying the information to other clients of the relevant credit reporting agency).

19.2 Acknowledgement: Each Obligor agrees that NBS may collect information regarding that Obligor from third parties such as credit reporting agencies and searches of public registers.

19.3 Correction of Information: An Obligor can ask to see information received by NBS about that Obligor. An Obligor can ask for any information held by NBS to be corrected.

19.4 Electronic Communications: Each Obligor agrees to NBS providing notices or other communications under the Agreement to that Obligor online, via email or by other electronic means.

20 PERSONAL PROPERTY SECURITIES ACT 1999

Each Obligor waives its right to receive a copy of a verification statement confirming registration of a financing statement or a financing change statement under the PPSA and agrees, to the extent permitted by law, that:

(a) **Rights:** the Obligor shall have no rights under section 114(1), of the PPSA (this means NBS does not need to notify the Obligor if it intends to sell Secured Property);

(b) **Part 9 Provisions:** the provisions of Part 9 of the PPSA regarding enforcement of Security Interests which are for the benefit of the Obligor, or place obligations on NBS, shall apply only if they have to by law or NBS agrees to their application;

(c) **Additional Rights:** where NBS has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply; and

(d) **Change Demands:** where the Obligor registers a change demand under section 162 of the PPSA, NBS may charge a fee for complying with the change demand.

21 COMMUNICATION

21.1 Electronic Communications: Each Obligor agrees that if it has provided NBS with an email address, NBS may contact that person electronically using the email address that it holds from time to time. Electronic communications include all disclosures required to be made under the Credit Contracts and Consumer Finance Act 2003 or the Building Societies Act 1965, any other law or regulation, and any general communications about the Agreement, the Borrower's account, the Borrower's membership of NBS or other related matters.

21.2 Other Communications: In addition to, or alternatively to electronic communications, and subject to the requirements of any specific laws, NBS may communicate with any Obligor by:

(a) providing notice in writing (whether in person or by post);

(b) making information available on a website maintained by NBS which is available to the Obligor

(c) displaying a notice on NBS' website and at its branches; and/or

(d) publishing a notice in a major daily newspaper.

22 COMPLAINTS

22.1 Contact NBS: If any Obligor has a complaint, he, she or it should first contact the relevant Local Branch Manager. If the complainant is still not satisfied with the outcome, they should contact complaints@nbs.co.nz or the General Manager Banking Operations of NBS at: Nelson Building Society - 111 Trafalgar Street, Nelson 7010, PO Box 62, Nelson 7040. Phone: +64 3 548 2164. Free Phone: 0800 101 700.

22.2 Banking Ombudsman Scheme: If NBS cannot resolve the complaint or the complainant is not satisfied with the resolution we propose, he, she or it can contact the Banking Ombudsman Disputes Resolution Scheme (which is an approved scheme under the Financial Service Providers (Registration and Disputes Resolution) Act 2008). The Banking Ombudsman offers a free, independent dispute resolution service that may help investigate or resolve complaints. The Banking Ombudsman can be contacted at:

Freepost 218002, PO Box 25327 Featherston Street, Wellington 6146.

Free Phone: 0800 805 950

Email: help@bankomb.org.nz

www.bankomb.org.nz

Complaints can also be made to the Financial Markets Authority through their website https://www.fma.govt.nz/

23 MISCELLANEOUS

23.1 No Waiver: Each Obligor must meet its obligations in a timely manner, but no failure or delay by NBS to exercise any right under the Agreement or any Collateral Document shall operate as a waiver of that right and the partial exercise by NBS of any right, shall not prevent any further exercise of that right.

23.2 Remedies Cumulative: The rights of NBS under the Agreement and the Collateral Documents are in addition to any rights conferred or implied by law.

23.3 Determination: A decision by NBS as to the amount of the Loan, an applicable Interest Rate or any amounts owing under the Agreement or any Collateral Document or as to whether an Event of Default has occurred and is continuing under the Agreement or any Collateral Document, shall, in the absence of an obvious error, be conclusive for all purposes including any proceedings.

23.4 Amendments: Other than as specified in clause 5.3 and clause 6.4, no amendment to the Agreement will be effective unless it is in writing and signed by all the parties to the Agreement.

23.5 No Obligation to Marshal: NBS is not required to exercise its rights under the Security Interests it holds from the Obligors in any particular order.

23.6 Impossibility: NBS will not be liable for any failure to perform or comply with its obligations under the Agreement resulting directly or indirectly from the action or inaction of a governmental or local authority, strike, labour disturbance (whether of its employees, officers or otherwise) or any other cause that is beyond its control.

23.7 Monitoring transactions: The Borrower agrees that NBS may refuse to process any transaction without incurring any liability if it is suspected that:

(a) the transaction may breach any laws or regulations in New Zealand or any other country;

(b) the transaction involves any person (natural, corporate or governmental) that is sanctioned or is connected, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the United Nations, the European Union or any country; or

(c) the transaction may directly or indirectly involve conduct that is unlawful in New Zealand or any other country.

The Borrower must (and must ensure that each other Obligor will) provide all information to NBS that it reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Borrower agrees that NBS may share any information concerning the Obligors with any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or elsewhere.

23.8 Delivery: The Agreement will be treated as having been "delivered" by the Obligors immediately on physical or electronic delivery of an original or copy of the Agreement, executed by the Obligors, into the custody of NBS or our solicitors or registered conveyancer.

23.9 Version Identification: For the purpose of identifying these General Lending Terms, they will be known as "General Lending Terms – Version 2021-1"

24 Governing Law: The Agreement is to be governed by and construed in accordance with New Zealand law.