

**1. What we agree to do**

We agree to provide the Advance to you upon the terms and conditions referred to below and referred to in the Schedule. Where the Collateral is to be purchased by you, we may pay the Advance directly to the seller of the Collateral.

**2. Withdrawal of Facility**

We may at any time prior to you drawing on the Advance, cancel this Agreement immediately if we consider that:

- (a) there has been a material delay in you drawing on the Advance;
- (b) information we relied upon when assessing your application is incorrect in a material respect; or
- (c) there has been a material change in the financial market conditions on which we relied when we offered the Advance to you.

**3. What you agree to do. You agree to the following**

**3.1 Security Interest:** You grant us a Security Interest in the Collateral as security for the repayment of the Advance and the payment of all other moneys payable under this Agreement and the performance of all other terms contained or implied in this Agreement.

**3.2 Interest:** Interest is charged to your account at the end of each Interest Period. Interest charges are calculated daily at the Interest Rate on the unpaid balance of the Advance.

**3.3 Pay moneys:** To pay us at our address shown in the Schedule or as we otherwise direct the Initial Unpaid Balance and all interest charges and the fees and charges specified in this Agreement on the days on which such payments are due. All payments received will be credited against your obligations in such order as we may determine. Unless this Agreement states otherwise, all money payable by you under this Agreement must be paid on demand.

**3.4 Prepayment:** You may prepay the Advance in full but not in part. In the event of early repayment of the Advance we will be entitled to charge a fee determined by us to compensate us for any loss resulting from the early repayment plus 3 months premium interest on the amount outstanding at the time of repayment.

**3.5 Change of Annual Interest Rate and Fees and Charges:** We may at any time by giving you not less than one month's notice in writing increase or reduce the Interest Rate with a consequential increase or reduction in the amounts payable under this Agreement, but any increase shall be limited to the Interest Rate charged by us for new transactions for similar purposes. We may also at any time vary any fee or charge specified in this Agreement.

**3.6 Default Interest:** If you don't make any payment due under this Agreement or if any moneys are payable by you in accordance with clause 5.13, you must pay to us interest on that amount from the due date until the date of payment at the rate of  $(A + 10\% \text{ per annum})$ : where A is the Interest Rate for the time being payable under this Agreement. Default fees are payable in respect of any breach of this Agreement. Default interest is charged to your account on the last day of each Interest Period.

**3.7 Keep Collateral at the Premises:** To keep the Collateral at the Premises and not to move or permit the removal of the Collateral to any other premises or place without our written consent.

**3.8 Motor Vehicles:** If the Collateral includes a motor vehicle:

- (a) to keep the vehicle at the Premises when not in use;
- (b) to comply with all statutory requirements from time to time in force including where appropriate maintaining a current vehicle inspection certificate, vehicle registration, certificate of fitness (if applicable) and a warrant of fitness;
- (c) to promptly pay all traffic and parking fines, penalties, levies, fees and tax (including road user charges) imposed by any law or government agency in relation to the vehicle;

**3.9 Not to affix the Collateral:** Not to allow the Collateral: (a) to become an Accession (as defined in the PPSA) or (b) to become attached to land or buildings in such a way as to become a fixture.

**3.10 Not to part with Possession of Collateral:** Not to part with possession of the Collateral or attempt to sell, pledge or create a Security Interest or permit a lien in the Collateral. You agree to immediately notify us if the Collateral is taken out of your possession and to advise us of the location to where the Collateral has been removed.

**3.11 Comply with Law:** To ensure the use and operation of the Collateral in a careful, prudent and lawful manner and comply with all Laws affecting the Collateral and not to use or permit the use of the

Collateral for any illegal purpose and to keep the Collateral registered and licensed if applicable.

**3.12 Take good care of Collateral:** Keep the Collateral in good condition and protect it from loss or damage.

**3.13 Service Collateral:** At your cost to have the Collateral serviced or repaired in accordance with the recommendations of the manufacturer of the Collateral by a dealer authorised by the manufacturer of the Collateral to service or repair the Collateral and to ensure the servicing and repairs are carried out in a proper and workmanlike manner.

**3.14 Not to alter Collateral:** Not to alter the Collateral without our prior approval.

**3.15 Tell us if Collateral Damaged or Defective:** To notify us immediately of any loss of or damage to the Collateral or any defect or fault in the Collateral.

**3.16 Insure Collateral:** To insure the Collateral as follows:

- (a) throughout the Term;
- (b) for full replacement value not being less than the amount, if any, specified by us;
- (c) for loss or damage by accident, fire, theft (and in the case of a motor vehicle liability to third parties for bodily injury, death or damage to property) and any other risk required by us;
- (d) with an insurance company approved by us;
- (e) in our joint names for our respective interests; and not to do or omit to do anything which could result in the insurance company declining any claim. You agree that any amount payable under any insurance policy will be paid to us to be applied as we think fit either in making good any damage to the Collateral or towards payment of all amounts outstanding under this Agreement whether or not the time for payment has arrived.

**3.17 Other Insurance:** Where we require you to hold life insurance or other insurance such insurance must be:

- (a) maintained throughout the Term;
- (b) for not less than the amount specified by us;
- (c) with an insurance company approved by us;
- (d) in our name as insured and loss payee; and you must not to do or omit to do anything which could result in the insurance company declining any claim. You agree that any amount payable under any insurance policy will be paid to us to be applied towards payment of all amounts outstanding under this Agreement whether or not the time for payment has arrived.

**3.18 Permit Inspection:** To allow us to inspect the Collateral at any time between the hours of 8.00 am and 5.00 pm on any weekday and at any other time the Collateral is being used.

**3.19 Information:** That the information you have provided is true and correct and that you will promptly upon request provide to us such information about your financial position or operations as we may reasonably require.

**3.20 No Deductions:** To make all payments due under this Agreement without set-off or deduction (except as required by law).

**3.21 Name Change:** Not to change your name without first notifying us in writing of the proposed name change and the new name at least 7 days before the change takes effect.

**3.22 Consumer Guarantees:** That this Agreement is entered into solely for your business purposes and therefore, The Consumer Guarantees Act 1993 does not apply to this Agreement and:

- (a) no warranty, guarantee or other assurance of any kind is given by us to you in respect of the Collateral; and
- (b) all such warranties, guarantees and assurances (whether claimed to have been made or implied) are excluded to the maximum extent permitted by law.

**3.23 Agreement to Mortgage:** To mortgage all of your present and future right, title and interest in land to us as security for payment of all moneys payable by you under this Agreement. You must execute in our favour upon our request a registrable mortgage in such form as we may require over any land or interest in land which you may presently hold or subsequently acquire as security for payment of all moneys payable under this Agreement.

**3.24 Financial Information:** To provide us with management account's and end of year financials upon our request.

#### 4. Breach by You

If any Enforcement Event occurs, then:

- 4.1 Moneys Due:** All moneys owing and unpaid under this Agreement will be immediately payable even if the time for payment has not arrived;
- 4.2 Take possession of Collateral:** We may enter the Premises or enter any other premises where the Collateral is located as your agent for the purpose of repossessing the Collateral and take possession of the Collateral.
- 4.3 Sell Collateral:** We may sell the Collateral or any part of it in such manner as we consider expedient. We may allow time for payment of purchase money and may buy in the Collateral at auction. We can rescind or vary the terms of sale and resell without being answerable for loss or expense occasioned by the resale. We may do anything necessary to give effect to any sale.

#### 5. Some Incidental Provisions

- 5.1 Accessories:** You acknowledge that any accessories or goods (including replacement parts) supplied with or for any Collateral during the term of this Agreement shall become part of the Collateral for all purposes and shall be subject to the Security Interest contained in this Agreement.
- 5.2 Collateral Securities:** This Agreement shall be collateral with all other deeds, securities, documents and agreements given to us by any person to secure the money payable under this Agreement. All such documentation shall be read and construed together so that a default under one shall constitute a default under all. With respect to any such default we may exercise our rights, powers and remedies under any of them in such order as we think fit.
- 5.3 Conflict:** In the event of conflict between the terms of this Agreement and the terms of any collateral security the terms of this Agreement will prevail.
- 5.4 Illegal Provisions Severed:** You agree that if any provision of this Agreement is illegal, that provision will be severed from this Agreement without affecting the remaining provisions.
- 5.5 Time of the Essence:** You agree that time is of the essence of your obligations to us.
- 5.6 Rights Cumulative:** The rights provided in this Agreement and each collateral security are cumulative and not exclusive of any rights provided by law.
- 5.7 Reinstatement:** If any payment made under this Agreement is required to be repaid by any law, that payment will be deemed not to have affected or discharged your liability and we will to the extent permitted by law be restored to the position in which we would have been had such payment not been required to be repaid.
- 5.8 Attorney:** You irrevocably appoint us and each of our officers severally as your attorney to do, at your risk and cost, anything you are required to do under this Agreement including to execute any mortgage pursuant to clause 3.23 or to make any insurance claim in respect of the Collateral.
- 5.9 No Liability:** We are not liable, whether in contract, tort (including but not limited to negligence), or as mortgagee in possession, or otherwise to you for any loss or damage (including indirect or consequential loss, and loss of business or other profits) suffered or incurred or claimed to have been suffered or incurred by you or any other person under or in connection with this Agreement or the use or operation of the Collateral or resulting from the exercise or purported exercise of any rights conferred on us by this Agreement or any Collateral security.
- 5.10 Indemnity:** You agree to indemnify us against the following:
- (a) any liability arising in connection with the possession or use or operation of the Collateral by you;
  - (b) any loss of, damage to or destruction of the Collateral; and
  - (c) any liability, loss or expense we incur as a result of your default under this Agreement or the exercise of any right power and remedy under this Agreement.
- 5.11 Third Party Protection:** Our receipt or the receipt of our agent will discharge any purchaser in respect of the payment of any purchase money. No purchaser will be required to enquire as to the propriety or regularity of any sale or be affected by knowledge that such sale is improper or irregular.
- 5.12 Costs:** You agree to reimburse us for all costs (including legal costs on a solicitor and own client basis) incurred by us in relation to the preparation and execution of this Agreement, registering, maintaining and discharging a Security Interest in relation to the Collateral, repossessing the Collateral, repairing the Collateral, enforcing or attempting to enforce this Agreement including with

such amount as we may reasonably determine is necessary to compensate us for any administrative action taken by our personnel in connection with this Agreement.

- 5.13 Performance by Us:** If you fail to observe or perform any obligation on your part contained or implied in this Agreement or if we consider it necessary or desirable to pay any moneys or incur any expenses in order to protect our interest under this Agreement, then we may perform such obligations, pay such money, or incur such expenses and any moneys so paid or expenses so incurred will be payable by you to us.
- 5.14 No Waiver:** We will not be prevented from enforcing any of our rights under this Agreement because on an earlier occasion we did not enforce those rights.
- 5.15 Notices:** All notices to be given pursuant to this Agreement shall be given in accordance with sections 185 to 189 of the PPSA.
- 5.16 Privacy Act:** You authorise us to request information about you from other people for the purposes of this Agreement and to collect and hold that information and authorise those people to disclose that information to us. Such purposes may include assessing your creditworthiness, administering and enforcing this Agreement, offering you insurance, maintaining credit records with us, a related company and external agencies, marketing goods and services provided by us, a related company or any other supplier nominated by us. You also authorise us to disclose information collected by us under this clause to any external agency for any of the purposes described above or to any potential assignee of this Agreement or any other person providing us with services in connection with this Agreement. If any Enforcement Event occurs you authorise us to disclose any information about you to any agency for the purposes of debt collection or to any credit agency who may in turn release that information to other customers. Such information will be held by us at our business address and by other parties for the purposes described above. We acknowledge that the Privacy Act 2020 may entitle you to have access to this information and if necessary, request the correction of this personal information.
- 5.17 Variations:** Except as provided in clause 3.5, this Agreement may only be varied or modified in writing executed by both parties.
- 5.18 Governing Law:** This Agreement shall be governed by New Zealand law.
- 5.19 Personal Property Securities Act 1999:**
- (a) You acknowledge that this Agreement creates a Security Interest in the Collateral as security for your obligations to us under this Agreement and that we may register a financing statement to perfect this Security Interest in the Personal Property Securities Register.
  - (b) You must sign and deliver any documents and do anything else that we require to ensure that we have a perfected first ranking security interest in the Collateral under the PPSA.
  - (c) You waive any right to receive a copy of a verification statement under the PPSA and agree that to the extent permitted by law:
    - (i) Where we have rights in addition to, or existing separately from those in Part 9 of the PPSA, those rights will continue to;
    - (ii) Sections 114(1)(a), 133 and 134 of the PPSA will not apply; and
    - (iii) You will have none of the rights referred to in sections 116, 120(2), 125, 129 and 131 of the PPSA and you waive your rights to object under section 121.
- 5.20 Overpayment:** Where at the date this Agreement terminates a credit is due to you though you having overpaid any amount due, then we may deduct a processing fee before refunding that credit.
- 5.21 Commission:** You acknowledge that we or any broker, agent, dealer or other person who introduces you to us may receive commission, fees or other remuneration for providing such introduction.
- 5.22 Set Off:** In addition to any other rights we may have, we may at any time (without prior notice to you) apply any amount owed or to become owing by us to you on any account against any amounts payable to us by you (either jointly or separately) under this Agreement or any other agreement.
- 5.23 Counterparts:** This Agreement may be signed in any number of counterparts, all of which together shall constitute one and the same document. Any party may enter into this Agreement by signing any such counterpart.
- 5.24 Copies:** Any copy of this Agreement that is received by facsimile or via email in PDF or other document reproduction format (including any copy of any document evidencing a party's signature to this Agreement) may be relied on by any party and presented in

evidence in any legal proceedings as though it were an original copy of this Agreement. This Agreement may be entered into on the basis of an exchange of facsimile, PDF or other document reproduction format.

## 6. Assignment

We are entitled to assign our rights under this Agreement to another person either by way of sale or by way of security. You may not assign your rights under this Agreement without our prior written consent.

## 7. Trustee Provisions

Where you are identified in the Schedule as a trust (the "Trust") then the following provisions shall apply:

**7.1 Liability of Independent Trustees:** The liability of an Independent Trustee under this Agreement will be limited to the assets of the trust. However, if we incur loss due to an intentional default or the dishonesty in breach of trust by any Independent Trustee, that trustee will be personally liable to us to the extent the trust assets do not satisfy the loss. This Agreement will be binding upon each trustee who is not an Independent Trustee both personally and in his or her capacity as trustee.

**7.2 Warranties:** The trustees warrant that:

- (a) they are entering into this Agreement for the proper purposes of the Trust;
- (b) they have the power and authority under the trust deed constituting the Trust to enter into this Agreement; and
- (c) they have the right to be indemnified from the assets of the Trust for the liabilities they incur under this Agreement.

## 8. How to interpret this Agreement

**8.1 Defined Terms:** Unless the context otherwise provides, the following terms and expressions have the following meanings where used in this Agreement:

**"Advance"** means the Initial Unpaid Balance specified in the Schedule;

**"Agreement"** means this Agreement (incorporating the Schedule and these terms and conditions) as amended from time to time;

**"Collateral"** means the property described as the Collateral in the Schedule and includes any proceeds of that property;

**"Debtor", "You" and "Your"** are references to the party named as Debtor in the Schedule;

**"Oxford", "Our", "Us" and "We"** are references to Oxford Finance Limited;

**"Enforcement Event"** means the occurrence of any of the following events:

- (a) Do Not Pay Moneys: you do not pay any money payable under this Agreement when due;
- (b) Breach: you do not perform or comply with any other obligation you have under this Agreement;
- (c) Insolvency: you are, in our opinion, unable to pay your debts as they fall due or are deemed to be insolvent under any law;
- (d) Insurance Cancelled: if any insurance policy in respect of the Collateral is cancelled by the insurer;
- (e) Collateral at Risk: if we believe the Collateral is "at risk" (as defined in section 109(2) of the PPSA);
- (f) Cross Default: you fail to pay any indebtedness owed to any person on its due date;
- (g) Composition: you stop payment to or enter into any composition or other arrangement with your creditors generally;
- (h) Enforcement: any distress or execution is levied upon or against any of your assets or any of your property or assets are seized or appropriated by any person or a security over any of your assets becomes enforceable;
- (i) Judgment: any judgment is obtained against you and remains unsatisfied for more than 14 days;
- (j) Cease Business: you cease or threaten to cease to carry on business or dispose of a substantial part of your business, property or assets;
- (k) Liquidation: any steps are taken for your liquidation or dissolution;

(l) Receivership: a Receiver, liquidator or statutory manager is appointed to you or over any of your assets or any resolution is passed or step taken for the appointment of any such person; Constitutional Documents: you alter your constitutional documents in a way that, in our opinion, adversely affects our interests; or

(m) Change in control; there is a change in the effective control or management of you, without our prior written consent.

**"Guarantor"** means the person or persons named as Guarantor in the Schedule;

**"Independent Trustee"** means a trustee in respect of whom each of the following statements is correct:

- (a) the trustee is identified on the schedule of this Agreement as acting as an Independent Trustee of the Trust; and
- (b) the trustee is not a settler or a beneficiary of the Trust; and
- (c) in the case of a corporate trustee, no director of the trust is a settler or beneficiary of the Trust

**"Laws"** means Acts of Parliament, regulations and by-laws;

**"PPSA"** means the Personal Property Securities Act 1999;

**"Premises"** means the premises described on the front page of this Agreement at which the Collateral is to be kept;

**"Receiver"** includes a receiver and manager;

**"Security Interest"** has the meaning given to that term in the PPSA;

**"Term"** means the period commencing on the date of this Agreement and ending on the date all moneys payable under this Agreement have been paid in full.

Any other term used in the Schedule will have the same meaning where used in these terms and conditions.

**8.2 Headings:** Headings are for guidance only and do not affect the interpretation of this Agreement.

**8.3 Plural and Singular:** References to the plural number include the singular and vice versa.

**8.4 Successors:** References to a person include (as applicable) that persons successors, executors and permitted assigns.

**8.5 Joint and Several:** If more than one person executes this Agreement as Debtor, references to the Debtor in this Agreement shall include each such person and any two or more of them and shall bind each such person under this Agreement jointly and severally.

## 9. The terms of the Guarantee

In consideration of Oxford at the Guarantor's request agreeing to execute this Agreement, the Guarantor:

**9.1 Guarantee:** Guarantees to Oxford the due and punctual payment by the Debtor of all moneys payable by the Debtor under this Agreement and the due and punctual performance of all obligations imposed upon or assumed by the Debtor in favour of Oxford in terms of this Agreement.

**9.2 Indemnity:** As a separate and additional obligation, covenants with Oxford that it will indemnify Oxford from and against any liability, loss or damage that Oxford may incur by reason of any breach by the Debtor of the Debtor's obligations under this Agreement or any term of this Agreement or by reason of this Agreement being or becoming void or unenforceable.

**9.3 Nature of Liability:** agrees that:

- (a) If more than one person is named in this Agreement as Guarantor their liability is joint and several;
- (b) this guarantee is a continuing guarantee and remains in full force and effect and is not discharged by any payment or anything else until Oxford has signed and delivered a release;
- (c) the Guarantor's obligations under this guarantee are principal obligations and may be enforced against the Guarantor without Oxford being required to first exhaust any remedy against the Debtor or to enforce any security Oxford may hold;
- (d) the Guarantor's obligations are absolute and that no waiver, granting of time or other indulgence, variation or modification of the Debtor's obligations under this Agreement or the doing or omission to do anything which would release a person liable as surety only will release the Guarantor from liability under this guarantee;
- (e) until all moneys payable by the Debtor under this Agreement have been paid in full, the Guarantor may not exercise any rights as surety in competition with Oxford.

**9.4 Further Assurances:** Agrees to execute in favour of Oxford upon request by Oxford a registrable mortgage in such form as Oxford may require over any land or interest in land which the Guarantor may presently hold or subsequently acquire as security for payment of all moneys payable under this Agreement.

**9.5 Power of Attorney:** Irrevocably appoints Oxford and every officer of Oxford severally to be the attorney of the Guarantor at the risk and cost of the Guarantor to execute any mortgage which the Guarantor has promised to execute pursuant to clause 9.4 and 9.5 and to do everything necessary to procure registration of such mortgage.

## FEES AND CHARGES

### Application / Approval / Account Maintenance

**Application Fee:** This is a fee for receiving and processing the loan applications together with acceptance and establishment of the loan and is added to the loan contract when the loan is drawn.

Standard Fee: \$250 (this may differ for specialised loans)

All other commercial loans:

Up to \$50,000	\$750
\$50,000 - \$100,000	\$1,000
\$100,000 +	1%

**Account Maintenance Fee:** This fee is part of the loan installment and is for the maintenance service provided. The fee is charged at: Monthly Loan Installment \$5.00 per month

**Direct Costs:** These are actual costs that have been incurred for services that relate directly to the approval of your advance:

PPSR lodgment	\$8.05
Secured Signing	\$1.50 per search
Ilion	\$1.95 per search
AplyID	\$3.50 per search
Motorweb	\$7.95 per search

**Caveat Fee:** Where a loan is secured by a caveat / agreement to mortgage we will register a caveat over the property, caveat registration costs will be charged to the loan to a maximum of \$322.00 for each property. NB: Upon settlement, costs may be incurred for the release of the mortgage.

**Mortgage Fee:** For any loan where we register a mortgage over a property, mortgage registration costs will be charged to the loan to a maximum of \$386.00 for each property.

**Early Repayment Fee \$30:** Administration fee charged to the loan account when the account is settled early. NB: A charge of 3 months interest can also be charged on the event of settlement prior to the maturity date of the loan.

### Modifications

**Contract Variation (Security) \$75.00:** Fee is charged when the goods/ security on the loan contract are changed.

**Contract Variation (Term or Amount) \$75.00:** Fee is charged when the term or amount on the loan contract are changed.

### Collections

**Dishonoured Payment Fee \$10.00:** Fee is charged to the loan account in the event of a payment tendered to the account is dishonoured by the Debtor's bank.

**Pre-Possession Letter \$50.00:** Fee is charged to a loan account when a Prepossession Notice is issued. This is generally 12-15 days after a breach of terms (e.g. overdue installments).

**SMS/Email Charge \$2.00:** Fee is charged to the loan account where we are attempting to contact the client by SMS message service after a breach of agreement has occurred (e.g. overdue installments).

**Phone Call \$3.00:** Fee is charged to the loan account where a Credit Controller is attempting to contact the Debtor regarding overdue amounts on the loan account where the loan account has been in arrears more than 10 days.

**Repossession Order \$100.00:** Fee charged to the loan account when it is necessary to issue a Repossession Warrant as a result of a serious default (e.g. overdue installments). This amount along with the arrears and any agent costs are due and payable immediately to avoid repossession.

**Recovery Costs:** Costs incurred by a third party (e.g. repossession agent, legal provider, repairer) will be charged to a loan account for the invoiced amount, copies of which are available upon request.

**Formal Demand (Mortgage) \$30.00:** Fee is charged to a loan account for a Demand issued when the loan account has a serious breach of agreement. Formal demand is issued prior to a Property Law Notice.

**Property Law Notice (Mortgage) \$200.00:** Fee is charged to the loan account when a serious breach of agreement has occurred (e.g. overdue installments).

**Post-Possession Notice \$50.00:** A Post possession Notice is issued within 21 days of the taking of goods by the Creditor. Fee for the issue of Post possession Notice will be charged to the loan account.

**Statement of Account After Sale \$85.00:** Fee is charged to the loan account following production and service of this notice after sale of goods within 10 days of the sale being effected

## YOUR RIGHTS

You are protected by responsible lending laws. Because of these protections, the recommendations given to you about this commercial loan are not regulated financial advice as described in the Financial Services Legislation Amendment Act 2019. This means that duties and requirements imposed on people who give financial advice do not apply to these recommendations. This includes a duty to comply with a code of conduct and a requirement to be licensed.

## ACKNOWLEDGEMENT

The Debtor and the Guarantors acknowledge that they have received, read, understood and are bound by the terms of this Agreement.

AccountWitnessSignatureBlock