

Date

2020

## Parties

Name [•]  
Registration number [•]  
New Zealand Business Number [•]  
Short form name **Debtor**  
Notice details [•]

Name [•]  
Registration number [•]  
New Zealand Business Number [•]  
Short form name **Guarantor**  
Notice details [•]

Name Squirrel P2P Trustee Limited  
Registration number 5077521  
Short form name **Secured Party**  
Notice details Squirrel Group, 20 Beaumont Street  
Auckland Central  
Auckland 1010

## Background

- A To secure to the Secured Party payment or delivery of the Secured Money and compliance with the Secured Obligations, each Debtor has agreed:
- (a) to grant to the Secured Party a security interest in that Debtor's Personal Property;
  - (b) to charge to the Secured Party that Debtor's Other Property; and
  - (c) to mortgage to the Secured Party that Debtor's present and future interests in any Real Property.
- B Each Debtor has agreed to do this in return for the Secured Party providing certain financial accommodation to the Debtors from time to time and other valuable consideration.

# Agreed terms

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## 2. Priority amount

**Priority Amount** is \$[●] plus interest (and if is not specified, to the extent permitted under the PLA, will be the multiple of 2.0 times the Secured Money).

## 3. Defined terms and interpretation

### 3.1 Defined terms

In this document, unless otherwise defined herein or the context requires otherwise, capitalised terms have the meaning given to them in the Loan Agreement (as defined below), and:

**Attorney** means a person (including a Receiver) appointed as attorney under this document, and includes any agent or delegate.

**Authorised Representative** means a director or:

- (a) in respect of a Debtor, a person it notifies to the Secured Party (with a certified copy of that person's specimen signature) as being its authorised representative for the purposes of the Finance Documents where the Secured Party has no notice of revocation of that authority; and
- (b) in respect of the Secured Party, or a person whose title or acting title includes "manager", "director", "executive", "chief", "head", "counsel" or "president", or a person notified to the other parties as being its authorised representative for the purposes of the Finance Documents.

**Collateral Security** means each security interest (other than the security interest created under this document) granted at any time by a Debtor or any other person at the express or implied request of a Debtor in favour of the Secured Party (whether alone or with any other person) to secure payment and/or delivery of any or all of the Secured Money.

**Companies Act** means the *Companies Act 1993*.

**Debtors** means the Borrower and any Guarantors that are party to this document and **Debtor** means any one of them.

**Dollars** and **NZ\$** mean the lawful currency of New Zealand.

**Excluded Property** means any property in relation to which it is prohibited to provide for a security interest under Part 3A subpart 6 of the *Credit Contracts and Consumer Finance Act 2003*.

**Investigator** means an investigator appointed by the Secured Party under this document.

**Loan Agreement** means the Loan Agreement Summary (incorporating the General Terms and Conditions) dated on or about the date of this document between the Debtors and the Secured Party.

**Notice** means a notice, demand, consent, approval or communication given in accordance with clause 18.

**Material Contract** means,

- (a) any agreement or arrangement for or in connection with the construction, development, redevelopment or refurbishment of the Property, or any part of the Property;

- (b) any lease agreement in respect of the Property or any part of the Property, and includes any agreement to lease, any other present or future lease agreement, tenancy or licence in respect of the Property or any part of the Property and any renewal or variation of any other agreement in respect of the Property or any part of Property;
- (c) any pre-sale agreements in respect of the Property, or any part of the Property;
- (d) any document that the Lender and the Borrower agree is a “Material Document” for the purposes of this document; or
- (e) any other document which the Borrower is required to assign to the Lender by way of security.

**Other Property** means, in relation to a Debtor, all of that Debtor’s present and future interests in, and all of that Debtor’s present and future rights in relation to, any Real Property and any other assets, other than any Personal Property.

**[Permitted Security Interest** means, any Security Interest in respect of the assets of a Debtor which has been expressly permitted by the Secured Party.]

**Personal Property** means, in relation to a Debtor, all of that Debtor’s present and after-acquired personal property to which the PPSA applies, and all of that Debtor’s present and future rights in relation to any personal property to which the PPSA applies, excluding any Excluded Property.

**PLA** means the *Property Law Act 2007*.

**PPSA** means the *Personal Property Securities Act 1999*.

**Real Property** means, in relation to a Debtor, all of that Debtor’s present and future estates and interests in freehold and leasehold land, and in all buildings, structures and fixtures from time to time on that land.

**Receiver** means a receiver, or receiver and manager, appointed under this document.

**Receiverships Act** means the *Receiverships Act 1993*.

**Records** means, in relation to a person, all information relating in any way to that person’s business or any transaction entered into by the person, whether recorded electronically, magnetically or otherwise.

**Secured Money** means any and all indebtedness and monetary liabilities (in any currency) that an Obligor is or may become liable at any time (whether alone or not or in any capacity) to pay to, or for the account of, the Secured Party.

**Secured Obligations** means all present and future obligations which an Obligor (whether alone or with any other person and in any capacity) has or owes to the Secured Party (whether alone or with any other person in any capacity), other than obligations to pay or deliver any Secured Money.

**Secured Property** means the Personal Property and the Other Property, and includes any part of it.

### 3.2 PPSA terms incorporated

In this document, unless the context requires otherwise, the following words and expressions (and grammatical variations of them) have the same meanings as are given to them in the PPSA: **at risk, attach, financing statement, future advance, investment security, proceeds,**

**purchase money security interest, security interest, transfer, value and verification statement.**

### 3.3 References

Unless the context requires otherwise, in this document:

- (a) an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (b) **at any time** includes from time to time;
- (c) **costs** incurred by a person includes all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;
- (d) **distribution** has the meaning given to that term in the Companies Act;
- (e) to **grant a security interest** includes to charge, mortgage, pledge, encumber, assign by way of security and transfer by way of security;
- (f) **including** and similar expressions do not limit what else may be included;
- (g) **indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment or repayment of money;
- (h) **law** includes any common law, equity and any statute;
- (i) a **person** includes:
  - (i) an individual, body corporate, association

of persons (whether corporate or not), trust, state, agency of a state and any other entity (in each case, whether or not having separate legal personality); and

- (ii) that person's successors, permitted assigns, executors and administrators (as applicable);

- (j) an Event of Default **subsists** until either:

- (i) remedied to the Secured Party's satisfaction; or
- (ii) waived by the Secured Party in writing in accordance with this document.

### 3.4 Interpretation

In this document:

- (a) headings are for reference only and do not affect interpretation;
- (b) references to clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (c) any undertaking, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (d) reference to a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (e) reference to any thing includes any part of it and a reference to

- a group of things or persons includes each thing or person in that group;
- (f) reference to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (g) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (h) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day; and
- (i) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.
- Real Property and Secured Property (as the case may be) of all the Debtors;
- (c) this document binds all Debtors jointly and each Debtor severally; and
- (d) where any Secured Money comprises indebtedness, or a Secured Obligation is an obligation of one Debtor alone or of some but not all of the Debtor (the **principal indebtedness or obligation**), then:
- (i) each Debtor is nevertheless jointly and severally liable for, and in relation to, that principal indebtedness or obligation; and
- (ii) that principal indebtedness or obligation is secured by all the Secured Property of each Debtor.

### 3.5 More than one Debtor

If there is more than one Debtor, in this document:

- (a) a reference to Debtor is a reference to each Debtor severally as well as to all Debtors jointly;
- (b) when used with reference to a Debtor, Other Property, Personal Property, Real Property and Secured property means the Other Property, Personal Property, Real Property and Secured Property (as the case may be) of that Debtor and, when used without reference to a particular Debtor, means the Other Property, Personal Property,

## 4. Grant of security

### 4.1 Security interest

To secure to the Secured Party payment or delivery of the Secured Money and performance of the Secured Obligations, each Debtor:

- (a) grants a security interest in the its Personal Property to the Secured Party;
- (b) charges to the Secured Party its Other Property; and
- (c) agrees to mortgage to the Secured Party its present and future interests in any Real Property.

## 4.2 Transfer and assignment

The Security Interest granted under clause 4.1 shall:

- (a) **(transfer)** to the extent that it relates to present and future accounts receivable and chattel paper, and present and future rights in relation to any accounts receivable and chattel paper, take effect as a transfer to the Secured Party; and
- (b) **(assignment)** to the extent that it relates to present and future rights or choses in action to which paragraph (a) above does not apply, take effect as an assignment by way of security to the Secured Party.

## 4.3 Nature of charge in relation to Other Property

The charge created under this document is a fixed charge in relation to Other Property. However, if that charge is not legally and fully effective as a fixed charge then, for so long as and to the extent it may not be so legally and fully effective, that charge is a floating charge until such time as it becomes a fixed charge by virtue of clause 4.4.

## 4.4 Crystallisation of floating charge

Any floating charge created under this document will become a fixed charge:

- (a) **(without notice)** automatically, without the need for any notice or action by the Secured Party, immediately prior to or, if that would not result in the fixed charge being legally and fully effective, contemporaneously with, the occurrence of any Event of Default; or
- (b) **(with notice)** on notice from the Secured Party to the relevant Debtor, in respect of

such of the Other Property subject to that floating charge as is specified in the notice, if, in the Secured Party's opinion, any of that Other Property is or might be or become seized or taken, subject to any Security Interest other than a Permitted Security Interest, or otherwise in jeopardy.

## 4.5 Continuing security and obligations

The Security Interest granted under this document is a continuing Security Interest until the Secured Party releases all Secured Property from the Security Interest granted under this document, despite any intermediate payment, discharge, settlement, release or other matter. Each Debtor's obligations under this document continue despite any full or partial release of Secured Property.

## 4.6 Mortgage

Each Debtor shall, if the Secured Party requires at any time, promptly:

- (a) grant in favour of the Secured Party an all obligations mortgage in the form required by the Secured Party over such of that Debtor's interests in any Real Property as the Secured Party may require; and
- (b) deliver to the Secured Party any document, and do any other thing, which the Secured Party requires in order to register any such mortgage.

Each Debtor acknowledges and agrees that any such mortgage shall be in substitution for the agreement to mortgage given by the relevant Debtor in clause 4.1(c) and shall not in any way affect, or limit, the Security Interest granted under clause 4.1.

## 5. Priority

### 5.1 Priority of Security Interest in Secured Property

The Security Interest granted in the Secured Property has the same priority in relation to all Secured Money, including future advances. Nothing in this clause 5.1 restricts the Secured Party from claiming that the Security Interest is a purchase money security interest in respect of all or part of the Secured Property.

### 5.2 No agreement or consent to subordination or attachment

Nothing in this document may be construed as an agreement or consent by the Secured Party to:

- (a) **(subordination)** subordinate the Security Interest created under this document in favour of any person;
- (b) **(security)** any Security Interest attaching to or being created in any Secured Property other than a Permitted Security Interest; or
- (c) **(deferral of attachment)** defer or postpone the date of attachment of the Security Interest created under this document in any Secured Property;
- (d) **(accessions to Personal Property)** any personal property that is not Personal Property becoming an accession to any Personal Property; or
- (e) **(accessions to non-Secured Property)** any Personal Property becoming an accession or affixed to any asset that is not Secured Property.

### 5.3 Section 92 PLA

For the purposes only of section 92 of the PLA, the maximum amount up to which the Secured Money will rank in priority to any subsequent security over any Other Property is the Priority Amount set out in clause 2.

### 5.4 Contrary agreements

This clause 5 is subject to any written agreement to the contrary between the parties, including the overriding provisions of any subordination and/or priority agreement entered into by the Secured Party in respect of any other holder of security.

## 6. Covenants to pay and comply

### 6.1 Pay Secured Money

Each Debtor agrees that it will pay or procure payment of the Secured Money to the Secured Party:

- (a) at the times and on the terms stipulated in the other Finance Documents; or
- (b) to the extent that there is no such stipulation, on demand and otherwise in accordance with this document or as the Secured Party directs.

### 6.2 Comply with Secured Obligations

Each Debtor agrees that it will comply with or procure compliance with the Secured Obligations.

## 7. Representations, Warranties and Undertakings

## 7.1 Representations, warranties and undertakings incorporated

The representations, warranties and undertakings contained in clauses 19 to 30 (inclusive) of the General Terms and Conditions are deemed incorporated and repeated here in full (with any necessary amendments).

## 7.2 Positive undertakings

Each Debtor must:

- (a) **(Material Contracts):**
  - (i) comply, and in the case of a Debtor who is not the Borrower ensure that the Borrower complies, with the terms of each Material Contract;
  - (ii) procure compliance by each other party with the terms of a Material Contract; and
  - (iii) take all reasonable steps to enforce the Borrower's rights under each Material Contract; and

## 7.3 Negative undertakings

Each Debtor agrees that, unless the Secured Party has otherwise consented in writing, it will not:

- (a) **(change of name)** change its name without giving at least 14 days' prior written notice to the Secured Party;
- (b) **(Material Contracts):**
  - (i) take steps to terminate any Material Contract;
  - (ii) waive any material breach of any Material Contract by any other party;

- (iii) assign or procure the assignment of the Debtor's rights, interests or obligations in any Material Contract;
- (iv) vary, or agree to any variation of any material term in a Material Contract;
- (v) extend, or agree to any extension of, any dates for performance in any Material Contract; or
- (vi) consent to any other party assigning its interest in any Material Contract.

## 7.4 Information undertakings

Each Debtor agrees that, unless the Secured Party has otherwise consented in writing, it will:

- (a) **(notify changes relating to Secured Property)** notify the Secured Party promptly:
  - (i) if any Secured Property becomes a fixture otherwise than as permitted by clause 7.5(c);
  - (ii) if any personal property which is not Secured Property and which is subject to a Security Interest which has attached becomes an accession to any Secured Property;
  - (iii) if any Secured Property is moved outside New Zealand;
  - (iv) on the Secured Party's request, of the present location of any Secured Property;



- (v) if it acquires, or enters into an agreement to acquire, any investment securities or chattel paper;
  - (vi) if the Secured Party has requested under clause 7.5(f):
    - (A) of the acquisition of any serial numbered goods (including motor vehicles) which are not inventory and which form part of that Debtor's assets and, in respect of those serial numbered goods, all the details referred to in the Schedule;
    - (B) of the details of any serial numbered goods (including motor vehicles) which cease to be inventory of that Debtor; and
  - (vii) of any matter adversely affecting the Secured Property;
- (b) **(notify insurers and others)** notify each insurer of that Debtor and each other person from whom that Debtor is entitled to receive or claim any account receivable or chattel paper, or the indebtedness or entitlement, of the transfer and assignment referred to in clause 4.2;
  - (c) **(notify Material Adverse Effects)** notify the Secured Party of the occurrence of any event or circumstance which would constitute a Material Adverse Change, immediately on becoming aware of it (providing the Secured Party with full details of it and any action taken or proposed to be taken in relation to it); and
- (d) **(other information)** provide to the Secured Party promptly such further information regarding the financial condition, business and operations of it or any other Debtor as the Secured Party requests.

## 7.5 Undertakings relating to Secured Property

Each Debtor must:

- (a) **(other Security Interests)** unless the Secured Party first consents in writing:
  - (i) not create any Security Interest over the whole or part of its assets, other than a Permitted Security Interest (or, if by law its creation cannot be restricted, that Debtor must procure that the holder of the Security Interest first enters into a priority arrangement in form and substance acceptable to the Secured Party); and
  - (ii) ensure that there is no increase in the amount secured under a Security Interest held by someone other than the Secured Party in respect of the Secured Property;
- (b) **(no disposal)** not, whether by a single transaction, or a number of related or unrelated transactions and whether at the

- same time or over a period of time, dispose of any of its assets;
- (c) **(accessions and fixtures)** not allow any Personal Property to become an accession or a fixture to any asset (other than land) that is not Secured Property (or otherwise subject to a Security Interest in favour of the Secured Party) or to be affixed to any land (other than any freehold interest in land in respect of which the Secured Party has a first ranking registered mortgage);
- (d) **(location of Secured Property)** not move (or allow to be moved) any Secured Property situated in New Zealand as at the date of this document outside New Zealand;
- (e) **(no prejudice to Secured Property)** not do or allow to occur (or omit to do) anything which might:
- (i) result in the Secured Property, any right or interest of a Debtor in the Secured Property, or any Collateral Security, being or becoming invalid, unenforceable, liable to forfeiture or cancellation;
  - (ii) result in any deterioration in value of any Secured Property (other than by reason of fair wear and tear); or
  - (iii) otherwise adversely affect any Collateral Security;
- (f) **(serial numbered goods)** if, at the time this document is signed by that Debtor or if the Secured Party so requests and at the time of the request, the Personal Property includes serial numbered goods (including motor vehicles) which are not inventory, complete the details referred to in the Schedule and provide a copy to the Secured Party;
- (g) **(maintain and repair Secured Property)** keep and maintain the Secured Property in a good state of repair and in good working order and condition and protect it from loss or damage and remedy any defects in the repair, order or condition of any Secured Property;
- (h) **(access and inspection)** ensure that the Secured Property and each Debtor's Records relating to the Secured Property are available for inspection (and in the case of Records, for copying) by the Secured Party and persons authorised by the Secured Party:
- (i) during business hours; and
  - (ii) at any time without prior notice while an Event of Default subsists or while an event or circumstance subsists that the Secured Party believes exposes a substantial part of the Secured Property to risk of loss, damage or material reduction in value,
- and in each case each Debtor must assist with each

- inspection (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same;
- (i) **(protect title)** protect and enforce its title to, and the Secured Party's title as Secured Party of, the Secured Property;
  - (j) **(further assurances)** at its own cost, do (and procure that anyone else who has an interest in the Secured Property or who claims under or in trust for a Debtor does) all things that the Secured Party requires in order to:
    - (i) perfect or improve that Debtor's title to, or other right or interest in, all or any part of the Secured Property;
    - (ii) perfect, preserve, maintain, protect or otherwise give full effect to the Security Interest create under this document and the priority of that Security Interest required by the Secured Party (including for the Secured Party to register and maintain one or more financing statements in relation to the Security Interest in Personal Property or to remove any financing statement which is registered against that Debtor or any caveat which is lodged against land which is Other Property in relation to any Security Interest); and
  - (iii) secure more satisfactorily to the Secured Party payment or delivery of the Secured Money and compliance with the Secured Obligations (including the granting of further specific security in the form required by the Secured Party and depositing with the Secured Party documents or evidence of title and any transfers in relation to investment securities);
  - (iv) facilitate the exercise of any right by the Secured Party or any Receiver or Attorney at any time or the realisation of the Secured Property following the occurrence of an Event of Default including the exercise of all rights of inspection, requesting all Records and taking all necessary copies, which that Debtor is entitled to exercise, request or take; and
  - (v) otherwise enable the Secured Party to obtain the full benefit of the provisions of any Finance Document.

## 7.6 Representations relating to the Secured Property

Each Debtor represents and warrants to the Secured Party that:

- (a) **(existing Secured Property)**
  - (i) it has good title to, and is the sole legal and

- beneficial owner of, the Secured Property;
- (ii) no security interest, other than a Permitted Security Interest, exists over any Secured Property;
- (iii) the right, title, assets and undertakings over which a Security Interest is purported to be created in favour of the Secured Party are capable of being encumbered by, and constituting Secured Property under, the Security Interest;
- (iv) it has not entered into any agreement to give or permit to exist a Security Interest over or affecting the Secured Property;
- (v) it is lawfully entitled to create, in favour of the Secured Party, a Security Interest in all the Secured Property; and
- (b) **(serial-numbered goods)** the information in the Schedule, if any, is true and correct and includes the details of all that Debtor's serial-numbered goods (if any) that are not inventory,

and each of the above representations will be deemed to be repeated continuously so long as this document is in effect by reference to the facts and circumstances then existing.

## 8. Events of Default

### 8.1 Consequences of an Event of Default

If an Event of Default occurs:

- (a) **(security enforceable)** the Security Interest created under this document will become immediately enforceable;
- (b) **(floating charge)** the floating charge created under this document will become a fixed charge in accordance with clause 4.4(a), to the extent that it is not already fixed; and
- (c) **(Secured Party's rights)** the Secured Party may do any or all of the following:
  - (i) on notice to the relevant Debtor terminate any or all of the Secured Party's obligations under the Finance Documents;
  - (ii) declare all or any part of the Secured Money to be:
    - (A) due and payable on demand, in which event that Secured Money will become due and payable on demand; or
    - (B) due and payable, in which event that Secured Money will become immediately due and payable;

- (iii) appoint a Receiver pursuant to clause 9; and
- (iv) (whether or not a Receiver has been appointed) exercise all or any rights which a person would have if appointed as a Receiver under this document.

- (f) the Prior Secured Party need not enquire whether any amount is owing under a Finance Document; and
- (g) each Debtor irrevocably directs any such Prior Secured Party to give the Secured Party any information it requires in connection with the prior Security Interest.

## 8.2 Discharge or acquire prior Security Interest

While an Event of Default subsists, the Secured Party may do any one or more of the following:

- (a) purchase a debt or liability secured by a prior Security Interest (including a debt secured by a Permitted Security Interest);
- (b) pay the amount required to discharge or satisfy that debt or liability; and
- (c) take a transfer or assignment of that Security Interest and any guarantee, document or right ancillary or collateral to it,

and, where the Secured Party exercises its rights in this clause 8:

- (d) the relevant Debtor is indebted to the Secured Party for the same amount paid by the Secured Party or the amount of the debt or liability acquired (whichever is higher) and that amount is immediately payable to the Secured Party and forms part of the Secured Money;
- (e) the Secured Party may rely on a written notice from the holder of a prior Security Interest (**Prior Secured Party**), or on an ancillary or collateral document, as to the amount and property secured by that prior Security Interest;

## 8.3 Co-operation in exercise of power of sale

If the Secured Party or a Receiver or an Attorney wishes to exercise a right to sell any Secured Property, each Debtor must do or cause to be done all things necessary to enable an expeditious sale and transfer to the purchaser for the value as estimated by the Secured Party, in the manner and on terms the Secured Party thinks fit.

## 9. Receiver

### 9.1 Appointment of Receiver

If:

- (a) an Event of Default is subsisting; or
- (b) a Debtor so requests,

the Secured Party may appoint any person or persons (whether jointly, severally or jointly and severally) to be a Receiver of all or any of the Secured Property. The Secured Party may do this whether or not it has exercised any other right and even if dissolution of a Debtor has already commenced.

### 9.2 Additional rights

At any time on or following the appointment of any Receiver, the Secured Party may:

- (a) determine, or vary, the terms of appointment of the Receiver;

- (b) require any Receiver to give it a Security Interest or an indemnity for the due performance of the Receiver's duties;
- (c) remove any Receiver; or
- (d) appoint another Receiver in addition to, or in place of, any Receiver.

### **9.3 Remuneration**

The Secured Party may, subject to the Receiverships Act, determine or vary the remuneration of any Receiver.

Such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by each Debtor;
- (c) will form part of the Secured Money; and
- (d) will be secured by the Security Interest created under this document.

### **9.4 Receiver agent of Debtor**

Every Receiver is the agent of the Debtors except where (but only to the extent that) the Receiver is required by notice from the Secured Party to act as agent of the Secured Party. The Secured Party is not responsible for a Receiver's actions, including the misconduct, negligence or default of a Receiver.

### **9.5 Receiver's rights**

In addition to, and without limiting or affecting any other rights granted to or conferred on a Receiver (whether under the Receiverships Act, at law or otherwise), and subject to the specific terms of appointment of the Receiver, the Receiver has the right in respect of the Secured Property and each Debtor's business to do anything (whether alone or with any other person) a Debtor could do as if the

Receiver had full legal and beneficial ownership of the Secured Property and carried on that Debtor's business for the Receiver's own benefit.

### **9.6 Exercise of Receiver's rights**

Every Receiver will, to the fullest extent permitted by law, exercise its rights in compliance with any directions issued by the Secured Party, and otherwise on such terms and conditions as the Receiver requires.

### **9.7 Event of Default taken to subsist**

Each party agrees that if a Receiver is appointed under this document on the basis of an Event of Default which subsequently ceases to subsist, the Event of Default is taken to continue to subsist for the purposes of the Receiver's appointment under this document.

### **9.8 Withdrawal**

The Secured Party may at any time give up possession of any Secured Property or discontinue any receivership.

## **10. Application of amounts**

### **10.1 Order of application**

All amounts received or recovered by the Secured Party or any Receiver from the security created under this document will be applied in the manner and order determined by the Secured Party or any Receiver. In the absence of any determination, those amounts will be applied in the manner described in clause 10.2. This clause is subject to:

- (a) any claims ranking in priority to the Security Interest created under this document; and
- (b) any mandatory provisions of law (including, in the case of

any Personal Property, any mandatory provisions of the PPSA).

## 10.2 Order of application where no determination

Subject to clause 10.1, amounts received or recovered by the Secured Party or any Receiver from the security created under this document will be applied in payment:

- (a) first, of all expenses incurred by the Secured Party, the Receiver and any Attorney in the exercise, or attempted exercise, of rights under, or otherwise in connection with, any Finance Document;
- (b) secondly, of the Receiver's remuneration;
- (c) thirdly, of all other Secured Money;
- (d) fourthly, to each holder of a Security Interest of which the Secured Party is aware and which ranks after the Security Interest created under this document in relation to the relevant Secured Property, to the extent, and in the order, of such priority; and
- (e) fifthly, of any surplus to one or more of the Debtors (including for receipt on behalf of any other persons who may be entitled to the same).

## 10.3 Amounts contingently owing

If, at the time of application of any amounts under clauses 10.1 or 10.2, any part of the Secured Money is contingently owing, or not yet due and payable, to the Secured Party, the Secured Party or any Receiver:

- (a) **(retention)** may retain an amount equal to all or part of

the amount of such Secured Money;

- (b) **(deposit)** will place that retained amount in an interest bearing deposit account until such Secured Money becomes actually due and payable or ceases to be contingently owing;
- (c) **(payment)** will pay to the Secured Party from the amount retained, all amounts which become actually due and payable after that time; and
- (d) **(application)** will apply the balance of the amount retained, together with interest earned whilst on deposit, in accordance with clauses 10.1 and 10.2.

## 11. Protections

### 11.1 Notice, demand or lapse of time required by law

If a notice, demand or lapse of time is required by law before the Secured Party can exercise a Power, then for the purposes of this document:

- (a) that notice, demand or lapse of time is dispensed with to the extent allowed by that law; or
- (b) if not allowed to be dispensed with, but the period of notice, demand or lapse of time is allowed by that law to be shortened or fixed, it is shortened and fixed to one day (or, if a longer minimum period is required by law, to that period).

### 11.2 Secured Party, Receiver not restricted

The Secured Party or a Receiver need not:

- (a) exercise a Power, give a consent or make a decision under this document unless a Finance Document expressly provides otherwise; or
- (b) resort to a Collateral Security or Power before resorting to any other of them.

### **11.3 Secured Party, Receiver not mortgagee in possession or liable**

To the extent permitted by law, none of the Secured Party, a Receiver nor any Attorney will:

- (a) be, nor account or be liable as, mortgagee in possession due to exercise of a Power; or
- (b) be liable to anyone for any Loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

### **11.4 Protection of Secured Party, Receiver and Attorney**

Neither the Secured Party, nor any Receiver or Attorney is:

- (a) accountable for any proceeds of enforcement other than those proceeds actually received by it;
- (b) obliged to enforce payment of the Secured Money or compliance with the Secured Obligations;
- (c) liable in respect of any conduct or delay in the exercise, manner of exercise, attempted exercise, or non-exercise of any right by the Secured Party or a Receiver;
- (d) liable to account as mortgagee in possession in respect of the Secured Property; or

- (e) liable for any Loss resulting from, or consequential on, any of the matters set out in paragraphs (a) to (d) above.

### **11.5 No marshalling or merger**

The Secured Party is not required to marshal, enforce, apply, appropriate, recover or exercise any security, guarantee or other entitlement held by it or any assets which it holds or is entitled to receive. The Secured Party's right to payment of any Secured Money (including under any negotiable instrument or other agreement) will not merge in a Debtor's obligation to pay that Secured Money under any Finance Document.

### **11.6 Protection of third parties**

No person dealing with or entering into a transaction with the Secured Party or any Receiver or Attorney need enquire:

- (a) whether an Event of Default has occurred or is subsisting or any Finance Document or the Security Interest created under it has become enforceable;
- (b) whether any Receiver or Attorney has been properly appointed;
- (c) as to the amount of the Secured Money or whether the Secured Money is due and payable;
- (d) whether any right was exercised or is exercisable;
- (e) as to the propriety or regularity of any transaction or dealing; or
- (f) as to the application of any amount paid to the Secured Party or any Receiver, or to any Attorney.



## 12. Authorised Representatives

### 12.1 Authorised Representatives and communications

Each Debtor irrevocably authorises the Secured Party to rely on a certificate by any person purporting to be its director or company secretary as to the identity and signatures of its Authorised Representatives, and to rely on any Notice or other document contemplated by any Finance Document which bears the purported signature (whether given by facsimile or otherwise) of its Authorised Representative. Each Debtor warrants that those persons have been authorised to give notices and communications under or in connection with the Finance Documents.

### 12.2 Secured Party's opinion

An opinion or view of the Secured Party for the purposes of this document may be formed or held on its behalf by its Authorised Representative, its board of directors or by any other person it authorises to act on its behalf in relation to the Finance Documents.

## 13. General security provisions

### 13.1 Security continuing and independent

Each of this document and the Security Interest created under it, and each other Collateral Security:

- (a) is in addition to and enforceable independently of any other Security Interest, guarantee or Collateral Security; and
- (b) shall remain in full force and effect (whether or not at any given time a Debtor is indebted to the Secured Party) until the execution by the Secured Party

and delivery to each Debtor of an unconditional release of this document and each Collateral Security.

### 13.2 Collateral Securities

This document is collateral to each other Collateral Security. This document and each other Collateral Security will be read and construed together so that:

- (a) a default under one of them will be deemed to be a default under each of them; and
- (b) the Secured Party may exercise any of its rights under any one or more of them separately or concurrently or not at all, and in such order as it chooses.

### 13.3 Release

A Debtor may require the Secured Party to execute a release of this document or the Security Interest created under it, or to release any Secured Property from that Security Interest, if the Secured Party is satisfied that:

- (a) all Secured Money has been irrevocably paid in full and all commitments which might give rise to Secured Money have terminated;
- (b) no further indebtedness which is Secured Money might in future become payable to the Secured Party under or pursuant to this document or any other agreement entered into, or as a result of any matter or circumstance occurring; and
- (c) all Secured Obligations have been satisfied and there are no liabilities or obligations which will subsequently fall within the description of Secured Obligations.

### 13.4 Reinstatement

Each Debtor agrees that, if a payment made, amount applied, or other transaction relating to the Secured Money is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an **Avoidance**), then, even though the Secured Party knew or should have known of the Avoidance:

- (a) each Power and each Debtor's liability under this document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) each Debtor will immediately execute and do anything required by the Secured Party to restore the Secured Party to its position immediately before the Avoidance (including reinstating this document).

This clause 13.4 survives any termination or full or partial discharge or release of this document.

## 14. Appointment of investigator

### 14.1 Power to appoint

Where the Secured Party considers an Event of Default may occur, the Secured Party may appoint any person or persons (whether jointly, severally or jointly and severally) to act as an Investigator of a Debtor. The Secured Party may remove any Investigator and may appoint a new Investigator in addition to, or in place of, any Investigator.

### 14.2 Remuneration

The Secured Party may determine or vary the remuneration of any Investigator. Such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by each Debtor;
- (c) will form part of the Secured Money; and
- (d) will be secured by the Security Interest created under this document.

### 14.3 Investigator agent of Debtors

Every Investigator is the agent of the Debtors. The Secured Party is not responsible for any Investigator's actions, including the misconduct, negligence or default of an Investigator.

### 14.4 Powers of Investigator

An Investigator has right to investigate the affairs of a Debtor in such manner as the Investigator thinks fit, including the right to:

- (a) enter, without prior notice, on any Real Property owned or occupied by that Debtor;
- (b) make enquiries from any person (including any director, officer, employee, professional advisor or business associate of a Debtor) regarding the financial condition, business, operations or other affairs of that Debtor; and
- (c) inspect and take copies of or extracts from any document relating to the financial condition, business, operations or other affairs of that Debtor, whether those documents are held by a Debtor, any professional advisor or any other person.

### 14.5 Debtors to assist Investigator

Each Debtor shall do everything requested by the Investigator to enable

the Investigator to exercise the rights of the Investigator.

delegate or agent of any Attorney, in accordance with this clause 15.

## 15. Power of attorney

## 16. Indemnities and costs

### 15.1 Appointment

Each Debtor irrevocably appoints the Secured Party, every officer of that Secured Party and every Receiver, separately, for valuable consideration and by way of security to secure the payment of the Secured Money, to be the attorney of that Debtor with power to:

- (a) at that Debtor's expense, do anything the Debtor is obliged to do under this document and has failed to do;
- (b) do anything the Attorney thinks desirable to:
  - (i) protect or secure payment or delivery of the Secured Money or compliance with the Secured Obligations; and
  - (ii) give effect to the rights conferred on the relevant Secured Party or any Receiver by this document or by law or otherwise,even if the Attorney has a conflict of interest in doing so;
- (c) delegate its rights (including this right of delegation) to any person for any period (and to revoke any such delegation); and
- (d) appoint any person its agent for any period (and to revoke any such appointment).

### 15.2 Ratification

Each Debtor agrees to ratify everything done by an Attorney, or by any

### 16.1 Indemnity

Each Debtor agrees to indemnify, and to pay or reimburse on demand, the Secured Party, the Receiver and each Attorney the indemnities set out in clause 33 of the General Terms and Conditions, and for all costs and other liabilities (including the remuneration of any Receiver or Investigator) incurred or sustained by the Secured Party or any Receiver or Attorney in connection with:

- (a) any enquiry by a government agency involving that Debtor or any transaction or activity with which the Secured Property or the Secured Money is connected;
- (b) surveying, valuing, inspecting or reporting on the Secured Property;
- (c) the release of any Secured Property from the security created under this document or any other Finance Document;
- (d) goods and services tax applicable to any supply by the Secured Party to that Debtor; and
- (e) preparing, registering and maintaining any financing statement or financing change statement (including pursuant to section 167 of the PPSA) or complying with any demand made under section 162 of the PPSA).

### 16.2 Survival of indemnities

- (a) Each indemnity in this document (including

Incorporated from the General Terms and Conditions) is:

- (i) unconditional and irrevocable; and
  - (ii) a continuing and separate obligation which will survive termination, release or discharge of this document, payment of all other Secured Money.
- (a) The Secured Party or a Receiver need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in this document.

### 16.3 Debtors' costs

Each Debtor will pay its own costs in connection with this document.

## 17. PPSA

### 17.1 Waiver and section 109

Without limiting any other provision of this document, each Debtor:

- (a) **(waiver)** waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interest created under this document; and
- (b) **(section 109)** agrees that, at any time after an Event of Default has occurred, the Secured Party may:
  - (i) take possession of any Secured Property;
  - (ii) dispose of any Secured Property in such manner and generally on such terms and

conditions as the Secured Party thinks desirable;

- (iii) not have goods damaged when the Secured Party (or any person on its behalf) removes an accession under section 125 of the PPSA;
- (iv) be reimbursed for damage caused when the Secured Party (or any person on its behalf) removes an accession under section 126 of the PPSA;
- (v) refuse permission to remove an accession under section 127 of the PPSA;
- (vi) receive notice of removal of an accession under section 129 of the PPSA; and/or
- (vii) apply to the court for an order concerning the removal of an accession under section 131 of the PPSA, and otherwise do anything that Debtor could do in relation to the Secured Property.

### 17.2 Part 9 and additional rights

Each Debtor and the Secured Party agree that, to the extent permitted by law and in respect of this document:

- (a) that Debtor and the Secured Party contract out of sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) that Debtor and the Secured Party contract out of the Debtor's rights to (and that

Debtor waives its rights to receive a statement of account under section 116 of the PPSA.

### **17.3 Other rights**

Where the Secured Party has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and are not limited or excluded (or otherwise adversely affected) by any right provided by this document or by law.

## **18. Notices and communications**

Clause 39 of the General Terms and Conditions is deemed incorporated here in full (with any necessary amendments).

## **19. Appointment of attorney by Debtors**

### **19.1 Appointment**

Each Debtor irrevocably appoints the Borrower and any director or authorised signatory of the Borrower for valuable consideration, to be its attorney on its behalf and in its name with power to agree to, and to execute, any amendment to the Finance Documents, and any other document or deed to be delivered in relation to the Finance Documents which may, in the opinion of the Borrower, be necessary or desirable.

### **19.2 Ratification**

Each Debtor agrees to ratify any action taken or document executed by the Borrower pursuant to the power conferred under this clause 19.

## **20. General**

### **20.1 No waivers**

Clause 35 of the General Terms and Conditions is deemed incorporated here in full (with any necessary amendments).

### **20.2 Discretions**

Except to the extent otherwise expressly provided, the Secured Party or any Receiver may act in its absolute and sole discretion when forming any opinion, exercising (or not exercising) any Power, taking (or not taking) any action, giving or withholding consents or releases, dealing with any other matter, or imposing any terms in respect of any such matter.

### **20.3 Remedies cumulative**

Powers under the Finance Documents are cumulative and do not limit or exclude Powers under law.

### **20.4 Exclusion of laws**

- (a) To the extent permitted by law:
  - (i) this document prevails to the extent of inconsistency with any law; and
  - (ii) any present or future legislation operating to reduce a Debtor's obligations under this document or the effectiveness of the Powers is excluded.
- (b) Without limiting clause 20.4(a), each Debtor agrees that:
  - (i) the covenants set out in clauses 1(3), 3(2), 8(2) and 16(2) of Part 1 of Schedule 2 to the PLA are excluded from this document and, to the extent that a mortgage

of Real Property  
(**Mortgage**) secures  
any Secured Money,  
from that Mortgage;

- (ii) the covenants set out in clauses 1(3), 3(2), 6(2), 8 and 12 of Part 2 of Schedule 2 to the PLA are excluded from this document; and
- (iii) if there is any conflict between any provision of this document and Schedule 2 to the PLA, the provision of this document shall apply.

## **20.5 Contract Privity**

For the purposes of Part 2, Subpart 1 of the *Contract and Commercial Law Act 2017*, each Receiver and each Attorney is entitled to enforce against each Debtor each provision of this document which confers a benefit on a Receiver or Attorney (as the case may be). However, none of them need consent to any amendment made to this document.

## **20.6 Conflicts**

In the event of a conflict between a provision of this document and any other Finance Document, the Secured Party may, in its absolute discretion, determine which provision will prevail.

## **20.7 Counterparts**

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the

original by hand or post. Failure to make that delivery will not affect the validity of this document. Furthermore, where a party executes this document by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email or facsimile transmission.

## **20.8 Governing law and jurisdiction**

This document shall be governed by and construed in accordance with the laws of New Zealand.

## **20.9 Delivery by Debtors**

For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, this document will be delivered by each Debtor, immediately on the earlier of:

- (a) physical delivery of an original of this document (or a counterpart of it), executed by that Debtor, into the custody of the Secured Party or the Secured Party's solicitors; and
- (b) transmission by that Debtor or its solicitors (or any other person authorised in writing by that Debtor) of a facsimile or scanned copy of an original of this document (or a counterpart of it), executed by that Debtor, to the Secured Party or the Secured Party's solicitors.

# Signing page

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**EXECUTED AND DELIVERED** as a deed

## Debtor

[*Debtor*] by:

\_\_\_\_\_  
Signature of director/authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of director/authorised person

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Signature of director/authorised person

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Name of director/authorised person

\_\_\_\_\_  
City/town of residence

## Guarantor

[*Guarantor*] by:

\_\_\_\_\_  
Signature of director/authorised person

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of director/authorised person

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Signature of director/authorised person

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Name of director/authorised person

\_\_\_\_\_  
City/town of residence

## Lender

\_\_\_\_\_  
**Squirrel P2P Trustee Limited**

\_\_\_\_\_  
Print Name

# Schedule – Serial numbered goods

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Serial numbered goods (including motor vehicle(s)) that are equipment or consumer goods:

## Motor vehicles

*Complete if serial numbered goods consist of any of any motor vehicle(s) other than inventory:*

Organisation Name:

Make or name of manufacturer	Model no.	Model year	Registration no. (if any)	Vehicle id No. (if any)	Chassis no. (if any)	Colour

Serial numbered goods (including motor vehicle(s)) that are equipment or consumer goods: