



Bank of India (New Zealand) Limited

Business Loan General Terms and Conditions

Effective July 2015

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TERMS AND CONDITIONS

1. GENERAL INFORMATION

1.1 The terms and conditions that apply to your Loan are set out in:

- these Terms and Conditions;
- your Loan Agreement;
- any Security documents;
- any document which we give you which changes the terms and conditions of your Loan;
- our Fees and Charges Brochure; and
- any other Loan Document relating to your Loan.

Other terms not included in the documents listed above may also be implied by New Zealand law.

1.2 These Terms and Conditions are subject to any specific terms set out in your Loan Agreement or Security documents (which will override the relevant part of these Terms and Conditions if they conflict with them). You agree to be bound by these Terms and Conditions and by any other terms which apply to your Loan when you sign your Loan Agreement.

1.3 The terms and conditions governing your general banking relationship with us, including the operation of your Specified Account and other banking services we provide to you, are set out in the General Terms. If there is any conflict between any part of the General Terms and these Terms and Conditions, these Terms and Conditions will apply.

2. DEFINITIONS

2.1 Words in these Terms and Conditions which are capitalised are words with specific meanings, as set out in clause 2.2 below. In addition:

- "you" means each person or entity named in the Loan Agreement as the "Borrower" and where any person is named as a trustee or partner means that person in, as applicable, his/her/its capacity as trustee or his/her capacity as a partner. If there is more than one person or entity named as "Borrower", it means each person and/or entity jointly and severally (unless the context requires otherwise), and includes their successors and permitted assignees. "Your" has a corresponding meaning;
- "we" or "BOINZ" means Bank of India (New Zealand) Limited and our successors, assignees and authorised agents. "Our" and "us" have corresponding meanings;
- a reference to any document or agreement includes that document or agreement as amended, supplemented or replaced from time to time;
- a reference to any statute or a provision of a statute includes that statute or provision as amended, modified, substituted or re-enacted from time to time and any regulations and other instruments issued or made under that statute from time to time;

- a reference to "costs" includes costs, losses (including indirect and consequential losses), fees, charges, claims, judgments, damages, penalties, interest and all liabilities, including the costs of any legal advisers (on a solicitor client basis);
- a reference to a "security interest" includes a "security interest" (as defined in section 17 of the Personal Property Securities Act 1999), a mortgage, encumbrance, pledge, charge (whether fixed or floating), lien, finance lease, deferred purchase, sale and repurchase, flawed asset, sale and leaseback, title retention, assignment by way of security, trust, hypothecation, and any other security agreement or arrangement of whatsoever nature (however described) that in substance secures payment or performance of an obligation without regard to the form of the transaction and the identity of the parties;
- a reference to an Event of Default "continuing" means it has not been waived in writing by us;
- a reference to something having a "material adverse effect" is a reference to it having a material adverse effect on you (or any Guarantor, as applicable), your (or any Guarantor's) business, assets or financial condition, or your (or any Guarantor's) ability to comply with your (or their) obligations under the Loan Documents or our ability to exercise our rights under any Loan Document, and "material adverse change" will be construed accordingly;
- a reference to a "directive" means any order, regulation, requirement, request or notification which is generally complied with as a matter of practice by persons to whom it is addressed;
- a reference to "disposing" of any assets or property includes to sell, lend, lease, discount, factor, subordinate, give, assign, transfer or otherwise part or deal with those assets or that property in any way;
- a reference to a "person" includes any individual, firm, company, limited partnership, corporation, trust or governmental agency (in each case whether or not having separate legal personality);
- a reference to "\$" means New Zealand currency;
- derivatives of any defined term will have a corresponding meaning;
- a reference to us giving you notice means public notice, press release, notices in our branches or on our website, mail to the address you have advised to us or such other method as we see fit; and
- a reference to our website means to www.bankofindia.co.nz.

2.2 In these Terms and Conditions and in each Loan Document (unless the context requires otherwise):

"Amounts Owning" means, at any time, the principal and interest outstanding under your Loan plus all fees, costs and other amounts you owe under the Loan Documents at such time.

"Business Day" means any day other than a Saturday or Sunday on which banks are open for normal banking business in Auckland.

"Construction Loan" means your Loan, if your Loan Agreement specifies that the purpose of the Loan is to finance the construction or renovation of a building or, as the context requires, the amount which is outstanding under your Loan.

"Credit Limit" means, in respect of a Revolving Loan, the amount specified in your Loan Agreement as the maximum amount that may from time to time be outstanding under the Revolving Loan.

"Default Rate" means, at any time, the rate specified in your Loan Agreement to be our default rate applying to the relevant Loan, or any rate from time to time determined by us as being the appropriate rate or rates for the default concerned (as at July 2015, our standard Default Rate for business loans is 5% per annum above the interest rate applying to the loan).

"Early Repayment Charge" means the charge described in clause 11 (Early repayment).

"Event of Default" means any of the events specified in clause 18 (Events of Default) and any other event specified as a default or an event of default in any Loan Document.

"Fees and Charges Brochure" means our fees and charges brochure, including any schedules to it (as changed, updated or replaced from time to time), a copy of which is available at our branches and on our website.

"Fixed Rate Period" means, where the Loan Documents provide that a fixed Interest Rate is to apply to your Loan, the length of time that the fixed Interest Rate is to remain the same.

"GAAP" means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1999.

"General Terms" means our General Terms and Conditions (as changed, updated or replaced from time to time), a copy of which is available at our branches and on our website.

"Guarantor" means any person named as a guarantor in any guarantee given to us in connection with your obligations under the Loan Documents.

"Interest Rate" means, at any time, the annual interest rate specified in your Loan Agreement or (as applicable) such other Interest Rate as may apply to your Loan pursuant to the Loan Documents.

"Investigator" means any person (whether an officer of BOINZ or not) appointed to investigate your business, financial condition and operations pursuant to clause 21 (Investigator).

"Loan" means a loan made available by us to you under a Loan Agreement.

"Loan Agreement" means any loan agreement between you and us in relation to a Loan.

"Loan Amount" means (except in the case of Revolving Loans) the amount specified as such in your Loan Agreement, being the maximum amount of your Loan.

"Loan Documents" means these Terms and Conditions, each Loan Agreement, any letter of offer from us in respect of your Loan, any document evidencing a Security, any document setting out an

amendment to the terms of your Loan, and any other document specified by us as a "Loan Document".

"Mortgage" means any mortgage specified in your Loan Agreement or otherwise provided to us from time to time which secures your obligations to us under your Loan Documents.

"Payment Amount" means, in relation to a Loan, the minimum amount of principal and/or interest payable on a Payment Date, as specified in your Loan Agreement.

"Payment Date" means each date on which you are scheduled to make a payment in accordance with your Loan Agreement.

"Revolving Loan" means your Loan, if your Loan Agreement describes your Loan as a Revolving Loan or, as the context requires, the outstanding balance under your Revolving Loan at any time.

"Security" means each security interest provided to us from time to time in connection with your obligations to us and includes any Mortgage, debenture, general security agreement, specific security agreement, trust, pledge, lien, or other security interest and any guarantee given by any third party and any security interest given in connection with such guarantee, and includes any substitute guarantee or security interest.

"Specified Account" means the account from which we will deduct Amounts Owing, as specified in your Loan Agreement.

"Term" means the term of your Loan, as specified in your Loan Agreement.

"Variable Interest Rate" means our relevant variable interest rate applying to your Loan from time to time, as specified in your Loan Agreement. Details of our prevailing interest rates can be obtained from our branches or from our website.

3. CHANGES TO THE TERMS OF YOUR LOAN

If we believe that it is commercially justifiable to do so, we may change these Terms and Conditions or any other term applying to your Loan (including fees and charges) at any time without having to obtain your agreement, by giving 14 days' prior notice of the change to you. We can change any Interest Rate (including any base rate) or margin by giving you notice before we make that change except during any Fixed Rate Period.

Unless stated elsewhere in your Loan Documents, changes will not however be made to any fixed Interest Rate, the cap on a capped Variable Interest Rate, the Loan Amount or Credit Limit, the timing for payment of any Payment Amounts or the Term of any Loan, unless made by agreement between us and you.

4. CONDITIONS PRECEDENT

Your Loan shall be available if we have received (in form and substance satisfactory to us):

- (a) a signed copy of your Loan Agreement, provided to us by the date specified in your Loan Agreement;

- (b) signed copies of any Security documents;
- (c) any certificates from authorised persons and/or your solicitors that we request;
- (d) payment of all fees and costs;
- (e) evidence that all of our insurance requirements have been met; and
- (f) evidence that any other conditions set out in the Loan Agreement or any related document have been met.

5. PROCEDURE FOR BORROWING

Unless otherwise specified in these Terms and Conditions or in your Loan Agreement, you may request that your Loan (or, if your Loan Agreement allows for progressive drawdowns, an advance under your Loan) is drawn down on any Business Day and in the amounts you request, as long as we are satisfied that no Event of Default is continuing or is likely to occur.

Unless your Loan Agreement specifies when your Loan must be drawn down, you must give us written notice of the date on which you want to borrow your Loan and in what amount before 10:00 a.m. on the proposed drawdown date.

If your Loan Agreement states that your Loan must be drawn down on a specified date (or dates) and your Loan is not drawn down on such date(s), this will constitute a breach of the Loan Documents and will also entitle us to recover our costs under clause 24 (Indemnities).

Unless your Loan Agreement provides otherwise, you may only borrow your Loan in one lump sum. This does not apply to any Construction Loan or Revolving Loan, which may be drawn down in stages.

For Loans other than Revolving Loans, any amount borrowed must not exceed your Loan Amount when added to all principal amounts outstanding under your Loan at the relevant time.

If your Loan is a Revolving Loan, then notwithstanding the above and subject to any restrictions in your Loan Agreement, you may draw down the Loan at any time and in any amounts by any method we authorise (which may include by way of cheque, ATM, eftpos, telephone or internet transaction) without providing us with any drawdown notice, provided always that:

- (a) any amount borrowed under your Revolving Loan must not exceed your Credit Limit when added to all Amounts Owing outstanding at the relevant time; and
- (b) no Event of Default is continuing.

6. INSURANCE

Your Loan Agreement and any Mortgage or other Security document will specify what insurance is required. You must keep all insurance in place until you have repaid the Loan and all other Amounts Owing. If we ask for it, you must give us a copy of your certificate of insurance. If we require it, the proceeds of any insurance claim must be used to repay the Amounts Owing. We may ask the insurance company to pay any proceeds directly to us.

7. TYPES OF LOANS

The type of business Loan you have will be specified in your Loan Agreement. Loan types are described below. Your Loan will be a combination of these types.

Fixed Rate Loans

Loans where the Interest Rate is fixed for a defined period. On the expiry of that period, the interest rate will automatically change to a Variable Interest Rate (together with any margin and/or low equity premium which may apply), unless you arrange otherwise with us. The period during which the interest rate is fixed is noted in your Loan Agreement.

Variable Rate Loans

Loans which are subject to one of our Variable Interest Rates (together with any margin and/or low equity premium). The Variable Interest Rate (and/or the margin and low equity premium) may change over the course of your Loan.

Amortising Loans

If your Loan Agreement specifies that your Loan is an amortising loan, the Loan Amount or the Credit Limit (as applicable) shall reduce on each date and by the amounts specified in the "Payment Amount" section of the Loan Agreement.

Revolving Loans

Under a Revolving Loan amounts can be repaid and reborrowed at any time, up to your Credit Limit. There are no fixed, regular repayments but interest on the outstanding balance is debited to your Specified Account monthly, and payments will need to be made by you to ensure that your Credit Limit is not exceeded at any time. If your Revolving Loan is an amortising loan, the Credit Limit will reduce during the course of your Loan as set out in your Loan Agreement. Fixed interest rates are not available on a Revolving Loan.

Construction Loans

When you borrow a Construction Loan, some additional conditions apply (except to the extent your Loan Agreement provides otherwise):

- (a) you can borrow your Construction Loan in stages;
- (b) you must provide us with a registered valuer's report (in a form satisfactory to us) before you can borrow any of your Construction Loan. Loan funds will only be made available at each drawdown date if the amount borrowed at that date does not exceed the relevant loan to value ratio that we apply to your Loan;
- (c) builders' invoices must be provided before each draw down of the Construction Loan. Subject to other conditions being met, we will fund the amount set out in the invoice and a certificate by a registered valuer or quantity surveyor must be given before each draw down of the Construction Loan, stating how much money you need to finish the next stage of construction, and how much money you need to finish all of the construction works;
- (d) a Code of Compliance Certificate must be provided before the final draw down of the Construction Loan;

- (e) you must use your own money (in the amount we have agreed with you) towards the construction works before we will make any of the Construction Loan available to you;
- (f) you must take out a builders' risk insurance policy approved by us with our interest as mortgagee noted on the policy for the full period of the construction before you can borrow the Construction Loan. Builders' risk insurance insures the building and materials until the construction is completed;
- (g) we may cancel any undrawn portion of your Loan and/or require repayments of principal and interest to be commenced immediately if, in our opinion, there has been an unreasonable delay in the construction work or in drawing down the Loan; and
- (h) once your Loan is fully drawn down, we will require you to commence repayments of principal and interest (that is, your Loan will automatically become an amortising Loan) unless your Loan Agreement specifies otherwise.

8. PAYMENTS AND LIMITS

If your Loan is amortising, repayments of principal and interest must be made in the amounts and on the Payment Dates specified in your Loan Agreement.

If your Loan is not amortising, you must make regular payments of interest in the amounts and on the Payment Dates specified in your Loan Agreement.

For all Loans, all Amounts Owing must be paid in full on the last day of the Term.

Except where your Loan is specified in your Loan Agreement as a Revolving Loan (or your Loan Agreement specifies otherwise), amounts repaid or prepaid in respect of a Loan cannot be reborrowed.

Revolving Loans

If your Loan Agreement specifies that your Loan is a Revolving Loan you must make regular payments to us to ensure that the Amounts Owing do not exceed your Credit Limit at any time. If you exceed your Credit Limit, you must immediately repay any outstanding balance on your Revolving Loan which exceeds your Credit Limit.

If your Revolving Loan is an amortising Loan, the Credit Limit will reduce during the course of your Loan on the dates and by the amounts set out in your Loan Agreement.

Amounts repaid in respect of your Revolving Loan may be reborrowed up to the Credit Limit at any time before the end of the Term in accordance with the terms of the Loan Documents.

9. INTEREST

Interest on your Loan will accrue daily on the outstanding balance of your Loan at the Interest Rate. It will be calculated on the basis of a year of 365 days and the actual number of days elapsed.

Interest is payable on each Payment Date, with a final payment due on the last day of the Term.

Fixed Interest Rates

If your Loan is subject to a fixed Interest Rate, the initial period during which the Interest Rate will stay the same will be specified in your Loan Agreement. The fixed rate which applies to your Loan will not change during the Fixed Rate Period (unless you fail to pay any amount to us when it is due, in which case default interest will be payable).

If you do not make alternative arrangements with us, we will review your Interest Rate and may change it to our prevailing Variable Interest Rate (which may be higher than the Interest Rate which applied to your Loan during the Fixed Rate Period) when the Fixed Rate Period ends.

Variable Interest Rates

If your Loan is subject to a Variable Interest Rate, you will be advised of our prevailing Variable Interest Rate when we offer the Loan to you.

We may change our Variable Interest Rate at any time without having to obtain your agreement. We will give you notice (which may take the form of a press release, notices in our branches and a notice on our website, rather than by a direct communication with you) before we make the change.

If you have a capped Interest Rate and our Variable Interest Rate increases, we cannot increase your Interest Rate (which will include the Variable Interest Rate and also any margin and/or low equity premium that we apply to your Loan) above the cap specified in your Loan Agreement during the term of the cap. Once the capped term ends, the part of your Loan that was subject to the capped Interest Rate will automatically become subject to our Variable Interest Rate (together with any margin and/or low equity premium) (without any cap) unless you request otherwise.

If the Interest Rate includes reference to a margin, we may make changes to that margin as we see fit. We will give you at least 14 days' notice (by letter, email, fax or telephone) of any change to a margin.

If you have a Loan with a Variable Interest Rate and our Variable Interest Rate (or any relevant margin and/or low equity premium) increases during the term of your Loan, we will automatically increase your Payment Amounts so that the term of your Loan stays the same. We will give you notice of your new Payment Amounts. If you have a loan with a Variable Interest Rate and our prevailing Variable Interest Rate (or any relevant margin and/or low equity premium) decreases, the amount of your Loan repayments will stay the same and the term of your Loan (or the relevant part of it) may reduce instead. If you would rather that your Payment Amounts reduced instead, please contact us.

If the Interest Rate is not able to be determined at any time because a rate which is used by us to determine the Interest Rate ceases to exist or is otherwise not available for any reason, we may select an appropriate rate at our discretion, which will be used for calculating the amount of interest payable under your Loan.

Low Equity Premium

We may add or increase a 'low equity' interest rate premium (**Low Equity Premium**) to an Interest Rate if the aggregate of amounts owing to us, and/or the aggregate of the limits for every loan you

have with us (under the Loan Documents or any other agreement) exceeds certain limits set by us from time to time. We will notify you if this is the case. A Low Equity Premium will apply for the term of the Loan, unless reduced or removed as we see fit if you provide evidence satisfactory to us that the aggregate of amounts owing and/or the aggregate of the limits for each loan you have with us under any agreement falls below the relevant limits.

Progressive draw down

Where your Loan Agreement provides that you can draw down your Loan (or part of your Loan) progressively (that is, in stages rather than in one lump sum):

- (a) interest only will be charged on your Loan until your Loan is fully drawn down;
- (b) interest will be calculated on the outstanding balance of your Loan at the end of each day and payable monthly (unless specified otherwise in your Loan Agreement); and
- (c) the Payment Amounts specified in the Loan Agreement may be adjusted to reflect amounts drawn down after the date of the Loan Agreement, and references in these Terms and Conditions (or in the Loan Agreement) to Payment Amounts shall be deemed to refer (where applicable) to such payment as they may be so adjusted.

If you have a fixed rate Loan then you may not draw down your Loan progressively.

10. HOW TO MAKE PAYMENTS

All of your Payment Amounts and payments of default interest, fees and other Amounts Owing under your Loan will be deducted by direct debit from your Specified Account, or may be paid by any other method that we have confirmed is acceptable to us. Without prejudice to clause 22 (Set-off), if any Loan Document so provides, or if you have not made any payment on its due date, then we may debit any amount due to us from any account that you hold with us.

Where a Loan Document does not specify the date for payment of any amount, it will be payable on demand. You authorise us to deduct from your Specified Account all amounts required to be paid to us on each Payment Date or other date that amounts are due to us.

All payments are to be made in cleared funds without set-off or counter claim and free of any deduction or withholding, except to the extent required by law. If you or we are legally obliged to deduct or withhold an amount from any payment due to be paid to us under the Loan Documents, then that payment will be increased so that we receive and retain, free from liability, a net amount equal to the amount that we would have received and retained if no deduction or withholding had been made.

Payments received by us will go towards payment of outstanding fees and costs under the Loan Documents and/or the General Terms, then towards interest and then towards payment of principal and other Amounts Owing (though we may change this order at our discretion).

If an amount is due on a day which is not a Business Day, you agree to pay it to us on the next Business Day unless the next Business Day falls in the following calendar month, in which case

you agree to pay it to us on the previous Business Day. If applicable, any amount due will be adjusted accordingly.

11. EARLY REPAYMENT

Procedure for early repayment

You may prepay your Loan in full, or in part (in an amount of \$5,000 or higher) if you have given us at least 10 Business Days' irrevocable notice in writing of the date and amount of that prepayment. You will also have to pay any interest owing on the amount prepaid and may have to pay an Early Repayment Charge and administration fee.

If you are considering making an early repayment, we recommend that you contact us for details of any Early Repayment Charge which may be payable.

You may also be required to pay an Early Repayment Charge and administration fee if you change your Loan to a different type of Loan or to a different type of Interest Rate.

Early Repayment Charge

An Early Repayment Charge may be payable if any part of your Loan is repaid early by you (including where we have required early repayment due to an Event of Default occurring).

The Early Repayment Charge will compensate us for any costs we incur as a result of the early repayment (including costs relating to movements in the wholesale interest rate market during the term of the Loan).

Any Early Repayment Charge will be payable on the date that the full or part prepayment takes place. You may also have to pay our administrative costs arising from the early repayment. Our standard early repayment administration fees are set out in our Fees and Charges Brochure.

Early Repayment of Revolving Loans

The provisions of this clause 11 (Early Repayment) do not apply to Revolving Loans, which may be repaid at any time without notice to us and without incurring any Early Repayment Charge or administration fee.

12. REPRESENTATION AND WARRANTIES

12.1 At all times, you represent and warrant to us (by reference to the facts and circumstances at the relevant time) that:

- (a) (if you are a company or other corporate body) you are a legal entity validly existing under the laws of New Zealand, capable of suing and being sued, and have the power and authority to own your assets and carry on your business as it is being conducted;
- (b) (if you are a company or other corporate body) you have the power, and all necessary action (including passing all resolutions) has been taken to authorise you, to enter into, execute, exercise your rights and perform your obligations under each Loan Document;

- (c) (if you are a company or other corporate body) you have no holding company or subsidiaries other than any holding company or subsidiaries previously disclosed in writing to, and accepted by, us;
- (d) your entry into, and the exercise of your rights and performance of obligations under, the Loan Documents and any other documents contemplated in connection with the Loan Documents does not and will not conflict with or contravene any applicable law or (if applicable) your constitutive documents or any other document which is binding upon you or any of your assets;
- (e) your obligations under each Loan Document are legal, valid, binding and enforceable against you in accordance with their terms;
- (f) all consents, acts, conditions and things required to be obtained, done, fulfilled and performed in order to:
 - (i) enable you to lawfully to enter into, exercise your rights and perform your obligations under the Loan Documents;
 - (ii) ensure that your obligations under the Loan Documents are legal, valid, binding and enforceable against you; and
 - (iii) make the Loan Documents admissible in evidence,

have been obtained, done, fulfilled and performed and remain in full force and effect;
- (g) you are not in default under any agreement relating to indebtedness, or under any other agreement to an extent or in a manner which might (in our view) have a material adverse effect, and no event has occurred or circumstance exists which, with the giving of notice or passing of time, could constitute such a default;
- (h) no Event of Default has occurred and is continuing;
- (i) no legal proceedings, arbitration, action or administrative proceeding of, or before, any court, tribunal or governmental agency has commenced or to the best of your knowledge and belief is pending or threatened against you or any of your assets which, if adversely determined, might have a material adverse effect;
- (j) no action or step has been taken or legal proceedings been started or (to the best of your knowledge and belief) threatened to adjudicate you bankrupt or for your liquidation, dissolution or reorganisation, or for the appointment of a receiver, manager, receiver and manager, inspector, trustee, statutory manager, administrator or similar officer in respect of you or any of your assets;
- (k) you are solvent and are able to pay your debts as they become due in the normal course of business;
- (l) all information, including accounts and other financial information, provided by you or on your behalf, to us in connection with the Loan Documents is true, complete and accurate in all material respects and has, in the case of financial information, been prepared in accordance

with GAAP and gives a true and fair view of your financial condition and operations for the period to which it relates;

- (m) you are not aware of any material facts or circumstances which have not been disclosed to us and which could affect our decision to provide the Loan to you;
- (n) you are, and at all times will be, the sole legal and (unless you are acting as a trustee of a trust disclosed in writing to us) beneficial owner of all of your assets and no security interest exists over any of your assets (except as expressly permitted by these Terms and Conditions or with our prior written consent); and
- (o) (if you are a company or other corporate body) no action or step has been taken or proceedings been started to remove you from any official company or corporations register.

You acknowledge that we have relied on the representations and warranties contained in this clause and in clauses 15 (Trustees) and 16 (Limited Partnerships) (and on any representations and warranties contained in any other Loan Document) in making the Loan available to you.

13. COVENANTS

13.1 You covenant with and undertake to us that you will (and in the case of a company or limited partnership, will ensure that any subsidiary will):

- (a) immediately notify us of any Event of Default, or any other event which, with the giving of notice or passing of time, could constitute an Event of Default, providing us with full details of it and of any steps to be taken as a result;
- (b) comply with all directives and laws applicable to you and obtain, maintain and comply with all consents and other authorisations (including those required under the Building Act 2004 and Resource Management Act 1991) which, if not maintained or complied with, might adversely affect our rights under a Loan Document or your ability to comply with your obligations under any Loan Document;
- (c) on reasonable request and within any time periods reasonably specified by us, deliver to us any information relating to you and/or to any Guarantor and/or to your business, financial condition or operations (or those of any Guarantor);
- (d) keep proper accounts, prepared in accordance with GAAP, giving a true and fair view of your financial condition and operations at the relevant time and for the relevant period;
- (e) ensure that your payment obligations under each Loan Document rank at all times at least equally with all of your other debt except debt preferred by law or secured by a security interest permitted under clause 14(a) (Negative covenants); and
- (f) deliver to us, copies of your constitutional documents (if any), and, within 14 days of their taking effect, copies of any documents amending or replacing such constitutional documents, in each case certified as true and up-to-date by a duly authorised officer. This clause does not prejudice your obligations under clause 14(d) (Negative covenants).

14. NEGATIVE COVENANTS

14.1 You will not (and in the case of a company or limited partnership, will ensure that any subsidiary will not) without our prior written consent:

- (a) create or allow to be created or permit to exist any security interest over any property in which you have rights (whether now or in the future) except:
 - (i) any security interest created in our favour;
 - (ii) a lien or charge arising by operation of law; or
 - (iii) any purchase money security interest (as that term is defined in the Personal Property Securities Act 1999) in after-acquired goods arising only because of the normal trade terms of the supplier of those goods,

and in the case of a security interest permitted under sub-clause (ii) or (iii), that security interest secures obligations that are not overdue and results from a transaction in the ordinary course, and for the purpose, of your ordinary business;

- (b) materially change the nature or scope of your business or move your principal place of business outside New Zealand;
- (c) dispose of or agree to dispose of any material part of your assets, other than in the ordinary course of business on normal commercial terms and at arm's length, and otherwise in accordance with the Loan Documents;
- (d) make any changes in any of your constitutive documents, other than an administrative or technical change;
- (e) lend or provide any financial accommodation to, give any guarantee in respect of, take on any debt of or provide any financial assistance to, any person;
- (f) incur any debt relating to financial accommodation unless that debt is subordinated to our satisfaction, or incur any other debt unless it is incurred in the ordinary course of business on normal commercial terms and at arm's length;
- (g) (if you are a company or other corporate body) acquire your own shares, issue shares redeemable at the option of the holder of the shares or on a date specified in your constitutive documents or exercise any option to redeem your shares;
- (h) (if you are a company or other corporate body) make any distribution (as defined in section 2(1) of the Companies Act 1993);
- (i) (if you are a company or other corporate body) amalgamate with any other company or corporate body;
- (j) (if you are a company or other corporate body) enter into any major transaction (as defined in section 129 of the Companies Act 1993);
- (k) (if you are a company or other corporate body) form or acquire a subsidiary;

- (l) (if you are a company or other corporate body) give financial assistance to any person in connection with the purchase of shares issued or to be issued by you or your holding company; or
- (m) change your name, address, fax number or email address without first giving us ten Business Days' written notice of what your new name, address, fax number or email address will be.

15. TRUSTEES

15.1 If you have entered into the Loan Documents in your capacity as the trustee of a trust, the provisions of this clause 15 (Trustees) apply.

15.2 You represent and warrant that:

- (a) the person(s) named in the Loan Documents as trustee(s) of the trust is the sole trustee/are all of the trustees of the trust, and have been validly appointed and have the power and authority to hold the trust assets and carry on the trust's business;
- (b) you have the power under the trust deed, and have been duly authorised, to enter into the Loan Documents and transactions under them;
- (c) if we request, you will provide us with a copy of the trust deed constituting the trust and all other documents setting out the terms applying to the trust;
- (d) you have the right to be fully indemnified out of the trust assets in priority to the beneficiaries in respect of all of your obligations under the Loan Documents, and we are entitled to be subrogated to that right;
- (e) at the date of the Loan Agreement, the trust assets are (or will be) sufficient to satisfy all obligations in which you have a right of indemnity (including your obligations under the Loan Documents);
- (f) you are not in breach of the terms of the trust deed;
- (g) no action has been taken or proposed to wind-up, terminate or liquidate the trust;
- (h) no distribution or event for vesting of trust assets has been made or has occurred without our prior written consent;
- (i) you and your directors and other officers (if any) have complied with all your or their obligations in connection with the trust;
- (j) so far as you are aware, none of the trust assets have been mixed with other property; and
- (k) our rights under the Loan Documents rank in priority to the interests of the beneficiaries of the trust.

15.3 You will:

- (a) at our request, exercise your right of indemnity against the trust assets or any beneficiary for our benefit. This right is in addition to all other rights we have under the Loan Documents;
- (b) not permit any restriction, limitation, set-off, counterclaim or other defence to or against:
 - (i) your rights of indemnity out of the trust assets;
 - (ii) any right of indemnity that may arise in your favour from a beneficiary; or
 - (iii) our right of subrogation to either indemnity referred to above; and
- (c) not repay any debt owing to any settlor or to any beneficiary of the trust.

15.4 If any Loan Document acknowledges that you do not have any interest or right in the assets of the trust (including as beneficiary), other than as a trustee, then your liability to us under the Loan Documents will be limited to the value of the trust assets that are available to meet your liability, unless we cannot recover Amounts Owing from the trust assets because any representation or warranty set out above is not correct, or because of dishonest, wilful default or misconduct by you in respect of any Loan Document. In this case ("**exceptional circumstances**"), the limitation of liability will not apply and you will be liable to us from your personal assets for the amount that we would have been able to recover from trust assets if the exceptional circumstances did not apply.

15.5 You will remain liable under each Loan Document to which you are party after you cease to be a trustee until we provide you with a release in writing. We will release you from your liabilities under a Loan Document when we are satisfied that section 45(2) of the Trustee Act 1956 has been complied with and that all new and remaining trustees are liable under that Loan Document.

16. LIMITED PARTNERSHIPS

16.1 If you have entered into the Loan Documents as a partner of a limited partnership, this clause 16 (Limited partnerships) applies.

16.2 You represent and warrant that:

- (a) the person(s) named in any Loan Document as the general partner(s) of the limited partnership is the sole general partner/are all the general partners of the limited partnership;
- (b) the limited partnership is a legal entity validly existing under the laws of New Zealand and capable of suing and being sued, and has the power and authority to own its assets and carry on its business as it is now being conducted;
- (c) you have the power, and all necessary corporate action (including passing all resolutions) has been taken to authorise you, to enter into, execute, exercise your rights and perform your obligations under each Loan Document;
- (d) the limited partnership has no subsidiaries other than any subsidiaries previously disclosed in writing to, and accepted by us;

- (e) no terminating event has occurred under the provisions of the limited partnership agreement nor the Limited Partnership Act 2008; and
- (f) no limited partner or general partner is in default under the limited partnership agreement.

16.3 You will:

- (a) notify us of the occurrence of any event of default (however described) under the limited partnership agreement or any circumstances that may constitute, or give rise to, a terminating event (under the Limited Partnership Act 2008 or the terms of the limited partnership agreement);
- (b) upon our request and in accordance with the terms of that request, require payment of any unpaid capital contribution;
- (c) promptly deliver to us a copy of any document that amends, supplements or replaces the limited partnership agreement. This clause does not prejudice your obligations under clause 14(d) (Negative covenants);
- (d) comply with your obligations under the Limited Partnerships Act 2008 and the limited partnership agreement;
- (e) ensure that any of the assets of the limited partnership which are in the possession or control of the general partner(s) of the limited partnership are kept separate from the assets of the general partner(s) and identified as assets of the limited partnership to the greatest extent possible;
- (f) not take any steps, or permit any steps to be taken by the limited partnership, the general partner(s) or the limited partner(s), to limit the joint and several liability of the general partner(s) for any debt or liability of the limited partnership under sections 26, 27 and 28 of the Limited Partnerships Act 2008;
- (g) not make any distribution or pay any interest on, or repay any principal in relation to, any funds provided to the limited partnership by any general partner or any limited partner of that limited partnership (or any associated person (as defined in the Financial Markets Conduct Act 2013) of that limited partnership) or pay any income or capital to any general partner or any limited partner of that limited partnership (provided always that this clause shall not apply to any payment by the limited partnership to any general partner to reimburse that general partner for the day to day running costs of the limited partnership, so long as such costs were incurred in the ordinary course of business on normal commercial terms and at arm's length);
- (h) not enter into a transaction, whether contingent or not, which has the effect of the limited partnership acquiring rights, interests or assets or incurring obligations or liabilities, including contingent liabilities, or disposing of assets the value of which is more than half the value of the limited partnership's assets before the transaction; and
- (i) not form or acquire a subsidiary.

17. PARTNERSHIPS

17.1 If you have entered into the Loan Documents as a partner of a partnership, you acknowledge and agree that:

- (a) you will continue to be bound by the Loan Documents despite any changes which may take place from time to time in the partnership, including death, retirement or incapacity of any partner (including the fact that you may no longer be a member of the partnership) or the admission of any new partner or the fact that the partnership no longer carries on business; and
- (b) as well as being jointly liable, you are individually liable for all obligations of the partnership under the Loan Documents, so that we may have recourse to your personal assets on the same basis as any other personal creditor.

18. EVENTS OF DEFAULT

18.1 We may require you to repay immediately the whole of your Loan and all other Amounts Owing and/or we may cancel your Loan or any undrawn portion of your Loan and/or we may exercise any of our rights under any Loan Document and at law, if any of the following situations occur (whether or not such situation is beyond your control):

- (a) you do not pay when due any Amounts Owing, or any other amount owing under any other agreement with us;
- (b) you or any Guarantor fails to comply with any of the other terms of your Loan Documents or our General Terms;
- (c) the Loan is used for a purpose other than that for which it was granted;
- (d) a representation, warranty or statement made by you or on your behalf in connection with a Loan Document or in any certificate or notice delivered under any Loan Document was untrue, incomplete or inaccurate, in any material respect, when made;
- (e) you are unable to pay, or do not pay, your debts as they become due and payable, or become insolvent, or take steps to benefit any of your creditors or to adjust or reschedule a material part of your debts, or in our view your financial position otherwise changes adversely to a material extent (or any of these events or circumstances occurs or applies to any Guarantor);
- (f) you (or any Guarantor) are adjudicated bankrupt;
- (g) (if you are a company or other corporate body) any action or step is taken for your dissolution or liquidation or to remove you from any official company or corporations register (or such action or step is taken in respect of any Guarantor);
- (h) any person with a security interest in your property takes possession of those assets, or a receiver, manager, receiver and manager, inspector, trustee, statutory manager, administrator or similar officer is appointed in respect of you or any of your assets (or such

appointment is applied for), or a judgment, distress, attachment or execution for an amount exceeding \$5,000 is levied, issued or enforced against you or any of your assets (or any of these events occurs in respect of a Guarantor);

- (i) you die or become legally incapacitated (or any Guarantor does);
- (j) you cancel or terminate your obligations under a Loan Document without our prior written consent;
- (k) an investigator, inspector or similar person is appointed under any law to investigate your business or any aspect of it (except for an Investigator appointed by us under the Loan Documents);
- (l) you repudiate, or do anything evidencing any intention to repudiate, a Loan Document;
- (m) it is unlawful for you to perform any of your obligations under a Loan Document or any part of a Loan Document is claimed to be invalid, ineffective or unenforceable;
- (n) in our view, there is a material adverse change or there is the existence of circumstances that could reasonably be expected to result in a material adverse change;
- (o) we reasonably believe you or another person has acted fraudulently in connection with any Loan Document or any other agreement you have with us;
- (p) any consent required in connection with any Loan Document is cancelled, withdrawn or modified in a way which is unacceptable to us or ceases to be in full force and effect or any condition relating to that consent is not complied with;
- (q) any of your assets become subject to a restraining order or a clean up notice under any environmental law (including the Building Act 2004 and Resource Management Act 1991);
- (r) (if you are a company or other corporate body) there is any change in the legal or beneficial shareholding or ownership interest (other than the pro rata issue of ordinary shares or ownership interest to existing shareholders or owners) or in effective control (in each case, in respect of you);
- (s) any debt owed by you to any person is not paid when due or is declared (or is capable of being declared) due and payable or is placed on demand before its maturity because of any default (however described), or any security interest provided in respect of any such debt becomes enforceable by the relevant creditor;
- (t) (if you enter into the Loan Documents as a trustee of a trust):
 - (i) without our prior written consent, any action is taken or proposed to terminate the trust; or
 - (ii) the trust assets and/or any trustee's right of indemnity from the trust assets are insufficient to fully satisfy the trustee's obligations under the Loan Documents;
- (u) (if you enter into the Loan Documents as a partner of a limited partnership):

- (i) there is no general partner of the limited partnership at any time;
- (ii) any partner of the limited partnership ceases to be a limited partner or reduces their interest in the limited partnership without our consent; or
- (v) any event described in clauses 18(e) - (h) (Events of Default) (inclusive) occurs in relation to any general partner; or
- (w) any event which has a similar effect to any of the above events occurs under the law of any place outside New Zealand.

Your Loan Documents may describe other events (which may be described as 'events of default' or similar) in addition to the above which will allow us to require early repayment of the Loan or to exercise our other rights under the Loan Documents or at law.

19. DEFAULT INTEREST AND FEES

If you fail to pay any amount under the Loan Documents when it is due we will charge you interest at the Default Rate on the overdue amount from the due date until the overdue amount is fully repaid (before and after judgment). Default interest will accrue daily and be calculated by reference to successive periods of such length as we determine. Default interest will be debited from the Specified Account or any other account you hold with us on the last day of each period by reference to which it is calculated. We may also from time to time (at our discretion) add any default interest due but unpaid to the principal amount of your Loan.

We may also charge you a default fee if any Event of Default arises. Our standard default fees from time to time are set out in our Fees and Charges Brochure.

20. FEES AND COSTS

In addition to any fees described in your Loan Agreement, a list of the fees and charges we may charge in connection with your Loan is set out in our Fees and Charges Brochure. Fees will be deducted from your Specified Account (or paid in such other manner which we confirm is acceptable to us).

If we believe that it is commercially justifiable to do so, we may increase, decrease, apply new fees and charges or change the terms of payment of any fee or charge payable under the terms of a Loan in accordance with clause 3.

If we incur any costs in connection with the Loan Documents, you agree to reimburse us for those costs on demand. We may deduct those costs from your Specified Account or any other account. If we make any such deduction, we will give you written notice that we have done so (but any failure to do so will not relieve you of your obligation to pay our costs).

21. INVESTIGATOR

- 21.1 If we believe that you might be in default under the Loan Documents, we may appoint an Investigator. The Investigator will have the power to investigate and enquire into your business, financial condition and operations. You agree to cooperate with the Investigator and comply with

their reasonable requests. You also agree to pay the costs to us of appointing an Investigator and the costs of their investigation. We may appoint more than one Investigator in which case the appointment will be joint or several. Each Investigator will be your agent and you will be responsible for their acts and defaults.

22. SET-OFF

- 22.1 We may at any time, without notice to you, set-off against amounts we owe to you (regardless of the terms on which such amounts are owing or the currency of such amounts) any unpaid amount you may owe us under the Loan Documents, and may debit any account you have with us in order to effect such set-off. We may exercise this right even if the amount debited takes the debit balance over any approved limit, in which case we may charge interest and fees on the new debit balance. We may undertake any currency exchanges that we consider necessary to effect such set-off at your cost in accordance with our usual practice, and may also break any term deposit. If any amount is contingently due to us or is not quantified, we may retain and withhold repayment of any amounts owing by us to you until the relevant amount becomes due and/or quantified and is paid.
- 22.2 The rights in this clause 22 (Set-off) are contractual rights and do not create any security interest for the purposes of the Personal Property Securities Act 1999, nor do they affect any other right of set-off, combination of accounts, lien or other right to which we are entitled, whether by law or contract.

23. CHANGE IN CIRCUMSTANCES

- 23.1 If at any time we determine that it will become unlawful or contrary to any directive to make available, fund or continue to provide your Loan, or to perform any of our obligations or exercise any of our rights under the Loan Documents, we will notify you and your Loan will be cancelled. You must then repay all Amounts Owing on the date we specify in the notice.
- 23.2 If as a result of any new law or directive or any change to an existing law or directive or to the interpretation of any law or directive:
- (a) the cost to us of making the Loan available to you or continuing to provide the Loan, or of performing our obligations or exercising our rights under the Loan Documents, is increased;
 - (b) any amount received or receivable by us under any Loan Document is reduced (except on account of tax on our overall income); or
 - (c) we make any payment (except for tax on our overall income) or forgo any return on, or calculated by reference to, any amount received or receivable by us under any Loan Document,
- 23.3 (including any diminished yield to us arising from any imposition of, or increase in, any capital adequacy, risk weighting, reserve asset or similar requirement) we will notify you and you will be required to indemnify us against such increased cost, reduced return, payment made or forgone return by paying us on demand the amount that we advise is required to indemnify us.

24. INDEMNITIES

24.1 You irrevocably agree to indemnify us (and any receiver appointed) on demand (by paying us or any receiver, as applicable, the amount required to compensate us or the receiver for the relevant costs) against:

- (a) all costs incurred by us due to all or any part of your Loan not being advanced on the required day (except through our fault);
- (b) all costs incurred by us due to the occurrence of an Event of Default;
- (c) all costs incurred by us due to any amount payable by you under the Loan Documents not being paid on the date it is due (except through our fault);
- (d) all costs incurred by us or any receiver due to any failure by you to comply with any environmental law, or any obligation under any environmental law being imposed on us, or if we or any receiver has to act to ensure that you comply with any environmental law;
- (e) all costs incurred by us or any receiver enforcing or protecting (or considering or attempting to enforce or protect) our rights under any Loan Document or law;
- (f) all costs incurred by us or any receiver in connection with any claim against us or a receiver relating to any of your assets;
- (g) all costs incurred by us in connection with preparing, negotiating, executing, registering, changing, releasing and/or replacing any Loan Document;
- (h) all costs incurred by us in converting any payment received by us in a currency other than the currency in which it is due, into the relevant currency; and
- (i) all stamp duty, registration costs and other taxes that apply to a Loan Document or any payment under a Loan Document.

25. PRIVACY

We will comply with all privacy laws and rules of banker's confidentiality that apply to us. You agree that we may collect personal information from you or any other person who can provide us with information that is of relevance to us. We may make enquiries about any personal information that you provide to us in order to check the accuracy of the information.

Your personal information will be collected, held and used for the purposes of:

- (a) opening, operating or maintaining your Loan with us, providing services to you, or assisting our relationship with you;
- (b) assisting us in developing and running our business; and
- (c) providing you with information about accounts and services that we think might be of interest to you (including from our related companies such as our parent company, Bank of India, and selected business partners). This may involve, among other things, contacting you via

email, text message or an online facility, or by telephone or post. If you ask us not to provide you with this information, we will comply with your request.

We will take reasonable measures to ensure that your personal information is accurate and protected while we have it. You may ask us to show you the personal information we hold about you and request any personal information to be corrected. You must promptly inform us of any changes in your personal details.

If we are asked to provide personal information about you to another person, we will only do so in accordance with these Terms and Conditions, with your prior consent or as required by law.

You authorise us to disclose your personal information to:

- (a) our related companies (including our parent company, Bank of India);
- (b) credit reporting agencies;
- (c) Guarantors;
- (d) reputable market research organisations for the purpose of conducting market research for us;
- (e) insurers in relation to any Amounts Owing or any property subject to Security;
- (f) our assignees or potential assignees;
- (g) any person we engage to assist us in collecting any money from you; or
- (h) anyone that we need to contact in order to carry out your instructions to us (including the recipient of an automatic payment, bill payment or direct debit).

We may be required to release your personal information to persons such as law enforcement authorities, the courts and government agencies. We will release your personal information in these situations if we reasonably believe that the people requesting it have the authority to have it, or that we are required by law to release it.

Credit reporting agencies may retain your personal information and provide it to third parties as part of their credit reporting systems. You agree that should any check with a credit reporting agency reveal adverse information, we are authorised by you, where there are multiple applicants, to inform any applicant of this fact.

For security, verification, training and evidentiary reasons, we may record:

- (a) phone conversations you have with us on any matter, either through phone banking or directly with us; and
- (b) your use of electronic banking.

26. ASSIGNMENT

We may assign or transfer our rights and obligations under the Loan Documents to any other person and may disclose personal information about you to a potential assignee or transferee. In the event of any assignment or transfer by us, you irrevocably undertake to us to do all such acts and to execute all agreements as we may reasonably require to effect or perfect such assignment or transfer.

You are not permitted to assign or transfer your rights or obligations under the Loan Documents unless we agree in writing.

27. COMMUNICATIONS

27.1 Each notice and other communication to be given under a Loan Document is to be in writing and may be sent by personal delivery, post or fax, or in the case of notices or communications from us only (unless we agree otherwise in any Loan Document), by email.

Each communication must be sent to the address, fax number or email address of the relevant party set out in the relevant Loan Document or any other address, fax number or email address advised by at least five Business Days' prior notice.

A communication to us will be effective only when we actually receive it. A communication to you will be effective when received, and will be deemed to have been received:

- (a) in the case of personal delivery, when delivered to the specified address;
- (b) if posted, three Business Days after the day of posting;
- (c) if faxed, on production of a transmission report by the sender's fax machine of transmission in full to your fax machine; and
- (d) if emailed by us, at the time we receive an acknowledgement of receipt of delivery from your email address or (if earlier) at the end of two Business Days after the day the email was sent (unless we receive a notice of non-delivery),

provided that any communication received after 5.00 pm on a Business Day or on a day which is not a Business Day will be deemed to have been received on the next Business Day.

27.2 If you live outside New Zealand, any document or notice in connection with the Loan Documents may be served on you by delivering it to an agent who is authorised by you to receive such documents or notices and who has been notified to us or, if no such agent has been notified, any document or notice in relation to proceedings under or in connection with the Loan Documents may be served on you by delivering it to any other of your addresses for service in New Zealand as notified in writing to us. Please advise us if you live outside New Zealand or are not entitled to be permanently resident in New Zealand.

28. GENERAL

- (a) The illegality, invalidity or unenforceability of any provision of any Loan Document will not affect the legality, validity or enforceability of any other provision of that Loan Document.
- (b) At our request and at your expense, you will promptly complete, execute and otherwise perfect all agreements and do all acts and things that we consider necessary or desirable to protect our interests under any Security document or other Loan Document, and you irrevocably appoint us as your attorney to do anything which may be done by you, or which you are required to do, under any Loan Document. You agree to ratify and confirm anything we do under this power of attorney.
- (c) All Security will secure the Amounts Owing. You consent to each Guarantor receiving a copy of the Loan Documents and any information about your financial position that is in our possession.
- (d) No failure by us to exercise or delay in exercising any right or remedy available under the Loan Documents or at law will waive that right or remedy, nor will a partial exercise of any right or remedy preclude any further exercise of that right or remedy or any other right or remedy.
- (e) Unless expressly agreed otherwise in a Loan Document, no amendment to a Loan Document will be effective unless we agree in writing.
- (f) The indemnities in clauses 23 (Change of circumstances) and 24 (Indemnities) shall survive repayment of your Loan and termination of the Loan Documents.
- (g) Each Loan Document (unless required otherwise by a registry or similar office where such document is to be submitted) may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), all of which when taken together shall constitute one and the same instrument, and each of the parties to a Loan Document may execute a Loan Document by signing any such counterpart.
- (h) You acknowledge that you have entered into each Loan Document for a business purpose and accordingly nothing in the Consumer Guarantees Act 1993 will apply to the Loan.
- (i) A certificate from us regarding any amount relating to your Loan will, in the absence of a manifest error, be conclusive evidence of that amount.
- (j) The provisions of the Loan Documents will be governed by and interpreted in accordance with New Zealand law. Any legal action or proceeding arising out of or in connection with the Loan Documents may be brought in the courts of New Zealand and you unconditionally submit to the non-exclusive jurisdiction of such courts.

29. HOW TO CONTACT US

You can contact us:

- on +64 9 9265712

(customer services are open Monday to Friday 9am – 4.30pm)

- by post to:

10 Manukau Road
Epsom
Auckland

PO Box 99491
Auckland 1023
- by email to boinz.advances@bankofindia.co.in
- via our website: www.bankofindia.co.nz