

AGREEMENT BETWEEN

Secured Party:

UDC Finance Limited, a duly incorporated company having its principal place of business at Level 11, 50 Albert Street, Auckland Central, Auckland 1010 (the "Secured Party")

Customer:

Customer Name: _____

Physical Address: _____

Customer No.: _____ **Telephone:** _____ (Mob) _____ (Hm)

Email: _____ (the "Customer")

Notice Addresses

Notices by the Secured Party to the Customer may be given by the Secured Party to any of the following addresses:

Delivery: _____

Email: _____

Fax: _____

Post: _____

Ref No.

Collateral:

(including particulars to appear in financing statement)

Details of Collateral

Goods Type: _____

Description: _____

Make: _____ **Model:** _____ **Year:** _____ **Registration No.:** _____

Chassis/Serial No: _____ **Vin No:** _____ **Colour:** _____

Odometer Reading: _____ **Motive Power :** _____ **First Registered:** _____

All present and after acquired property that is proceeds of the collateral described in the financing statement.

Verification Statement Waiver:

The customer **waives/does not waive** *[Delete one. If no deletion, to be read as 'waives']* the need for the Secured Party to forward it a copy of any verification statement in respect of any financing statement or financing change statement registered under the PPSA by the Secured Party in connection with this Agreement.

Agreement:

To secure to the Secured Party payment of the Secured Amounts, the Customer:

- (a) grants the Secured Party a security interest (as defined in the PPSA) in the collateral to the extent it is Personal Property.
- (b) charges to the Secured Party the Collateral to the extent it is Other Property; and
- (c) agrees to mortgage to the Secured Party the Collateral to the extent it is Real Property.

The Customer agrees to the terms set out in this Agreement (including the terms set out in the attached Schedule of Terms).

SIGNING PROVISIONS

Signed by the Customer / on its behalf by persons authorised to do so:

Signature of Customer/Authorised Person

Full name of Customer/Authorised Person

Signed for and on behalf of the Secured Party:

Signature

Full name

Date of Agreement:

____/____/____ (Secured Party to Complete)

SCHEDULE OF TERMS

- 1. Purpose, creation, perfection and release of security interests**
- 1.1 Fixed and floating charge:** The charge created under this Agreement is a fixed charge^{3.7} 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 this clause. Any floating charge created under this Agreement will become a fixed charge:
 - (a) 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) on notice from the Secured Party to the Customer, 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 security interest agreed to by the Secured Party), or otherwise in jeopardy.
- 1.2 Types of Collateral:** If the Collateral that is subject to this Agreement is described in the "Collateral (including particulars to appear in financing statement)" section of this Agreement by reference to:
 - (a) the collateral type "All present and after acquired property"; or
 - (b) the collateral type "All present and after acquired property, except -"; or
 - (c) a type of property, rather than to a specific item of property,the security interest in that Collateral created by this Agreement will apply to all property of that type that is at that time or subsequently owned by the Customer, or in respect of which the Customer has rights, except to the extent that the CCCFA requires that no security interest may be granted in such property or any part of such property or to the extent that the Secured Party from time to time agrees.
- 1.3 Consumer goods:** If the Customer acquires any consumer goods that are a type of property that is intended to be subject to this Agreement, the Customer will on demand^{4.1} the Secured Party sign a security agreement in respect of those consumer goods in favour of the Secured Party in the same form as this Agreement (or such other form as the Secured Party may reasonably require).
- 1.4 Relationship with other Transaction Documents:** This Agreement is intended to supplement, and not to limit, any other Transaction Document. Subject to clause 1.7, if the terms of any other Transaction Document and of this Agreement contradict one another, the terms of this Agreement will prevail.
- 1.5 PPSA registration:** The Customer agrees:
 - (a) that the Secured Party may register a financing statement under the PPSA in respect of each item of Collateral that is from time to time subject to this Agreement, in such^{4.4} a manner as the Secured Party considers desirable in order to perfect its security interest in that Collateral; and
 - (b) to pay the registration fees incurred by the Secured Party in doing so, on demand;^{4.5} and
 - (c) to do such things as the Secured Party may reasonably request in order to assist the Secured Party to perfect its security interest in that manner.
- 1.6 Perfection of security interest in proceeds:** Except to the extent set out in clause 4.2, the Secured Party does not authorise any sale, withdrawal, transfer, assignment, disposal^{5.1} or other dealings with the Collateral which give rise to proceeds, unless the Secured Party has expressly agreed to any such dealing by the Customer. The Secured Party's security interest in all Collateral will continue in the proceeds of any such dealing, whether or not authorised by the Secured Party, and the Customer agrees:
 - (a) to do such things as the Secured Party may reasonably request to ensure that the Secured Party has a perfected security interest in any such proceeds;
 - (b) where any proceeds are serial-numbered goods, to inform the Secured Party of the details necessary to allow the Secured Party to register a financing statement in respect of those proceeds no later than the time at which the Customer has rights in those proceeds.
- 1.7 Release of Collateral by the Secured Party:** The Secured Party may from time to time agree to release Collateral from this Agreement, on such terms as the Secured Party may require, but always subject to clause 6.3. If the Secured Party does so:
 - (a) the release of any item of Collateral from this Agreement will not affect the Secured Party's security interests or other rights in any other Collateral that remains subject to this Agreement;
 - (b) recognising that the Secured Party may incur costs in doing so, the Customer agrees to pay any fees the Secured Party may require as a condition precedent to any such release or in respect of any financing change statement that may be registered under the PPSA in respect of it, even if the release or financing change statement is one which the Customer would otherwise be entitled to require under the PPSA.
- 1.8 Priority of security interest in Personal Property:** The security interest granted in the Personal Property under this Agreement has the same priority in relation to all Secured Amounts, including future advances. Nothing in this clause restricts the Secured Party from claiming that the security interest is a purchase money security interest in respect of all or part of the Personal Property.
- 1.9 Real Property:** If any Collateral comprises Real Property, the Customer agrees to promptly grant in favour of the Secured Party an all obligations mortgage in the form required by the Secured Party over such of the Customer's interest in that Real Property as the Secured Party may require and deliver to the Secured Party any document, and do anything, which the Secured Party requires in order to register any such mortgage. The Customer acknowledges and agrees that any such mortgage shall not in any way affect, or limit, the^{5.3} security interest granted under this Agreement.
- 2. Customer warranties**
- 2.1 Regular execution:** The Customer and each person signing this Agreement on its behalf, warrants that this Agreement is validly signed by and binding on the Customer.
- 2.2 Ownership of Collateral and absence of other security interests:** In respect of each item of Collateral that becomes subject to this Agreement, the Customer warrants that:
 - (a) the Collateral is owned by the Customer; or
 - (b) the Customer has sufficient rights in respect of the Collateral to give the Secured Party a security interest in it;
- in either case as a first ranking and only security interest, or otherwise as represented to the Secured Party.
- 2.3 Repetition of warranties:** The warranties in 2.1 to 2.2 shall be considered repeated by^{5.5} the Customer on each occasion the Secured Party enters into a credit contract or any other Transaction Document.
- 3. Obligations the Customer must perform**
- 3.1 Make payments when due:** The Customer will ensure that the Secured Amounts are paid to the Secured Party in cleared funds and:
 - (a) at the times and on the terms stipulated in the Transaction Documents; or
 - (b) to the extent that there is no such stipulation, on demand or as the Secured Party directs.
- 3.2 Perform obligations:** The Customer will perform all other obligations required of it by this Agreement or by any other Transaction Document when they are due to be performed.
- 3.3 Apply credit for purpose intended:** If any credit is provided by the Secured Party to the Customer in order to acquire rights in Collateral, the Customer will apply the credit to that purpose.
- 3.4 Comply with laws:** The Customer will comply with all laws relating to the Collateral.
- 3.5 Pay costs:** The Customer will meet all costs incurred or payable by it which relate to the Collateral, as and when due.
- 3.6 Serial-numbered goods:** If the Customer acquires any serial-numbered goods that are Collateral for the purposes of this Agreement, as soon as any such Collateral is acquired, the Customer will advise the Secured Party of such details of that Collateral as are necessary to allow the Secured Party to register a financing statement under the PPSA in respect of any such Collateral, unless those serial-numbered goods are to be held by the Customer as inventory.
- Maintain Collateral:** The Customer will maintain all Collateral in good order and repair, and will:
 - (a) replace defective or worn out parts as and when necessary;
 - (b) ensure that any Collateral intended by its manufacturer for use for a particular purpose is used for that purpose, and in accordance with any relevant recommendations of the manufacturer;
 - (c) not alter or modify any Collateral, unless the Secured Party agrees;
 - (d) not change any registration plate, identification number or similar identification mark in respect of any Collateral, unless the Secured Party agrees;
 - (e) allow the Secured Party to inspect Collateral that is able to be inspected, at all reasonable times.
- Insurance:** The Customer will maintain insurance in its name to full insurable value against all insurable risks in respect of all Collateral which is insurable, with a reputable insurer approved by the Secured Party and with the Secured Party's interest noted in such a manner that the amount of any claim is payable to the Secured Party. The Customer will deliver the policy document and current premium receipts to the Secured Party on demand, if the Secured Party requires it to do so.
- Documents of title etc:** The Customer will deliver any registration papers or documents of title in respect of any Collateral to the Secured Party, on demand. Where any Collateral comprises investment securities, negotiable instruments or chattel paper for the purposes of the PPSA, the Customer will deliver such documents to the Secured Party, and/or take such steps as required by the Secured Party, to ensure that the Secured Party has possession of that collateral for the purposes of the PPSA.
- Actions not to be taken by Customer without prior consent of the Secured Party**
- Change name or address:** The Customer will not change its name or address unless it has given the Secured Party 10 working days prior written notice of its intention to do so.
- Dealing with Collateral:** The Customer will not sell, withdraw, transfer, assign, lease or otherwise dispose of any Collateral that is subject to this Agreement, unless:
 - (a) the Collateral is held by the Customer as inventory and is disposed of in the ordinary course of the Customer's business for full market value; or
 - (b) the Collateral is sold, withdrawn, transferred, assigned, leased or disposed of with the prior consent of the Secured Party.
- Not create security interests:** The Customer will not grant a security interest in the Collateral to any person other than the Secured Party, unless the Secured Party agrees.
- Not part with possession:** The Customer will not part with possession of any Collateral, or allow any other person to take possession of any Collateral, unless permitted by clause 4.2.
- Location of Collateral:** The Customer will not allow:
 - (a) the Collateral to be kept at any premises other than those notified to the Secured Party; or
 - (b) the Collateral to be taken out of New Zealand, unless the Secured Party agrees.
- Secured Party's powers if Event of Default occurs**
- Secured Party's powers if Event of Default occurs:** If an Event of Default occurs, the security interest created by this Agreement will become immediately enforceable and the Secured Party may take any one or more of the following actions (subject to any requirements of law):
 - (a) terminate any or all of the Secured Party's obligations under the Transaction Documents;
 - (b) require immediate payment of all or any Secured Amounts;
 - (c) take possession of any Collateral;
 - (d) sell any Collateral;
 - (e) appropriate the whole or any part of the Collateral in or towards payment of all or any Secured Amounts;
 - (f) transfer ownership of any Collateral to itself or any nominee;
 - (g) lease, or otherwise grant rights of use in respect of, any Collateral on such terms as the Secured Party may consider desirable;
 - (h) exercise any of the Customer's rights against other persons that comprise part of, or relate to, the Collateral;
 - (i) complete any transfer or other document which has been signed by or on behalf of the Customer;
 - (j) cause itself or its nominee to be registered as the holder of any Collateral or as the person entitled to any Collateral;
 - (k) do or omit to do, in the name of the Customer or otherwise, anything in relation to the Collateral which the Secured Party considers necessary or expedient to enforce the security interest created under this Agreement;
 - (l) for the purpose of exercising any rights of set-off it may have against the Customer, accelerate the date for payment of any amount owing by the Customer to the Secured Party, irrespective of the terms on which such amount is owing;
 - (m) exercise such other rights as the Secured Party may have under any other Transaction Document, the PPSA, the PLA or by law.
- Power to acquire Collateral:** The Secured Party may exercise its power to retain Collateral towards satisfaction of the Customer's obligations without giving prior notice of its intention to do so to the Customer.
- Collateral attached to other property:** In order to exercise its power to take possession of any Collateral, the Secured Party may:
 - (a) remove that Collateral from any other property to which it may be attached; and/or
 - (b) remove any accessions from the Collateral;whether or not any such other property or accessions have become part of the Collateral subject to this Agreement, without the need for any notice to the Customer, and without being liable to the Customer for any damage or loss that may arise from the Secured Party doing so, and none of Sections 125, 127, 129 and 131 of the PPSA shall apply in favour of the Customer to the extent they may be inconsistent with this clause.
- Protection of the Secured Party:** The Secured Party, its employees and agents will not be liable to the Customer as a result of any bona fide exercise by the Secured Party of the Secured Party's powers under this Agreement.
- Application of proceeds of enforcement:** The Secured Party will apply the proceeds of any sale of Collateral by the Secured Party in the manner required by Section 117 of the PPSA in respect of Personal Property and in the manner required by the PLA in relation to any Other Property, except that the Secured Party will not be obliged to pay any surplus to the Customer until:
 - (a) the Secured Party has first received an amount equivalent to all costs incurred by it in enforcing its rights;
 - (b) the Secured Party is satisfied that any amounts payable to preferential creditors entitled to be paid by law in priority to the Customer have been paid;
 - (c) the Secured Party is satisfied that all of the Customer's obligations to the Secured Party have been met; and
 - (d) the Secured Party is satisfied that no payment received by the Secured Party, whether from the Customer or otherwise, is at risk of being set aside under any relevant law; and
 - (e) the Secured Party is satisfied that the Secured Party has no contingent liabilities referable to this Agreement or the Customer.
- Contracting out of PPSA rights:** The Customer:
 - (a) agrees that nothing in sections 114(a), 133 and 134 of the PPSA will apply to this Agreement, or any security interest created by this Agreement; and
 - (b) waives the Customer's right to any of the following:
 - (i) to receive a statement of account under section 116 of the PPSA;
 - (ii) to receive notice of the Secured Party's proposal to retain any of the Collateral

- (iii) to object to the Secured Party's proposal to retain any Collateral under section 121 of the PPSA;
- (iv) to not have goods damaged when the Secured Party (or any person on its behalf) removes an accession under section 125 of the PPSA;
- (v) to be reimbursed for damage caused when the Secured Party (or any person on its behalf) removes an accession under section 126 of the PPSA;
- (vi) to receive notice of the removal of an accession under section 129 of the PPSA; or
- (vii) to apply to the court for an order concerning the removal of an accession under section 131 of the PPSA.
- 6. General provisions**
- 6.1 Protection of the Secured Party's interests:** If the Customer has not complied with any of its obligations under a Transaction Document, the Secured Party may perform any such obligation in such manner as it considers desirable, including in the name of the Customer or as its attorney. However, the Secured Party is not obliged to do so, and will not be liable to the Customer if the Secured Party exercises the powers given it by this clause in good faith. The Customer hereby irrevocably appoints the Secured Party and every officer, manager and attorney of the Secured Party, separately, for valuable consideration and by way of security to secure the payment of the Secured Amounts, to be the attorney of the Customer with power to:
- at the Customer's expense, do anything the Customer is obliged to do under any Transaction Document;
 - do anything the attorney thinks desirable to protect or secure the Secured Party's rights or interests under this Agreement, to protect or secure the payment or delivery of the Secured Amounts and to give effect to the rights conferred on the Secured Party by this Agreement, any Transaction Document, or by law or otherwise (including power to delegate its powers to any person for any period and to revoke a delegation).
- The Customer agrees to ratify everything done by an attorney appointed under this clause, or by any delegate or agent of any such attorney, in accordance with this clause.
- 6.2 Further assurance:** The Customer agrees to give such notices and directions as the Secured Party may require to any person and to do all such things as are necessary or in the Secured Party's opinion desirable to ensure that the Secured Party receives the full benefit of each Transaction Document, and to perfect the security interests envisaged by each Transaction Document.
- 6.3 Release of this Agreement:** The Secured Party will not be obliged to release this Agreement, or any security interest created by it, nor to register any financing change statement under the PPSA, unless:
- any costs incurred by the Secured Party in doing so have first been paid by the Customer; and
 - the Secured Party is satisfied that any amounts paid by the Customer to the Secured Party prior to that release are not at risk of subsequently being set aside by the operation of any law; and
- if any such payment to the Secured Party is avoided or otherwise becomes payable by the Secured Party to the Customer or any other person, to the extent possible the relevant release will be of no effect, and execution by the Secured Party of that release will not prevent the Secured Party from registering a financing statement in respect of any Collateral previously released, or from otherwise recovering the amount in question in such manner as the Secured Party may be entitled to do.
- 6.4 Contracts (Privity) Act:** For the purposes of the Contracts Privity Act 1982, each attorney appointed under this Agreement is entitled to enforce against the Customer each provision of this Agreement which confers a benefit on such attorney. However, no such attorney need consent to any amendment made to this Agreement.
- 6.5 Indemnities and costs:** Any costs incurred by the Secured Party in connection with the enforcement of, taking advice on or taking any action pursuant to any Transaction Document, or otherwise in connection with any Transaction Document, will be payable to the Secured Party by the Customer, on demand, including legal costs on a full indemnity basis. The Customer will indemnify the Secured Party and any attorney appointed under this Agreement (as applicable):
- for all costs, losses, expenses and liabilities incurred by the Secured Party or the attorney in relation to this Agreement and in exercising any right under this Agreement or recovering any Secured Amounts; and
 - against any claim by any person relating to the Collateral; and the Customer will pay on demand all amounts payable in relation to the indemnities given under this clause (including any goods and services taxes).
- 6.6 Counterparts:** This Agreement may be executed in any number of counterparts. This has the same effect as if the signature on the counterparts were on a single copy of this Agreement.
- 6.7 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 Amounts (including under any negotiable instrument or other agreement) will not merge in the Customer's obligation to pay such Secured Amounts under any Transaction Document.
- 7. Interpretation**
- 7.1 Defined Terms:** In this Agreement, unless the context requires otherwise:
- "Agreement"** means this Security Agreement, and includes any other terms that are added to this Agreement by agreement between the Secured Party and the Customer.
- "CCCFA"** means the Credit Contracts and Consumer Finance Act 2003, and includes, where appropriate, regulations made pursuant to that Act.
- "credit contract"** has the same meaning as in the CCCFA, and for the avoidance of doubt includes credit contracts which are not consumer credit contracts for the purposes of that Act.
- "Collateral"** means:
- the applicable Collateral that is shown in the "Collateral (including particulars to appear in financing statement)" section of this Agreement; and
 - if that Collateral is of a type other than "goods-motor vehicles", all personal property of that type in respect of which the Customer has rights, or may obtain rights in the future; and
 - any accessions, or modifications or replacements, to the Collateral made by the Customer; and
 - where the Collateral is at any time in the possession of a person other than the Customer, the Customer's rights against, or to receive any amount from, that person; and
 - any proceeds of any such Collateral.
- "Event of Default"** means an event that is specified in any Transaction Document to be an event of default.
- "on demand"** means immediately after the Secured Party has given a notice to the Customer requiring the action specified in that notice.
- "Other Property"** means any Real Property and any other assets other than any Personal Property.
- "Other Secured Party Securities"** means any security interests held by the Secured Party from time to time in respect of any of the Secured Amounts but which are created by documents other than this Agreement.
- "person"** includes an individual, firm, company, corporation, unincorporated body of persons, organisation or trust, and any governmental agency or authority, in each case whether or not having separate legal personality.
- "Personal Property"** means personal property to which the PPSA applies.
- "PLA"** means the Property Law Act 2007.
- "PPSA"** means the Personal Property Securities Act 1999 as amended and in force from time to time, and also includes the Regulations, unless the context requires otherwise.
- "Real Property"** means estates and interests in freehold and leasehold land, and in all buildings, structures and fixtures from time to time on that land.
- "Regulations"** means the Personal Property Securities Regulations 2001, as amended and in force from time to time.
- "security interest"** means:
- a mortgage, pledge, charge, lien, assignment, hypothecation, encumbrance, deferred purchase, title, retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and/or
 - a security interest as defined in the PPSA.
- "serial-numbered goods"** has the same meaning as in the Regulations.
- "Secured Amounts"** means all money and amounts, including interest or payments in the nature of interest, that the Customer is or may become liable at any time to pay to or for the account of the Secured Party and includes money and amounts:
- whether present, future, actual or contingent;
 - whether incurred alone, jointly, severally or jointly and severally;
 - whether the Customer is liable on its own account or for the account of, or as guarantor for, another person and without regard to the capacity for which the Customer is liable; and
 - whether due to the Secured Party alone or with another person;
 - whether the Secured Party is the original person in whose favour any of the above amounts were owing or payable or an assignee or transferee, and, if the Secured Party is an assignee:
 - whether or not the Customer consented to or knew of the assignment;
 - no matter when the assignment occurred; and
 - whether or not the entitlements of that original person were assigned with the Transaction Documents.
- "Secured Party"** includes the Secured Party's successors and assigns, and any entity which results from any amalgamation to which the Secured Party is a party.
- "subsidiary"** has the same meaning as in the Companies Act 1993.
- "Transaction Document"** means this Agreement and the Other Secured Party Securities and each loan agreement, credit contract or other document evidencing or relating to the Secured Amounts (including any applicable general conditions).
- PPSA expressions:** Expressions used in this Agreement which are used in the PPSA have the same meaning as in the PPSA, unless the context requires otherwise.
- Plural and singular:** Plural words used in this Agreement include the singular, and vice-versa.
- Genders:** In this Agreement, use of the neuter includes the masculine and feminine genders, if appropriate.
- Headings:** Headings are used in this Agreement only as a visual aid, and do not affect the meaning of the clauses to which they relate.
- NZ currency:** All amounts payable pursuant to this Agreement must be paid in New Zealand currency, unless the Secured Party agrees otherwise.
- NZ law:** This Agreement is governed by, and is to be interpreted in accordance with, New Zealand law, even if it is executed in another country. The Customer submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters relating to this Agreement.
- Inconsistency with terms of CCCFA:** Some of the provisions of this Agreement may be incorporated by reference into credit contracts which are consumer credit contracts for the purposes of the CCCFA. For the avoidance of doubt, if (i) a credit contract to which this Agreement applies is a "consumer credit contract" for the purposes of the CCCFA, and (ii) the terms of this Agreement are inconsistent with the terms of that consumer credit contract and/or any relevant provisions of the CCCFA, then the terms of the relevant consumer credit contract and/or the relevant provisions of the CCCFA (as applicable) will apply.
- More than one Customer:** Where there is more than one person referred to in this Agreement as a Customer:
- a reference to a Customer is a reference to each Customer severally as well as to both or all Customers jointly;
 - when used with reference to a Customer; Collateral, Other Property, Personal Property and Real Property (as the case may be) means the Collateral, Other Property, Personal Property and Real Property (as the case may be) of that Customer and, when used without reference to a particular Customer, means the Collateral, Other Property, Personal Property and Real Property (as the case may be) of each and of all the Customers;
 - this Agreement binds both or all Customers jointly and each severally; and
 - where any Secured Amounts comprises indebtedness of one Customer alone or of some, but not all, of the Customers (principal indebtedness), then each Customer is nevertheless jointly and severally liable for, and in relation to, the principal indebtedness and that principal indebtedness is secured by all the Collateral of each Customer.
- Secured Party agreement and consent:** References in this Agreement to an agreement or consent by the Secured Party means an agreement or consent in writing by the Secured Party.
- References to agreements:** References in this Agreement to a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time.
- References to legislation:** References in this Agreement 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.