

**COMMERCIAL LOAN & SECURITY****FINANCIAL  
SERVICES****Loan Schedule****Contract Number:****Dealer:****BORROWER INFORMATION ("YOU" "YOUR")**

Borrower #number Name:	
As Trustee For (if any):	
Trading As (if any):	
NZ Company Number (if any):	

**BORROWER INFORMATION ("YOU" "YOUR")**

Borrower Name:	
As Trustee For (if any):	
Trading As (if any):	
NZ Company Number (if any):	

**ADDRESS DETAILS**

Address where goods will principally be located:	
---	--

**GUARANTOR DETAILS**

Guarantor Name:	New Zealand company number:
	Trading As (if any):
Address:	As Trustee For (if any):

**DESCRIPTION OF GOODS**

New/Used/Demo:	Body:
Compliance_date_or _Build_Year:	Rego No:
Make:	VIN:
Model:	Engine No:
Variant:	Colour:

**Nissan Financial Services New Zealand Pty Ltd**

Trading as Nissan Financial Services ("NFS" "we" "us")

Incorporated in Australia | ACN 163 511 224

PO Box 83101 Wellington 6440

T 0800 464 7726 (4NISSAN)

nissan.co.nz

Options/Accessories:

### FINANCED INSURANCE(S) & WARRANTIES

*If Insurance Premiums are detailed below, they will be disbursed on your behalf and are included in the Total Amount Financed.*

Insurance Type	Insurer	Premium (\$)
Comprehensive Motor Vehicle Insurance		
GAP Insurance		
Consumer Credit Insurance		
Extended Warranty Insurance		

### AMOUNT FINANCED AND DISBURSEMENTS

Cash Price: (GST exclusive)	
Goods & Services Tax:	
On Road Costs (including Registration) & other recovery amounts:	
Total Vehicle Price:	
Less Deposit & Trade In:	
Amount Payable to Dealer:	
Establishment fee:	
PPSR registration fee:	
Dealer Origination Fee:	
Total Insurance Premiums & Warranties Financed:	
Total Amount Financed	
Interest Charges:	
Total Account Keeping Fees:	
<b>Total Amount Payable:</b>	
Annual Interest Rate:	
Default Interest Rate:	

### PAYMENT DETAILS

Start	End	Payment Period	Number of Payments	Net Payment	GST	Account Keeping Fee	Payment

### PAYMENTS REQUIRED

The repayments are due as set out above. Your loan is to be repaid over a period of \_\_\_\_ months (“**Repayment Period**”).

The first repayment is due

\_\_\_\_\_ week(s)

\_\_\_\_\_ month(s)

after the day of acceptance of your offer. (the “**Commencement Date**”).

The first repayment is due on the date of acceptance of your offer. (the “**Commencement Date**”).

Subsequent payments are due each successive payment period, with a final payment of \_\_\_\_\_. Where you select monthly payment periods, if a month does not have the same date (e.g., 31st of the month) the payment is due on the last business day of that month.

In accordance with this Agreement an account keeping fee of \_\_\_\_\_ payable monthly may be debited to your account and forms part of the unpaid loan balance. The monthly account keeping fee will be divided evenly across payments if payment periods are weekly or fortnightly.

Pursuant to clause 2 of this Agreement, you may also be required to pay during the term of this Agreement other fees and charges such as (but not limited to) Payment Processing Fee (\$5.00 per cheque).

We may vary the fees payable by you or introduce new fees on written notice to you.

By signing this Schedule:

1. the Borrower makes an offer to enter into this Commercial Loan & Security on the terms set out in this Agreement, and warrants having received this Schedule and the Commercial Loan & Security Standard Terms; and
2. each Guarantor provides the guarantee and indemnity set out in the Commercial Loan & Security Standard Terms.

#### INDIVIDUAL BORROWER

Signed by Borrower:

Signature

Date

in the presence of:

Name of Witness

Witness Signature

Date

Address of Witness

Occupation of Witness

#### COMPANY

Signed for and on behalf of:

Trading as (if applicable):

New Zealand Company

Number:

By:

Signature

Date

By:

**COMPANY**

Director / Director (\*circle if applicable)

*Signature**Date*

By:

Sole Director (\*circle if applicable)

*Signature**Date*

in the presence of:

Name of Witness

Witness Signature

Date

Address of Witness

Occupation of Witness

**GUARANTOR**

Signed by Guarantor #number: #guarantor\_name

Signature

Date

in the presence of:

Name of Witness

Witness Signature

Date

Address of Witness

Occupation of Witness

## COMMERCIAL LOAN & SECURITY – STANDARD TERMS

### 1. The Loan

1.1 By signing this document, the Borrower offers to borrow the Total Amount Financed from the Credit Provider on the terms set out in the Schedule and these Standard Terms (the **Loan Offer**). The Credit Provider is not obliged to accept the Loan Offer.

1.2 If the Credit Provider accepts the Loan Offer, the commencement date of this Agreement will be the date on which the Credit Provider makes the first advance to the Borrower in accordance with the Schedule.

1.3 The Borrower and the Guarantor authorise the Credit Provider to complete any blank spaces in this document and the Schedule.

### 2. Payments

2.1 The Borrower must repay the Total Amount Financed and pay interest, fees and charges in accordance with these Standard Terms and the payment details set out in the Schedule, or if applicable any structured payment schedule. Payments must be made on or before the due dates specified.

2.2 The Borrower must pay the establishment fee specified in the Schedule on the commencement date. The Borrower must also pay any other fees and charges levied by the Credit Provider to cover its costs in relation to this Agreement.

2.3 Unless the Borrower has a direct debit authority, the Borrower must make the Borrower's repayments to the Credit Provider in a manner approved by the Credit Provider. Whenever the Borrower makes a repayment the Borrower must quote the account number given to the Borrower by the Credit Provider.

2.4 Where you select a monthly payment period, if a repayment is due on a date in a month that has no such date, the repayment will be due on the last day of that month.

2.5 Any payment due on a day which is not a Business Day must be made on the previous Business Day.

2.6 The Borrower must make all payments free of all deductions and without set-off for any amount the Borrower may consider that the Credit Provider owes to the Borrower, irrespective of any loss, damage, destruction, defect, unsuitability, failure to operate, or anything else relating to the Goods.

2.7 The Borrower declares and undertakes to the Credit Provider that the payment of money will not breach any laws in New Zealand or any other country.

2.8 The Borrower must pay all costs and expenses which the Credit Provider incurs in exercising any of its rights under this Agreement, including any amount paid to release a lien claimed over the Goods or to remedy a breach of the Borrower's obligations under this Agreement (e.g., failure to maintain insurance).

2.9 The Borrower must promptly pay any fees and associated costs for this document or any interest it secures to be registered, recorded or amended in any places the Credit Provider reasonably requires.

2.10 The Borrower must pay to the Credit Provider on demand all costs associated with the Credit Provider -

- (a) providing written information or a copy of a document when requested by the Borrower;
- (b) dishonour of any payment instruction or cheque drawn in the Credit Provider's favour;
- (c) any letter or notice concerning a breach of this Agreement; or

(d) any other fee charged by the Credit Provider of which the Borrower has been given written notice.

2.11 If this Agreement is terminated for any reason before the expiry of its Term, the Borrower must pay to the Credit Provider the principal balance,

costs, interest to the date of the next monthly anniversary of the commencement date, plus a further amount of 30 per cent of the remaining Interest Charges calculated by multiplying the Interest Charges stated in the Schedule by the sum of the number of whole months remaining in the Term, divided by the sum of the number of whole months in the Term.

2.12 The Borrower must pay the Credit Provider interest on any money payable under this Agreement and not paid on the due date, including any damages which the Borrower may be liable to pay the Credit Provider, at the Default Interest Rate debited on the same day of each calendar month as the commencement date.

2.13 Unless otherwise stated in this Agreement, all amounts payable by the Borrower will be debited to the unpaid balance of the Borrower's loan account. The Borrower must pay interest at the rate specified in clause 2.12 on all amounts the Credit Provider adds to the unpaid balance.

2.14 If taxes, fines or other government charges apply in relation to this Agreement or anything done or supplied under it, or relate to the use, possession or operation of the Goods, then the Borrower must pay, or reimburse the Credit Provider for, the amount of those taxes, fines or other government charges. The Credit Provider may, by written notice, vary the repayments as a consequence of any change to, or imposition of, any tax, fine or other government charge.

2.15 The Borrower must pay or reimburse the Credit Provider for the amount of any GST payable on any taxable supply made by the Credit Provider under or in connection with this Agreement.

### 3. Interest

3.1 Interest accrues from the commencement date. It is calculated based on the assumption that the instalments stated in the Schedule will be paid on the dates they are required to be made by the Borrower under this Agreement.

### 4. Security Interest

4.1 The Borrower gives and the Credit Provider takes a security interest over the Goods (as specified in the Schedule) and over any insurance financed by the loan. This security interest includes any vehicle acquired in replacement for the Goods, or any modifications made to the Goods (including any additions made or accessories purchased) and any money received from any insurance claim over the Goods or received from an insurer following cancellation of a policy. The security interest secures all amounts payable by the Borrower under this Agreement (including future advances). In respect of accounts receivable, the security interest takes effect as a transfer of those accounts receivable. The security interest granted by the Borrower is intended to be a first ranking security over the collateral.

4.2 The Credit Provider may register a financing statement on the personal property securities register under the PPSA to perfect its security interest under this Agreement. In addition, the Borrower agrees to do all things that the Credit Provider reasonably requires to ensure that the Credit Provider has a perfected security interest under this Agreement.

4.3 This Agreement and each security interest created under this Agreement is a continuing security, notwithstanding intermediate payments, settlement of accounts or anything else.

4.4 No security interest created under this Agreement is discharged, nor are the Borrower's or the Guarantor's obligations affected, by any amendment to, or the validity or enforceability of, or failure to enforce, this Agreement, or anything else whatever that, but for this clause, may have discharged this Agreement or affected the Borrower's or the Guarantor's obligations under this Agreement.

4.5 If the Credit Provider is satisfied that the Borrower has paid it all amounts payable under this Agreement and the Borrower is not in breach of any other obligation under this Agreement, the Credit Provider will at the Borrower's cost discharge the security interest.

4.6 If the Borrower has granted another person a security interest over all the Borrower's assets, or any other security interest that gives the person a security interest in the collateral to which clause 4.1 applies, then the Borrower undertakes to obtain a release of that collateral from that security interest and to do as the Credit Provider requires to ensure that the Credit Provider obtains a first ranking security interest over that collateral.

### 5. Use and Location

5.1 The Goods must be kept in the Borrower's possession and control.

5.2 The Goods must be kept at the address specified in the Schedule or such other place as the Credit Provider approves.

5.3 The Borrower must promptly notify the Credit Provider if the address at which the Goods are kept changes or, if applicable, of any change in the registration of the Goods (including any loss of registration).

5.4 The Borrower must tell the Credit Provider within seven (7) days of being requested in writing by the Credit Provider the location where the Goods are used or ordinarily kept. If the Goods are not in the Borrower's possession, the Borrower must give the Credit Provider all the information the Borrower has that might assist in tracing the Goods.

5.5 The Borrower must not without the Credit Provider's written consent make any alteration, additions or improvements to the Goods.

5.6 The Borrower assumes all risks and liabilities arising from the Borrower's possession or use of the Goods. The Borrower indemnifies the Credit Provider against any liability the Credit Provider may incur arising from the use or possession of the Goods by the Borrower or any other person.

### 6. Repair and Maintenance

6.1 The Borrower must keep the Goods in good repair and ensure that the Goods are serviced and maintained in accordance with the manufacturer's specifications and recommendations.

6.2 The Borrower must pay for repairs to the Goods immediately, to avoid a repairer's lien over the Goods.

6.3 The Credit Provider is entitled to inspect and test the Goods, on giving reasonable notice.

6.4 If the Goods are a motor vehicle or any other property that is usually registered, the Borrower must maintain current registration throughout the term and comply with all laws relating to the Goods or the use of the Goods.

### 7. Loss or Damage

7.1 The Borrower bears the entire risk of loss of, or damage to, the Goods from any cause.

7.2 The Borrower must tell the Credit Provider immediately if the Goods are stolen, lost, destroyed or damaged to such an extent that the Borrower or the insurer decides that repair is impracticable or uneconomic.

7.3 If the Goods are stolen, lost, destroyed, or damaged so that repair is impractical or uneconomic, any insurance money must be paid to the Credit Provider in reduction of the Borrower's liability to the Credit Provider. Payment of the insurance money to the Credit Provider does not release the Borrower from liability for any other amount due under this Agreement. If repair is practical, the Borrower is obliged to repair the Goods promptly.

### 8. Insurance

8.1 The Borrower must maintain insurance of the Goods during the term against such risks as the Credit Provider from time to time requires.

8.2 Insurance must be on such terms as the Credit Provider reasonably requires with an insurer approved by the Credit Provider.

8.3 Insurance must be for the respective rights and interests of the Borrower and the Credit Provider and for the full insurable value of the Goods as determined by the Credit Provider. The Borrower must produce proof of the terms and currency of insurance over the Goods whenever the Credit Provider requests the Borrower to do so.

8.4 The Borrower must not do or permit to be done anything which could prejudice any insurance or any claim under any insurance.

8.5 The Borrower must notify the Credit Provider immediately of a claim made under any insurance.

## 9. Default

9.1 The Borrower will be in default under this Agreement if:

- (a) the Borrower fails to pay any amount payable under this Agreement and also fails to subsequently comply with a notice of default given by the Credit Provider requiring payment to be made;
- (b) any other Event of Default capable of rectification occurs and the Borrower fails or are unable to rectify the default within 14 days after the Credit Provider gives the Borrower a notice telling the Borrower what the default is and asking the Borrower to rectify it;
- (c) an Event of Default not capable of rectification occurs; or
- (d) the Credit Provider believes on reasonable grounds that it was induced to enter into this Agreement by the Borrower providing information that was incorrect or was misleading.

9.2 If the Borrower is in default under this Agreement:

- (a) the security interest granted by the Borrower under this Agreement will become immediately enforceable; and
- (b) the Credit Provider may, at any time:
  - (i) call up the loan and demand immediate payment of the balance due under this Agreement calculated in accordance with clause 2.11;
  - (ii) exercise its rights under this Agreement;
  - (iii) perform any of the Borrower's obligations under this Agreement; and
  - (iv) enter any premises and take possession of and sell the Goods; and
- (c) the Credit Provider has all other rights conferred by law (including under Part 9 of the PPSA) in relation to the collateral to which the security interest granted under this Agreement relates.

9.3 The Borrower must pay all costs of and incidental to enforcement of this Agreement by the

Credit Provider including any costs of repossessing and storing the Goods.

## 10. Powers the Borrower gives to the Credit Provider

10.1 In the exercise of rights by the Credit Provider in relation to this Agreement, under this clause:

- (a) each authorisation and appointment cannot be revoked for as long as any amount remains owing under this Agreement; and
- (b) when the Credit Provider exercises each of those rights, the Credit Provider will do so at the Borrower's cost and in the Borrower's name.

10.2 The Credit Provider is authorised to act on the Borrower's behalf in the exercise of any right and in relation to any legal proceedings to protect the Credit Provider's security interest in the collateral.

10.3 The Borrower irrevocably appoints the Credit Provider the Borrower's attorney to do anything the Borrower should do under this Agreement, and to settle any disputes concerning the Goods.

10.4 If the Credit Provider has taken possession of the Goods:

- (a) the Credit Provider may execute any transfer, assignment, discharge or other instrument which the Credit Provider considers necessary for the enforcement or protection of the Credit Provider's rights; and
- (b) the Credit Provider may notify an insurer who is providing insurance in respect of those Goods to cancel the insurance and direct the insurer to pay any rebate of premium to the Credit Provider to repay the money owed under this Agreement.

10.5 The Borrower must provide all information to the Credit Provider which the Credit Provider reasonably requires in order to manage anti-money laundering and counter terrorism financing or to comply with any laws or regulations in New Zealand or any other country. The Borrower agrees that the Credit Provider may disclose any information concerning the Borrower to any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or elsewhere. The Borrower agrees that the Credit Provider may refuse to process any transaction without any liability if the Credit Provider suspects that the transaction may breach any laws or regulations in New Zealand or any other country, the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, unlawful conduct.

## 11. PPSA Provisions

11.1 The Borrower waives its rights under section 148 of the PPSA to receive a copy of a verification statement in respect of any financing statement, or financing change statement, registered by the Credit Provider in respect of the security interest granted by the Borrower under this Agreement.

11.2 The Borrower:

- (a) agrees that:
  - (i) sections 114(1)(a), 120(1), 122, 133 and 134 of the PPSA do not apply; and

- (ii) where the Credit Provider has rights in addition to those in Part 9 of the PPSA, those rights continue to apply;

- (b) waives its rights to:

- (i) receive a statement of account under section 116 of the PPSA;
- (ii) receive a notice of any proposal of the Credit Provider to retain collateral under section 120(2) of the PPSA;
- (iii) object to any proposal of the Credit Provider to retain collateral under section 121 of the PPSA;
- (iv) not have goods damaged if the Credit Provider removes an accession under section 125 of the PPSA;
- (v) receive notice of the removal of an accession under section 129 of the PPSA; and
- (vi) apply to the court for an order concerning the removal of an accession under section 131 of the PPSA.

11.3 The rights and powers conferred on the Credit Provider by this document or the law are in addition to any rights and powers conferred by the PPSA. For the avoidance of doubt, in addition to the powers under the PPSA, the Credit Provider may take any action after default authorised by this document or the law, including delaying any disposal, leasing or action to retain any goods.

## 12. The Borrower's warranties

12.1 The Borrower warrants to the Credit Provider that:

- (a) all information given by the Borrower to the Credit Provider (or any dealer, agent or representative of the Credit Provider) is correct and is not misleading; and
- (b) the Borrower has not relied on any statement made by the Credit Provider or anyone acting on behalf of the Credit Provider about this Agreement, financial or taxation matters and their affect on the Borrower, or the quality, or suitability for any purpose, of the Goods; and
- (c) the Borrower is authorised to enter into this Agreement.

## 13. The Borrower's acknowledgements about introducers and commission

13.1 The Borrower may be introduced to the Credit Provider by a broker, agent, dealer or other person. The Borrower acknowledges that any introducing broker, agent or dealer is not the agent of the Credit Provider for any purpose and that no representation or course of conduct or dealing by any introducing broker, agent, or dealer binds the Credit Provider.

13.2 The Borrower agrees to the Credit Provider paying commission or other remuneration to any person who introduces the Borrower to the Credit Provider.

## 14. Limitation of liability

14.1 The Borrower acknowledges that:

- (a) to the full extent permitted by law all express and implied terms,

conditions and warranties other than those set out in this Agreement are excluded;

(b) the Credit Provider is not liable for any injury to any person or loss or damage to property arising from possession, installation, operation, removal, or use of the Goods (including any injury or loss arising from the Credit Provider's negligence); and

(c) nothing in this Agreement is intended to exclude, restrict, or modify any statutory obligations of the Credit Provider under any applicable consumer protection laws if it cannot be lawfully effected.

14.2 Subject to clause 14.1, the Credit Provider's liability for anything in relation to the Goods their use or their installation including damage or economic loss to anyone is limited as much as it can be. Whatever happens, the Credit Provider's liability is no more than either to:

(a) replace or pay for the cost of replacing the Goods with the same or equivalent Goods; or

(b) repair the Goods or pay for their repair.

#### 15. Guarantee and Indemnity

15.1 The Guarantor unconditionally guarantees to the Credit Provider the due and punctual performance by the Borrower of the Borrower's obligations under this Agreement.

15.2 As a separate obligation, the Guarantor indemnifies the Credit Provider against all loss, damage, costs and expenses suffered or incurred by the Credit Provider because of any breach by the Borrower of any of the terms of this Agreement.

15.3 This guarantee and indemnity is a continuing guarantee and indemnity (it being the intent of the Guarantor that the guarantee and indemnity will be absolute and unconditional in all circumstances). This guarantee and indemnity is irrevocable and will remain in full force and effect until the obligations of the Agreement have been fully satisfied.

15.4 This guarantee and indemnity will not be considered as wholly or partially discharged by any time, credit, indulgence, or concession extended by the Credit Provider to the Borrower, the Guarantor, or any other person or by:

(a) any compounding, compromise, release, abandonment, waiver, variation, relinquishment, or renewal of any rights of the Credit Provider against the Borrower or the Guarantor or any other person or by the neglect or omission of the Credit Provider to enforce any of those rights or by winding up or bankruptcy of any party to this Agreement or by any other dealing, matter, or thing or by any alteration, modification, variation or addition to this Agreement;

(b) any neglect, omission or delay by the Credit Provider in enforcing any of its rights; or

(c) liquidation or bankruptcy, death, or any other event occurring to the Borrower or any Guarantor.

15.5 If for any reason the Borrower ceases to be bound by any of the terms and conditions of this Agreement or the obligations of the Borrower under this Agreement are affected or modified other than by the Borrower's performance of them, the Guarantor on a full indemnity basis must pay to the Credit Provider an amount equal to the total direct loss or damage incurred by the Credit Provider as a result. The obligations of the Guarantor under this paragraph are original and independent and are in addition to the Credit Provider's other rights.

15.6 If the Borrower becomes bankrupt or enters into any scheme of arrangement in favour of creditors or enters into receivership, administration, liquidation or statutory management, the Guarantor assigns to the Credit Provider the whole of its right to claim, if any, against the relevant official receiver, administrator, statutory manager, liquidator or other insolvency official, so that the Credit Provider will be entitled to receive the whole of the entitlement in reduction of the amount due under this guarantee and indemnity. The Guarantor must not exercise any right of subrogation against the Borrower until the Credit Provider has been paid all money actually and contingently due under this Agreement or otherwise by the Borrower.

#### 16. Trusts

16.1 If a party has entered into this Agreement or given a guarantee under this Agreement as trustee of a trust then that party warrants:

(a) that it is sole trustee of the trust; and

(b) that it has the necessary powers to enter into this Agreement or give a guarantee and does so with the consent and for the benefit of the beneficiaries of the trust; and

(c) that it has rights to seek recourse or indemnification from the trust's assets for the obligations so incurred; and

(d) that it will not without the Credit Provider's consent retire or be removed as trustee from the trust; and

(e) that the trust will not be terminated and the trustee will not be changed without the Credit Provider's consent; and

(f) that if the Credit Provider requests, it will give the Credit Provider copies of the trust deed and other documents relating to the trust; and

(g) that it is liable both personally and in its capacity as trustee of the trust.

#### 17. Administrative Provisions

##### 17.1 Notices to Credit Provider

If the Borrower or the Guarantor is required to give the Credit Provider a document about this Agreement then the Borrower or the Guarantor can do so by:

(a) mailing it to the Credit Provider's address as shown in the Schedule, or any other address the

Credit Provider tells the Borrower and the Guarantor; or

(b) emailing it to an email address the Credit Provider tells the Borrower and the Guarantor.

##### 17.2 Notices from Credit Provider

Unless otherwise stated in this Agreement, if the Credit Provider is required to give the Borrower or the Guarantor a document about this Agreement then the Credit Provider can do so by:

(a) sending it through the post to the address of the addressee specified in this Agreement, in which case service is effected five (5) days after posting; or

(b) delivering it to, or leaving it at, the address of the addressee specified in this Agreement, in which case service is effected on delivery or leaving; or

(c) sending it by facsimile to the facsimile number advised by the addressee, in which case service will be deemed to be effected on conclusion of transmission; or

(d) emailing it to the email address advised by the addressee, in which case service will be deemed to be effected on conclusion of the transmission without electronic notification of communication failure.

##### 17.3 Moratorium Legislation

The provisions of legislation at any time operating directly or indirectly to lessen or otherwise vary or affect in favour of the Borrower or the Guarantor any liability under this Agreement or delay or otherwise prevent or have a prejudicial affect on the exercise by the Credit Provider of any right are negated and excluded from this Agreement, to the fullest extent permitted by law.

##### 17.4 Certificate

A certificate signed by or on behalf of the Credit Provider or its solicitor as to a matter or as to an amount payable to the Credit Provider in connection with this Agreement is conclusive and binding on the Borrower and the Guarantor as to the amount stated in it or any other matter of a factual nature, in the absence of proof to the contrary.

##### 17.5 Assignment

The Credit Provider may assign, without the consent the Borrower or the Guarantor, its rights under this Agreement or the Goods. The Borrower and the Guarantor agree that if the Credit Provider considers exercising this right, it may disclose any information (including documents) about this Agreement, the Borrower and the Guarantor to the assignee, or to anyone who is considering becoming the assignee, and that person's advisors and service providers.

##### 17.6 Appropriation of Payments

The Credit Provider may apply any money received from the Borrower or anyone on the Borrower's behalf, to any money owing by the Borrower under this or any other agreement with the Credit Provider. In doing this, the Credit Provider may disregard any directions given by the Borrower as to how the money is to be applied.

##### 17.7 Severability

If any term, agreement, or condition of this Agreement or the application of any term, agreement, or condition of this Agreement to any person or circumstance is or becomes illegal, invalid, or unenforceable in any jurisdiction it will be severed and neither the remaining terms, agreements, and conditions nor the application, validity, and enforceability of the severed term, agreement, or condition in any other jurisdiction will be affected.

#### 17.8 Applicable Law

The law of New Zealand applies to this Agreement.

#### 17.9 Variations

The Borrower may request a variation to this Agreement. The Borrower may request a variation directly to us or through a Nissan Finance Dealer. If the Borrower makes a request through a Nissan Finance Dealer, the Borrower consents for that dealer to contact us for the purposes of communicating and managing the Borrower's requested variation. We will at our discretion consider and assess the requested variation and may, at our discretion, agree to the requested variation. If we agree to the requested variation, we will notify you in writing. Any such notification will be made in accordance with the requirements under any applicable Credit Laws. We do not have to agree to any requested variation.

#### 17.10 Requested Information

The Borrower agrees that a Nissan Finance Dealer may request information to this Agreement to assist with the administration of this Agreement (including on your behalf). Where we agree to supply the information requested, the Borrower consents that we may supply that information either to the Borrower or to the Nissan Finance Dealer on your behalf.

### 18. Definitions and Interpretation

#### 18.1 Definitions

In this document unless the context otherwise requires:

**Agreement** means the agreement between the Credit Provider, the Borrower and the Guarantor as set in the Schedule and these Standard Terms and, if applicable, any structured payment schedule.

**Borrower** means anyone who signs the Schedule as a Borrower.

**Business Day** means Mondays to Fridays excluding public holidays, bank holidays, and any days the Credit Provider is not open for ordinary business in Auckland.

**Credit Provider** means Nissan Financial Services New Zealand Pty Ltd incorporated in Australia and trading as Nissan Financial Services ACN 163 511 224.

**Event of Default** means if any one or more of the following occur (whether or not it is within the Borrower's control):

- (a) the Borrower does not pay any amount payable under this Agreement on the due date;
- (b) the Borrower is in breach of any other obligation under this Agreement;
- (c) the Goods are lost or destroyed or the Credit Provider forms the opinion that the Goods are so damaged as to make their repair uneconomical;
- (d) the Borrower deals with the Goods in any way that is inconsistent with the Credit Provider's interest as mortgagee in the Goods;
- (e) if either the Borrower or Guarantor is an individual, the Borrower or Guarantor dies or is made or declared bankrupt or

becomes incapable of managing his/her own affairs or is gaoled;

(f) an Insolvency Event occurs to any Borrower or Guarantor;

(g) if the Borrower is a company, there is any change in ownership or control of the Borrower;

(h) if the Borrower is a partnership, the partnership is dissolved or an application is made to a court for dissolution of the partnership;

(i) if in the Credit Provider's opinion a material adverse change has occurred in the Borrower's business or financial position which is likely to affect the Borrower's ability to meet the Borrower's obligations under this Agreement;

(j) any distress or execution is levied or enforced against any of the Borrower's assets;

(k) the Borrower ceases to carry on the Borrower's business;

(l) any warranty given by the Borrower in relation to this Agreement is false.

**Goods** means the goods as described in the Schedule.

**GST** means goods and services tax levied:

(a) in New Zealand, under the Goods and Services Tax Act 1985; and

(b) in Australia, under 'A New Tax System (Goods and Services Tax) 1999.

and, in each case, related legislation.

**Guarantor** means a party named as a Guarantor in the Schedule.

**Insolvency Event** means the happening of any the following events:

(a) an application is made to a court for an order or an order is made appointing a liquidator, provisional liquidator, receiver, administrator, statutory manager or any similar person, in respect of the Borrower or Guarantor (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);

(b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Borrower or Guarantor, or an order is made or any effective resolution is passed for the winding up of the Borrower or Guarantor;

(c) except to reconstruct or amalgamate while solvent on terms approved by the Credit Provider, the Borrower or Guarantor enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;

(d) a receiver is appointed to or over or takes possession of all or a substantial part of the assets or undertaking of the Borrower or Guarantor;

(e) the Borrower or Guarantor is or is deemed or presumed by law or a court to be insolvent;

(f) the Borrower or Guarantor takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to the Borrower or Guarantor; and

(g) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the Borrower or Guarantor under the law of any applicable jurisdiction.

**Nissan Finance Dealer** means a motor vehicle dealer authorised by NFS to provide NFS products and services.

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

**Schedule** means the schedule to this Agreement which sets out the specific terms of, and the parties to, the Agreement.

**security interest** includes:

(a) a mortgage, pledge, charge, lien, 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

(b) a "security interest" as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor,

but does not include a lien or other security interest arising solely by operation of law.

**Total Amount Financed** means the amount stated as that in the Schedule.

#### 18.2 Interpretation

In this document unless the context otherwise requires:

(a) clause and subclause headings are for reference purposes only;

(b) the singular includes the plural and vice versa;

(c) words denoting any gender include all genders;

(d) reference to a person includes any other entity recognised by law and vice versa;

(e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;

(f) any reference to a party to this document includes its successors and permitted assignees;

(g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

(h) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;

---

(i) words used in the Schedule have the same meaning when used in this document;

(j) a reference to any legislation or legislative provision includes any statutory modification or re-

enactment of or legislative provision substituted for and any subordinate legislation under that legislation or legislative provision; and

(k) the terms **account receivable, collateral, debtor,**

**financing change statement, financing statement, future advance, goods, motor vehicle, proceeds** and **secured party** have the meanings given to them in the context of the PPSA.