

## 1. DEFINITIONS

In this PFMA unless the context otherwise requires, the following terms have the meanings set out below:

**"Borrower"** means (jointly and severally) the person(s) named as Borrower below in the signing section of this PFMA and includes (without limitation) any other person, trust(s) or legal entity(s) named as an insured party under or in relation to any Insurance;

**"Broker"** means:

(i) for the purposes of clause 3 below, the person(s) and/or entity(s) specified as the broker in the Loan Request signed by or on behalf of the Borrower at or about the time that the Borrower enters into this PFMA; and

(ii) for all other purposes, means the broker(s) specified in the applicable Loan Request;

**"Debt"** means the principal amount that FSL funds the Borrower pursuant to a Loan Agreement and, depending on the context, also includes the 'Deposit Amount' set out in the relevant Loan Agreement and all accrued and unpaid interest, fees and charges relating to the principal amount or payable under the applicable Loan Agreement;

**"Deposit Amount"** in relation to a Loan Agreement, means the amount specified as such in that Loan Agreement;

**"Insurance"** means any insurances described in a Loan Agreement and in respect of which the Insurance Premium is funded (wholly or in part) by FSL under a Loan Agreement;

**"Insurer"** means the provider of any Insurance;

**"Insurance Premium"** means premium payment(s) payable to the Insurer in relation to any Insurance;

**"Insurance Proceeds"** means all refunds of Insurance Premium or other moneys payable at any time by an Insurer in connection with any Insurance, including on termination of such Insurance;

**"Loan Agreement"** has the meaning given to it in clause 2;

**"Loan Request"** means a completed loan application (in the then current form prescribed by FSL) submitted to FSL by the Borrower or by the Broker on the Borrower's behalf;

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

**"Repayment Event"** has the meaning given to it in accordance with clause 9 of this PFMA;

**"Secured Moneys"** means all Debts owing by the Borrower to FSL from time to time under Loan Agreements;

**"Secured Property"** has the meaning given to it in clause 8;

**"Security Interest"** has the meaning given to it in the PPSA.

## 2. ENTRY INTO LOAN AGREEMENTS

The Borrower may from time to time make a request to FSL to lend it money to fund insurance premiums by submitting (or its Broker submitting) to FSL a Loan Request. FSL undertakes to promptly consider each such Loan Request. Upon acceptance of a Loan Request by FSL a loan agreement ("Loan Agreement") is automatically made between FSL (as lender) and the Borrower on the terms set out in the applicable Loan Request and this PFMA. For the avoidance of doubt, the terms of this PFMA will be deemed to be automatically incorporated into each Loan Agreement. The person(s) who sign this PFMA for the Borrower warrant(s) that they have full power and authority to enter into this PFMA on behalf of each person comprising the Borrower and that the terms of this PFMA create valid and binding obligations on each person comprising the Borrower in respect to each Loan Agreement entered into under this PFMA.

## 3. EXPRESS FUNDING OF FUTURE INSURANCES

Unless the opt out provision (at the end of this PFMA) is selected by the Borrower, the Broker is hereby authorised to (in the Borrower's name and as attorney for and on behalf of the Borrower): (a) arrange future insurances on behalf of the Borrower, whether additional to or by way of replacement of any pre-existing insurance on its expiry or otherwise; (b) on receipt from time to time of invoice/s for the premium due for such insurance(s), forward Loan Request(s) to FSL on behalf of the Borrower for funding insurance(s), at the rates and on the terms of FSL prevailing at the time of such Loan Request(s); and (c) otherwise enter into Loan Agreements with FSL with respect to the funding of the premiums on insurance(s). The Borrower acknowledges that FSL may accept and act on Loan Requests submitted by the Broker, on the basis of this authority and without further inquiry with the Borrower (and that the Borrower will be bound by any Loan Agreement(s) resulting from any such Loan Request), until and unless FSL receives written notice of cancellation of this authority from the Borrower which the parties acknowledge and agree that the Borrower may provide at any time.

## 4. CONDITIONS PRECEDENT TO ANY ADVANCE BY FSL

FSL will not be obligated to make any advances under a Loan Agreement until: (a) FSL has received the relevant Deposit Amount in cleared funds; (b) the Insurer has accepted the Borrower's proposal for the Insurance the subject of the relevant Loan Agreement; and (c) FSL has received a properly completed and signed direct debit authority. FSL is not deemed to have waived these conditions by forwarding money to the Insurer or the Broker (or any other intermediary broker) under a Loan Agreement and, until they are satisfied (or waived by FSL), such money belongs to FSL. If the Insurer does not accept the Borrower's proposal for Insurance within 21 days of FSL's acceptance of a Loan Request, FSL may by written notice to the Borrower terminate the applicable Loan Agreement. Upon such termination FSL will (if it was received), repay to the Borrower the relevant Deposit Amount less any direct expenses in relation to that Loan Agreement.

## 5. APPLICATION OF LOAN AND DEPOSIT

The Borrower directs FSL to advance the Debt: (a) to the Insurer or the Broker (as applicable) in payment of the Insurance Premium and associated fee(s) relating to each Loan Agreement; and (b) to FSL itself in payment of the FSL Administration Fee specified in the applicable Loan Agreement; and (c) where any Insurance Premium is payable to the Insurer by instalments, FSL will pay the Insurance Premium by the respective due dates. FSL has no obligation to pay any instalments of the Insurance Premium in relation to any Loan Agreement after a Repayment Event occurs. Each Deposit Amount belongs to FSL from the date of its payment by the Borrower and FSL is entitled to the benefit of such Deposit Amount(s) before making payment under this clause.

## 6. REPAYMENT OF LOAN

The Borrower must pay the total Debt by instalments as described in the applicable Loan Agreement. The Borrower must pay FSL interest ('default interest') calculated daily (both before and after judgment) at 5% above the prevailing published Westpac Personal Overdraft interest rate on any overdue money from the due date for payment until payment is made in full to FSL.

## 7. FSL APPOINTED AS BORROWER'S ATTORNEY

Upon signing this PFMA the Borrower (and if there is more than one Borrower, each jointly and severally) irrevocably appoints FSL and its officers and employees (each an "attorney") from time to time severally as its attorney(s) to do all such things as FSL reasonably believes may be necessary or desirable to protect fully FSL's interest under this PFMA and each Loan Agreement including (without limitation): (a) to do anything the attorney considers desirable to give effect to this PFMA or any Loan Agreement; (b) to date or complete or correct any details in this PFMA or any Loan Request (before or after acceptance); (c) to cancel, terminate or procure the cancellation or termination of any Insurance; (d) to give directions and authorities to any Insurer or Broker concerning payments to be made by the Insurer and to give valid receipts for any Insurance Proceeds; and (e) to do anything the attorney considers desirable to facilitate the exercise of FSL's rights under this PFMA and each Loan Agreement. The powers in paragraphs (a) and (b) may be exercised at any time. The other powers in this clause may only be exercised after there has been a breach of this PFMA or a Loan Agreement by the Borrower or if a Repayment Event has occurred. Upon request by FSL, the Borrower must ratify all acts of its attorneys.

## 8. SECURITY

The Borrower hereby irrevocably assigns unconditionally and absolutely to FSL all of the Borrower's right to, and interest in, the benefit of all present and all future Insurance including without limitation, the rights to possession of any Insurance policy, the right to the Insurance Proceeds, and the right to claim, demand, sue for, recover, settle and receive the Insurance Proceeds (together, the "Secured Property") as security for the performance by the Borrower of its obligations under this PFMA and each Loan Agreement. FSL will only be entitled to exercise rights over the Secured Property following a Repayment Event. The Borrower shall remain liable to perform all of its obligations under and in connection with any Insurance and nothing in this clause transfers or imposes any such obligations on FSL or imposes any liability on FSL for any failure on the part of the Borrower to comply with its obligation under any Insurance. The assignment of Secured Property to FSL will be effective immediately upon the entry into a Loan Agreement without the need for any further notice or agreement between FSL and the Borrower. Insofar as the Secured Property comprises Insurance Proceeds, the security interest created by this PFMA shall take effect as a transfer (as "transfer" is used in the PPSA).

## 9. REPAYMENT EVENTS

A Repayment Event occurs if: (a) the Borrower fails to pay any money owing to FSL under a Loan Agreement; (b) the Borrower is a corporation, and a liquidator, receiver, administrator or any similar officer is appointed over any part of the Borrower's undertaking; (c) the Borrower is a partnership which is dissolved or has a receiver appointed to any of its assets; (d) the Borrower is declared or becomes insolvent or, if an individual, is declared bankrupt; or (e) the Borrower breaches any term of this PFMA or any Loan Agreement. If a Repayment Event occurs: (i) the Borrower is deemed to have repudiated the relevant Loan Agreement; (ii) the Debt the subject of the applicable Loan Agreement will become immediately due and payable by the Borrower to FSL without FSL having to make demand for the same;

(iii) FSL may cancel or otherwise deal with any Insurance; (iv) FSL may direct the Insurer, or any person or organisation to whom Insurance Proceeds are paid, to pay the Insurance Proceeds in full to FSL; and FSL may apply the Insurance Proceeds received by FSL in payment of all Secured Moneys. If the Insurance Proceeds received by FSL are less than the Secured Moneys the Borrower will remain liable to FSL for the shortfall and if they exceed the Secured Moneys FSL will account to the Borrower for the excess. FSL will not be liable for any losses that the Borrower may incur if FSL exercises its right to cancel any Insurance or otherwise exercises its rights under this clause. The Borrower must pay FSL upon demand all its costs and expenses (including legal costs and expenses on a full indemnity basis) incurred by FSL in recovering Secured Moneys following a Repayment Event.

#### 10. BORROWER'S OBLIGATIONS REGARDING INSURANCES

The Borrower hereby undertakes: (a) to comply with all legal requirements concerning the Insurance; (b) not to cancel any Insurance (or give a Broker an instruction to cancel any Insurance) without FSL's consent in writing and not to do anything else which might prejudice FSL's security interest in the Secured Property; (c) not to mortgage, sell, dispose of, pledge, charge or otherwise create, allow to be created or permit to exist a security interest in the Secured Property (other than the security interest granted to FSL); (d) to do all things reasonably necessary to ensure that FSL has and maintains a valid and binding first-ranking security interest in the Secured Property at all relevant times; and (e) to notify FSL promptly of any material change in information relating to the Borrower.

#### 11. PPSA

FSL may register a financing statement (including a financing change statement) in respect of its security interests in the Secured Property. The Borrower waives its rights under the PPSA to receive any financing statement, financing change statement or a verification statement that is registered, issued or received by FSL at any time in relation to this PFMA or any Loan Agreement. FSL and the Borrower agree that sections 114(1)(a), 133 and 134 of the PPSA shall not apply to any enforcement by FSL of the security interest granted to it under this PFMA and any Loan Agreement. The Borrower also waives any rights it may have under sections 116, 120(2) and 121 of the PPSA on such enforcement.

#### 12. BORROWER'S WARRANTIES AND INDEMNITIES

The Borrower indemnifies FSL against all loss and costs of any nature incurred by FSL arising directly or indirectly from a breach by the Borrower of any of its obligations under this PFMA or a Loan Agreement or from FSL exercising any right under this PFMA or any Loan Agreement. The Borrower will notify FSL immediately in writing of (a) any damage to, loss or alienation of property the subject of any Insurance; (b) the cancellation of any Insurance; and (c) any refusal by any Insurer to issue insurance.

#### 13. BROKER AND COMMISSIONS

A commission is generally payable by FSL to the Broker and/or any organisation of which the Broker is a member. The Borrower acknowledges that commissions may be paid by an Insurer to the Broker and/or such organisation. The Borrower acknowledges that in effecting the Insurance and arranging this PFMA (including each Loan Agreement) any Broker is acting on behalf of the Borrower and not as agent of FSL and that any Broker cannot make any representation or warranty for or on behalf of FSL.

#### 14. PRIVACY ACT 2020

The Privacy Act 2020 may entitle the Borrower to access, and/or request the correction of personal information which FSL holds about the Borrower. The Borrower hereby authorises FSL, the Insurer, the Broker (as relevant) or any reference bureau to obtain and/or disclose any personal information held about the Borrower in connection with this PFMA in response to any enquiry from FSL.

#### 15. DEMANDS AND NOTICES

A demand or notice by FSL to the Borrower may be sent by post or delivered to the Borrower's address or email to the Borrower's email address specified in a Loan Agreement or to such other address or email address as is made known by the Borrower to FSL in writing from time to time.

#### 16. GENERAL

Time is of the essence for the Borrower's obligations. If the Borrower is two or more persons they are bound jointly and severally. References to the singular include the plural and vice versa. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the New Zealand court system. References to the Borrower, Broker, Insurer and FSL include their respective successors and permitted assigns. FSL may assign its rights under this PFMA and any Loan Agreement but the Borrower may not assign any of its rights without the prior written consent of FSL (such consent not to be unreasonably withheld). A cancellation fee of up to \$250 may apply if for whatever reason a Loan Agreement is terminated early. FSL's right, powers and remedies under this PFMA and each Loan Agreement will not be adversely affected if FSL delays or omit to enforce its rights, powers and remedies.

#### 17. COUNTERPART EXECUTION

This PFMA may be executed in a number of counterparts each of which is an original but all counterparts together constitute one and the same instrument, as follows: (i) by signing and sending a counterpart electronic copy of this agreement to the other party by email or fax; or (ii) by uploading a signed counterpart electronic copy of this agreement to the IT Platform owned and/or operated by FSL; or (iii) by confirming acceptance of this agreement by acknowledgement on the IT Platform owned and/or operated by FSL. In addition, the Borrower acknowledges and agrees that: (i) unless the "opt out provision" referred to in clause 3 of the PFMA has been selected, the Broker can sign and/or confirm future Loan Requests (and thereby create binding agreements) on behalf of the Borrower; and (ii) FSL may rely on and enforce as an agreement any document, arrangement or agreement entered into by the Borrower by the procedures set out in this clause.

#### 18. CONSUMER GUARANTEES ACT 1993 ("CGA") / FAIR TRADING ACT 1986 ("FTA")

(a) Subject to (b), the Borrower has rights under the Consumer Guarantees Act in respect of loans. (b) If the Borrower is acquiring the lending (provided for under this PFMA and each Loan Agreement) in trade, parties acknowledge and agree that, for the purposes of section 43 of the Consumer Guarantees Act 1993 and section 5D of the Fair Trading Act 1986: (i) the products are being supplied and acquired in trade; and (ii) to the extent permitted by law, the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act will not apply to this PFMA, any Loan Agreement, or to the negotiation or implementation of this PFMA or any Loan Agreement. The Borrower acknowledges that FSL does not give any guarantee or make any representation with respect to any lending provided under this PFMA or any Loan Agreement, other than those guarantees or representations which are expressly confirmed by FSL in writing.