

TERM LOAN AGREEMENT

(non regulated)

Date of agreement:

We, the lender(s) specified below, agree to lend you, the borrower(s) specified below, the amount of the total advances referred to in the attached Annexure Schedule.

Lender(s) (We/us):

Physical address:

Postal address:

Fax:

Email:

Borrower(s) (You):

Physical address:

Postal address:

Fax:

Email:

Guarantor(s):

Physical address:

Postal address:

Fax:

Email:

The terms and conditions that apply to your contract (other than those implied by law) are set out in the following documents:

- this Term Loan Agreement;
- the Annexure Schedule and Loan Conditions attached; and
- each security interest.

When we refer to this agreement, we are referring to all of these documents. When we refer to a table we are referring to the relevant table in the Annexure Schedule.

The meaning of certain key words is explained in the "meaning of words" clause in the Loan Conditions.

Agreement to repay

You agree that:

- (a) you will repay all amounts that you borrow from us together with interest charges, fees, other charges and any default interest at the times and in the manner set out in the Annexure Schedule; and
- (b) the terms and conditions contained in the Loan Conditions apply to all loans that we make to you under this agreement.

Security

All moneys that you owe us under this agreement and under any other agreement that you enter into with us will be secured to us by the securities set out in the Annexure Schedule. This contract is a secured agreement as defined by the Mortgage Memorandum (all obligations) 2015/4328 (Ref. 8010) / General Security Agreement (Ref. 6301) / Memorandum of General Terms 2015/4326 (Ref. 6302) / Purchase Security Agreement (Ref. 6303) published by the Auckland District Law Society over the property set out in the Annexure Schedule.

Conditions precedent to advance

Before we can make the first advance to you under this contract:

- (a) you must have signed this agreement together with all of the securities;
- (b) the conditions set out in the Annexure Schedule (if any) and any other pre-settlement requirements that we ask you to complete must have been completed to our satisfaction; and
- (c) if any person is named in this agreement as a guarantor, the guarantor must have signed a deed of guarantee and indemnity in the form required by us and the conditions precedent to the acceptance of that guarantee (if any) must have been completed to our satisfaction.

Signed

Signed by the borrower/director/authorised signatory _____ Date _____

Signed by the borrower/director/authorised signatory _____ Date _____

Signed by the guarantor/director/authorised signatory _____ Date _____

Signed by the guarantor/director/authorised signatory _____ Date _____

PART 1 ANNEXURE SCHEDULE

1. LOAN DETAILS

Information relating to your contract is contained in this Annexure Schedule and any further Annexure Schedules (if any) that may be attached to this agreement. This information forms part of your contract with us.

The information in this Annexure Schedule is given as at the date of the agreement. The payment dates, interest rates, and payment amounts in this Annexure Schedule are estimates that assume that:

- (a) all payments will be made on time;
- (b) the fees and charges will not change after the date of this agreement; and
- (c) if an interest rate is subject to change, it will not change after the date of this agreement.

If any of these assumptions are wrong, and a change occurs before the initial loan advance is actually made to you, we do not need to give you a new or replacement agreement.

This Annexure Schedule only relates to those advances that we have already agreed to make. If we agree to make further advances to you in the future we will provide you with a new Annexure Schedule for those further advances.

Table A – Financial details

Principal sum: \$	Lower interest rate: % per annum. Higher interest rate: % per annum.
Term expiry date: Repayment of principal sum: Interest commencement date: Interest dates:	
Interest calculation method <i>(delete one, if none deleted then interest on full sum method applies)</i> Interest on full sum: (see clause 3(c)) Interest on full sum, default interest only on amount in default : (see clause 3 (d))	Interest is payable at the higher interest rate on the full principal sum but will be accepted at the lower interest rate if it is paid within 7 days of the due date for payment. Interest accrues and is payable at the lower interest rate on the full principal sum. If a payment is not made on its due date then interest at the higher rate is payable on the amount in default for the period that it is in default. This applies whether the default is payment of interest or principal

Table B – Repayment of principal sum

<p>* The principal sum is repayable in one sum together with interest and all other moneys then outstanding on the term expiry date.</p>
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(* Delete if not applicable and include alternative repayment details in this box and on a further Annexure Schedule if required.)

Table C – Description of all security

The following table describes all security held or to be held in connection with this contract and the extent to which your obligations to the lender are secured.

Type of Security	Description of property secured	Extent of security *

* (e.g. "all obligations" or "\$xxxxx.xx plus all interest, credit fees and charges and other costs and expenses")

Table D – Additional provisions

The following table contains a description of any variations to any of the printed terms and conditions in the Loan Conditions and contains a brief description of the provisions contained in any further Annexure Schedules.

Clause or Annexure Sheet number	Description of change or provisions

2. INTERPRETATION – GENERAL

- (a) **Inclusion in contracts:** The words "**this contract**" mean the Term Loan Agreement which includes the Annexure Schedule, these Loan Conditions, each security interest and any document that contains a provision incorporating into that document any or all of the provisions set out in these Loan Conditions as amended, added or varied specifically by the terms of any annexure or schedule attached to that document.
- (b) **Construction of terms:** In this contract, unless inconsistent with the context:
- (i) any expression that corresponds to a heading in Table A means and includes the information and particulars inserted against that heading; and
 - (ii) the word "**you**" includes all persons executing this contract regardless of how they may be described in this contract and the covenants contained and implied in this contract will bind each of you jointly and severally as the principal party in this contract;
 - (iii) a reference to a person (whether by name or position) extends to and includes the executors, administrators and assigns of that person; and
 - (iv) "**us**", "**we**" or the "**lender**" means the party named as such in this contract;
 - (v) the singular includes the plural and vice versa; and
 - (vi) a reference in any provision of this contract to any law is a reference to that law as at 1 July 2015 unless the provision requires you to comply with that law and that law is changed in which case the requirement to comply with the relevant law is a requirement to comply with the amended law.

In this contract, clause and paragraph headings are included to assist with navigation through these Loan Conditions and do not affect the content of the clause or paragraph.

- (c) **Meaning of certain words:** In this contract, unless inconsistent with the context:

"**higher interest rate**" means the interest rate set out opposite the words "higher interest rate" in the Annexure Schedule;

"**interest commencement date**" means the date set out opposite the words "interest commencement date" in the Annexure Schedule;

"**interest dates**" means the dates set out opposite the words "interest dates" in the Annexure Schedule and refers to the dates on which interest is debited by us to the loan account;

"**interest period**" means the period from (and including) one interest date (or in the case of the first interest period, from the interest commencement date) to (but excluding) the next interest date;

"**land**" and "**mortgage**" have the meanings set out in the Land Transfer Act 1952;

"**law**" and "**laws**" means any Act of Parliament, regulation, Order in Council or local authority by-law;

"**lower interest rate**" means the annual interest rate set out opposite the words "lower interest rate" in the Annexure Schedule;

"**moneys owing**" means all moneys owing to the lender at any time under this contract;

"**person**" includes a company or other body corporate;

"**principal sum**" means the principal sum specified in the Annexure Schedule;

"**schedule**" refers to one or more of them as the context requires;

“security interest”

- (i) in relation to land, means an interest in land under a mortgage and includes any unregistered charge on any land and any interest in any land granted or created for securing money or the payment or performance of an obligation;
- (ii) in relation to personal property has the meaning set out in section 17 of the Personal Property Securities Act 1999; and
- (iii) in relation to other property means any interest in that property that has been created for the purpose of securing money or moneys worth;

“taxpayer's paying rate” has the meaning set out in section 120C of the Tax Administration Act 1994 or any amendment or replacement of that section;

“term expiry date” means the date set out opposite the words “term expiry date” in the Annexure Schedule; and

“upon demand” means upon demand by notice in writing signed by or on behalf of the lender.

- (d) **Relationship with laws:** If any provision in this contract conflicts with, varies or is contrary to the provisions of any law or any provisions implied in contracts by any law then:
 - (i) if the provisions of or implied by that law may be varied or negated, the provisions of this contract will take precedence and the provisions of or implied by that law will be deemed not to apply to this contract or to apply only as varied by the provisions of this contract;
 - (ii) if the provisions of or implied by that law may not be varied or negated, then the provisions of this contract must be read subject to the provisions of or implied by that law.

The provisions in this contract are not exclusive and all laws that would otherwise apply to this contract continue to apply unless they have been varied or negated by the provisions of this contract.

3. COVENANT TO PAY AND TO COMPLY WITH OBLIGATIONS

- (a) **Pay and comply:** You must:
 - (i) repay the principal sum and pay the moneys owing (other than the principal sum) at the times and in the manner set out in Table B or (if applicable) in the manner provided by any other agreement and, to the extent that there is no such agreement, then upon demand;
 - (ii) comply with all of the obligations contained in every agreement between us; and
 - (iii) comply with the terms of every security or security interest at any time held by the lender for the moneys owing.
- (b) **Repay principal sum:** Unless alternative provisions are set out in Part 1 of this contract, you must repay the principal sum together with interest and all other moneys then outstanding on the term expiry date.

Interest Payment Method

- (c) **Interest on full sum:**

This subclause (c) applies as follows if full sum method is selected in Table A or by default if neither option is selected in Table A.

You must pay interest:

- (i) on the last day of the relevant interest period on the amount of the principal sum outstanding on the first day of an interest period at the higher interest rate; and
- (ii) on that part of the moneys owing in respect of which there is no agreement between us as to liability for payment of interest (whether or not demand has been made) on the last day of each month at 2% per annum above the taxpayer's paying rate as prescribed from time to time, calculated with daily rests from the date on which the moneys become owing.
- (iii) if, however:
 - A. you pay the interest on the due date for payment or within seven days of the due date for payment (or such other period as the Annexure Schedule may specify); and
 - B. during the relevant interest period no default has occurred or no default that occurred in any earlier period has continued during that period,

the lender will accept interest for the relevant interest period at the lower interest rate for that period.

(d) **Interest on full sum, default interest only on amount in default:**

This subclause (d) applies as follows if full sum method is deleted in Table A but if neither option is deleted, subclause (c) above will apply.

You must pay interest:

- (i) on the last day of the relevant interest period on the amount of the principal sum outstanding on the first day of an interest period at the lower interest rate; and
- (ii) if you fail to make a payment of interest or of principal on the due date for payment you must pay interests on the amount in default at the higher interest rate for the period from the due date for payment until the date of actual repayment of the amount in default; and
- (iii) if not paid within one month of the due date, the default interest amount shall compound at monthly intervals.

4. RIGHT TO PREPAY THE PRINCIPAL SUM

Unless the Annexure Schedule provides otherwise, you may repay the principal sum in full, but not in part, at any time prior to the term expiry date upon payment of:

- (a) the full amount of the principal sum then outstanding;
- (b) interest at the lower interest rate to the date of repayment in full;
- (c) all discharge and other fees payable to the lender or the solicitor for the lender relating to the discharge of any security interest;
- (d) all other moneys then owing under this contract; and
- (e) either:
 - (i) interest at the lower interest rate for a period of three months; or
 - (ii) if the lender so elects, the amount determined by the lender to be a reasonable estimate of its loss arising from the prepayment.

5. REPRESENTATIONS AND WARRANTIES

You represent and warrant to the lender that:

- (a) **properly authorised and valid binding and enforceable:** this contract is granted in accordance with:
 - (i) the resolutions of the directors and shareholders (where applicable) or of the partners, as the case may be; and
 - (ii) (if applicable) the Companies Act 1993,and that all other matters and things have been done and performed so as to authorise and make the execution and delivery of this contract, and your performance under this contract legal, valid and binding;
- (b) **inclusion of all other representations and warranties:** all representations and warranties given by you under this contract form representations and warranties of this contract and it must be read and construed to include such representations and warranties;
- (c) **default:** no event of default has occurred and you have no knowledge that an event of default is about to occur nor do you reasonably suspect that an event of default will occur;
- (d) **solvency:** if all or any one of you are a company, that you are solvent according to the meaning of the term in section 4 of the Companies Act 1993;
- (e) **information:** the information provided by you in connection with this contract is true and accurate and remains true to the date of this contract and there are no facts or circumstances that have not been disclosed to the lender which would make any information untrue, inaccurate or misleading; and
- (f) **continuation:** each representation and warranty in this contract is deemed to continue for as long as this contract is in effect by reference to the facts and circumstances as they exist, except that each reference to financial statements must be construed as a reference to the latest available financial statements of the relevant person.

6. WHEN DEFAULT OCCURS

Default occurs if:

- (a) **breach of obligation to pay money:** any of you fail to pay any moneys due in accordance with clause 3;
- (b) **breach of non-monetary obligation:**
 - (i) you fail to comply with any of the other obligations set out in clause 3(a)(ii) and 3(a)(iii) and, unless the agreement or arrangement relating to the obligation provides otherwise, where such failure is capable of remedy, the failure continues for a period of seven (7) days after the lender has served on you, a notice requiring you to remedy such failure; or
 - (ii) a default (however described) occurs in any agreement, deed or document under which you have obligations to the lender (other than an agreement or arrangement referred to in clause 6(b)(i)) and, unless the agreement deed or document under which that default occurs provides otherwise, where such default is capable of remedy, the default continues for a period of seven (7) days after the lender has served on you a notice requiring you to remedy such failure;
- (c) **change to a natural person granting the security:** any of you are a natural person and you die, change your name without the written consent of the lender, become bankrupt or in the opinion of the lender it appears from any balance sheet or other record that you have committed an act of bankruptcy;
- (d) **liability:** you act so that you contravene any law or incur legal liability or if you contravene any part of this contract including any collateral guarantee or agreement or if litigation, arbitration or administrative proceeding is current, pending or to your knowledge is threatened.

7. RIGHTS AND POWERS OF LENDER ON DEFAULT

- (a) **Rights and powers generally:** If default occurs, the lender may at any time or times thereafter, in addition to any rights, remedies or powers otherwise conferred upon the lender by law, exercise all or any of the following rights and powers separately or concurrently:
 - (i) call up the balance of the moneys owing in accordance with clause 8; or
 - (ii) obtain judgment and enforce such judgment against you (and if more than one of you, all or any one of you) for all of the moneys owing or if the amount realised from the exercise of any of the lender's rights and powers in any security interest is not sufficient to pay the moneys owing in full, the amount of such deficiency.
- (b) **Delay does not affect exercise of powers:** The lender's rights under this contract will not be affected by any delay in exercising them (whether or not the lender knows that they have become exercisable). The lender may only be held to have acquiesced in or waived any matter in relation to this clause if and to the extent that the acquiescence or waiver is expressed in writing.
- (c) **When notice required:** Except as required by law or the terms of this contract, the lender need not give any notice before exercising all or any of its rights and powers following a default.
- (d) **Persons dealing with lender:** No person dealing with the lender exercising any of these rights and powers will be:
 - (i) **not answerable for any loss:** answerable for the loss, misapplication or non-application of any money paid to the lender, or be obliged or concerned to see to its application; or
 - (ii) **not obliged to enquire:** obliged or concerned to enquire whether any default has been made, whether any notice has been given, whether the right or power has been exercised has become exercisable or otherwise as to the necessity, expediency, regularity or propriety for or of the action taken by the lender or the receiver or be affected by notice that no such default has been made, that no notice has been given, that the right or power has not become exercisable or that the exercise of that right or power is otherwise unnecessary, inexpedient, irregular or improper.
- (e) **Rights once acquired are not lost:** Once acquired, a lender will not lose a right or power unless the lender agrees in writing to waive or release it.
- (f) **Costs of default are payable:** All sums expended by the lender in the exercise of the lender's rights and powers following a default or in exercising or enforcing or attempting to exercise or enforce any power, right or remedy contained or implied in this contract are payable by you to the lender upon demand. This clause does not limit any other term of this contract relating to costs; nor is it limited by any other such term.

8. ACCELERATING PAYMENT OF THE MONEYS OWING ON DEFAULT

If default occurs, the moneys owing will become due and payable upon demand, or to the extent any notice is required by law to be given before the secured moneys become payable, immediately on expiry of the relevant notice period, without the need for any further notice or demand.

9. PAYMENT OF MONEYS BY LENDER

If you fail to do any thing or pay any sum which you have agreed to do or pay, the lender may (but is not obliged to) do such thing or pay such sum, in whole or in part which, in the lender's opinion, is necessary or expedient to rectify the consequences of the default. Any payment by the lender is without prejudice to the rights and powers of the lender under any other provision in this contract or any other agreement between you and the lender.

10. TRANSFER BY LENDER

The lender may without notice at any time assign or transfer or grant a security interest in this contract. You agree that the assignee or transferee will have all the rights and remedies available under this contract and further agree that you will not assert any right of set-off or enter a claim which you have or acquire against the lender and will pay the moneys owing as they come due to the assignee or transferee as the case may be.

11. SERVICE OF NOTICES

You agree that any demand or notice required or authorised to be served on you under or in relation to this contract may be signed by the lender or by the lender's agent and the following provisions apply:

- (a) **method of service:** the notice may be served:
 - (i) by delivering it to each of you personally; or
 - (ii) by posting it by registered letter addressed to you at your place of residence or place of business last known to the lender; or
 - (iii) if any or all of you are a company, by leaving it at your registered office or by posting it by registered letter addressed to you at your registered office or addressed to you at your place of business last known to the lender or by delivering it to any person who is named on the public register as a director or secretary of the company;
- (b) **when service effected:** a demand or notice posted by registered letter is deemed served at the time when the registered letter would in the ordinary course of postal delivery have been delivered;
- (c) **service valid when effected:** any service effected in accordance with this clause will be valid and effectual notwithstanding that at the date of service, you, whether to the knowledge of the lender or not, are dead, mentally incapable, bankrupt, in liquidation or absent from New Zealand or do not receive the demand or notice and notwithstanding any other matter or event whatsoever;
- (d) **other modes of service:** the modes of service provided by this clause do not limit any other sufficient and lawful modes of service and are subject to any mandatory provisions in any statute;
- (e) **actual receipt is valid notice:** where a demand or notice is not served in accordance with any of the foregoing methods, it will nevertheless be sufficiently served if actually received by you.

12. COSTS

- (a) **Costs payable by you:** You must pay to the lender upon demand, the lender's legal costs (as between solicitor and client) for:
 - (i) **documentation:** the arranging and preparation of this contract and registration of any security interest taken in conjunction with this contract and any variation or discharge or transfer in lieu of discharge of any security interest;
 - (ii) **costs on default:** legal services arising from or relating to any default under this contract or the enforcement or exercise or attempted enforcement or exercise of any of the lender's rights, remedies and powers under this contract (including the giving or attempted giving of any notice under the Property Law Act 2007 or any enactment in substitution for that Act, the inspection and valuation of the land and, if the lender is a solicitor's nominee company, the cost of compliance by the relevant solicitor with the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008 or any similar rules in relation to the matters mentioned in this paragraph (ii));
 - (iii) **costs of variation, waiver or change demand:** dealing with any of your requests for a variation of or waiver, change demand or other concession in relation to this contract;

- (iv) **legal costs of lender:** legal services relating to the protection of the lender's security interest taken in conjunction with this contract (including the investigation of any claim relating to the land which might affect that interest).
- (b) **Costs payable despite nature of lender:** This clause applies notwithstanding that the lender may be a solicitor or a solicitor's nominee company.

13. TRUSTEES

- (a) **Representations by trustees:** If any of you are entering into this contract as the trustee of a trust then you represent and warrant to the lender that:
 - (i) **powers:** you have the power under the instrument under which you hold property on trust to enter into this contract;
 - (ii) **proper purposes:** the entry into this contract is for a proper purpose and for the benefit of the trust under which you hold the property;
 - (iii) **right to be indemnified:** you have the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any of your actions including the entry into this contract; and
 - (iv) **all trustees approve or assent:** all of the persons who are trustees of the relevant trust have approved and have signed or assented to this contract.
- (b) **Trustees have full and unlimited personal liability:** Unless you have been named in this contract as a limited liability trustee (in which case the provisions of clause 13(c) will apply) all of you have full and unlimited personal liability for the repayment of the moneys owing and the compliance with all obligations in this contract.
- (c) **Limited liability trustees:** If you have been named in this contract as a limited liability trustee your liability is not personal and unlimited but will be limited to an amount equal to the value of the assets of the trust under which you have entered into this contract as a trustee that are (or, but for default would be) available to satisfy your liability for the moneys owing (the "limited amount") unless your right as a trustee to be indemnified from the assets of the trust has been lost and, as a result, the lender is unable to recover from you the limited amount.

SAMPLE



AUCKLAND DISTRICT LAW SOCIETY INC
INDEPENDENT VOICE OF LAW

Auckland District Law Society Incorporated
PO Box 58, Shortland Street, Auckland 1001
DX CP 24001
Ph: (09) 303 5270
Fax: (09) 309 3726
www.adls.org.nz

Law Firm Acting:

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