

## Form of Loan Contract

### LOAN CONTRACT

1. **Parties:** The parties to this Loan Contract are:
  - (a) you, as borrower;
  - (b) your spouse or partner as co-borrower, if clause 3 applies; and
  - (c) Harmony Investor Trustee Limited (**Trustee**), as lender (acting through its agent Harmony Limited (**Harmony**)).

The Trustee enters into this Loan Contract as bare trustee for the benefit of the Participating Investors, and not in any other capacity. The Trustee holds all rights and powers vested in it under or in connection with this Loan Contract as trustee for the Participating Investors in accordance with their respective interests, on and subject to the terms of the Trustee's appointment.

2. **Effective date:** This Loan Contract comes into existence and force immediately after the Loan Disclosure has been provided to you (or to your spouse or partner, if clause 3(b)(vi) applies). For the purposes of this clause 2, the Loan Disclosure will be treated as provided to you on the day on which it is emailed to you or otherwise sent to you by electronic communication (within the meaning of section 35 of the CCCFA, which sets out how disclosure is to be made).

3. **Co-Borrowers**

- (a) This clause applies if:
  - (i) your spouse or partner has registered as a Borrower (**Primary Borrower**) and has asked you to register as a co-Borrower; or
  - (ii) you have registered as a Borrower (**Primary Borrower**) and have asked your spouse or partner to register as a co-Borrower.
- (b) If this clause applies:
  - (i) you and your spouse or partner are party to the same Loan Contract, being this Loan Contract (regardless of the fact that you entered into this Loan Contract by separate processes);
  - (ii) you and your spouse or partner are jointly and individually liable under this Loan Contract;
  - (iii) you consent to Harmony providing your personal information to the other of you;
  - (iv) Harmony can accept instructions from either of you (without reference to the other) in respect of your rights and obligations under this Loan Contract;
  - (v) either of you can agree on behalf of both of you to modifications to this Loan Contract;
  - (vi) if providing a disclosure statement to either of you is sufficient under section 35(2) of the CCCFA, the disclosure statement will be deemed to have been provided to both of you for all purposes if it has been provided to either of you; and
  - (vii) at Settlement, the Loan Amount to be credited to the borrower's bank account will be paid to the Primary Borrower's nominated account.

4. **Loan:** The Trustee agrees to advance the Loan Amount specified in the Loan Disclosure to you for the term specified in the Loan Disclosure, on and subject to the terms of this Loan Contract.

5. **Settlement:** Settlement of the Loan will be by no later than the end of the first Business Day after the day on which the Loan Disclosure was provided to you.

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6. **Interest:** Interest will accrue on the outstanding amount of the Loan at the interest rate specified in that Loan Disclosure, on the basis of a 365-day year. Interest is charged and payable monthly in arrears (and will be added to the amount owing).
7. **Repayment:** You must pay all loan repayments specified in the Loan Disclosure, comprising all payments of principal and interest, to Harmoney (as agent for the Trustee) on the repayment dates specified in the Loan Disclosure.
8. **Fees and charges:** You must pay all fees and charges specified in the Loan Disclosure to Harmoney (as agent for the Trustee) on the payment dates specified in the Loan Disclosure.
9. **Early repayment option:** You can prepay the Loan or any portion of it early. If you choose to prepay the entire outstanding amount together with all interest, fees, and charges payable by you under this Loan Contract accrued to the date of prepayment, Harmoney will, on request, provide you with written confirmation of the prepayment amount for this purpose.
10. **Payment provisions:** You must make every payment due by you under this Loan Contract:
- (a) as and when due;
  - (b) in cleared funds and in full, without any set-off, deduction, or withholding, except as may be required by law; and
  - (c) by direct credit to the Collections Account (as notified to you by Harmoney).
- Harmoney will decide the order in which amounts you pay under this Loan Contract will be applied.
11. **Collection and enforcement**
- (a) Harmoney is authorised to carry out the Collection Services. Accordingly, Harmoney will:
    - (i) monitor all payment obligations under this Loan Contract;
    - (ii) take appropriate steps to contact you for payment arrears; and
    - (iii) take appropriate recovery action if there is a payment default (which may among other things include appointing a collection agent, instituting legal proceedings, and selling the Loan to another person).
  - (b) You must promptly and fully comply with all requests and directions Harmoney gives you when it exercises these powers.
12. **Default**
- (a) If you do not pay any money due under this Loan Contract on the due date, you must:
    - (i) pay an overdue fee until the overdue amount has been paid in full, at the times and at the rate specified on the Website under the "Interest Rates and Fees" section; and
    - (ii) continue to pay interest on the overdue amount (not including overdue fees and charges) at the interest rate applying to the Loan. Such interest accrues from the due date until the overdue amount has been paid in full, and is payable on demand (or compounded monthly in arrears if not paid).
  - (b) Further, if you:
    - (i) do not pay any money due under this Loan Contract on the due date;

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(ii) commit an act of bankruptcy (as defined in the Insolvency Act 2006); or

(iii) provided Harmony with incorrect or fraudulent information in registering as a Borrower or applying for the Loan,

Harmony (as agent for the Trustee) may by notice to you declare all money outstanding under the Loan Contract (including all interest and fees) immediately due and payable. In that case, you must immediately pay that outstanding money.

(c) If any direct debit instruction or other payment instruction you give in order to pay an amount due under the Loan is dishonoured (and subject to any grace period specified on the Website under the "Interest Rates & Fees" section), you will be charged a dishonour fee at the rate specified on the Website under the "Interest Rates & Fees" section. The dishonour fee must be paid at the same time as the next payment due under the Loan.

(d) You must on demand pay Harmony (as agent for the Trustee) for all costs and expenses (including all legal expenses) it incurs in enforcing or attempting to enforce this Loan Contract.

13. **Trustee's liability**

(a) The Trustee enters into this Loan Contract as trustee for the Participating Investors, and not in its personal capacity. The Trustee's liability to you under and in connection with this Loan Contract is limited to the assets from time to time under its control as trustee for the Participating Investors (subject to clause 13(b)). However, the Trustee will not have the benefit of this limitation if the loss for which the Trustee is liable is the direct result of the Trustee's wilful default or dishonesty.

(b) Without limiting clause 13(a), no Relevant Person will be liable if it fails to comply with this Loan Contract due to events beyond its reasonable control (including due to Participating Investors failing to fund the Loan). Nothing in this clause 13(b) or this Loan Contract limits any rights you may have under the Consumer Guarantees Act 1993, the Fair Trading Act, or any other applicable legislation.

14. **Harmony's liability:** Harmony enters into this Loan Contract as agent for the Trustee, and not in Harmony's personal capacity. Accordingly, Harmony has no personal liability to you under this Loan Contract.

15. **Changes to Terms**

(a) The Trustee (through Harmony) will not amend the interest rate applying to the Loan, the loan term, the amounts of any loan repayments, and the loan repayment dates without your prior agreement (or if clause 3 applies, the prior agreement of your spouse or partner).

(b) The Trustee (through Harmony) may from time to time:

(i) vary an existing fee under this Loan Contract; and

(ii) introduce a new type of fee under this Loan Contract, but only if the introduction of that fee is considered necessary as a result of a legal or regulatory development,

in each case as and with effect from the time specified on the Website under the "Interest Rates & Fees" section. Harmony will be entitled to process additional direct debit payments to cover any such fees.

(c) Subject to clauses 3(b)(v), 15(a), and 15(b), the Trustee (acting through Harmony as its agent) may amend this Loan Contract at any time by notice to you. Any such amendment will apply from the time specified in the notice.

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16. **Notices**

- (a) You must provide all notices to the Trustee and Harmoney (as agent for the Trustee) in writing addressed to Harmoney (including by email sent to customer.services@harmoney.co.nz).
- (b) The Trustee and Harmoney may provide you with communications in relation to this Loan Contract and the Loan, including notices and disclosures, by electronic means (including by email). Subject to clause 2 and the CCCFA, every electronic communication to you (including any email) will be deemed received by you when transmitted by the Trustee or Harmoney (as the case may be).
- (c) In respect of any disclosure statements to be provided to you under the CCCFA:
  - (i) You nominate the email address specified in the Loan Application (or such other email address as you may notify to Harmoney) as the information system to which any CCCFA disclosure statements or other communications may be sent. Any such disclosure statement may be provided to you by sending you an electronic communication that allows the disclosure statement to be accessed from a website or by means of the Internet.
  - (ii) Without limiting clause 16(c)(i), you further agree that any disclosure statement that the CCCFA requires to be provided to you may be disclosed to you by enabling you to access the relevant information on the Website.

17. **Investors**

- (a) Your legal relationship under the Loan Contract is held by the Trustee for the benefit of the Participating Investors.
- (b) The Trustee is the trustee solely for the Participating Investors.
- (c) You are not entitled to any information about the Participating Investors.
- (d) You will not be advised if there is any change in the Participating Investors (for example, because a Participating Investor sells its beneficial interest in the Loan). Any such change will not affect any of your rights and obligations under this Loan Contract.

18. **Replacement of Trustee or Harmoney**

- (a) Harmoney can in its discretion replace the Trustee. Any such change will not affect your rights and obligations under this Loan Contract. The replacement Trustee will have the same rights and obligations as the Trustee it replaces, without further action being necessary.
- (b) If a Harmoney Servicer Default occurs, a back-up servicer will be appointed to carry out the role of Harmoney under this Loan Contract. Any such appointment will not affect your rights and obligations under this agreement. The appointed back-up servicer from time to time will have the same authority as Harmoney did, without further action being necessary.

19. **Assignment**

- (a) You may not transfer or assign any of your rights or obligations under this Loan Contract to any person without Harmoney's prior written consent (which consent may be withheld at Harmoney's absolute discretion).
- (b) The Trustee (acting through Harmoney, where applicable) may transfer or assign all and any of its rights under this Loan Contract to any person, without requiring your consent. You agree that the Trustee and Harmoney may disclose all information they hold about you to any such person or intended person.

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20. **Governing law:** This Loan Contract is governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Loan Contract and the Loan.
21. **Disputes**
- (a) The Trustee is a member of the Financial Services Complaints Limited dispute resolution scheme. You may refer any dispute relating to this Loan Contract to that dispute resolution service, details of which are available at <http://www.fscl.org.nz/>.
  - (b) The entries made in the accounts maintained by Harmoney (as the Trustee's agent) are, in the absence of manifest error, conclusive evidence of the matters to which they relate.
22. **Additional Payment Protect terms:** If the Loan Disclosure provides that Payment Protect applies to the Loan, the Payment Protect Terms (as posted on the Website under "Legal Agreements" when you lodged the Loan Listing on the Website) will be incorporated in, and will form part of, this Loan Contract. This Loan Contract and the Payment Protect Terms will be read together as one, so that the express provisions of this Loan Contract will extend to the incorporated Payment Protect Terms. If there is any inconsistency between the Payment Protect Terms and the other terms of this Loan Contract (for example, if the Payment Protect Terms have different notice provisions), the Payment Protect Terms will apply to the extent of the inconsistency.
23. **Definitions:** In this Loan Contract:
- Business Day** means a day other than a Saturday, Sunday, or statutory public holiday in New Zealand;
- CCCFA** means the Credit Contracts and Consumer Finance Act 2003;
- Collections Account** means the bank account operated by Harmoney on behalf of the Trustee into which (among other things) payments of principal and interest and other amounts payable by you to the Trustee for the benefit of the Participating Investors must be paid;
- Collection Services** means the collection and enforcement services which the Trustee has appointed Harmoney to provide (itself or through a third party) in respect of loans made to borrowers through the Service, including the Loan;
- Harmoney Servicer Default** means the liquidation of Harmoney or Harmoney ceasing to hold a licence for the Service under the Financial Markets Conduct Act 2013 for a period of 5 Business Days;
- Investor** means, as the context requires:
- (a) a person who has registered as an Investor with Harmoney; or
  - (b) in relation to the Loan, a Participating Investor;
- Loan** means the total amount lent or to be lent by the Trustee to you under this Loan Contract, as set out in the Loan Disclosure (whether credited to your bank account or otherwise applied for your benefit); and where applicable includes the amount of all compounded and capitalised interest;
- Loan Application** means the application you made for the Loan on the Website;
- Loan Disclosure** means the initial disclosure required under the CCCFA and provided to you in respect of the Loan;

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**Loan Listing** means the loan listing you lodged on the Website relating to the Loan;

**Participating Investor** in relation to the Loan means an Investor who provided or participated in providing funds to the Trustee to make the Loan;

**Payment Protect** means the opt-in service provided by the Trustee (acting through Harmony as its agent) under which the Trustee agrees with you (in consideration of your paying the Payment Protect Fee) that you will not be liable to make certain payments under the Loan to the Trustee if a specified event occurs, subject to applicable cover limits;

**Payment Protect Terms** means the terms for Payment Protect;

**Relevant Person** means the Trustee, any related company (as defined in in section 2(3) of the Companies Act 1993) of the Trustee, and any employee, director, officer, agent, and contractor of the Trustee or such related company;

**Service** means the peer-to-peer lending service which Harmony provides through the Website;

**Settlement** in relation to the Loan means

- (a) Harmony arranging for the collection of funds from all Participating Investors, and (as directed by the Trustee) applying the Loan Amount as provided in the Loan Disclosure; and
- (b) the time at which the above transfer occurs;

**Website** means the website at [www.harmony.co.nz](http://www.harmony.co.nz), or such other website as Harmony may from time to time operate to provide the Service.

23. **Interpretation:** In this Loan Contract:

- (a) headings are inserted for ease of reference only, and do not affect the interpretation of this agreement;
- (b) references to **you or your** means the borrower(s) under this Loan Contract (and includes, unless the context states otherwise, the Primary Borrower and co-Borrower);
- (c) references to the singular include the plural, and vice versa;
- (d) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) reference to any party includes its permitted assignee or transferee; any reference to the **Trustee** includes any entity appointed to replace it as trustee for the Participating Investors; and any reference to **Harmony** includes any a back-up servicer entity appointed to replace it if a Harmony Servicer Default occurs;
- (f) reference to the "liability" of a person include references to its liability under any cause of action, whether in contract, tort, or equity or under any enactment;
- (g) references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form; and
- (h) a reference to any legislation is a reference to that legislation as amended or replaced from time to time, and includes any regulations or legislative instrument made under it.