

Harmony Limited

Platform Agreement

Version: 20 September 2016

This document sets out the terms on which a natural person (**you** or **your**) agrees to use the service provided by Harmony Limited (**Harmony**) to borrow money on a peer-to-peer basis from other persons through the Trustee (as defined below).

By accepting these terms, an agreement is formed between you, Harmony, and the Trustee.

Introduction

1. This agreement sets out the terms on which you are able to access and use the Service. If there is any inconsistency between these terms and any other terms set out on the Website, these terms will prevail (except as expressly contemplated by these terms).
2. You acknowledge and agree that:
 - (a) Harmony provides the Service under a licence which Harmony holds pursuant to the FMCA;
 - (b) you may have only one Loan outstanding at any time, the Loan Amount of which will be subject to any maximum limit specified on the Website; and
 - (c) you may not borrow more than \$2 million using the Service in any 12-month period.
3. In providing the Service, Harmony will (and will procure that its Related Companies who provide any aspect of the Service will):
 - (a) exercise the care, diligence, and skill that a prudent licensee for the Service would exercise in the same circumstances; and
 - (b) if any aspect of the Service is contracted out, take all reasonable steps to:
 - (i) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if Harmony were performing them directly; and
 - (ii) monitor the performance of those functions.

Co-Borrowers

4. If your spouse or partner has registered as a Borrower (**Primary Borrower**) and has asked you to register as a co-borrower, or vice versa, then:
 - (a) you will each have the same rights and obligations under this agreement;
 - (b) you consent to Harmony providing your personal information to the other of you; and
 - (c) Harmony will be entitled to accept instructions from either of you (without reference to the other) in respect of your rights and obligations under this agreement.

Registration as a Borrower

5. In order to access and use the Service, you must register as a Borrower by completing the Borrower Application. Harmony reserves the right not to register any person as a Borrower if that person has not completed the registration process to Harmony's satisfaction or does not meet Harmony's eligibility criteria.

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6. Harmoney's eligibility criteria for registering as a Borrower are:
 - (a) you must be a natural person (that is, not a company, partnership, incorporated society, trust, or other legal entity);
 - (b) you must be a New Zealand resident, which Harmoney will verify through you having a New Zealand residential address and a bank account with a registered New Zealand bank;
 - (c) you must be 18 years of age or older when you register; and
 - (d) you must have an acceptable credit record, as determined by Harmoney at its discretion.
 7. You acknowledge that Harmoney is required to implement its Fair Dealing Policy, which is set out on the Website under the "Legal Agreements" section, in respect of registering any person as a Borrower.
 8. Harmoney may terminate or suspend your registration as a Borrower at any time by notice to you if Harmoney reasonably believes that you are not complying with the terms of this agreement or are otherwise not using the Service for its intended purpose.
 9. You may terminate your registration as a Borrower at any time by notifying Harmoney through the Website or via 0800 HARMONEY or customer.services@harmoney.co.nz.
 10. If your registration is terminated or suspended, this agreement will continue to apply in respect of any Loans, Loan Contracts, and contracts for Optional Services to which you are a party when the termination or suspension takes effect.
 11. Subject to clause 10, this agreement will apply to you for so long as you are registered as a Borrower.

Loan Process

12. When you apply for a Loan, you should consider whether you require any Optional Service as part of taking out the Loan. The Website will have details of the Optional Services that are offered, their terms and conditions, and their costs.
13. If you want to take out a Loan using the Service, you must complete a Loan Application in which you nominate:
 - (a) the proposed Loan Amount;
 - (b) (if the Loan Application provides for this option) the lesser amount you agree to accept if the proposed Loan Amount is not reached by the end of the Listing Period;
 - (c) the Repayment Period; and
 - (d) whether you require an Optional Service for the proposed Loan.The proposed Loan Amount and any lesser amount which you will accept must each be expressed as a multiple of \$25. The amount you apply for will include:
 - (i) an amount equal to the Platform Fee that you must pay Harmoney if you obtain the Loan; and
 - (ii) an amount equal to any Optional Service Fee that is payable by you.
14. As part of the Loan Application, you must provide Harmoney with details of your bank account with a registered bank in New Zealand, from which payments are to be made by you in respect of your Loan. By providing those details you agree to Harmoney establishing a direct debit authority against that bank account on the terms set out in the authority accompanying this agreement in relation to any amount payable by you to Harmoney or to the Trustee under this agreement or any Loan Contract.

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15. If Harmony approves your Loan Application for listing on the Website, it will assign a Credit Grade to your Loan Application which will state the maximum Loan Amount and the Interest Rate applicable to that application. Harmony may in its discretion specify different ranges of maximum Loan Amounts which you are approved to list for, with a different Interest Rate applicable to each such range. You may then select the Loan Amount from the information provided by Harmony. Following this selection, your Loan Application (together with those details, including the Loan Repayments) will comprise your Loan Listing for that Loan.
16. Your Loan Listing will be published by Harmony on its Website for consideration by Investors, or allocated by Harmony to the Wholesale Investor marketplace for funding by one or more Wholesale Investors, during the Listing Period. You may withdraw your Loan Listing at any time before the Loan Contract has been concluded (as set out in clause 18) by cancelling your Loan Listing on the Website.
17. If your Loan is Fully Funded before the Listing Period expires, Harmony will:
- (a) notify you of that fact; and
 - (b) on the Trustee's behalf, provide you with a Loan Disclosure setting out the key terms of the proposed Loan (as required by the CCCFA). For the purposes of section 35 of the CCCFA, you:
 - (i) nominate the email address specified in the Loan Application (or such other email address as you may notify to Harmony) as the information system to which the Loan Disclosure may be sent; and
 - (ii) agree that the Loan Disclosure may be provided to you by sending you an electronic communication that allows the Loan Disclosure to be accessed from a website or by means of the Internet.
- If you take out any Optional Service for your Loan, the Loan Disclosure will also confirm that Optional Service.
- You should contact Harmony if you are not clear as to any of the information set out in the Loan Disclosure.

Loan Contract

18. Immediately after Harmony has provided the Loan Disclosure to you, a Loan Contract will come into existence under which the Trustee (who will be the lender of the Loan) will agree to advance the Loan Amount to you. The Loan Contract will be on the form set out on the Website under the "Legal Agreements" section when you lodge the Loan Listing for the Loan on the Website. For the purposes of this agreement, 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).

Optional Service Terms and Contracts

19. If you applied for an Optional Service in relation to a Loan, the Optional Service will be provided to you as follows:
- (a) If the terms that govern the Optional Service provide that they apply as additional Loan Contract terms, they will be part of the Loan Contract from the time that the Loan Contract comes into existence.
 - (b) If the terms governing the Optional Service provide that the Optional Service will be provided under a separate contract from the Loan Contract, then a separate contract for that Optional Service will come into existence immediately after Harmony has provided the Loan Disclosure for the Loan to you.

The additional Loan Contract terms or Optional Services contract (as the case may be) will be on the terms of the Optional Service set out on the Website under the "Legal Agreements" section when you lodge the Loan Listing for the Loan on the Website.

Settlement

20. Your Loan will be Settled before or on the next Business Day after Harmony has provided you with the Loan Disclosure for it.
21. At Settlement, Harmony will:
- (a) collect the funds that make up the Loan Amount from the Participating Investors, and deposit the Loan Amount in the Advance Account; and
 - (b) acting at the direction of the Trustee, as authorised by you:
 - (i) deduct an amount equal to the Platform Fee from the Loan Amount, and transfer it to Harmony's own account (in satisfaction of your obligation to pay that Platform Fee to Harmony); and
 - (ii) (subject to clause 22) transfer the balance of the Loan Amount to your Nominated Account.
22. If you have applied for an Optional Service, the following provisions will apply:
- (a) The Loan Amount will include an amount equal to the Optional Service Fee for that Optional Service.
 - (b) The amount transferred to your Nominated Account at Settlement will be:
 - (i) the total Loan Amount; less
 - (ii) an amount equal to the Platform Fee (which will be deducted and applied as set out in clause 21(b)(i)); and less
 - (iii) an amount equal to the Optional Service Fee.
 - (c) The Optional Service Fee will (as authorised by you) at Settlement either be:
 - (i) capitalised (so that it will be owing as part of the principal amount of the Loan); or
 - (ii) advanced to you as part of the Loan, but (on your instructions) transferred to the Trustee or Harmony (depending on who provides the Optional Service to you) in discharge of your obligation to pay it the Optional Service Fee.
- The terms governing the Optional Service will specify whether the Optional Service Fee is to be capitalised or transferred and paid at Settlement.

Cooling-down Period

23. The "Your Right to Cancel" section in your Loan Disclosure will specify whether there is a cooling-down period during which you can cancel the Loan, how long it is, and what costs you will have to pay if you cancel the Loan.

Fees and Charges payable by You

24. You must pay Harmony a Platform Fee for arranging each Loan made to you using the Service. The Platform Fee will be calculated at Harmony's rate (as notified on the Website under the "Interest Rates & Fees" section when the relevant Loan Contract is formed) and paid by you on Settlement.
25. If a Loan is advanced to you, you must pay Harmony (as agent for the Trustee) all fees and charges specified in the Loan Contract (such as the account maintenance fee and any overdue fees, dishonour fees, or enforcement costs). The fees and charges applying under Loan Contracts as at the date of this Agreement are set out on the Website under the "Interest Rates & Fees" section.

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26. If you take out an Optional Service, you must pay (in the manner provided in clause 22(c)) any Optional Service Fee that applies to it. The Optional Service Fees applying as at the date of this Agreement are set out on the Website under the "Interest Rates & Fees" section. You must also pay all costs that are payable by you under the terms governing that Optional Service. If you do not pay a cost for which you are responsible, Harmony may pay it and debit the amount it paid to your Loan account (and if that happens, you must pay that amount in full with your next Loan instalment, together with any interest that accrues on it.)
27. Harmony may from time to time introduce new types of fees or charges to be charged under or in connection with the Service, Loan Contracts, or Optional Services with effect from the time specified on the Website under the "Interest Rates & Fees" section. However, any new type of fee or charge will apply in respect of a Loan or an Optional Service only if:
- (a) you lodged the Loan Listing for the Loan on the Website after the new type of fee came into effect; or
 - (b) introducing the new type of fee or charge is considered necessary as a result of a legal or regulatory development (including as a result of any legislative change or in the interpretation or application of any legislation).
- You must pay Harmony any such fees and charges at the rate (as specified on the Website under the "Interest Rates & Fees" section from time to time), in such manner as Harmony may notify you. Harmony will be entitled to process additional direct debit payments to cover any such fees and charges.

Repayments

28. You must pay the Loan Repayments and all other amounts required to be paid by you under a Loan Contract to the Collections Account on the due date.

Collection Services

29. The Trustee has appointed Harmony to provide (itself or through a third party) collection and enforcement services (collectively, **Collection Services**) in respect of your Loans. The Collection Services include:
- (a) monitoring all payment obligations under each Loan Contract;
 - (b) taking appropriate steps to contact you for payment arrears; and
 - (c) taking appropriate recovery action where there is a payment default.
30. Harmony will be entitled to process additional direct debit payments to cover any collection fees payable by you.

Warranties

31. You warrant to Harmony that:
- (a) all information you provide to Harmony is true, accurate, and complete, and there is no information which has not been provided which would impact on Harmony's decision to register you as a Borrower or to make a Loan Listing available;
 - (b) you will provide Harmony with updated information in respect of any Loan Listing if any of your circumstances have changed from the time you submitted your Borrower Application; and
 - (c) if your residential address, email address, or telephone number changes, you will immediately provide Harmony with notice of the change and update the dashboard with your revised information.

Right to Profit

32. You acknowledge and agree as follows:
- (a) Harmony does not act as your agent in connection with the Service. For example, Harmony does not act as your agent in arranging a Loan.
 - (b) Harmony and its Related Companies may be paid a commission or other financial benefit by any person in connection with any Loan or the Service or an Optional Service (which may include Participating in any Loan).

Liability

33. You acknowledge and agree, in respect of Harmony, each Related Company of Harmony, and the Trustee, and their respective employees, directors, officers, agents, and contractors (together, **relevant persons**) that:
- (a) none of the relevant persons will be liable in respect of:
 - (i) any failure to provide the Service or otherwise to comply with this agreement, if the failure or non-compliance is caused by events beyond its reasonable control; or
 - (ii) to achieve any funding in respect of any Loan Listing;
 - (b) the liability of any relevant person (if any) in relation to any Loan will be limited to the amount of the Platform Fee actually received by Harmony for that Loan.

Nothing in this clause 33 or this agreement (except for clause 34) limits any rights you may have under the Consumer Guarantees Act 1993, the Fair Trading Act 1986, or any other applicable legislation.

This clause 33 is for the benefit of, and is enforceable by, each relevant person, in terms of the Contracts (Privity) Act 1986.

34. If you are in trade, and you acquire the Service in trade, all parties agree that:
- (a) the provisions of the Consumer Guarantees Act 1993; and
 - (b) sections 9, 12A, and 13 of the Fair Trading Act 1986, will not apply to this agreement.
35. You acknowledge that you do not rely on Harmony's skill or judgment as to the suitability or otherwise of the Service for your specific needs, in terms of providing a service through which you can seek to have loans funded.
36. You acknowledge that the Website may not be available at all times and that neither Harmony nor the Trustee will be liable to you for any loss of profit or opportunity (however described) arising from any inability to access the Website at any time.

Replacement of Trustee and Harmony

37. Harmony can in its discretion replace the Trustee with another entity it appoints to hold Loans as trustee for Participating Investors (and otherwise to act as trustee for Investors). Any such change will not affect your rights and obligations under this agreement. The replacement Trustee will have the same rights and obligations under this agreement as the Trustee it replaces, without further action being necessary.
38. If a Harmony Servicer Default occurs, a back-up servicer will be appointed to carry out the role of Harmony under this agreement. 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 rights as Harmony did, without further action being necessary.

Communications and Disputes

39. Harmony may provide you with communications in relation to the provision of the Service, including notices and disclosures, by mail or in an electronic form, including by email.
40. You must provide notices to Harmony by mail (posted to its registered address) or by email to the email address below.
41. If you have any questions about the Service or the terms of this agreement, please contact Harmony as follows:

Phone: 0800 HARMONEY
Email: customer.services@harmony.co.nz
42. Each of Harmony and the Trustee is a member of the Financial Services Complaints Limited dispute resolution scheme. You may refer any dispute relating to the provision of the Service to that dispute resolution service, details of which are available at <http://www.fscl.org.nz/>.
43. The entries made in the accounts maintained by Harmony (as principal or as the Trustee's agent, as the case may be) are, in the absence of manifest error, conclusive evidence of the matters to which they relate.

Amendments to Agreement

44. Subject to clause 27, Harmony may modify this agreement, and the way in which it provides the Service, at any time by notice on the Website under the "Legal Agreements" section. You should check the "Legal Agreements" section of the Website regularly. Any such modifications will apply from the date stated on the Website.

Assignment

45. You may not transfer or assign any of your rights or obligations under this agreement without Harmony's prior written consent (which consent may be withheld at Harmony's absolute discretion).

Tax Matters

46. You will not be required to withhold or account to Inland Revenue for any RWT in relation to interest payments you make under the Loan. This is because the Trustee holds an RWT Exemption Certificate.
47. In certain circumstances where a Participating Investor is not resident in New Zealand for income tax purposes, you may be required to:
 - (a) withhold and account to Inland Revenue for NRWT; or
 - (b) pay AIL to Inland Revenue, in relation to interest payments you make under the Loan.However, Harmony (acting for the Trustee) will meet all NRWT or AIL obligations on your behalf from the Loan Repayments you make, immediately upon payment of the relevant interest into the Collections Account. For this purpose, you:
 - (i) authorise the Trustee to act on your behalf and to do all things necessary (including, where required, completing Inland Revenue registration forms and providing all necessary information about you to Inland Revenue) to meet any NRWT or AIL obligations on your interest payments;

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- (ii) authorise the Trustee to delegate its authority under clause 47(i) to Harmony as its agent; and
 - (iii) agree to provide the Trustee (through Harmony) with all necessary information (including your IRD number and any other relevant personal or tax-related information) for it to act effectively for the purposes described above.

You are not required to make any additional payment as a top-up for the NRWT or AIL deduction.

Anti-money Laundering Obligations

48. Harmony, the Trustee, and certain persons who Participate or propose to Participate in Loans to you (**Affected Investors**) may have initial or ongoing customer due diligence and other obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (or equivalent legislation in other countries) and related regulatory directives or guidelines. You agree promptly on request by Harmony to provide it with any information and documents that are reasonably required to enable Harmony, the Trustee, or any Affected Investor to comply with those obligations. You authorise Harmony and the Trustee to disclose any information or documents it holds about you (including any information or documents you provide to Harmony under this clause 48) to any Affected Investor for this purpose.

Governing Law

49. This agreement is governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters arising under or in connection with this agreement.

Defined Terms

50. In this agreement:

Advance Account means the bank account operated by Harmony on behalf of the Trustee into which funds are transferred by Harmony from the Investor Account when an Order is accepted, and from which Harmony (as agent for the Trustee) transfers funds to the relevant Borrower's Nominated Account at Settlement;

AIL means approved issuer levy payable under part 6B of the Stamp and Cheque Duties Act 1971;

Borrower means a natural person who has registered as a Borrower with Harmony;

Borrower Application means the application to become a Borrower, set out on the Website;

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 Harmony on behalf of the Trustee:

- (a) into which Loan Repayments and other amounts payable by Borrowers for the benefit of Investors are paid; and
- (b) from which:

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- (i) certain deductions, withholdings, and payments are paid to Inland Revenue and Harmony (as provided for in the Investor Agreement); and
 - (ii) the balance is repaid to the Investor Account for the benefit of the relevant Investors;

Collection Services has the meaning given to that term in clause 29;

Credit Checks means the credit checks carried out by Harmony on a Borrower, either itself or through a Related Company or a third party credit reporting agency;

Credit Grade means Harmony's proprietary credit grade attributed to a Borrower, which Harmony generates based on information provided by a Borrower and otherwise obtains in respect of that Borrower (including through Credit Checks), details of which are set out on the Website under the "Borrower FAQs" section;

Disclosure Statement means Harmony's disclosure statement which is set out on the Website under the "Legal Agreements" section, as updated by Harmony from time to time;

FMCA means the Financial Markets Conduct Act 2013;

Fully Funded in relation to a Loan Listing or a Loan means that Harmony has received sufficient Orders from Investors to fund the full amount of:

- (a) the proposed Loan Amount; or
 - (b) any lesser amount you agreed to accept,
- as specified in the relevant Loan Listing, provided that if an Optional Service is proposed to apply to the Loan, **Fully Funded** means that Harmony has received sufficient Orders from Investors to fund:

- (i) the full amount of the proposed Loan Amount (or any lesser amount you agreed to accept) net of any Optional Service Fee that is proposed to be capitalised (so that it will be owing as part of the principal amount of the Loan); plus
- (ii) the full amount of any charges that are payable by the Trustee to Harmony for the Optional Service;

Harmony Servicer Default means the liquidation of Harmony or Harmony ceasing to hold a licence for the Service under the FMCA for a period of 5 Business Days;

Interest Rate means the annual interest rate (expressed as a percentage rate per annum) which is set by Harmony in respect of a Loan Listing;

Investor means, as the context requires:

- (a) a person who has registered as an Investor with Harmony; or
- (b) in relation to a Loan, a Participating Investor;

Investor Account means a trust account held by Harmony for the benefit of all Investors whose funds have been deposited into that account for the purpose of investment or reinvestment in Participations or pending repayment to the Investors' nominated accounts, in accordance with their interests;

Investor Agreement means the agreement entered into by an Investor with Harmony and the Trustee in relation to the provision of the Service by Harmony to that Investor;

Investor Fees means the fees which are charged by Harmony and paid by Investors in relation to the Service, as set out on the Website under the "Interest Rates & Fees" section;

Listing Period in relation to a Loan Listing means the period from the date the Loan Listing appears on the Website for consideration by Investors (or Harmony first allocates the Loan Listing to the marketplace for Wholesale Investors, where applicable) to the earlier of 14 days from that date and the date on which the Loan which is the subject of that Loan Listing is Fully Funded;

Loan means the Loan Amount lent by the Trustee to a Borrower, using the Service, and where applicable includes the amount of all compounded and capitalised interest;

Loan Amount means, as the context requires:

- (a) the amount that a Borrower wishes to borrow (inclusive of the amount of the Platform Fee payable on the Loan, and any applicable Optional Service Fee that is to be capitalised), as set out in the relevant Loan Listing; or
- (b) the total amount of the Loan at Settlement (inclusive of the amounts of the Platform Fee and, if applicable, the capitalised Optional Service Fee), as set out in the Loan Disclosure;

Loan Application means the application for a Loan, which is set out on the Website;

Loan Contract in relation to a Loan means the contract under which that Loan is made, as described in clause 18;

Loan Disclosure means, in respect of any Loan, the initial disclosure required under the CCCFA which is provided to the Borrower in respect of that Loan;

Loan Listing means a listing which a Borrower lodges on the Website, and which sets out the details of a Loan which the Borrower wishes to have funded;

Loan Repayments means, as the context requires:

- (a) the monthly payments of principal and interest which will be payable by the Borrower in respect of the Loan Amount specified in a Loan Listing; or
- (b) the monthly payments of principal and interest which are payable by the Borrower on a Loan which has Settled;

Nominated Account means the New Zealand bank account which is nominated by a Borrower from time to time as the account into which Loan advances are to be paid by Harmony (on behalf of the Trustee as lender) for that Borrower at Settlement;

NRWT means non-resident withholding tax imposed under the NRWT rules in the Income Tax Act 2007;

Optional Service means a service that you may opt in to when taking out a Loan;

Optional Service Fee in relation to a Loan means the fee you must pay to have the benefit of any Optional Service for that Loan, as set out on the Website under the "Interest Rates & Fees" section;

Order means an offer by an Investor to participate in funding a Loan (or an offer by a Wholesale Investor within the meaning of the Investor Agreement to fund an entire Loan, where applicable), based on that Borrower's Loan Listing;

Participating Investor in relation to a Loan means an Investor who participated in providing funds to the Trustee to make that Loan; and in relation to an entire Loan funded by a Wholesale Investor (within the meaning of the Investor Agreement) includes that Wholesale Investor and each transferee of any share in that Wholesale Investor's beneficial interest in that Loan; and "**Participate**" has a corresponding meaning;

Platform Fee means the fee payable by the Borrower to Harmony for arranging any Loan which Settles, as set out on the Website under the "Interest Rates & Fees" section;

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993;

Repayment Period in relation to a Loan means the period (in months) for which the Loan has been made to you which you accepted on the website;

RWT means resident withholding tax imposed under the RWT rules in the Income Tax Act 2007;

RWT Exemption Certificate has the meaning given in section YA 1 of the Income Tax Act 2007;

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

Settlement in relation to a Loan means:

- (a) Harmony arranging for the collection of funds from all Investors who have had their Order on the relevant Loan Listing accepted, and (as directed by the Trustee) deducting the applicable Platform Fee for Harmony's own account, deducting the Optional Service Fee (if and to the extent applicable under clause 22(c)(ii)) and transferring it to the Collections Account, and transferring the balance of the Loan Amount to the Borrower's Nominated Account (all via the Advance Account); and
- (b) the time at which the above transfer occurs, and **Settle** and **Settled** have corresponding meanings;

Trustee means the entity which makes and holds Loans as bare trustee for Investors; and

Website means the website at www.harmony.co.nz, or such other website as Harmony may from time to time operate to provide the Service.

Interpretation

51. In this agreement:

- (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) and includes, unless the context requires 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; and any reference to the **Trustee** or to **Harmony** includes any entity appointed to replace it under clause 37 or 38 (as applicable);

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- (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.

Attachment – Direct Debit Terms

In these terms, references to "Initiator" are references to Harmony (or its successors or assigns) and references to the "Customer" are references to the Borrower.

CONDITIONS OF INSTRUCTION TO ACCEPT DIRECT DEBITS

1. The Initiator:

1.1. Will provide notice either:

1.1.1. in writing; or

1.1.2. by electronic mail where the Customer has provided prior written consent to the Initiator.

1.2. Has agreed to give advance Notice of the net amount of each Direct Debit and the due date of the debiting at least 10 calendar days (but not more than 2 calendar months) before the date when the Direct Debit will be initiated.

1.2.1. The advance notice will include the following message:

"Unless advice to the contrary is received from you by (date*), the amount of \$..... will be directly debited to your Bank account on (initiating date*)."

*This date will be at least two (2) days prior to the initiating date to allow for amendment of Direct Debits.

1.3. Alternatively, the Initiator undertakes to give notice to the Acceptor of the commencement date, frequency and amount at least 10 calendar days before the first Direct Debit is drawn (but no more than 2 calendar months).

1.3.1. Where the Direct Debit System is used for the collection of payments which are regular as to frequency, but variable as to amounts, the Initiator undertakes to provide the Acceptor with a schedule detailing each payment amount and each payment date.

1.3.2. In the event of any subsequent change to the frequency or amount of the Direct Debits, the Initiator has agreed to give advance notice of at least 30 days before the change comes into effect. This notice must be provided either:

(a) in writing; or

(b) by electronic mail where the Customer has provided prior written consent to the Initiator.

1.4. May initiate a Direct Debit on my/our account when authorisation is received from me/us in accordance with the terms and conditions agreed between me/us and the Initiator of each amount to be debited from my/our account.

1.4.1. notice will be sent of the net amount of each Direct Debit and the due date of debiting after receiving authorisation from me/us under clause 1.4 but no later than the date the Direct Debit will be initiated. This notice must be provided either:

(a) in writing; or

(b) by any other means which provides a verifiable record of the initiated transaction and where the Customer has provided prior written consent to the Initiator.

1.4.2. Where the notice is in writing it must include the following message:

“The amount \$..... was directly debited to your Bank account on (initiating date).”

1.4.3. Where the notice is provided by other means:

(a) the Initiator should hold prior written consent of those means of providing notice; and

(b) the notice should provide a verifiable record of the initiated transaction and include the amount and initiating date of that transaction.

1.5. May, upon the relationship which gave rise to this Instruction being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the Instruction. Upon receipt of such notice the Bank may terminate this Instruction as to future payments by notice in writing to me/us.

2. The Customer may:

2.1. At any time, terminate this Instruction as to future payments by giving written (or by the means previously agreed in writing) notice of termination to the Bank and to the Initiator.

2.2. Stop payment of any Direct Debit to be initiated under this Instruction by the Initiator by giving written notice to the Bank prior to the Direct Debit being paid by the Bank.

2.3. Where no advance notice is provided under clause 1.4 a variation to the amount agreed between the Initiator and the Customer from time to time to be Direct Debited had been made without notice being given in terms of clause 1.4 above, request the Bank to reverse or alter any such Direct Debit initiated by the Initiator by debiting the amount of the reversal or alteration of Direct Debit back to the Initiator through the Initiator’s Bank PROVIDED such request is made not more than 120 days from the date when the Direct Debit was debited to my/our account.

2.4. Request the Bank to reverse any Direct Debits initiated by the Initiator under the Instructions by debiting the amount of the Direct Debits back to the Initiator through the Initiator’s Bank where the Initiator cannot produce a copy of the Instructions and/or Confirmation to me/us that I/we are reasonably satisfied demonstrate that I/we have authorised my/our bank to accept Direct Debits from the Initiator against my/our account PROVIDED the request is made not more than 9 months from the date when the first Direct Debit was debited to my/our account by the Initiator under the Instructions.

3. The Customer acknowledges that:

3.1. This Instruction will remain in full force and effect in respect of all Direct Debits passed to my/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this Instruction until actual notice of such event is received by the Bank.

3.2. In any event this Instruction is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to my/our account.

3.3. Any dispute as to the correctness or validity of an amount debited to my/our account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this Instruction. Any other disputes lie between me/us and the Initiator.

3.4. Where the Bank has used reasonable care and skill in acting in accordance with this Instruction, the Bank accepts no responsibility or liability in respect of:

3.4.1. the accuracy of information about Direct Debits on Bank statements; and

3.4.2. any variations between notices given by the Initiator and the amounts of Direct Debits.

3.5. The Bank is not responsible for, or under any liability in respect of the Initiator's failure to give notice in accordance with clauses 1.1 to 1.4, nor for the non-receipt or late receipt of notice by me/us for any reason whatsoever. In any such situation the dispute lies between me/us and the Initiator.

3.6. Where notice given by the Initiator in terms of clause 1.4 to the debtor responsible for the payment shall be effective. Any communication necessary because the debtor responsible for payment is a person other than me/us is a matter between me/us and the debtor concerned.

4. The Bank may:

4.1. In its absolute discretion conclusively determine the order of priority of payment by it of any monies pursuant to this or any other Instruction, cheque or draft properly signed by me/us and given to or drawn on the Bank.

4.2. At any time terminate this Instruction as to future payments by notice in writing to me/us.

4.3. Charge its current fees for this service in force from time to time.