

# Loan Contract – Effective from March 2021 to August 2021

## Form of Loan Contract

Effective from March 2021

### LOAN CONTRACT

1. **Loan Contract:** The terms and conditions of your Loan Contract are set out in your Loan Disclosure Statement together with this form of loan contract. Your Loan Disclosure Statement prevails over this form of loan contract in the event of any inconsistency.
2. **Effective date:** Your Loan Contract comes into effect if, after you have been provided with your Loan Contract, you accept or confirm that you want to continue.
3. **Borrower:** The Borrower under your Loan Contract is specified in your Loan Disclosure Statement. If more than one person is the Borrower:
  1. you are jointly and individually liable under your Loan Contract;
  2. we can accept instructions from any of you (without reference to any other person who is the Borrower) in respect of your Loan Contract; and
  3. each of you can agree on behalf of all of you to changes to your Loan Contract.
4. **Participating Investors:** Any Participating Investors are anonymous to the Borrower, and you will not receive information about them. No Participating Investor is a party to your Loan Contract.

5. **Agreement to lend:** Your Loan will be lent to you on and subject to the terms of your Loan Contract.
6. **Date of Advance:** The loan amount (specified in your Loan Disclosure Statement) is lent to you by Harmony Lender when our bank is requested to pay out that amount. The Date of Advance may not be the same date that the funds are received in cleared funds by you or any other payee. We may pay any part of the Loan to a third party in accordance with your instructions. In the unlikely event that your Loan is not fully funded by any Participating Investors within 14 days of the Loan Contract coming into effect, then your Loan Contract will automatically be cancelled. If this happens, Harmony Servicer will notify you of that fact.
7. **Interest:** Interest charges are calculated by multiplying the unpaid balance of your Loan at the end of the day by a daily interest rate. The daily interest rate is calculated by dividing the annual interest rate specified in your Loan Disclosure Statement by 365. Interest is charged and payable monthly in arrears as part of your required payments (specified in your Loan Disclosure Statement).
8. **Required payments:** You must pay to Harmony Lender as and when due all required payments specified in your Loan Disclosure Statement, which comprise principal and interest. Each required payment will be direct debited from your Nominated Account on the date it is due (unless otherwise agreed). You may select a direct debit start date and frequency that suits you, provided that each required payment is paid in full by its due date. For the avoidance of doubt (and without limiting any other payment obligation under your Loan Contract) you must pay Harmony Lender back in full the Loan together with all interest, fees, charges and other amounts payable by you under your Loan Contract, and no

such amount may be outstanding after the final due date for a required payment specified in your Loan Disclosure Statement.

9. **Fees and charges:** You must pay to Harmoney Lender all fees and charges (including default fees and charges) referred to in your Loan Disclosure Statement. Any such fees and charges will be direct debited from your Nominated Account on the date they are due (unless paid from, and forming part of, your Loan on the Date of Advance or otherwise agreed).
10. **Early repayment option:** You can prepay to Harmoney Lender your Loan or any portion of it early. If you choose to prepay the entire Loan, you must pay to Harmoney Lender the full outstanding amount of your Loan together with all interest, fees, charges and other amounts payable by you under your Loan Contract and accrued to the date of prepayment. If you choose at any time to make direct debit payments more frequently than the due date each month:
  1. these are prepayments under this clause, which means that there is no formal variation to your required monthly payments and you can choose to change your direct debit frequency again at any time (provided that each required payment is paid in full by its due date); and
  2. like any prepayment, the total amount of the interest charges payable under your Loan Contract (and therefore the total amount of payments) may be less, because these prepayments reduce the unpaid balance of your Loan earlier each month.
11. **Payment provisions:** You must make every payment under your Loan Contract:
  1. as and when due;
  2. without set-off;
  3. in cleared funds and in full, without any deduction or withholding, except as may be required by law; and

4. to the Collections Account.

12. Harmony Servicer will decide the order in which amounts you pay under your Loan Contract will be applied.

You agree to a direct debit authority being established and maintained against your Nominated Account on the terms set out in the authority accompanying this document in relation to the amounts payable by you to Harmony Lender under your Loan Contract. You may change your direct debit frequency at any time, provided that each required payment specified in your Loan Disclosure Statement is paid in full by its due date. You must ensure that your Nominated Account has sufficient funds at all relevant times to honour each direct debit payment. If any direct debit payment will not be made or honoured for any reason, you must make alternative arrangements to ensure that each required payment is made in full by its due date in accordance with these payment provisions.

If any amount payable by you under your Loan Contract is not paid when due in accordance with this document, that amount will continue to constitute a debt due by you to Harmony Lender until it is paid in full (see also clause 14 below).

You agree to waive any right of set-off you may have against Harmony Lender or Harmony Servicer.

**13. Tax Matters:**

1. You will not be required to withhold or account to Inland Revenue for any RWT in relation to interest payments you make under your Loan. This is because Harmony Lender holds an RWT Exemption Certificate.

2. In certain circumstances where a Participating Investor is not resident in New Zealand for income tax purposes, you may be required to:
  1. withhold and account to Inland Revenue for NRWT; or
  2. pay AIL to Inland Revenue, in relation to interest payments you make under your Loan.

However, Harmony Lender will meet all NRWT or AIL obligations on your behalf from the payments you make under your Loan Contract, immediately upon payment of the relevant interest into the Collections Account. For this purpose, you:

3. authorise Harmony Lender 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; and
4. agree to provide Harmony Lender 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. To the extent allowable, Harmony Lender will also undertake any required investment income reporting on your behalf.

14. **Warranties:** You warrant to us that:

1. all information you provide to us is true, accurate, and complete, and there is no information which has not been provided which would impact on a decision to register you as a Borrower or to make a Loan available;
2. you will provide us with updated information if any of your circumstances have changed; and
3. if your contact details change, you will immediately provide us with details of the change and update the dashboard with your revised information.

**15. Default:**

1. If you:
  1. do not pay any money due under your Loan Contract on the due date;
  2. commit an act of bankruptcy (as defined in the Insolvency Act 2006); or
  3. provided us with incorrect or fraudulent information,
2. we may by notice to you declare all money outstanding under your Loan Contract (including all accrued interest, fees, charges and other amounts payable by you under your Loan Contract) immediately due and payable. In that case, you must immediately pay that outstanding money to Harmony Lender. We may also exercise any collection, enforcement or other rights available to us (which, if you have not paid an amount when due, may include taking appropriate recovery action such as appointing a collection agent, instituting legal proceedings, or selling your Loan Contract to another person). You must promptly and fully comply with all requests and directions we give you when we exercise these rights.

3. In the event of a breach of your Loan Contract or on the enforcement of your Loan Contract, you must also pay to Harmony Lender any applicable default fees and charges referred to in your Loan Disclosure Statement. Any such fees and charges will be direct debited from your Nominated Account on the date they are due (unless otherwise agreed).

**16. Limitation of liability:**

1. If Harmony Lender (referred to in this clause as the **Trustee**) has entered into your Loan Contract as bare trustee for Participating Investors, the Trustee holds all rights and powers vested in it under or in connection with your Loan Contract as bare trustee for the Participating Investors in accordance with their respective interests, on and subject to the terms of the Trustee's appointment.
2. Without limiting clause 15(a), no Relevant Person will be liable if it fails to comply with your Loan Contract due to events beyond its reasonable control (including due to any Participating Investors failing to fund your Loan). Nothing in this clause 15(b) or your Loan Contract limits any rights you may have at law.

**17. Changes to terms:**

1. We will not, without your prior agreement, amend the interest rate applying to your Loan, the loan term, the loan amount, the amounts of any loan repayments, the loan repayment dates, or any other matter except as expressly permitted in your Loan Contract. For the avoidance of doubt, the actual Date of Advance may not be the expected date described in your Loan Disclosure Statement, and (in that case) you permit us to notify you of the different Date of Advance and any associated change to any amount payable under your Loan Contract.

2. We may from time to time introduce a new type of fee under your Loan Contract, or amend any fee payable under your Loan Contract, but only in accordance with applicable law (including applicable lender responsibility principles and notice requirements) and only if (acting reasonably) we consider the introduction or amendment to be necessary or appropriate in all the circumstances. Harmony Servicer will be entitled to process additional debit payments to cover any such fees.

**18. Notices:**

1. You must provide all notices to us in writing (including by email) using the contact details provided in your Loan Disclosure Statement or any updated details provided by Harmony Servicer or on the Website at the relevant time.
2. You consent to obtaining ongoing disclosure information required by law about your Loan online. Such information can be accessed by logging on to the Website. You consent to receiving all other notices, documents and communications relating to your Loan in electronic form and by electronic means and you agree that (subject to applicable legal requirements) we may use any electronic message address specified by you and/or we may communicate with you through the Website (including the dashboard) for that purpose.

**19. Severability:** The illegality, invalidity or unenforceability of any provision in your Loan Contract will not affect the legality, validity or enforceability of another provision.

**20. Privity:** Each of Harmony Lender and Harmony Servicer can enforce its rights under your Loan Contract even if it has not signed your Loan Contract.

**21. Assignment:**



1. You may not transfer or assign any of your rights or obligations under your Loan Contract to any person.
  2. Each of Harmony Lender and Harmony Servicer may transfer or assign all and any of its rights and/or obligations under your Loan Contract to any person, without requiring your consent.
22. **Governing law:** Your 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 your Loan Contract and your Loan.
23. **Definitions:** In your Loan Contract, terms defined in your Loan Disclosure Statement have the same meanings where used in this document and:
- ALL** means approved issuer levy payable under part 6B of the Stamp and Cheque Duties Act 1971;
- Borrower** means the person(s) specified as the borrower in your Loan Disclosure Statement;
- Business Day** means a day other than a Saturday, Sunday, or statutory public holiday in New Zealand;
- Collections Account** means the Harmony Lender bank account into which (among other things) payments of principal and interest and other amounts payable by you under your Loan Contract must be paid;
- Date of Advance** has the meaning given to that term in your Loan Disclosure Statement;
- Harmony Lender** has the meaning given to that term in your Loan Disclosure Statement;
- Harmony Servicer** has the meaning given to that term in your Loan Disclosure Statement;
- Loan** means the total amount lent or to be lent by Harmony Lender to you

under your Loan Contract (whether credited to your bank account or otherwise applied for your benefit);

**Loan Contract** means the agreement between you and us in respect of your Loan, which comprises your Loan Disclosure Statement together with this document;

**Loan Disclosure Statement** means the loan disclosure statement provided to you in respect of your Loan;

**Nominated Account** means the New Zealand bank account which is nominated by the Borrower from time to time as the account into which Loan advances are to be paid and from which amounts payable to Harmony Lender are to be direct debited;

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

**Participating Investor** in relation to your Loan means (if applicable) each investor for whom Harmony Lender as bare trustee holds your Loan;

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

**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; and

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

24. Interpretation: In your Loan Contract:

1. headings are inserted for ease of reference only, and do not affect the interpretation of your Loan Contract;
2. references to you or your means the Borrower;
3. references to the singular include the plural, and vice versa;
4. 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;
5. references to any party (including Harmony Lender and Harmony Servicer) includes any permitted assignee or transferee; and any reference to Harmony Servicer includes any back up servicer entity appointed to replace it;
6. references 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;
7. 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
8. 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 1 – Direct Debit Terms**

*In these terms, references to "Initiator" are references to Harmony Servicer (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.

## **Attachment 2 - Fees and charges**

Borrowers will be charged no additional fees beyond the one-off establishment fee, except in the event of a breach of the loan contract or on the enforcement of the loan contract.

Please note that fees and charges can be varied in accordance with the applicable loan contract.

### **Establishment fee**

Borrowers are charged an up-front, one-off establishment fee of \$200 for approved loan amounts of below \$5,000, or \$350 for approved loan amounts of \$5,000 and above.

The establishment fee covers the arranging costs incurred in connection with the loan application, including the processing and consideration of that application, documenting the loan, and administration around advancing the loan.

The establishment fee is paid from the Borrower's loan on the date the loan is advanced. The amount of the fee is added to the approved loan amount and forms part of the principal amount of the loan (which is repaid, together with interest, by regular payments as specified in the loan contract).

These establishment fees also apply to Top Ups.

### **Dishonour fee**

In the case where a Borrower's payment is dishonoured, a \$15 fee may be charged. However, you will not be charged this fee if a direct debit payment for weekly or fortnightly payments is dishonoured, as long as you still pay your required monthly payment in full by the due date each month.

The dishonour fee covers the costs of the additional administration required to re-process and arrange the payment as part of the collection process.

Any dishonour fee will be charged to the Borrower and direct debited from the Borrower's nominated bank account on the Borrower's next payment due date.

### **Overdue fee**

The overdue fee is charged if a payment is not made in full when due and the account goes into arrears. The fee payable is \$20 on each of 6, 36, 66, 96 and 120 days after the payment due date, if the account remains in arrears.

The overdue fee covers the costs of the additional administration required to manage the collection process for an overdue account, which includes arranging for a collection process in respect of the arrears amount, updating and maintaining records, and other necessary and incidental services to the collection process.

The overdue fee is charged to the Borrower and direct debited from the Borrower's nominated bank account on the Borrower's next payment due date.

## **Collection and enforcement fees**

If collection or enforcement action is required against a Borrower, an amount that is no more than the legal and associated third party costs or expenses incurred in that collection or enforcement process (if any) will be charged to the Borrower.

These fees cover the costs or expenses incurred when a third party is instructed to assist with recovery in respect of an overdue account.

These fees are charged to the Borrower and direct debited from the Borrower's nominated bank account on the Borrower's next payment due date.