

## LOAN AGREEMENT

Statement Date: 04/05/2021

Transaction Number: 155100004949

This agreement ("Agreement") has been prepared by Fee Funders NZ Limited (trading as Fee Funders, Pet Funders, Real Estate Funders, Boat Funders as applicable) ("FFNZ") and is between the parties described under the heading 'PARTIES' below, namely FFNZ, the Borrower and the Guarantor (if any).

The Agreement sets out the terms and conditions upon which FFNZ (at the request of the Borrower and the Guarantor (if any)) agrees to advance certain funds to the Borrower, in consideration for which the Borrower and the Guarantor (if any) agree to repay those funds to FFNZ (along with all accrued interest and fees payable and charges incurred by the Borrower and the Guarantor (if any)) and perform certain obligations.

The Agreement comprises the sections enclosed within this document titled 'Loan Agreement', 'Initial Disclosure Statement', 'General Terms and Conditions', and (if applicable) the 'Property Marketing and Improvements Loan' and any other additional documents pursuant to the agreement. Reference to the term "Agreement" means all of these sections and documents together. Capitalised terms used but not otherwise defined have the meaning given to them in the 'Definitions' section of the General Terms and Conditions.

### PARTIES:

Lender: FEE FUNDERS NZ LIMITED (trading as Fee Funders, Pet Funders, Real Estate Funders, Boat Funders, as applicable) ("FFNZ")  
(also referred to as "we" or "us")  
Address: Level 10, 34 Shortland Street, Auckland, 1140, New Zealand  
Phone: 0800 333 729  
Email: admin@feefunders.co.nz

Borrower: XXXXXXXX ("Borrower") (also referred to as 'you')  
Address: XXXXXXXX  
Phone: XXXXXXXX  
Email: XXXXXXXX

Guarantor (if any): XXXXXXXX ("Guarantor") (also referred to as 'you')  
Address: XXXXXXXX  
Phone: XXXXXXXX

### IMPORTANT - PLEASE READ THIS ENTIRE AGREEMENT BEFORE SIGNING OR ACKNOWLEDGING YOUR ELECTRONIC ACCEPTANCE OF THIS AGREEMENT

By signing the Agreement, either physically or electronically, you acknowledge, agree and undertake to FFNZ that:

1. Repayment: You will become liable to, and must, repay in full to FFNZ all of the funds advanced by FFNZ to you under the Agreement and all other fees and expenses which may become due and payable by you in accordance with the terms and conditions set out in the Agreement.
2. Compliance: You will perform all of the obligations that apply to you, and comply with all the terms and conditions, that are set out in the Agreement and you will comply with all terms and conditions that may be implied by law.
3. Guarantee (if applicable): If you are the Guarantor, the obligations outlined in paragraphs 1 and 2 above (as more fully described in the General Terms and Conditions) apply to you if the Borrower defaults on these obligations. As Guarantor, you are required to do everything that the Borrower must do if the Borrower fails to do so. You enter into the Agreement on the assumption that you may be called upon to fulfil these obligations in the event of the Borrower's default.
4. Independent legal advice: You have been advised to obtain independent legal advice as to your rights and obligations under the Agreement before signing the Agreement, particularly in connection with the guarantee referred to in paragraph 3 above (as more fully described in the General Terms and Conditions).
5. Understanding: You have received and read a copy of the Agreement, you understand the full nature and effect of the Agreement, you have had sufficient time to consider whether to sign the Agreement, you have not been pressured or coerced to sign the Agreement by any person and you are signing the Agreement relying on your own judgement.
6. Default: Any money we receive from your payments may be applied by us to any payments or amounts that are due. This means that payments may be applied, for example, to default fees or interest owing and may not reduce the principal balance of the total amount of funds advanced to you under the Agreement.
7. Security:
  - (a) Personal property: If we take a security interest in your personal property to secure your obligations under the Agreement, then by the Agreement you grant us a security interest in that property. We have the right to sell that property and apply the sale proceeds to help repay the amount you owe us under the Agreement. This security is given in consideration of FFNZ agreeing to advance funds to you under the Agreement (and if the security is given by a Guarantor, FFNZ agreeing, at the request of the Guarantor to advance funds to the Borrower) and any further advances.
  - (b) Land: If we take a mortgage over land to secure your obligations under the Agreement, you grant us a mortgage over that land. The mortgaged property will be specified in the Agreement. We may lodge a caveat against that land to give notice of our interest under the Agreement to mortgage in which case you may not mortgage your land unless FFNZ otherwise agrees. FFNZ may sell that land if you fail to perform your obligations under the Agreement. We may also withdraw our caveat and register a mortgage over that land using the power of attorney that you give us in the Agreement (as more fully described in the General Terms and Conditions).
  - (c) Agent for service: You appoint each other Borrower or Guarantor (if any) to be your agent for service for the purposes of section 355 of the Property Law Act 2007 and for the service of notices under the Agreement. If FFNZ is unable to give notice to a Borrower or a Guarantor (if any) then we may use this clause to give notice or serve notice on the available other Borrower or Guarantor (if any).
8. Electronic disclosure: If an email address is inserted against your name in the Agreement then you consent to any disclosure and our communications generally being made in an electronic form by sending an email to that email address.
9. Appointment of FFNZ as attorney: As contemplated in paragraph 7(b) above, you and the Guarantor grant to FFNZ a power of attorney that FFNZ can use to do things that you and/or the Guarantor are obliged to do under the Agreement and to generally protect its interests under the Agreement. This means that FFNZ may sign in your and/or the Guarantor's name as if FFNZ was you or the Guarantor. This power of attorney is granted in consideration of FFNZ agreeing to advance funds to the Borrower under the Agreement (and if the power is granted by a Guarantor, FFNZ agreeing, at the request of the Guarantor to advance funds to the Borrower under the Agreement) and any further advances.
10. Contracting out: FFNZ, the Borrower and the Guarantor (if any): (i) agree to contract out of the provisions of the Consumer Guarantees Act 1993, and sections 9, 12A and 13 of the Fair Trading Act 1986, and they agree that it is fair and reasonable to do so, where the Borrower is not a natural person; and (ii) acknowledge and agree that the Agreement is not a "consumer credit contract" for the purposes of the Credit Contracts and Consumer Finance Act 2003 where the Borrower is not a natural person or is a trustee acting in his or her capacity as a trustee of a family trust.

## GENERAL TERMS AND CONDITIONS

### Definitions

"Agent"	means FFNZ or any nominated direct debit or payments processor nominated by FFNZ from time to time;
"Agreement"	means this agreement as may be amended from time to time which, as at the Statement Date may comprise: (a) the Application Form; (b) the Loan Agreement; (c) the Initial Disclosure Statement; (d) the General Terms and Conditions; (e) any additional Personal Guarantees (if applicable); (f) the Property Marketing and Improvements Loan Form (if applicable);
"AML/CFT Act"	means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (and associated subordinate legislation) as amended from time to time;
"Application Form"	means the initial application by the Borrower (or the Client on the Borrowers behalf) for funding by FFNZ either in electronic or paper form;
"Bank"	means, for the purposes of the Direct Debit Terms and Conditions, the Borrower's bank;
"Borrower", "you"	means the person and/or entity as signatory as 'Borrower' under the Agreement (as described in the Loan Agreement and in the Initial Disclosure Statement) and includes such person's executors, administrators and successors in title (i.e. the people who may take over such person's rights and obligations if such person dies or cannot pay due debts);
"Borrower's Indebtedness and Obligations"	means the Borrower's obligations under the Agreement to repay the Unpaid Balance to FFNZ and to perform all of the Borrower's obligations to FFNZ under the Agreement;
"Business Day"	means any day (other than a Saturday, Sunday or public holiday) in which registered banks are open for business in Auckland, New Zealand;
"CCCFCA"	means the Credit Contracts and Consumer Finance Act 2003 (and associated subordinate legislation) as amended from time to time;
"CCLA"	means the Contract and Commercial Law Act 2017 (and associated subordinate legislation) as amended from time to time;
"Change Disclosure Statement"	means a statement issued by FFNZ to you when FFNZ agrees to make a further advance to you or otherwise amends the Agreement;
"Client"	means the practice, person or company to whom the Borrower has liability for fees and in respect of whom funding assistance is being sought by the Borrower under the Agreement;
"Collateral"	means the personal property described under the heading "Personal Property" in the Initial Disclosure Statement in which the Borrower has granted a security interest(s) to FFNZ under the Agreement as security in respect of the Borrower's Indebtedness and Obligations, in the section of the Initial Disclosure Statement headed "What could happen if you fail to meet your commitments";
"Credit Fees and Charges"	means the fees and charges that you are required to pay to FFNZ as set out under the heading "Credit Fees and Charges" in the Initial Disclosure Statement;
"Default Interest Charges and Default Fee"	means the default interest charges and fees that you are required to pay to us as set out under the heading "Default Interest Charges and Default Fees" in the Initial Disclosure Statement;
"Default Interest Rate"	means the interest rate of 2.5% per month;
"Direct Debit"	means, the amount of each deduction from the Borrower's bank account by FFNZ under the Agreement pursuant to the Direct Debit Terms and Conditions;
"Direct Debit Terms and Conditions"	means the section of this Agreement titled 'Direct Debit Terms and Conditions';
"Drawdown Request"	means any request by the Borrower or the Client for payment of the Initial Unpaid Balance;
"Early Repayment Fee"	means the fee payable by you in the event you prepay the Unpaid Balance early as set out under the heading "Full Prepayment" in the Initial Disclosure Statement;
"Event of Default"	means any of the events outlined in clause 20.0;
"FFNZ"	means Fee Funders NZ Limited (trading as Fee Funders, Pet Funders, Real Estate Funders (as applicable)) (FSP287345), PO Box 125180 Auckland NZ (admin@feefunders.co.nz 0800 333 729);
"General Terms and Conditions"	means these terms and conditions;
"Guarantor"	means the person and/or entity as signatory as 'Guarantor' under the Agreement (as described in the Loan Agreement and in the Initial Disclosure Statement) and includes such person's executors, administrators and successors in title (i.e. the people who may take over such person's rights and obligations if such person dies or cannot pay due debts);
"Initial Disclosure Statement"	means the section of the Agreement titled 'Initial Disclosure Statement';
"Initial Unpaid Balance"	has the meaning given to that term under the heading "Credit Details" in the Initial Disclosure Statement;
"Installments"	means the amounts payable by you to FFNZ as set out under the heading "Payments" in the Initial Disclosure Statement;
"Instalment Date"	means the date/s to which Installments are received from the Borrower to FFNZ as detailed in the Agreement;
"Instruction"	means authority from the Borrower to FFNZ to deduct Installments from the Borrower by way of direct debit;
"Land"	means the property described under the heading "Land to be Mortgaged" in the Initial Disclosure Statement, together with all improvements thereon, being the land subject to a mortgage in favour of FFNZ as provided for under the Agreement, as security in respect of the Borrower's Indebtedness and Obligations, in the section of the Initial Disclosure Statement headed "What could happen if you fail to meet your commitments";
"Loan Agreement"	means the section of the Agreement titled 'Loan Agreement';
"PPSA"	means the Personal Property Securities Act 1999 (and associated subordinate legislation) as amended from time to time;
"PPSR"	means the Personal Property Securities Register;
"Property Marketing and Improvements Loan Form"	means the Agreement between FFNZ and the Borrower titled 'Property Marketing and Improvements Loan Form';
"Other Costs"	means all reasonable direct and indirect costs and expenses arising or which FFNZ may incur under or in connection with the Agreement regarding: a) the preparation, signing, registration, administration, variation, release or consent relating to any security agreement, mortgage, security or caveat that FFNZ is entitled to take as security under the Agreement, other than the PPSR registration fee referred to under the heading "Credit Fees and Charges" in the Initial Disclosure Statement; and b) any act or attempted act to exercise or enforce or protect any right or remedy FFNZ may have under the Agreement or any security thereunder;
"Secured Property"	means any Collateral or Land over which a security interest is created and/or a mortgage is granted (as applicable) by the Borrower under the Agreement, as security in respect of the Borrower's Indebtedness and Obligations, as more particularly described under the heading "What could happen if you fail to meet your commitments" in the Initial Disclosure Statement;
"Security Interest"	has the meaning given to it in section 17 of the PPSA;
"Settlement"	means the date upon which the Unpaid Balance is repaid to FFNZ in full;
"Statement Date"	means the date recorded as the 'Statement Date' in the Initial Disclosure Statement;
"Total Advances"	means the amount shown as Total Advances in the Initial Disclosure Statement;
"Unforeseen Hardship"	has the meaning given to that term under the heading "What to do if you suffer Unforeseen Hardship" in the Initial Disclosure Statement;
"Unpaid Balance"	means the aggregate of all Total Advances, further advances, interest, Credit Fees and Charges, Default Interest Charges and Default Charges, Other Costs, (if applicable) the Early Repayment Fee and any other fees, charges, costs or expenses owing by you to FFNZ, but unpaid, from time to time; and
"Unpaid Balance Statement"	means a statement prepared by FFNZ showing the payments made by you, and the Unpaid Balance, from time to time.

### 1) Lending and repayment of Unpaid Balance

- a) FFNZ agrees to advance the Initial Unpaid Balance to the Borrower in accordance with the terms, and subject to the conditions, set out in the Agreement.
- b) The Initial Unpaid Balance may be paid directly to the Borrower and/or the Client or any entity nominated by the Borrower as applicable to the product applied for by the Borrower and granted by FFNZ under the Agreement.
- c) The Borrower duly authorises FFNZ to advance the Initial Unpaid Balance to either the Borrower or the Client or any entity nominated by the Borrower in accordance with, and pursuant to, standard FFNZ procedures.
- d) The Borrower must, subject to the requirements of clause 12.0(a) below (if applicable), repay the Unpaid Balance to FFNZ as follows:
  - i) the Borrower must repay the Total Advances (and, if FFNZ agrees to make them, any further advances) together with interest to FFNZ at the times and in the amounts as set out under the heading "Payments" in the Initial Disclosure Statement;
  - ii) the Borrower must pay the Credit Fees and Charges to FFNZ at the times and in the amounts as set out under the heading "Credit Fees and Charges" in the Initial Disclosure Statement;
  - iii) the Borrower must pay the Default Interest Charges and Default Fees at the times and in the amounts as set out under the heading "Default Interest Charges and Default Fees" in the Initial Disclosure Statement;
  - iv) the Borrower must pay the Early Repayment Fee to FFNZ upon demand by FFNZ; and
  - v) the Borrower must pay the Other Costs to FFNZ upon demand by FFNZ.
- e) Every payment to FFNZ under the Agreement must be for the full amount without deduction or set off and shall be by way of direct debit authority on your bank account in accordance with the Direct Debit Terms and Conditions.
- f) If any amount is payable under the Agreement and no time is specified as the time for payment then that amount is payable immediately without the need for demand.
- g) If FFNZ obtains judgment for any amount owing to FFNZ, you remain liable to pay us interest at the then applicable interest rate (including any Default Interest Rate) from the date of judgment until the date of payment of the sum awarded by the judgement.
- h) If any payment or debit from your bank account is reversed or dishonoured, you must make that payment immediately in cash.
- i) Subject to any contrary mandatory requirements at law, we may determine from time to time the manner in which monies received from you will be taken and applied under the Agreement. Unless otherwise notified or required by law, the order in which monies will be applied will be:
  - i) in payment of any costs and expenses incurred by us in exercising any right or obligation we have under the Agreement;
  - ii) in payment of your obligation under the Agreement in respect of fees and charges; and
  - iii) in reduction of the Total Advances.

### 2) Further Advances

- a) If you require FFNZ to make further advances to you and if (in its absolute discretion) FFNZ agrees, then you acknowledge and agree that those further advances:
  - i) are governed by the Agreement;
  - ii) are secured to FFNZ by each Security Interest and mortgage that you give us under the Agreement,
  - iii) and the details regarding repayment of those further advances will be set out in a change disclosure statement ("Change Disclosure Statement").
- b) As contemplated in clause 26.0, we may issue the Change Disclosure Statement to you electronically.
- c) If you have applied to us in writing for a further advance then you agree that the Agreement and the Change Disclosure Statement to be given to you will be sufficient to record your obligation to repay the further advances without the need for any further documentation.
- d) If there is a Guarantor, by signing the Agreement the Guarantor will be acknowledging that the guarantee applies to further advances.
- e) For the avoidance of doubt, FFNZ reserves the right not to approve any further advance or to make any further advance on such additional terms and conditions as FFNZ deems fit.

### 3) The Agent, Direct Debit authority and the Client

- a) The Borrower acknowledges and agrees that:
  - i) the Agent has been contracted by FFNZ, and shall be entitled, to collect the Installments, by way of direct debit and or credit card, due under the Agreement, pursuant to the Direct Debit Terms and Conditions;
  - ii) for the purposes of the CCLA, all rights of FFNZ pursuant to the Agreement are able to be enforced by the Agent as if it were FFNZ without any involvement on the part of FFNZ or the consent of the Borrower;
  - iii) the Client acts as agent for the Borrower, and (if applicable) is authorised to complete and lodge a Drawdown Request on behalf of the Borrower;
  - iv) the Client does not act as agent for FFNZ and does not have any authority to make any representations or statements on behalf of, or to bind, FFNZ in any way;
  - v) FFNZ has no responsibility or liability whatsoever to the Borrower for the conduct of the Client in relation to any matter whatsoever;
  - vi) FFNZ may, upon accepting a Drawdown Request by way of receiving a completed Application Form, make the advance to the Client; and
  - vii) the Client may receive a fee or other remuneration from FFNZ in respect of the service in arranging the financing under the Agreement.

### 4) Guarantee

- a) In consideration of FFNZ at the Guarantor's request, entering into the Agreement, the Guarantor:
  - i) unconditionally and irrevocably guarantees to FFNZ the due and punctual repayment and performance by the Borrower of the Borrower's Indebtedness and Obligations;

- ii) agrees that the liability of the Guarantor under this guarantee is to be construed as if the Guarantor was the sole principal debtor (and not as mere surety) for the Unpaid Balance and FFNZ may require the Guarantor to pay the Unpaid Balance without first requiring the Borrower to pay;
  - iii) will pay the Unpaid Balance to FFNZ immediately upon demand by FFNZ;
  - iv) agrees that this guarantee shall be a continuing guarantee and shall not be satisfied or discharged if the Borrower's account at any time comes to a nil or credit balance or on the winding up, liquidation, dissolution (or similar event) of the Borrower or any disclaimer by any liquidator but will continue in full force and effect until the Unpaid Balance is paid to FFNZ in full and all of the Borrower's obligations under the Agreement are performed in full;
  - v) agrees that an assignment of FFNZ's rights under the Agreement will not release you from liability and that the assignee shall have the same rights and powers under this clause as does FFNZ;
  - vi) agrees that the Guarantor's rights of subrogation and indemnity against the Borrower and (if there are two or more Guarantors) contribution against any other Guarantor will not arise until FFNZ has received payment in full of the Unpaid Balance and all the Borrower's obligations under the Agreement have been performed.
  - vii) agrees to supply on request reasonable evidence of the Guarantor's financial standing to FFNZ; and
  - viii) indemnifies and holds harmless (and will continue to hold harmless) FFNZ against all costs and expenses which are either incurred or incidental to the enforcement of this guarantee and indemnity (including legal fees on a full indemnity basis).
- b) The granting of time, failure or delay in exercising remedies, concession or indulgence, compromise, waiver of any breach or default by the Borrower shall not avoid, release, or discharge this guarantee which continues until the Unpaid Balance is paid to FFNZ in full.

## 5) Security – Personal Property

- (a) The Borrower grants a Security Interest to FFNZ in each and every part of the Collateral as security in respect of the Borrower's Indebtedness and Obligations and that, accordingly, FFNZ may register a financing statement on the PPSR in respect of such Security Interest to secure the repayment and performance by the Borrower of all of the Borrower's Indebtedness and Obligations.
- (b) For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for the Borrower by virtue of section 36(1)(b)(iii) of the PPSA, the Borrower acknowledges and agrees that the Borrower also grants to FFNZ, as security in respect of the Borrower's Indebtedness and Obligations, a Security Interest in all of the Borrower's present and after-acquired property (and that FFNZ may also register a financing statement on the PPSR in respect of such Security Interest) except only for any such property which is or comprises items or kinds of personal property ("Excepted Property"):
  - (i) in or to which the Borrower has rights; and
  - (ii) which has not been supplied by FFNZ to the Borrower, other than any Excepted Property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by FFNZ to the Borrower.
- (c) The parties acknowledge and agree that the Agreement is a "security agreement" for the purposes of the PPSA.
- (d) The Borrower waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the Security Interests under the Agreement.
- (e) The Borrower agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Agreement, or the security under the Agreement, and waives the Borrower's rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- (f) By entering into the Agreement the Borrower agrees, immediately upon request by FFNZ, to execute in favour of FFNZ a General Security Agreement (and any ancillary documents) in accordance with the current Auckland District Law Society "General Security Agreement" form and accompanying Memorandum of General Terms and Conditions reflecting the provisions of this clause.

## 6) Security – Agreement to Mortgage Land

- a) You agree to grant a mortgage in favour of FFNZ over all of your rights, title and interest in the Land, and in any real property you may own in the future (together the "Property"), and you hereby charge the Property accordingly as security in respect of the Borrower's Indebtedness and Obligations.
- b) You authorise FFNZ to lodge and maintain a caveat against the certificate of title to the Property as notice of FFNZ's interest arising under the Agreement to mortgage made pursuant to the Agreement.
- c) You covenant that the Property is only subject to the encumbrances and mortgages as may be set out in the Agreement and you agree not to sell, transfer, encumber, assign or agree to sell, transfer or exchange your interest in the Property without obtaining FFNZ's prior written consent.
- d) You agree to, immediately upon request by us, execute in favour of FFNZ a registrable all obligations mortgage (and any ancillary documents) in the current Auckland District Law Society "All Obligations Mortgage" form reflecting the provisions of this clause, and do all things in connection therewith, as we may reasonably require in respect of the Property as security in respect of the Borrower's Indebtedness and Obligations. You irrevocably and unconditionally acknowledge that in the event that you have not executed the said mortgage within two days of receipt of the said mortgage, we may execute and register the said mortgage against the Property as attorney for you.
- e) You covenant to insure the buildings and improvements on the Property for their full replacement value against fire, accident, earthquake, weather damage and such other risks as we may require in our names for our respective rights and interests and with an insurer approved by us and to pay all premiums for the insurance and upon request by us produce policies and premium receipts to us.
- f) Except to the extent inconsistent with the terms of the Agreement, the covenants implied in Part 1 of Schedule 2 of the Property Law Act 2007 in relation to mortgages over land are implied in the respect of each mortgage given under the Agreement.

## 7) Security – General

The Borrower undertakes the following in respect of the Secured Property:

- a) The Borrower must sign and deliver any documentation which FFNZ may reasonably require to ensure the perfection of its security referred to in clauses 5.0 and 6.0 and the Borrower agrees to indemnify and hold harmless (and will continue to hold harmless) FFNZ in respect of any costs incurred by FFNZ in registering, perfecting or maintaining such security and/or exercising any rights including any rights FFNZ may have.
- b) The Borrower must:
  - i) store all goods that are part of the Collateral at the address of the Borrower shown in the Initial Disclosure Statement;
  - ii) care for and maintain and repair any damage to the Secured Property;
  - iii) replace with other Collateral of a similar nature and value any of the Collateral that may be destroyed or lost or may cease to exist;
  - iv) comply with all laws relating to the ownership and use of the Secured Property; and
  - v) allow us to inspect the Secured Property provided we first give you 24 hours' written notice.
- c) The Borrower must not:
  - i) do anything that could adversely affect your rights of ownership in the Secured Property;
  - ii) dispose of the Secured Property by way of sale, or gift or lease;
  - iii) allow someone else to have possession of the Secured Property;
  - iv) destroy, damage, endanger or disassemble the Secured Property;
  - v) conceal or hide the Secured Property from FFNZ;
  - vi) grant any other security of the Secured Property or allow any lien to be created over it;
  - vii) take the Secured Property out of New Zealand; and
  - viii) use the Secured Property for any dangerous or illegal activity or for any purpose for which it was not intended.
- d) If you install or fix anything to any Secured Property then that thing becomes part of the Secured Property and subject to the security granted by you under the Agreement.
- e) We have the right to take possession of any Collateral if this is required to enable us to perfect our Security Interest.
- f) If any Collateral has been acquired for business purposes, the Consumer Guarantees Act 1993 does not apply.
- g) We may, at all reasonable times, either personally or by agents, enter upon your premises to inspect the Secured Property.
- h) In consideration for the Lender advancing the Initial Unpaid Balance and any further advances to you in the future, the securities granted in the Agreement that concern your present and future accounts receivable, and present and future rights to any accounts receivable, take effect as and will be deemed a transfer of those accounts receivable to us for new value.

## 8) Power of Attorney

- a) To enable FFNZ to obtain the benefits under the Agreement, the Borrower and the Guarantor (if any) irrevocably and unconditionally appoint jointly and each of them severally:
  - i) FFNZ;
  - ii) any director for the time being of FFNZ; and
  - iii) any officer, attorney for the time being or nominee of FFNZ who has been authorised by the board of FFNZ, to be the attorney or attorneys of the Borrower and the Guarantor (if any) to:
    - (1) do all acts and things which the Borrower or Guarantor (if any) is obliged to do or which FFNZ is empowered or authorised to do under the Agreement, including to sign any document which the attorney thinks desirable to protect the interests of FFNZ under the Agreement (including, without limitation, direct debit forms, consents to caveat, mortgages and any instrument required by FFNZ in order to register any of its Security Interests granted under the Agreement); and
    - (2) from time to time appoint and revoke a substitute or substitutes;
    - (3) and the Borrower and the Guarantor (if any) agree to ratify and confirm all and whatever the attorney or attorneys or any substitute or substitutes lawfully do or cause to be done for that purpose. The attorney or attorneys may act irrespective of any conflict of interest and/or duty that may arise.
- b) The Borrower and the Guarantor (if any) agree this power of attorney is irrevocable and remains in full force and effect until the obligations owed by the Borrower and the Guarantor (if any) to FFNZ under the Agreement are discharged.
- c) Upon the exercise of any power or authority contained or implied in the Agreement, no person dealing with FFNZ or any attorney appointed under the Agreement shall be bound to inquire:
  - i) as to the due appointment of any attorney;
  - ii) whether any Event of Default has occurred;
  - iii) whether the Agreement has been repudiated by the Borrower and such repudiation accepted by FFNZ; or
  - iv) otherwise as to the propriety or regularity of the exercise of any power or authority under the Agreement.
- d) No such person shall be affected by notice, express or otherwise, that any such exercise is unnecessary or improper. Notwithstanding any irregularity or impropriety in the power or authority, its exercise shall as regards to the protection of other persons be deemed authorised by that power and authority and shall be valid and effectual accordingly.
- e) If requested by FFNZ, the Borrower and the Guarantor (if any) must, at their own expense, promptly execute and sign (not by way of electronic communication) before a qualified witness and deliver to FFNZ a power of attorney form prepared by FFNZ containing the provisions of this clause 8.0.
- f) The Borrower and the Guarantor (if any) agree to pay to FFNZ all legal costs on a full indemnity (solicitor and own client) basis which FFNZ incurs in giving effect to this clause.

## 9) Borrower's Warranties and Representations

- a) The Borrower and the Guarantor (if any) each warrants and represents that:
  - i) its obligations under the Agreement are legal, valid, binding and enforceable against it;
  - ii) there is no default (that is material in the context of the Agreement) under any agreement, undertaking or instrument to which it is a party and no Event of Default has occurred;
  - iii) nothing has happened that would become a default mentioned in clause 9.0(a)(ii) simply by notice being given or time elapsing;
  - iv) except as notified to FFNZ in writing, there are no security interests over the Borrower's property or the Guarantor's (if any) property over which a Security Interest, mortgage or otherwise has been or is proposed to be given to FFNZ;
  - v) it has disclosed to FFNZ all material matters that it knows of which may affect its ability to perform any of its obligations under the Agreement; and
  - vi) all information provided to FFNZ is true, complete and accurate in all respects.

## 10) Right to Cancel

- a) You have a right to cancel the Agreement by giving written notice of the cancellation to FFNZ in the manner, and in accordance with the timeframes, set out under the heading "Right to Cancel" in the Initial Disclosure Statement.

## 11) Problems Paying – Unforeseen Hardship

- a) If you are experiencing Unforeseen Hardship and cannot make payments under the Agreement, you may:
  - (1) apply for a hardship variation in accordance with the provisions set out under the heading "What to do if you suffer Unforeseen Hardship" in the Initial Disclosure Statement; and
  - (2) call FFNZ on 0800 333 729 or email FFNZ at admin@feefunders.co.nz for further information and/or enquiries.
- b) On receipt of your application under clause 11.0(a)(1), FFNZ will acknowledge the application within 5 Business Days and request any further information within 10 Business Days. FFNZ will then provide a decision at the later of 20 Business Days of the application and 10 Business Days after the further information has been provided.
- c) You may not make an application under clause 11.0(a)(1) within 4 months of a previous application unless FFNZ agrees (in its absolute discretion) to consider it or the cause of the Unforeseen Hardship is materially different from the previous application.

## 12) Prepayment

- a) For loans provided by FFNZ that are for the purposes relating to the sale of property, business or assets, the Borrower is required to repay the Unpaid Balance upon the sale of such aforementioned items.
- b) If you wish to repay the Unpaid Balance early, please contact FFNZ at admin@feefunders.co.nz or 0800 333 729 to request a Unpaid Balance Statement. FFNZ reserves to right to charge you interest up until Settlement. Also, a fee, as set out under the heading "Credit Fees and Charges" in the Initial Disclosure Statement for the preparation of the Unpaid Balance Statement may be payable in such circumstances.
- c) If you prepay in full, FFNZ shall be entitled to charge you the Early Repayment Fee.
- d) If you prepay in full, you must also pay any legal and other third party costs incurred in providing a discharge or release of any security held. The amount of the legal and third party costs is not ascertainable on the Statement Date.
- e) If the Unpaid Balance is repaid in full or in part early due to FFNZ's enforcement action taken after you default you may also be required to pay the fees specified in clause 1.0(b).
- f) We are not obliged to accept any partial prepayment but if we do, we reserve the right to charge an Early Repayment Fee.

## 13) Amendments

- a) Borrower
  - i) The Borrower may request alteration of the day of direct debit by requesting such change in writing to the Agent or FFNZ. Such change may affect the amount of the Unpaid Balance and may incur the addition of (at the discretion of FFNZ) an amendment fee as outlined under the heading "Credit Fees and Charges" in the Initial Disclosure Statement.
  - ii) If the Borrower extends the payment term beyond the initial term, then FFNZ reserves the right to charge the Borrower extra interest and (at the discretion of FFNZ) an amendment fee as outlined under the heading "Credit Fees and Charges" in the Initial Disclosure Statement. The Borrower hereby authorises FFNZ or the Agent to amend the direct debit details and charges accordingly.
  - iii) The Borrower hereby authorises FFNZ or the Agent to amend the direct debit details, amounts, payment dates and add any additional fees and charges if any amount which is due and payable by you under the Agreement becomes overdue or if you are in default of your obligations under the Agreement.
- b) FFNZ
  - i) FFNZ may vary the following terms of the Agreement from time to time without your prior consent:
    - (1) the amount of your repayments;
    - (2) the frequency of your repayments;
    - (3) the method by which you may make your repayments;
    - (4) fees and charges applicable under the Agreement, including (without limitation) the quantum and type;
    - (5) how any interest rate or fee is to be calculated; and
    - (6) any change in your credit limit.
  - ii) If FFNZ varies any of the matters referred to in clause 13.0(b), FFNZ will notify you of the change within 5 Business Days of the change being made, unless the change is made with your agreement in which case we will notify you prior to the change being made.
  - iii) With the exception of any change due to Unforeseen Hardship, if any change reduces what you have to pay, extends the time for payment or the change happens automatically under the Agreement, then you may be notified, at our discretion, within 5 Business Days of the change.

## 14) Liability

- a) To the extent permitted by law, FFNZ and the Agent shall not be liable or responsible to the Borrower for any direct, indirect or consequential injury, loss or damage to the Borrower or the property of the Borrower whatsoever and howsoever arising under or in connection with the Agreement.

## 15) Credit Reports and Privacy

- a) FFNZ undertakes to maintain the privacy of information in relation to the Borrower and the Client however:
  - i) you agree that any information about you, which you provide to us in connection with the Agreement, may be held and used by us at any time (in accordance with our privacy policy contained on our website www.feefunders.co.nz) for the purpose of administering the Agreement (including, without limitation, for the purpose of our compliance with the AML/CFT Act) and you authorise FFNZ, its subsidiaries and agents to retain the information for these purposes;
  - ii) you authorise FFNZ, its subsidiaries and agents to:
    - (1) collect, retain and use such other information as we may require for the above purposes from any other source including credit reporting agencies and you authorise each of those other sources to disclose that information to us, and to retain and use this information for the purpose of informing you of any matters or new products which we believe may be of interest to you; and
    - (2) disclose any information, that we hold, to other persons but only where disclosure is:
      - (a) required or permitted by law;
      - (b) to any of our employees or agents;
      - (c) to credit reporting agencies;
      - (d) to our legal or other professional advisors,
      - (e) in any other circumstances is authorised by you.
    - (3) make enquiries, apply for credit checks and other information concerning the Borrower to enable FFNZ to assess the Application Form and authorises any person holding commercial credit related information concerning the Borrower to divulge the same to FFNZ;
    - (4) provide to any intermediary involved in arranging or assisting in the funding under the Agreement, access from time to time to any report or information relating to the Borrower's transactions with FFNZ.
  - b) If the Borrower is, or includes an individual, the Borrower acknowledges and agrees that:
    - i) if the individual's personal information is not provided to FFNZ, FFNZ may not be able to accept the Agreement;
    - ii) the information is provided to FFNZ for the purpose of the Borrower obtaining funding and for verifying and assessing your creditworthiness for the purposes of the Agreement; and
    - iii) in accordance with the requirements of the Privacy Act 1993, the individual can request access to and, if necessary, request correction of personal information about him or her held by FFNZ by contacting FFNZ on 0800 333 729.
  - c) FFNZ and the Agent acknowledge and agree that they are subject to the Privacy Act 1993.

## 16) Disclosure

- a) At any time you may request, and FFNZ will provide, an Unpaid Balance Statement showing the amounts and payments of your loan under the Agreement. A fee, as set out under the heading "Credit Fees and Charges" in the Initial Disclosure Statement for the preparation of the Unpaid Balance Statement may be payable in such circumstances.
- b) An Unpaid Balance Statement produced by FFNZ stating the Unpaid Balance, or the amount due or owing by the Borrower to FFNZ or any other act, matter or thing arising in connection with the Agreement as at any date or dates set out in that statement will be conclusive evidence of the facts so stated.

## 17) Interest

- a) You are required to pay interest on the advances FFNZ provides to you under the Agreement at the rate and frequency as set out under the heading "Interest" in the Initial Disclosure Statement.

## 18) Default Interest

- a) Where any sum which is payable by the Borrower to FFNZ or the Agent under the Agreement is not paid to, or as directed by, FFNZ by the Instalment Date, the Borrower will be required to pay interest at the Default Interest Rate and such interest will:
  - i) accrue on the unpaid instalments which is then due and owing by the Borrower up to but excluding the date of payment thereof; and
  - ii) be computed on a daily basis for actual days elapsed and compounded on the last day of each month.
- b) You will also be required to pay interest at the Default Interest Rate on the Unpaid Balance pursuant to clause 19.0(c)(i) and such interest will:
  - i) accrue on the Unpaid Balance which is then due and owing by the Borrower up to but excluding the date of payment thereof; and
  - ii) be computed on a daily basis for actual days elapsed and compounded on the last day of each month.

## 19) Consequences of Default

If any Event of Default occurs, then:

- a) the Unpaid Balance, will, notwithstanding any delay or previous waiver of the right to exercise the option to require repayment, immediately become due and payable without the necessity for any demand or notice to the Borrower;
- b) the security interests granted by you under the Agreement will become immediately enforceable and, in respect of Collateral:
  - i) where the Collateral is consumer goods, FFNZ shall be entitled to repossess and sell the Collateral in accordance with the CCCFA, but subject to the Borrower's rights under Part 3A of the CCCFA;
  - ii) where the Collateral is not consumer goods, FFNZ shall be entitled to exercise any of the rights conferred on FFNZ under Part 9 of the PPSA or any of the rights FFNZ may have under the Agreement or at law;
- c) FFNZ may:
  - i) impose the default fees and charges as set out under the heading "Default Interest Charges and Default Fees" in the Initial Disclosure Statement;
  - ii) appoint a debt collector to recover the Unpaid Balance;
  - iii) seek to enforce the guarantee given by the Guarantor (if any) under the Agreement;
  - iv) seek judgement from a court;
  - v) if the Borrower is a company, make statutory demand from you from the court; or
  - vi) appoint a receiver and/or administrator for the purposes of recovering the Unpaid Balance.
- d) FFNZ shall be entitled, without notice to the Borrower, to terminate the service to the Borrower under the Agreement, and the Agreement itself, and to exercise all of its rights and remedies against the Borrower under the Agreement and under any securities, including the institution of proceedings against the Borrower.

## 20) Events of Default

- a) For the purposes of clause 19.0, an Event of Default shall include any of the following:
  - i) the Borrower fails to pay any Instalment Amount within seven days of the due date or fails to pay any other amount due and payable by the Borrower under the Agreement to FFNZ or the Agent at any time;
  - ii) the Borrower breaches any provision of the Agreement and such breach is not remedied within seven days of the date of the breach;
  - iii) an order is made for the winding up of the Borrower or the Borrower passes or proposes to pass a resolution to effect its winding up or an administrator of the Borrower is appointed or any step preliminary to the appointment of a receiver is taken or a receiver is appointed or in the opinion of FFNZ there is a likelihood of a receiver being appointed in respect of any part of the property of the Borrower or the Borrower ceases (or threatens to cease) carrying on business;
  - iv) where the Borrower is a natural person, he or she commits an act of bankruptcy, dies, changes his or her name without prior notification in writing to FFNZ or if you cease (or threaten to cease) carrying on business;
  - v) a warrant of distress is issued or levied against the Borrower or any of its property;
  - vi) you take an action or FFNZ reasonably believes you are about to take an action which places the Collateral at risk for the purposes of section 109(2) of the PPSA or section 83E of the CCCFA (as applicable) (namely where the Collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of the Agreement);
  - vii) you provide us with incorrect or misleading or deceptive information in connection with the Agreement;
  - viii) you have acted fraudulently in respect of the Agreement;
  - ix) any of the events set out above occur under any other agreement you have with FFNZ or under any security that you have given or agreed to give to FFNZ and whether or not you are a borrower or a guarantor; or
  - x) any of the above events happens in respect of a Guarantor (if any) and for the purposes of this clause 20.0, "the Agreement" includes each guarantee given in connection with the Agreement.

**21) Assignment**

- a) FFNZ may at any time assign, novate, dispose, sell, transfer or otherwise deal with its rights and interests under or in connection with the Agreement without the Borrower's consent. You agree that you will sign any document or do anything we reasonably request to enable us to assign, novate, dispose, sell, transfer or otherwise deal with our rights and interests under or in connection with the Agreement.
- b) The Borrower must not assign, novate, dispose, sell, transfer or otherwise deal with its rights and interests under or in connection with the Agreement without FFNZ's prior written consent.

**22) Complaints / Disputes**

- a) If you have any dispute or complaint regarding the terms of the Agreement you should, in the first instance, contact FFNZ by email to [admin@feefunders.co.nz](mailto:admin@feefunders.co.nz) and FFNZ will attempt to respond within 2 days of you making contact. If your dispute has not been resolved within 14 days of you contacting FFNZ, you may wish to make a complaint to the independent dispute resolution scheme that FFNZ is a member of as set out under the heading "Dispute Resolution" in the Initial Disclosure Statement.

**23) Notices**

- a) You agree that any notice, demand or other communication required or permitted to be given by or under the Agreement or any relevant statutory provision:
  - i) shall be sufficiently given if it is in writing from the party or their Agent or solicitors and delivered by prepaid mail, email or other electronic means;
  - ii) if delivered personally, shall be deemed to have been received on the date it bears or the date it is received, whichever is the later;
  - iii) if delivered by mail shall be deemed to have been received on the second Business Day after the date of posting; and
  - iv) if delivered electronically, shall be deemed to have been received on the day it was sent.
- b) If the day of receipt is not a Business Day, or it is received after 5pm, it will be deemed to have been received at 9am on the next following Business Day.
- c) Repayments will be deducted on the date specified in the repayment schedule provided to you, which is your payday as advised to us, except that if that date is not, in fact, your payday, we will automatically adjust your repayment date to your actual payday.
- d) For the purposes of determining the address to which any notice, demand or other communication will be sent:
  - i) you acknowledge that we are entitled to rely on the address, email address or telephone number most recently provided to us by you;
  - ii) if we send a document to you using the most recent address, email address or telephone number you have provided, even if this is not your current address, the document will be deemed to be sufficiently served if delivered to that address; and
  - iii) you will advise us within 7 days of any change to your address, email address or telephone number.
- e) If there is more than one borrower, you may nominate one of them to receive notices, demand or other communication on behalf of both and whilst the nomination is in force, where permitted by law, such service shall be deemed to be sufficient service on all borrowers.

**24) Anti-Money Laundering**

For the purposes of the AML/CFT Act:

- a) unless you have advised us otherwise and we have accepted, you warrant and undertake:
  - i) that you are entering into the Agreement in your own right as the sole persons with a beneficial interest in the Agreement and in all property given as security;
  - ii) no information has been withheld and, without limiting clause 9.0(a), all information you have given us is sufficient to enable us to determine your status under the AML/CFT Act;
  - iii) you will provide such further information as we may reasonably request during the term of this Agreement to enable us to comply with our obligations under the AML/CFT Act;
  - iv) that you are not a "politically exposed person" (i.e. an individual who holds or is in any way related to a person who holds or has held in the prior 12 months, a prominent public function in a foreign country and/or an individual who has ownership of a legal entity or any other relationship, with or on behalf of such a person) for the purposes of the AML/CFT Act; and
- b) if any warranty given under clause 24.0(a) is incorrect; if you fail to provide information under clause 24.0(a)(iii) when requested; or if we determine on reasonable grounds that your status under the AML/CFT Act has changed and as a result your ability to meet your obligations under the Agreement is impaired then you will be deemed to have given us incorrect or misleading or deceptive information and an Event of Default will have occurred under the Agreement.

**25) Set-off and commissions**

- a) FFNZ may at any time without notice set-off against any money owing by it to the Borrower any debt or liability of the Borrower to FFNZ on any account whatsoever.
- b) FFNZ may receive a commission from third parties or pay a commission to third parties in connection with the formation and entry into the Agreement.

**26) Electronic communications**

- a) Under the Unsolicited Electronic Messages Act 2007, you must consent to receiving commercial emails from us. Consent can either be explicit, inferred or deemed. We will infer that we have your consent to send you commercial emails from time to time unless you inform us otherwise by letter or email. The email address for unsubscribing to commercial emails is [admin@feefunders.co.nz](mailto:admin@feefunders.co.nz).
- b) The business relationship between you and FFNZ will be conducted under the provisions of the CCLA, pursuant to which we are permitted to conduct our business with you electronically and in doing so:
  - i) any electronic communication from us to you will be in a form which will be able to be saved by you, will be able to be printed by you or will be usable by you for subsequent reference;
  - ii) any electronic communication from us to you will either direct you to a website from which the document can be downloaded, or the communication will have an attachment containing the information;
  - iii) we will retain a copy of the electronic communication for such time as we are required to by law in a form which complies with the law; and
  - iv) we intend to communicate with you electronically in all matters where we are able to by law, and we expect that you will regularly check your electronic communication systems (email and SMS in particular, and fax where applicable) to see if there is any electronic communication from us.

**27) Miscellaneous**

- a) In the interpretation of the Agreement:
  - i) words importing any gender include the other gender;
  - ii) words importing the singular include the plural and vice versa;
  - iii) words importing persons include corporations;
  - iv) any covenant or agreement on the part of one or more persons shall bind them jointly and severally; and
  - v) unless otherwise stated, references to clauses are references to clauses in the General Terms and Conditions.
- b) Where a party to the Agreement is comprised of more than one person, such persons will be jointly and severally liable to perform the obligations of that party.
- c) For the avoidance of doubt, the obligations of the Borrower under the Agreement are intended to be given for the benefit of, and be enforceable by, FFNZ and its affiliates and/or related entities, and the Bank, in accordance with the provisions of subpart 1 of part 2 of the Contract and Commercial Law Act 2017.
- d) The Agreement may be executed in any number of counterpart copies which taken together will be deemed to constitute the same document.
- e) The Agreement is governed by and will be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

**28) Direct Debit Terms and Conditions**

- a) The Lender:
  - i) has agreed to give written advance notice of the net amount of each Direct Debit and the due date of the debiting at least two calendar days before the date that the Direct Debit will be initiated.
- b) The Borrower may:
  - i) at any time, terminate this Instruction as to future payments by giving notice of termination to the Bank and to the Lender or the Agent;
  - ii) stop payment of any Direct Debit to be initiated under this Instruction by the Agent by giving written notice to the Bank prior to the Direct Debit being paid by the Bank; and
  - iii) request the Bank to reverse any Direct Debits initiated by the Lender or the Agent under the Instructions by debiting the amount of the Direct Debits back to the Lender or the Agent through the Lender or the Agent's bank, to the extent that the Lender cannot produce a copy of the Instructions and/or confirmation that reasonably demonstrates the Borrower's authorisation to the Bank to accept Direct Debits from the Lender against the Borrower's account, PROVIDED the request is made not more than 120 days from the date when the first Direct Debit was debited to the Borrower's account by the Lender or the Agent under the Instructions.
- c) The Borrower acknowledges that:
  - i) this Instruction will remain in full force and effect in respect of all Direct Debits passed to the Borrower's account in good faith notwithstanding the Borrower's death, bankruptcy or other revocation of this Instruction until actual notice of such an event is received by the Bank;
  - ii) any dispute as to the correctness or validity of an amount debited to the Borrower's 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), and should be referred to the Lender. Any other dispute lies between the Borrower and the Lender;
  - iii) the Bank accepts no responsibility or liability for the accuracy of information on bank statements relating to any Direct Debits; and
  - iv) the Bank is not responsible for, or under any liability in respect of- any variations between notices given by the Lender or its Agent and the amounts of Direct Debits; the Lender or the Agent's failure to give written advance notice correctly, or for the non-receipt or late receipt of notice by the Borrower for any reason whatsoever. In any such situation, the dispute lies between the Borrower and the Lender or the Agent.
- d) The Bank may:
  - e) at its absolute discretion, conclusively determine the order of priority payment by it of any monies pursuant to this or any other instruction, cheque or draft properly executed by the Borrower or given to or drawn on the Bank;
  - f) at any time, terminate this Instruction as to future payments by notice in writing to the Borrower; and charge its current fees for this service in force from time-to-time.