



General Terms & Conditions

For Fixed Interest Term Loan Agreements
(Consumer Credit Contracts)

October 2021



This document forms part of a legal contract between you and Xceda Finance Limited. Please keep it in a safe place and familiarise yourself with the contents within.

1. INTERPRETATION

In the Term Loan Agreement and these Terms and Conditions:

Words referring to one gender include the other genders. Singular words include the plural and vice versa. References to a party include the representatives, successors and permitted assigns of that party, and where that party includes more than one person, each person is jointly and severally liable under this Agreement;

If more than one person is named as the Borrower, each reference to the Borrower, **"you"** or **"your"**, is a reference to each Borrower and each of you separately and to all Borrowers and you all together;

If more than one person is named as the Guarantor, each reference to the Guarantor is a reference to each Guarantor separately and to all Guarantors together;

"Additional Advance" means a sum of money that we agree in the future to make available to you pursuant to this Agreement, which exceeds the amount of the principal loan specified in the Loan Schedule;

"Adverse Credit Event" means if you commit an act of bankruptcy or if you are insolvent and are unable to pay your debts as they fall due or legal proceedings are commenced (and not dismissed within 30 days) or, if you are a company an order is made or any step is taken toward dissolution or a receiver, liquidator, trustee, administrator or similar officer is appointed in respect of you or any of your assets;

"Agreement" means the Term Loan Agreement and these Terms and Conditions as incorporated by the Term Loan Agreement, and the terms **"the Agreement"** and **"this Agreement"** shall have a corresponding meaning unless the context otherwise requires;

"Borrower": means:

(a) the person to whom credit has been or may be provided pursuant to this Agreement; and
(b) includes any guarantor; and
(c) includes any reference to **"Debtor"** in this Agreement; and
(d) means **"debtor"** as defined in the Credit Contracts and Consumer Finance Act 2003; and
(e) is also referred to in these terms and conditions as **"you"** and **"your"**.

"Business Day" means a day on which registered banks are generally open for business in New Zealand;

"Commencement Date" means the Commencement Date set out in the Loan Schedule or such later date as the Loan is drawn down;

"Default Rate" means the default rate set out in the Loan Schedule;

"Disclosure Statement" means the disclosure statement annexed to the Term Loan Agreement;

"Documents" means these Terms and Conditions, any Term Loan Agreement, any Security Document and any other deed or agreement present or future required by or relating to an Agreement and **"Document"** means any of them;

"End of the Day" means 3.00pm on the day referred to;

"Guarantor" means the person or persons referred to as the **"Guarantor"** in a document

"Interest Period" means the applicable payment period set out in the Loan Schedule (e.g. weekly, fortnightly, monthly), such period ending at the End of the Day on the last day of that period;

"Interest Rate" means the annual interest rate set out in the Loan Schedule;

"Lender" means:

(a) the person or legal entity who has provided or may provide credit pursuant to this Agreement; and
(b) includes any reference to **"Creditor"** in this Agreement; and

(c) means "**creditor**" as defined in the Credit Contracts and Consumer Finance Act 2003; and (d) is also referred to in these terms and conditions as "**we**", "**us**" and "**our**".

"**Loan**" means the advance detailed in the Term Loan Agreement (including any Additional Advance) and the term "**Loan**" shall have a corresponding meaning unless the context otherwise requires;

"**Loan Schedule**" means the Loan Schedule contained in the Term Loan Agreement;

"**Moneys Owed**" means all moneys of whatever nature owed or payable by you to us under this Agreement and the Security Documents;

"**Repayment Date**" means the Repayment Date set out in the Loan Schedule;

"**Security Document**" means each agreement at any time executed or delivered to evidence or secure your indebtedness under any agreement whether or not it secures other obligations as well (including any guarantee and all other documents which the parties agree shall be a Security Document).

"**Specified Schedule of Payments**" means the schedule of payments referred to or detailed on **page 1** of this Agreement under the heading "**Payments Required**" or any amended Schedule of Payments resulting from a variation to this Agreement;

"**Term Loan Agreement**" means the Fixed Interest Term Loan Agreement signed by you and includes any document signed by you to vary or amend this Agreement, including any document for the purpose of an Additional Advance.

2. LOAN

We agree to advance the Loan to you on the terms and subject to the conditions of this Agreement. So long as our conditions for advancing the Loan (as determined by us at our discretion) being satisfied, you may draw down the Loan in one amount on the Commencement Date or in multiples, as selected under "**Availability**" in the Loan Details specified in the Loan Schedule.

3. INTEREST

3.1 You shall pay to us on each interest payment date specified in the Loan Schedule interest in arrears at the Interest Rate on the Moneys Owed for the time being outstanding during the preceding Interest Period. The first Interest Period commences on the Commencement Date.

3.2 Interest shall accrue and be calculated and charged at the end of each Interest Period by multiplying the average unpaid daily balance for the Interest Period by an interest rate calculated by dividing the Interest Rate by the number of Interest Periods in a year. Interest shall be capitalised if not paid on the due date. Our certificate as to the rate or amount of interest payable pursuant to this Agreement shall be conclusive and binding upon you except in the case of manifest error or fraud.

3.3 If you do not pay any amount due under this agreement on its due date you must pay interest on that unpaid amount from the due date until it is actually paid calculated on a daily basis at the Default Rate. Such interest shall accrue after as well as before judgment and up to and including the date of actual payment. The obligation to pay default interest shall arise without the need for notice or demand.

4. REPAYMENT AND PREPAYMENT

4.1 You shall repay in full to us on the Repayment Date the Moneys Owed then outstanding.

4.2 You shall pay to us in reduction of the Loan outstanding the principal reductions as required by the payments specified in the Loan Details contained in the Loan Schedule.

4.3 You may prepay to us the whole of the Loan at any time provided that you pay:

- (i) The unpaid balance of the Moneys Owed at the time of prepayment;
- (ii) Any administrative costs incurred by us arising from the full prepayment or a charge equal to our average administrative costs arising

from full prepayments of consumer credit contracts of the type this Agreement is;

(iii) A fee or charge that does not exceed a reasonable estimate of our loss arising from the full prepayment, to be calculated in accordance with the formula set out in the Disclosure Statement.

4.4 We may at our discretion accept a part prepayment from you, and in that event we may at our discretion accept the part prepayment subject to the payment of fees and charges by you in accordance with clause **4.3(ii)** and **(iii)**. Alternatively, we may elect to deal with a part prepayment in accordance with clause **14.3**.

5. REINSTATEMENT

If any payment to us under any Document is avoided by law, your obligation to have made such payment will be deemed not to have been affected or discharged and you shall on demand indemnify us against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by us as a result of us being required for any reason to refund all or part of any amount received or recovered in respect of such payment and in any event pay to us on demand the amount so refunded. In any such case we each will be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights we respectively would have had, if that payment had not been made.

6. COVENANTS

You represent and warrant to us that you have the power to enter into and perform your rights and obligations under this Agreement and the Security Documents and that no event of default (as specified in **clause 9**) has occurred or will occur as a result of making the Loan; and, except as otherwise approved in writing by us, no charge of any nature exists on or over the property that is the subject of the Security Documents. You undertake to us that you shall comply with all laws applicable to you, provide to us all financial information in relation to you as reasonably requested by us during the term of this Agreement, and insure

and keep insured our name (and any prior mortgagee), with an insurer approved by us, all assets and property that are the subject of the Security Documents for their full replacement value (or, if replacement value is not available, then for the full insurable value of the Property).

7. SECURITY DOCUMENTS

You will provide or procure the provision of the Security Documents specified in the Loan Schedule and any future securities required by us as security for the payment of the Moneys Owed and the performance of your obligations under this Agreement and the Security Documents. All existing and future securities granted by you or any other person as security for your indebtedness or performance of your obligations to us also secure your indebtedness to us for all Moneys Owed.

8. DIRECT PAYMENT TO THIRD PARTY

If the Loan or any part of it is intended to be used by you to purchase property from a third party vendor or to repay an existing debt owed by you to a third party, we shall be entitled to pay the amount that you owe or will owe directly to the third party on your behalf. You agree that we may impose such conditions on payment as we may consider necessary.

9. EVENTS OF DEFAULT

An event of default shall occur if:

- 9.1** You fail to pay any amount or sum due under any document on its due date; or
- 9.2** You commit any breach of or omit to observe or perform any of your obligations or undertakings under any document; or
- 9.3** An Adverse Credit Event occurs; or
- 9.4** Anything you have told us is or becomes untrue, inaccurate, or misleading; or
- 9.5** Any legal process is levied or enforced against you or your assets, and is not discharged

or stayed within five **(5) days**, or a receiver, trustee, official assignee, statutory manager, administrator or similar officer is appointed in respect of you or any of your assets; or

9.6 You, being an individual, die or become insane or become in any way legally incapacitated; or

9.7 It is or becomes unlawful for you to perform any of your obligations under any Document to which you are a party or any Document becomes or is claimed to be invalid or unenforceable in whole or in part or is claimed to have effect otherwise than in accordance with its terms; or

9.8 Any Security Document is withdrawn or revoked; or

9.9 An event of default or termination event (however described) occurs under any Document; or

9.10 Unless otherwise agreed by us in writing, if you are a trustee of a trust, you cease to be a trustee of that trust, or a resolution is passed by the trustees or beneficiaries of that trust, or any other action is taken, to wind up that trust; or the trust deed is amended, varied or revoked; or

10. REMEDIES ON DEFAULT

Upon or at any time after the occurrence of an event of default specified in clause 9, we may at our discretion and without prejudice to our other rights and remedies, by notice in writing to you, take all or any of the following actions:

10.1 Demand immediate repayment of the Moneys Owed. If so demanded you shall immediately repay the Moneys Owed to us;

10.2 Enforce, or procure the enforcement of, our rights and remedies under this Agreement (and the Security Documents or any of them) in such order as we thinks fit;

10.3 Cancel any undrawn portion of the Loan.

11. SET-OFF

You irrevocably authorise us to apply (without prior notice or demand) any credit balance (whether or not due and payable) to which you are entitled on any account (in any currency) in or towards satisfaction of any indebtedness then due and payable by you to us but unpaid.

12. ATTORNEY

You irrevocably appoint us, and every director, officer or duly appointed agent for the time being severally, your lawful attorney in your name and on your behalf at any time from time to time and in such manner as we in our absolute discretion shall think fit, to take all steps and proceedings and to do all acts, matters and things as we shall think proper to remedy any default or breach of the terms and provisions of this Agreement and the Security Documents, exercise any of our rights, powers and remedies contained in the Documents, and execute any deed, instrument or document necessary for us to perfect our security conferred under the Security Documents. We as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes at its pleasure. You agree to ratify and confirm whatever we or our substitutes may lawfully do or cause to be done by virtue of this clause.

13. INDEMNITIES

You will indemnify, and hold us harmless, from and against all losses, claims, demands, liabilities, payments, charges and expenses which may be made against or incurred by us arising from or relating to the Documents by payment to us of the amount we certify is required to indemnify us for that loss, expense or other liability. This clause shall survive the termination of this Agreement.

14. PAYMENTS

14.1 All payments to be made to us under this Agreement shall be made without set-off, counterclaim, or deduction and prior to the End of the Day on which payment is due. Such payments shall be made to a bank account nominated by us in

writing or, if we fail to nominate a bank account, then payment shall be made to our address specified at the beginning of this Agreement. Payments received after the End of the Day shall be deemed to have been received on the following Business Day.

14.2 We will apply any payment received by us under this Agreement to the repayment of the principal, interest, or any other amount due under this Agreement in accordance with the Specified Schedule of Payments.

14.3 Subject to clause 4, in the event that you make a payment earlier than the date that payment or any part of it is due, we shall be entitled to hold that payment and credit the payment in accordance with the Specified Schedule of Payments.

15. TYPE OF BORROWER

15.1 If more than one person is named as the Borrower, then each of you is jointly and severally liable for all obligations under a Term Loan Agreement and the Documents including without limitation for the amount of any additional advances.

15.2 In relation to any Document to which you are a party if you are described as a trustee of a trust:

(a) You warrant and undertake to us that:

(i) your entry into the Documents is authorised by the trust deed and the Trustee Act 1956; and

(ii) the trust is properly constituted and validly existing under the applicable law, the trust is solely constituted by the trust deed and you are all of the trustees of the trust;

(b) In enforcing any of our rights under or in respect of the Documents, we:

(i) may have full recourse to the assets of the trust and will be subrogated to each trustee's right to be indemnified from those assets or by any other person (including any beneficiary of the trust); and

(ii) except as provided in clause 15.2(c), may have full recourse to the personal assets of any trustee; and

(c) If we have agreed in writing that a trustee is a "Limited Liability Trustee" in respect of the trust, then the personal liability of that trustee is limited to the assets of the trust. However, this limitation of personal liability will not apply, if the Limited Liability Trustee:

(i) has acted dishonestly or is in wilful breach of trust; or

(ii) loses his or her right to be indemnified out of the assets of the trust for any reason;

and in such circumstances the Limited Liability Trustee will have full personal liability under and in respect of the Documents.

(d) Each trustee confirms and undertakes that the retirement of a trustee shall be effected in terms of **section 45** of the Trustee Act 1956 and that it will notify us in writing that a trustee intends to retire in accordance with those provisions. Each trustee remains liable under and in respect of a Document after ceasing to be a trustee until released in writing by us. We will release a trustee (in its capacity as trustee and not, if applicable, in its personal capacity) when we are satisfied that all things required to vest the secured property in the continuing or new trustee(s) have been executed and done.

16. NOTICES

16.1 All notices, requests, demands or other communications to or upon the parties in connection with this Agreement shall be:

(a) given or made in writing; and

(b) signed by the party or an authorised person for the party giving such notice; and

(c) served upon or delivered to the recipient personally, or sent by post to the recipient at the recipient's last known place of residence, place

of business, or in the case of a company to its registered office, and marked for the attention of the person (if any) from time to time designated by that party to the other for the purposes of the Agreement.

16.2 A notice, request, demand or other communication shall be deemed to have been received:

(a) in the case of personal delivery, on the date of that delivery, and

(b) in the case of a letter posted by mail, on the second Business Day after posting.

16.3 We do not consent to receive notices under this Agreement or pursuant to the Credit Contracts and Consumer Finance Act 2003 in electronic form or by means of electronic communication.

16.4 You consent to receive notices under this Agreement in electronic form or by means of electronic communication.

17. CONSENT TO FORM OF DISCLOSURE

17.1 You consent to continuing disclosure required by the Credit Contracts and Consumer Finance Act 2003 being made by us in electronic form and by means of an electronic communication and if so requested by us, you shall specify an information system for receiving such disclosure.

17.2 In the event that we establish a website from which continuing disclosure may be made in accordance with the Credit Contracts and Consumer Finance Act 2003, we shall give you 30 days' notice in advance of the establishment of such a website and of our intention to meet our continuing disclosure obligations by such means. You consent to us meeting our continuing disclosure obligations in this manner.

18. FURTHER ASSURANCE

You shall when required by us at your cost make, execute, do and perform all such further assurances, instruments, acts or things as we may from time to time reasonably require to perfect this Agreement and the security conferred under the Security Documents, or the guarantee of the Guarantor under **clause 20**.

19. ADDITIONAL ADVANCES

In the event that we agree to make an Additional Advance to you, this Agreement shall be varied in accordance with **clause 22** and we shall provide you with disclosure of the consequent amendments to this Agreement as required by the Credit Contracts and Consumer Finance Act 2003, including an amended Schedule of Payments.

20. GUARANTEE

20.1 In consideration of the advance of the Loan by us to the Borrower, the Guarantor guarantees to us, and indemnifies us against loss incurred by us from a breach in the due and punctual payment of the Moneys Owed and the observance and performance of the Borrower's obligations under this Agreement and the Security Documents granted in favour of us for the payment of the Moneys Owed.

20.2 The Guarantor is liable under this guarantee and this Agreement as if it were the sole principal debtor and not merely a surety.

20.3 The Guarantor agrees that no indulgence, granting of time, waiver or forbearance to sue or any other thing whereby the Guarantor would be released as a surety or otherwise shall in any way release the liability of the Guarantor under this Agreement.

20.4 The guarantee under this **clause 20** is in addition to and not in substitution for or in replacement of any guarantee and indemnity granted by the Guarantor as part of the Security Documents.

20.5 In the event that we agree to make an Additional Advance to the Borrower, the Guarantor shall remain liable for the amount outstanding under this Agreement at the time the Additional Advance is made, but the Guarantor shall not be liable for the Additional Advance unless he or she consents in writing.

21. COSTS

You shall pay to us on demand the amount of all costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis) incurred by us in connection with the negotiation, preparation, execution, variation, enforcement and administration of the Documents.

22. WAIVER

The failure or delay by us in exercising, or our single or partial exercise, of any right, power, discretion, remedy or privilege in connection with the documents shall not operate as a waiver of that right, power, discretion or remedy.

23. CONFLICT

23.1 Where any conflict or inconsistency shall arise between any of the terms, conditions and provisions, whether express or implied, of this Agreement and those of any loan offer or correspondence from the Lender, the terms, conditions and provisions of this Agreement shall prevail.

23.2 If there is any conflict between the terms, conditions and provisions of this agreement and the Credit Contracts and Consumer Finance Act 2003, the provisions of that Act shall prevail.

24. AMENDMENT

The documents may be amended or varied provided that the amendment or variation is in writing and signed by you and us.

25. ASSIGNMENT

You may not assign or transfer any of your rights or obligations under this Agreement. We may assign all or part of our rights and benefits under this Agreement without your consent.

26. DISCLOSURE OF INFORMATION

We may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom we have or may contemplate having contractual relations in connection with a term loan agreement or any Document, any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available.

27. PAYMENT HOLIDAY

27.1 You may at any time and from time to time request and we may, in our discretion (but shall not be under any obligation to) agree to:

(a) extend the term of the Agreement and reduce the amount of each payment due under this Agreement; or

(b) postpone, during a specified period, the dates on which payments are due under this Agreement; or

(c) extend the term of the Agreement and postpone, during a specified period, the dates on which payments are due under this Agreement; ("**payment holiday**") provided that no payment holiday will exceed a period of eight weeks in any twelve month period.

27.2 In the event that a payment holiday is agreed to, the documents shall be varied in accordance with clause 24 and we shall provide you with disclosure of the consequent amendments to the documents as required by the Credit Contracts and Consumer Finance Act 2003, including an amended Schedule of Payments.

27.3 Nothing in this clause shall affect the Borrower's rights contained in section 55 of the Credit Contracts and Consumer Finance Act 2003.

28. ADDITIONAL TERMS AND CONDITIONS

The parties may agree that this Agreement shall be subject to additional special terms and conditions. Such additional terms and conditions may be included in or annexed to this Agreement and shall be binding provided that each condition has been initialled by all parties to this Agreement.

29. SURVIVAL OF COVENANTS:

Your payment and indemnity obligations under these General Terms, including, without limitation, under clauses 5, 13 and 21, shall be separate and independent obligations giving rise to independent causes of action and will survive the termination of any term loan agreement and payment of all other indebtedness under any Document.

30. COUNTERPARTS:

Any Term Loan Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute any Term Loan Agreement by signing any such counterpart.

31. STATEMENT OF RIGHT TO CANCEL

31.1 If the Term Loan Agreement is a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003 ("Act") that Act gives you a right for a short time after the terms of this contract have been disclosed to you to cancel the contract.

31.2 If you want to cancel this contract you must give written notice to us that you intend to cancel within 5 working days after you receive the documents. You must also return to us any advance and any other property received by you under the contract.

31.3 If you cancel the contract we may charge you: **(a)** the amount of any reasonable expenses we had to pay in connection with the contract and its cancellation (including legal fees and fees for credit reports); and

(b) interest for the period from the day you received the advance until the day you repay the advance in full.

This clause only contains a summary of your rights and obligations in connection with the right to cancel. If there is anything about your rights or obligations under the Act that you do not understand, if there is a dispute about your rights, or if you think that we are being unreasonable in any way, you should seek legal advice immediately.

32. CHANGE IN CIRCUMSTANCES

If by reason of:

(a) the introduction after the date of this Agreement of, or a change in any applicable law, regulation or directive or a change in the interpretation of any applicable law, regulation or directive by any governmental or other regulatory authority charged with the administration or issuance or in any requirement of that law, regulation or directive;
(b) compliance by us with any directive from any applicable fiscal or monetary authority;

(c) the action or inaction of any governmental or local authority;

(d) any other circumstances materially affecting the New Zealand domestic funding market or the availability to lending institutions in New Zealand of finance; or

(e) war, riot, civil commotion, strike, labour disturbance, lockout, disaster (natural or otherwise) or act of God;

we are unable or it would be impracticable to fund or maintain the Loan, then we may, at our discretion by notice in writing to you, terminate our obligations under this Agreement, upon which the Loan shall be cancelled and you shall immediately repay the Moneys Owed.

33. LAW

This Agreement shall be governed by and construed in accordance with New Zealand law.

34. COURT PROCEEDINGS

You agree that any proceeding in relation to the Loan and/or any security granted in relation to the Loan and/or any matter arising out of the Loan shall be filed and determined in the District Court at Whakatane or the High Court at Rotorua. For the avoidance of doubt you waive compliance by us with any rule requiring us to file any proceeding in any other Court.



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