

# REVERSE MORTGAGE LOAN AGREEMENT

## COMMERCIAL TERMS

**IMPORTANT** – This document sets out key information about your consumer credit contract. You should read it thoroughly. If you do not understand anything in this document, you should seek independent advice. You should keep this disclosure statement and a copy of your consumer credit contract in a safe place.

The law gives you a limited right to cancel the consumer credit contract (see below for further details). Note that strict time limits apply.

**LENDER** (this is who we call **we** or **us** in this Agreement)

*You may send notices to us by:*

- *writing to us at this postal address*
- *sending an email to this email address.*

*Please also see clause 11 of the General Terms.*

Name	Heartland Bank Limited
Trading name	Heartland Reverse Mortgages
Physical address	Heartland House, 35 Teed Street, Newmarket, Auckland 1023
Postal address	PO Box 9919, Newmarket, Auckland 1149
Email	reverseinfo@heartland.co.nz

**BORROWER(S)** (this who we call **you** in this Agreement)

**Nominated Borrower(s)** (this is each borrower that lives in the Home and receives the benefit of the Loan)

Name	_____	Name	_____
Email	_____	Email	_____
Phone	_____	Phone	_____

**Owner(s)** (this is each borrower that owns the Security Property, including a trustee)

Name	_____	Name	_____
Address	_____	Address	_____
Email	_____	Email	_____
Phone	_____	Phone	_____
Independent trustee	_____	Independent trustee	_____

**SECURITY PROPERTY** (this is the property that is subject to the Mortgage)

Physical address \_\_\_\_\_  
Title Number \_\_\_\_\_

**HOME** (this is the primary residence of the Nominated Borrower(s))

Physical address \_\_\_\_\_

**ALTERNATIVE CONTACT** (this is the person with whom we may communicate under this Agreement, if we cannot contact you)

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Email \_\_\_\_\_  
Phone \_\_\_\_\_

## LOAN DETAILS

<b>Disclosure Date</b>		The date this Agreement is provided to you
<b>Loan Number</b>		Please quote this number in all correspondence with us
<b>Security Property Valuation</b>	\$	This is the independent valuation that was conducted on the Security Property
<b>Initial Loan Amount</b>	\$	This is the total amount we have agreed to lend you as at the Disclosure Date, including the Initial Advance, all Monthly Advances (if applicable) and the Cash Reserve Facility Limit (if applicable). Note, however, that we may accept or reject any request to draw any amount under the Cash Reserve Facility at our discretion, in accordance with clauses 2.4 and 2.5 of the General Terms
<b>Initial Advance</b>	\$	This is the amount of the initial payment that we will make to you under the Loan
<b>Balance of Initial Advance after fees</b>	\$	This is the amount of the Initial Advance we will pay to your solicitor's account, after we have deducted the Initial Fees listed below
<b>Initial Fees</b>	\$	This is the total of the Initial Fees listed below. Unless you have elected to pay any fee separately, the Initial Fees will be added to the Loan principal. That means we will charge interest on that amount until you pay it. All fees are inclusive of GST
made up of		
<b>Valuation Fee</b>	\$	This is the fee to cover the cost of the valuation for the Security Property
<b>Arrangement Fee</b>	\$	This is the fee for arranging and establishing the Loan
<b>Cash Reserve Facility Limit</b>	\$	This is the maximum amount of additional funds that you may draw down under the Cash Reserve Facility. Note that we may, at our discretion, accept or reject any request to draw any amount under the Cash Reserve Facility, or reduce the amount available under the Cash Reserve Facility at any time, in accordance with clauses 2.4 and 2.5 of the General Terms
<b>Annual Interest Rate</b>	x.xx%	The Annual Interest Rate is variable and will change from time to time

### INTEREST AND FEES

Interest charges are calculated daily by multiplying the Principal Amount Owing at the end of each day by the daily interest rate, which is the Annual Interest Rate divided by 365. There is no interest-free period.

Interest is charged on each Interest Charge Date and added to the Total Amount Owing. This means the interest charges are added to the Loan principal and we will charge interest on the total amount.

All fees that you might need to pay us under this Agreement are listed in the FEE SCHEDULE and are inclusive of GST.

We can change the interest rates, fees and other charges you might have to pay from time to time.

### REPAYMENTS

We require you to make one payment of the Total Amount Owing to us when a Payment Event occurs. In limited circumstances, we may require you to pay us costs or other amounts that become due and payable prior to a Payment Event occurring.

If you do not pay an amount when it is due, we will also charge you interest at the Default Interest Rate. More information about default interest is in the General Terms.

You can make voluntary repayments at any time, including repayment in full. There are no fees or charges for voluntary repayments, however, there is a fee to discharge the Mortgage (once the Loan is repaid in full).

### CREDIT LIMIT

The maximum amount you can borrow under the Loan at any time is the Initial Loan Amount plus the amount of all fees, charges, interest and other amounts charged to you under this Agreement, all of which form part of the amount you owe us.

### INSURANCE AND MAINTENANCE

You must at all times:

- maintain the Security Property in good repair and condition;
- tell us before doing any structural alterations or renovations to the Security Property;
- keep the Security Property insured under a sum insured policy for the cost to reinstate the property;
- pay all outgoings on the property such as rates, body corporate levies, and the cost of maintaining the property.

### PAYMENT EVENT

A Payment Event will occur when:

- the Security Property is sold;
- 12 months has passed since the death of the last Nominated Borrower;
- the last Nominated Borrower has left the Home, including by entering into Permanent Long-Term Care, and has remained absent for 12 months without our consent; or
- a Continuing Default has occurred and we declare all or any part of the Total Amount Owing to be due and payable under clause 7.4b of the General Terms.

### STATEMENTS

Statements giving you information about your account will be provided every 6 months.

## SECURITY UNDER THIS AGREEMENT

This Agreement is a type of secured loan known as a reverse equity mortgage. Security is given under the Mortgage in the Security Property.

If you fail to meet your commitments under this Agreement, we may be able to sell the Security Property. We can use the sale proceeds to pay back the total amount of the Loan and all other amounts owed to us. In addition, if the failure becomes a Continuing Default, we may be able to cancel the No Negative Equity Guarantee, the Loan Repayment Guarantee, the Lifetime Occupancy Guarantee or the Equity Protection Option (if applicable).

## WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS?

There could be very serious consequences for you and (if different) the Nominated Borrowers if you do not meet your commitments under this Agreement and this becomes a Continuing Default under clause 7.4 of the General Terms.

**Nature of the security interest:** Unless we agree otherwise in writing, our security under this Agreement must be a first-ranking exclusive mortgage over the Security Property. That means we must be the only person with a security interest in the Security Property and there must not be any other security granted over it to anyone else.

**Extent of security interest:** The security under this Agreement secures the payment of all amounts you owe us, now and in the future, under this Agreement. However, the No Negative Equity Guarantee means that the amount required to repay your Loan will not exceed the Net Sale Proceeds of the Security Property. If you fail to meet your commitments under this Agreement, and this becomes a Continuing Default, we are not bound to honour the No Negative Equity Guarantee. If we do not honour the No Negative Equity Guarantee, and Net Sale Proceeds of the Security Property are insufficient to repay the Total Amount Owed, you will still be liable to pay us the remaining amounts.

We are not obliged to exercise our rights under our security if you fail to meet your commitments under this Agreement (and, if we choose not to do so, you will still be liable to pay us what you owe).

**What happens if you give someone else a security interest in the Security Property?** If you give security in the Security Property to anyone else without our prior written consent, you will be in breach of this Agreement and this will be an Event of Default under clause 7.1 of the General Terms. If the Event of Default is not remedied, it will become a Continuing Default. If that happens, we can give you notice declaring all or any part of the Total Amount Owed to be due and payable and we can enforce our rights under our security (which could include taking control of and selling the Security Property).

## YOUR RIGHT TO CANCEL

You are entitled to cancel this Agreement by giving notice to us.

**Time limits for cancellation:** You must give notice that you intend to cancel this Agreement within 30 calendar days of being handed a completed copy of this Agreement. (The law provides for a shorter period of time than 30 calendar days, but we provide you with an extended right to cancel).

**How to cancel:** To cancel, you must give us written notice that you intend to cancel by: giving notice to us or our employee or agent; posting the notice to us or our agent; or emailing the notice to our email address. **You must also repay the Loan and any other amounts owing.**

**What you may have to pay if you cancel:** If you cancel this Agreement, we can charge you our then-current Valuation Fee. (The law allows creditors to charge other reasonable expenses on cancellation, but we only charge this fee). We can also charge you interest accrued for the period starting on the day you get the Loan until the day you repay us in full.

## WHAT CAN YOU DO IF YOU SUFFER UNFORESEEN HARDSHIP?

If you are unable reasonably to make payments because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, you may be able to ask us to vary the terms of this Agreement. To apply for a hardship variation, you need to:

- (a) make an application in writing; and
- (b) explain your reasons for the application; and
- (c) request a postponement of payment; and
- (d) give the application to us.

**Do this as soon as possible.** If you leave it for too long, we may not have to consider your application.

## IF THERE IS A DISPUTE ABOUT THIS AGREEMENT

We are a member of the following dispute resolution scheme:

Banking Ombudsman  
Level 5  
Huddart Parker Building  
1 Post Office Square  
Wellington 6011

<http://www.bankomb.org.nz>, phone: 0800805950 and [email: help@bankomb.org.nz](mailto:help@bankomb.org.nz).

It is free to make a complaint to this independent dispute resolution scheme. The scheme can help you to resolve any disagreement you have with us.

## **HAVE YOU CONSIDERED ALL OTHER FINANCIAL OPTIONS?**

You should make sure that this Loan will meet your current and possible future needs. For instance you should think carefully about whether this Loan will affect your ability to move into aged care accommodation, or to leave equity in the Security Property to your estate. If a reverse mortgage is not suitable for you, there may potentially be serious consequences. Other options that might be appropriate for your circumstances could include:

- (a) taking out a personal loan;
- (b) downsizing to a less expensive house;
- (c) using your savings or other assets or cashing in investments; or
- (d) borrowing money from family.

## **HAVE YOU TAKEN FINANCIAL ADVICE?**

We strongly recommend that you consider taking independent advice from a qualified financial adviser. You should also each discuss your options with a trusted friend or family member. You can also use our free calculator to work out the financial impact of the Loan: <https://www.heartland.co.nz/reverse-mortgage/reverse-mortgage-calculator>. If you have chosen the Monthly Advance Option, you should also consider whether this Loan has any impact on your benefits and seek advice if you are unsure.

## **HAVE YOU TAKEN INDEPENDENT LEGAL ADVICE?**

You must each get advice from an independent lawyer before entering into the Agreement. We will ask you to provide a certificate from your respective lawyers confirming that he or she has explained the terms of this Loan to you. You will each need to pay for the cost of taking this advice.

## **REGISTRATION ON FINANCIAL SERVICE PROVIDERS REGISTER**

Our Financial Service Providers Register Number is FSP53901 and our registration name is Heartland Bank Limited.

## **AGREEMENT**

You **must** each receive independent legal advice from a lawyer before you sign this Agreement.

By completing and submitting this Agreement, you request that we provide the Loan to you on the terms of this Agreement. A legally binding agreement is effective only when your request is accepted by us, which will be notified to you. We are under no obligation to accept your request.

You confirm that:

- you have read and understood, and agree to, the terms of this Agreement, which includes these Commercial Terms and the General Terms
- all of the information provided to us by you in connection with this Agreement is complete, accurate and not misleading
- the Loan is for the benefit of the Nominated Borrowers.

**Nominated Borrower** (this is each borrower that lives in the Home and receives the benefit of the Loan)

Signed by \_\_\_\_\_ )

in the presence of: \_\_\_\_\_ )

\_\_\_\_\_

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness (name)

\_\_\_\_\_  
Witness (occupation)

\_\_\_\_\_  
Witness (address)

**Owner** (this is each borrower that owns the Security Property, including a trustee)

Signed by \_\_\_\_\_ )

in the presence of: \_\_\_\_\_ )

\_\_\_\_\_

\_\_\_\_\_  
Witness (signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness (name)

\_\_\_\_\_  
Witness (occupation)

\_\_\_\_\_  
Witness (address)

## FEE SCHEDULE

### SCHEDULE OF STANDARD FEES AND CHARGES APPLIED TO REVERSE MORTGAGE LOANS

#### APPLICATION / APPROVAL / ACCOUNT MAINTENANCE

**Valuation Fee (below \$1m)** \$600.00\*

We will charge you this fee to have a property valuation completed where the rating value is below \$1m. This fee can be deducted from your initial drawdown.

**Valuation Fee (above \$1m or lifestyle property)** \$855.00\*

We will charge you this fee to have a property valuation completed where the rating value is above \$1m or for a lifestyle property (generally up to 10 hectares, not farmed, single residence). This fee can be deducted from your initial drawdown.

**Arrangement Fee** \$920.00

Charged on the initial settlement date of your loan. This fee will be deducted from your initial drawdown.

**Equity Protection Fee** \$55.00

If you choose the Equity Protection Option, this will be charged on the initial settlement date of your loan. This fee will be deducted from your initial drawdown.

**Monthly Advance Establishment Fee** \$120.00

A one-time establishment fee which is charged at the time of initial drawdown if you request a Monthly Advance.

**Cash Reserve/Redraw Fee** \$70.00

Charged on, and deducted from, each drawdown of your Cash Reserve or Redraw Facility.

**Mortgage Discharge Fee** \$270.00

Charged at the time your loan is fully repaid. This fee will be added to the loan balance of your loan and will form part of the repayment required.

**Administration Fee** \$23.00

Charged each time we pay rates or insurance costs on your behalf. This fee will be added to the loan balance of your loan.

**Agency Fee** \$179.00

Charged if we have to send an agent out to the property to obtain any documentation or information we require for the purpose of your loan agreement.

#### MODIFICATIONS

**Further Advance Fee** \$455.00

Charged on the settlement date of a further advance to your loan. This fee will be deducted from the initial drawdown of any further advance.

**Variation Fee** \$375.00

Charged if the terms of your loan are varied. This fee will be added to the loan balance of your loan.

\*Additional costs may be applied by the independent valuer in certain circumstances (such as mileage costs or high value properties).

All fees are inclusive of GST.

**GENERAL TERMS**

**1 Understanding and interpreting this Agreement**

- This Agreement has three parts:
- these General Terms
  - the Commercial Terms, and any separate FEE SCHEDULE referred to in those terms
  - the Mortgage

Read each part carefully. Ask for help if there is anything you don't understand.

We use ordinary words where possible. But sometimes we have to use legal words or terms because there is no ordinary word with the same meaning. *To help you, we have added some explanations in italics.*

Also, some of the ordinary words we use have special meanings in this Agreement. We explain some legal and ordinary words, and set out the rules for interpreting this Agreement, in the **Dictionary** (at the end of these General Terms).

**2 Getting your Loan**

**2.1 Your Loan:** Your Loan will consist of:

- a all principal amounts that we pay you under this Agreement, including the Initial Advance and all Monthly Advances (if you chose the Monthly Advance Option);
- b all amounts advanced under the Cash Reserve Facility (if any);
- c all amounts advanced under the Redraw Facility; and
- d all accrued and unpaid interest and fees and charges payable under this Agreement.

**2.2 Conditions Precedent:** We will only pay you amounts under the Loan if we consider the following conditions are met or we agree to waive them:

- a this Agreement has been completed and submitted (and we have accepted it);
- b we are satisfied with the results of all title searches in respect of the Security Property;
- c we have received a valuation of the Security Property, acceptable to us;
- d the Mortgage has been registered;
- e we have received a copy of an insurance policy or certificate of currency in respect of the Security Property that notes our interest as mortgagee and is otherwise satisfactory to us;
- f no Event of Default or Payment Event has occurred; and
- g we have received all the other information and documents we have asked for, including for the purposes of Regulatory Compliance.

**2.3 Payment of advances:** We will pay you the Initial Advance once you have completed and submitted our payment instruction form. If you chose the Monthly Advance Option, we will pay you each Monthly Advance on each date falling on a monthly anniversary of the date of the Initial Advance (or such other date as we may agree) for the period specified in the Commercial Terms.

**2.4 Cash Reserve Facility:** Under the Cash Reserve Facility (if any), we may allow you to draw down additional funds up to the Cash Reserve Facility Limit. You must complete and

submit our payment instruction form to request any amounts under the Cash Reserve Facility.

**2.5 Availability of Cash Reserve Facility:** The Cash Reserve Facility (if any) is available to you at our discretion and we may review your Cash Reserve Facility at any time. This means that we can approve or reject requests for draw downs at our discretion and tell you at any time that the balance not already drawn is no longer available, or has been reduced. When we review your Cash Reserve Facility, you must give us any information we reasonably ask for.

**2.6 Redraw Facility:** Under the Redraw Facility, we may allow you to redraw any amounts that you have voluntarily paid under clause 3.2, but provided that you have not repaid the Loan in full. Each advance made under the Redraw Facility must not be for less than \$5,000 or such other amount as we determine from time to time. You must complete and submit our payment instruction form to request any amounts under the Redraw Facility.

**2.7 Availability of Redraw Facility:** The Redraw Facility, is available to you at our discretion. This means that we can approve or reject requests for advances at our discretion.

**3 Paying us back**

**3.1 Mandatory payment in full:** You promise to pay us back in full the Total Amount Owing when a Payment Event occurs, subject to the No Negative Equity Guarantee and Equity Protection Option. You also promise to pay us when due any costs or other amounts that become due and payable in accordance with this Agreement prior to the occurrence of a Payment Event (for instance, under clause 5.5).

**3.2 Voluntary payments:** You can also voluntarily pay back any amount at any time, including payment in full of the Total Amount Owing. Any repayment must not reduce the Total Amount Owing to below \$5,000, unless it is being repaid in full.

**3.3 Payment Events:** A Payment Event will occur when:

- a the Security Property is sold;
- b 12 months has passed since the death of the last Nominated Borrower;
- c the last Nominated Borrower has left the Home, including by entering into Permanent Long-Term Care, and has remained absent for 12 months without our consent; or
- d a Continuing Default has occurred and we declare all or any part of the Total Amount Owing to be due and payable under clause 7.4b.

**3.4 Interest:**

- a **How interest is calculated:** We calculate interest on the Loan daily by multiplying:
  - the Principal Amount Owing at the end of that day; by
  - the **daily interest rate** which is calculated by dividing the Annual Interest Rate by 365, even in a leap year.
- b **How interest accrues:** Interest accrues daily at the Annual Interest Rate on the Principal Amount Owing.
- c **When interest is charged:** Accrued interest is charged to you in arrears on each Interest Charge Date.

- 3.5 **How you must pay us:** Each payment by you to us under this Agreement must be made by you to the account we advise to you. Each payment must be made free and clear of any restriction or condition, and without any deduction, set-off or withholding (unless required by Law).
- 3.6 **Order of payments:** Unless otherwise specified or required by Law, all amounts received or recovered by us under this Agreement will be applied as between principal, interest and other amounts in the manner and order determined by us, notwithstanding any purported application by you or any other person or entity, or any other matter or circumstance.
- 3.7 **When you must pay us:** If a due date for payment under this Agreement is not a Business Day, you must pay on the next Business Day (unless that next Business Day occurs in the following month, in which case you must pay on the previous Business Day). Any payment made by you after 3.00 pm on any date will be deemed to have been made on the next Business Day.
- 3.8 **If you do not pay us on time, we will charge you extra interest:** If you do not pay an amount when it is due under this Agreement, we will charge you interest at the Default Interest Rate on the amount which is due and unpaid while the payment default continues. However, we will not charge you default interest on any amount that has become payable early because of non-payment of another amount or because of an event that is not a payment default. The obligation to pay default interest will arise without the need for any notice or demand. Default interest accrues daily, both before and after judgment, for the period from the due date for payment until the actual date of payment. If it remains unpaid, the default interest will be added to the Principal Amount Owing on the last day of each calendar month and will itself bear interest under this Agreement. *(This means that unpaid default interest is added to the Loan, on which you pay interest, until you pay us.)*
- 4 **Our promises to you**
- 4.1 **Promises subject to Continuing Default:** Our promises to you in this clause 4 are subject to our rights under clause 7.4 if an Event of Default becomes a Continuing Default. *(This means that we may not have to honour these promises if a default is not rectified within the time period required under this Agreement.)*
- 4.2 **Loan Repayment Guarantee:** Unless and until a Payment Event occurs, you are not required to make any Loan repayments to us (although you may do so voluntarily at any time).
- 4.3 **Lifetime Occupancy Guarantee:** Each Nominated Borrower can reside in the Home for as long as they wish.
- 4.4 **Equity Protection Option:** If you chose the Equity Protection Option, the maximum amount that you will be required to pay us will be an amount calculated as follows, even if this amount is less than the Total Amount Owing:
  - the Net Sale Proceeds; minus
  - the Equity Protection Percentage,

- 4.5 **No Negative Equity Guarantee:** At the time the Security Property is sold, the maximum amount you will be required to pay us will be an amount calculated as follows, even if this amount is less than the Total Amount Owing:
  - the Net Sale Proceeds of the Security Property; minus
  - the Equity Protection Percentage (if you chose the Equity Protection Option).

## 5 Security

- 5.1 **Mortgage:** You give us security on the terms set out in the Mortgage.
- 5.2 **Your promises in relation to the Security Property:** Your promises in relation to the Security Property are set out in the Mortgage. These require you to, amongst other things:
  - maintain the Security Property in good repair and condition;
  - tell us before doing any structural alterations or renovations to the Security Property;
  - keep the Security Property insured under a sum insured policy for the cost to reinstate the property; and
  - pay all outgoings on the property such as rates, body corporate levies, and the cost of maintaining the property.
- 5.3 **Sale of the Security Property:** You have the right by Law to sell the Security Property and repay the Total Amount Owing in full at any time without our consent. You must, however, obtain our consent to sell the Security Property if the Net Sale Proceeds are likely to be less than the Total Amount Owing on the date of settlement. If you need to obtain our consent, we may require you to provide us with an up-to-date valuation for the Security Property (at your cost). **We recommend you tell us as soon as practicable if you intend to sell the Security Property.**
- 5.4 **Our right to remedy:** You agree that, if you fail to comply with any promise under this Agreement, then (in addition to any other rights we have, and without prejudice to our right to rely on that failure as an Event of Default) we may do whatever we think appropriate to remedy that failure or otherwise protect the security given under this Agreement. This includes making payments on your behalf (such as rates, body corporate levies, and insurance premiums), taking out an insurance policy for the Security Property, and carrying out repairs and maintenance on the Security Property.
- 5.5 **Our right to recover costs:** If we make any payments on your behalf or incur any costs under clause 5.4, these amounts will be charged to you and added to the Total Amount Owing. We can also declare these amounts to be due and payable by giving notice to you.
- 6 **Other promises**
- 6.1 **Information:** You promise to:
  - promptly give us any information about you or the Security Property that we reasonably request;
  - tell us as soon as practicable if you enter into an agreement to sell the Security Property;
  - tell us as soon as practicable if a Nominated Borrower dies;



- d tell us as soon as practicable if a Nominated Borrower enters into Permanent Long-Term Care or has been absent from the Home, whether or not with an intention to return, for 12 months without our consent;
  - e give us at least 14 days' prior notice of any change to a Borrower's name or contact details;
  - f provide us with any information or documents we may require from time to time for the purposes of Regulatory Compliance; and
  - g notify us of the occurrence of any Event of Default immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result.
- 6.2 **Annual questionnaire:** Each year you must answer a questionnaire we send you about your circumstances, living arrangements, insurance and any other matters we consider relevant. If you are unable or refuse to answer the questionnaire, or do not respond within the time period requested, we may:
- a ask your Alternative Contact to answer it on your behalf; or
  - b obtain the requested information by any other means that we consider reasonably necessary (with any costs incurred by us being charged to you and added to the Total Amount Owing).

## 7 Events of Default and our enforcement rights

- 7.1 **Events of Default:** There will be an Event of Default if any of the following things happen, whether or not it was within your control:
- a **non-payment:** you do not pay us when due all or any part of the Total Amount Owing;
  - b **mortgage:** you have granted, or purported to grant, a mortgage over the Security Property to someone else in addition to us without our prior written consent;
  - c **breach of obligations:** you have breached a material term of this Agreement or taken an action, or not taken an action or permitted something to happen that has adversely affected, or is capable or adversely affecting, the value of the Security Property or our ability to exercise our rights under this Agreement; or
  - d **fraud or untrue information:** you have acted fraudulently or given us incorrect or misleading or deceptive information in connection with this Agreement and this has caused, or partially caused, us to make the Loan or any part of it (including any amount under the Cash Reserve Facility) when we would otherwise not have done so.
- 7.2 **Notice to remedy:** If an Event of Default has happened and is capable of remedy, we will give you at least 30 days' written notice advising you of the Event of Default. The notice will specify the amount of time you have to remedy the Event of Default.
- 7.3 **Our powers if Event of Default not remedied:** If you do not, or are unable to, remedy the Event of Default within the period specified in the notice or required by Law then we may (but are not obliged to) do whatever we reasonably believe is necessary to rectify the

event that caused the Event of Default. Any costs we incur will be charged to you and added to the Total Amount Owing. We can also declare these amounts to be due and payable by giving notice to you.

7.4 **Our rights if there is a Continuing Default:** Subject to applicable Law, including our obligations to act as a responsible lender, if an Event of Default is or becomes a Continuing Default:

- a we are under no further obligation to pay any amount under the Loan;
- b we can, at any time, by notice to you, declare all or any part of the Total Amount Owing to be due and payable (and, if we give such notice, the Loan is automatically cancelled); *(This means we can tell you to pay us back any amount you owe us.)*
- c we can cancel all or any of the Loan Repayment Guarantee, the Lifetime Occupancy Guarantee, the No Negative Equity Guarantee and the application of the Equity Protection Option (if applicable);
- d the security given under the Mortgage will be immediately enforceable; *(This means that we can sell the Security Property and use the Net Sale Proceeds to pay back the Loan or appoint a receiver to do that, among other things.)*
- e we can exercise any other right given to us by Law or in this Agreement; and
- f if we reasonably consider it necessary to do so, use your name and act on your behalf in exercising any of our rights under this Agreement. However, we cannot take additional security over your assets using this right to act on your behalf.

7.5 **Exclusion of liability:** To the fullest extent permitted by Law, we will not be liable for any damage, injury or other loss or cost to any person, entity or property arising from the exercise of our rights under this Agreement (or the rights of any receiver) if an Event of Default happens.

7.6 **Obligation to co-operate:** If we do not exercise the powers described in this clause if an Event of Default happens, you must co-operate in good faith with us to identify how the Event of Default may be remedied.

## 8 Illegality

If, at any time, we determine that, as a result of our Regulatory Compliance obligations, we are no longer reasonably able to continue to provide or fund the Loan, or to exercise any of our rights or comply with any of our obligations under this Agreement, then:

- a we are under no further obligation to pay any amount under the Loan; and
- b we can, at any time, by notice to you, declare all or any part of the Total Amount Owing to be due and payable (and, if we give such notice, the Loan is automatically cancelled). *(This means we can tell you to pay us back any amount you owe us.)*

## 9 General indemnity

You fully indemnify us on demand for each amount that we confirm is required to compensate us against any loss (including loss

	of profit) or cost that we incur in connection with:		
	a anything we do in accordance with this Agreement to remedy any failure or otherwise protect the security given under this Agreement;	11.3	<b>When received:</b> Notices and other communications given under this Agreement will be deemed to have been received by the addressee:
	b anything else we do or do not do in exercising our rights under this Agreement or at Law;		a if delivered personally, at the time of service;
	c an Event of Default happening or continuing;		b if sent by post, on the fourth Business Day after being posted by prepaid postage; or
	d any fraudulent or negligent act on your part; or		c if sent by electronic message, on the second Business Day after sending.
	e any amount falling due or being paid under this Agreement on a date which is not the date it is due for payment for any reason.	11.4	<b>Electronic messages:</b> For the purposes of this Agreement, the conditions relating to sending and receiving information in electronic form are those in Part 4 of the Contracts and Commercial Law Act 2017 (and any other applicable Law from time to time). Where you have given us an electronic message address, we may (unless otherwise requested in writing):
	<i>(This means that you separately and personally promise to reimburse us for all of the costs and liabilities we incur as a result of the things listed in sub-paragraphs a-e in addition to your other payment obligations.)</i> Any amount for which you indemnify us under this clause will be charged to you and added to the Total Amount Owning. We can also declare these amounts to be due and payable by giving notice to you.		a use that address to communicate with you; and
<b>10</b>	<b>Changes to this Agreement</b>		b send you electronic messages allowing access to statements from a website or by means of the internet.
10.1	<b>By agreement:</b> Subject to clause 10.2 below, no change to this Agreement will be effective unless the change is agreed between you and us and made in writing.	11.5	<b>We can rely on communications:</b> If we receive any communication that we reasonably believe to be from you or the Alternative Contact, we may rely on that communication without any further enquiry or verification. Despite this, we may (at our discretion) decline to act, or delay acting, on any instructions received where we consider that we have good reason to do so. Without limitation, we may decline to act if there is a dispute between, or we receive contradictory communications from, you or the Alternative Contact.
10.2	<b>Other changes:</b> We can make the following changes at any time without your specific agreement:		
	a any change to this Agreement that we reasonably believe is sensible or necessary in order to comply with applicable Law or to correct a manifest error or omission;		
	b any change to this Agreement that we reasonably believe is of a technical or administrative nature and will not prejudice or disadvantage you in a material respect;	<b>12</b>	<b>Alternative Contact</b>
	c any change to the Annual Interest Rate or Default Interest Rate;		Your Alternative Contact is the person with whom we may communicate if, for any reason, we cannot reasonably communicate with you. You may change your Alternative Contact by telling us in writing.
	d any change to the timing of Interest Charge Dates;	<b>13</b>	<b>Valuer</b>
	e any change to the Cash Reserve Facility Limit in accordance with clause 2.5; and		Any valuer we use is an independent contractor and not our agent or employee. We are not responsible for the acts or omissions of the valuer. The valuation obtained is for our use and benefit only. Even if we give you a copy, you may not rely on it or take any action against us based on it. If you wish to rely on it you will need to arrange this with the valuer.
	f any change to the fees and charges payable by you at any time under this Agreement.	<b>14</b>	<b>Trusts</b>
10.3	<b>Notices:</b> We will give notice of any change to this Agreement (including notice of the effective date of the change) in accordance with applicable Law.	14.1	<b>Your promises in relation to changes:</b> Where a person or entity has entered into this Agreement as a trustee, you promise that (without our prior written consent) there will be:
<b>11</b>	<b>Communications</b>		a no change to the trustees;
11.1	<b>How to communicate with us:</b> In respect of this Agreement, you must give notices and other formal communications to us in writing, which may be by means of an electronic message, using the details provided in the Commercial Terms (or any updated details subsequently provided by us).		b no change to the terms of the relevant trust;
11.2	<b>How we will communicate:</b> In respect of this Agreement, we must give notices and other formal communications to you or the Alternative Contact in writing, which may be by means of an electronic message, using the details provided in the Commercial Terms (or any other details we reasonably believe to be the details of you or the Alternative Contact). In some	14.2	c no vesting or final distribution of the assets or capital or the trust; and
			d no winding-up, dissolution or terminating event of the trust.
			<b>Our recourse:</b> In enforcing any obligations under this Agreement against a trustee, we may have full recourse to the assets of the relevant

- trust. For this purpose, we will be subrogated to the right of indemnity of each trustee (whether from the trust assets or otherwise) and you promise that there will be no restriction on any such right of indemnity. Subject to clause 14.3, each trustee also has unlimited personal liability, jointly and severally with each other trustee, to us under this Agreement.
- 14.3 **Independent trustees:** Where a person or entity is identified in the Commercial Terms as an independent trustee, that independent trustee will have no personal liability to us under this Agreement except in respect of any loss or cost that we incur as a result of:
- that independent trustee being unable to recover (in whole or in part) from the trust assets because that independent trustee has acted without power or improperly in relation to the trust;
  - any statement made by that independent trustee in a trustee's certificate (or any similar certificate, promise or statement) being misleading or untrue in a material respect when made; or
  - fraud, negligence or wilful default on the part of that independent trustee (including, for the avoidance of doubt, any fraud, negligence or wilful default on the part of that independent trustee that results in a breach of any promise in clause 14.1), and in each such case, that independent trustee will have unlimited personal liability.
- 15 **Privacy and information sharing**
- 15.1 **Our privacy statement:** By entering into this Agreement, you (if you are an individual) consent to the collection, use, disclosure, storage and processing of your information in accordance with the Privacy Act 2020 and our privacy statement (which is available on our website). We can change our privacy statement from time to time in accordance with its terms. Clauses 15.2 to 15.6 summarise some important information from the Privacy Statement as at the date of this Agreement.
- 15.2 **What information we collect about you**  
We collect various types of personal information about you and the Guarantor (if an individual), which may include that Relevant Party's name, age, gender, address, contact details (including phone numbers and email addresses), image, biometric data and financial information, including payment information. If the information we request from or about a Relevant Party is not provided, we may not be able to provide the requested services.
- 15.3 **How we collect information about you**  
We collect information about you when you interact with us, including when you:
- apply for a loan (or commence the process for applying for a loan), including when you provide personal information when completing this Agreement;
  - visit our website;
  - contact us with queries or feedback; and
  - subscribe to receive marketing communications from us
- You also authorise us to collect information about you from third parties including credit reporting agencies, your present or former creditors and insurance companies, identification service providers, your referees, government agencies, and your past and present employers and business partners. We may do this to confirm your identity, verify your current credit obligations, help us assess your ability to meet repayment obligations and make credit decisions, and to provide you with quotations for the cost of credit.
- 15.4 **Your rights request access to and correction of information:** You (if you are an individual) have the right to access and request correction of information we hold about you. You can do so by contacting us using the details provided in the Commercial Terms.
- 15.5 **What we can do with information:** Subject (if you are an individual) to any update to our privacy statement in accordance with clause 15.1, information that we collect, or that is provided to us, about you may be used by us to:
- consider any application for an account or service including to establish and verify your identity and to assess your creditworthiness and financial position from time to time;
  - carry out our business functions and activities;
  - collect amounts owed to us, including taking enforcement action and to notify credit reporting agencies of your repayment history and account details;
  - exercise our rights and fulfil our obligations under any agreement;
  - exercise our rights and fulfil our obligations for the purposes of Regulatory Compliance;
  - generally administer and monitor services provided to you (or any related entity); and
  - provide information about other services, including those of selected third parties, including by post, telephone and electronic message – **you can opt out of this by telling us in writing.**
- 15.6 **Who we can share information with:** Subject (if you are an individual) to any update to our privacy statement in accordance with clause 15.1, you agree that we can share any information we get, for the purposes set out above, with:
- our related companies;
  - existing and potential business partners;
  - identity verification agencies;
  - credit reporting agencies – credit reporting agencies may retain information (including default information) and use it to provide their credit reporting services;
  - third parties for the purposes of fraud prevention, identity verification, and any other purposes relevant to those purposes – those third parties may retain information and use it for identity verification and fraud detection purposes;
  - the New Zealand Transport Agency's 'Driver Check' service;
  - insurers;
  - any other party to this Agreement;
  - anyone to whom we consider assigning or transferring any of our rights or obligations;
  - anyone that we engage with about selling all or any part of our business;
  - anyone providing any credit or funding support to all or any part of our business;
  - government agencies, regulators and our approved dispute resolution scheme, or

- anyone else with whom we are required to share that information for the purposes of Regulatory Compliance;
  - m service providers – this may include information being held on our behalf by data storage providers, including cloud-based data storage providers in New Zealand or overseas;
  - n referees; and
  - o debt recovery agencies.
- 16 Other important things to note**
- 16.1 **Multiple Borrowers:** If there is more than one of you, each of you has joint and several liability under this Agreement. *(That means we can sue all Borrowers named in the Commercial Terms together, or any one of them alone, for the full amount owed to us.)*
- 16.2 **Waivers:** The only time we give up any of our rights under this Agreement is if we agree to do so in writing. A failure or delay in exercising any right does not operate as a waiver of that right. A single or partial exercise of any right does not preclude further exercise of that right or the exercise of any other right.
- 16.3 **Assignment:**
  - a We can assign or transfer any of our rights or obligations under this Agreement without seeking specific consent from you.
  - b You cannot assign or transfer any rights or obligations under this Agreement without our prior written consent.
- 16.4 **Certificates:** A certificate from a medical practitioner in respect of a Nominated Borrower:
  - a entering into Permanent Long-Term Care; or
  - b remaining absent from the Home, whether or not with an intention to return, for 12 months or more without our prior written consent,
 is sufficient evidence of that fact.
- 16.5 **Commission:** We may pay commission, fees or other remuneration to any broker, agent, dealer or other person or entity in connection with this Agreement.
- 16.6 **Our right to set off:** We can use any funds deposited or invested with us by you (or which we otherwise owe to you) to pay all or any part of an amount which that you owe to us under this Agreement but have not paid. We may break any term deposit for this purpose. If, at any time following an Event of Default, an amount is contingently due to us or an amount due to us is not quantified, we may retain and withhold repayment of any amount we owe to you, pending that amount becoming due or being quantified. We do not need to give any prior notice before taking any action under this clause.
- 16.7 **Giving effect to promises:** You promise to provide us with all documents we ask for, and do anything else we appropriately request, at your cost and in a timely manner, to give effect to the promises and the rights we are intended to have under this Agreement.
- 16.8 **Interaction with Law:** The rights provided in this Agreement are in addition to any rights provided by Law. If any provision of this Agreement conflicts with any provision of Law, then:
  - a to the extent that the relevant provisions of Law may be varied or excluded, the provisions of this Agreement prevail; and
  - b to the extent that the relevant provisions of Law may not be varied or excluded, then the provisions of this Agreement must be read subject to those provisions of Law.
- 16.9 **When part of this Agreement does not legally "work":** If any part of this Agreement is illegal, invalid or unenforceable, the other parts of that document will still be legal, valid and enforceable.
- 16.10 **We do not have to be a party:** We can enforce our rights under this Agreement even if we are not a party to the document for the purposes of the Contract and Commercial Law Act 2017.
- 16.11 **Counterparts:** This Agreement can be signed or accepted in one or more counterparts, which together constitute the same document.
- 16.12 **Entire agreement:** To the fullest extent permitted by Law, this Agreement contains all the terms in relation to its subject matter that apply between you and us, and supersedes all previous agreements, understandings and negotiations in relation to its subject matter.
- 16.13 **Governing Law:** This Agreement is governed by and must be interpreted under New Zealand Law.
- 17 Dictionary and interpretation**
- 17.1 **Dictionary:** In this Agreement (unless it would not make sense):
  - Agreement** means these General Terms, the Commercial Terms and the Mortgage.
  - Alternative Contact** means the person appointed as your Alternative Contact in the Commercial Terms or under any other agreement with us (or such other person appointed by you and notified to us in writing).
  - Annual Interest Rate** means the rate specified in the Commercial Terms (or the updated "Annual Interest Rate" if we have changed it in accordance with this Agreement or such other rate as we may agree).
  - Business Day** means a day (other than a Saturday, Sunday or public holiday observed in New Zealand) on which registered banks are open for general banking business in New Zealand.
  - Cash Reserve Facility** means the facility (if any) under which we may allow you to draw down additional advances, up to the Cash Reserve Facility Limit.
  - Cash Reserve Facility Limit** means the limit specified in the Commercial Terms (or the updated "Cash Reserve Facility Limit" if we have changed it in accordance with this Agreement or such other limit as we may agree).
  - Commercial Terms** means the terms set out under the heading "Commercial Terms" at the beginning of this Agreement and any separate FEE SCHEDULE referred to in those terms.
  - Continuing Default** means an Event of Default that:
    - a in our opinion is not capable of being rectified;
    - b is not rectified within the period required under this Agreement; or
    - c has been rectified by us but you have not paid us in full the costs incurred by us.

**Default Interest Rate** means the rate per annum equal to the Annual Interest Rate at the time of the default plus 2 per cent per annum (or the updated "Default Interest Rate" if we have changed it in accordance with this Agreement or such other rate as we may agree).

**Disclosure Date** means the disclosure date specified in the Commercial Terms.

**Equity Protection Option** means the option described in clause 4.4.

**Equity Protection Percentage** means the percentage of the Net Sale Proceeds specified in the Commercial Terms (if any) (or such other percentage as we may agree).

**Event of Default** means any event listed in clause 7.1.

**General Terms** means the terms set out under the heading "General Terms" in this Agreement.

**Home** means the property described in the Commercial Terms.

**Initial Advance** means the amount that is initially advanced to you as specified in the Commercial Terms (or such other amount as we may agree).

**Initial Loan Amount** means the total amount we have agreed to lend you as at the Disclosure Date, as specified in the Commercial Terms (or such other amount as we may agree).

**Interest Charge Date** means each date falling on a monthly anniversary of the date of the Initial Advance (or each updated "Interest Charge Date" if we have changed it in accordance with this Agreement or such other date as we may agree).

**Law** means any law, regulation, rule, official directive, order, request, guideline or consent (whether or not having the force of law) of any governmental body or regulatory authority and, if not having the force of law, with which responsible entities in the position of the relevant party would normally comply.

**Lifetime Occupancy Guarantee** means the guarantee described in clause 4.3.

**Loan** means the principal amount of the loan that we pay you under this Agreement and, depending on the context, also includes all accrued and unpaid interest and fees and charges payable under this Agreement and all amounts advanced under the Cash Reserve Facility (if any) and/or the Redraw Facility.

**Loan Repayment Guarantee** means the guarantee described in clause 4.2.

**Monthly Advance** means the amount that is advanced to you each month as specified in the Commercial Terms (or such other amount as we may agree).

**Mortgage** means the mortgage instrument and authority and instruction form entered into by you in relation to this Agreement granting us a mortgage over the Security Property.

**Net Sale Proceeds** means the sale price of the Security Property after deducting the costs associated with the sale (such as legal costs, advertising costs, marketing costs, auctioneer's fees, real estate agent's commission and any outstanding rates or body corporate levies).

**Nominated Borrowers** means the Nominated Borrowers named in the Commercial Terms (or such other Nominated Borrowers as we may agree).

**No Negative Equity Guarantee** means the guarantee described in clause 4.5.

**Payment Event** means any event listed in clause 3.3.

**Permanent Long-Term Care** means, in respect of a Nominated Borrower as confirmed by a medical practitioner:

- a they require care or supervision for mental, physical or cognitive incapacity or impairment; or
- b the care or supervision is within a licensed rest-home or hospital for an indefinite length of time.

**Principal Amount Owning** means, at any time, the unpaid principal balance under the Loan (which includes all capitalised interest, fees and charges).

**Redraw Facility** means, the facility (if any), under which we may allow you to redraw the funds you have repaid on the Loan.

**Regulatory Compliance** means the requirements for us to comply with all applicable Laws, including those relating to consumer credit, money laundering, terrorist financing, bribery, corruption, tax evasion, fraud or similar, and manage all economic and trade sanction risks.

**Security Property** means the property secured by the Mortgage and described in the Commercial Terms, including the land, buildings and all improvements (including any dwelling).

**Total Amount Owning** means, at any time, the Principal Amount Owning, plus all accrued but unpaid and uncapitalised interest, fees and charges, and all other amounts owing under this Agreement.

**you** means each Borrower named in the Commercial Terms (including the Nominated Borrowers).

17.2 **Interpreting this Agreement:** This Agreement must be interpreted using the following rules (unless it would not make sense to do so):

- a the Commercial Terms prevail over the General Terms if there is any inconsistency;
- b where we refer to any statute, we include all future versions of it, including all changes to it, all re-enactments or replacements of it, and all statutory instruments issued under it;
- c where we refer to a document we mean that document as varied or replaced from time to time;
- d each reference to us or you includes any person or entity that legally takes over our or your responsibilities (as applicable), and in the case of a party that is a trust, includes each trustee as well as the relevant trust; and
- e each reference to including, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.