

# Secured Loan Agreement - Homeowners

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## Parties to this Loan Agreement:

**The Lender:** Squirrel P2P Trustee Limited (referred to as **Squirrel** or **we**)

**The Borrower:** You (referred to as **the Borrower** and **you**)

## Agreed:

- A. This Loan Agreement includes:
  - a. the Loan Disclosure Statement; and
  - b. these Terms and Conditions.
- B. Squirrel agrees to lend to you the amount shown as Total Advances in the Loan Disclosure Statement.
- C. You acknowledge Squirrel is acting as bare trustee for the benefit of the Participating Investors.
- D. You covenant and agree:
  - a. to repay the Loan Facility at the time and in the manner set out in the Loan Disclosure Statement;
  - b. to comply with all the terms and conditions set out in this Loan Agreement and the Securities;
  - c. you have received a copy of and read this Loan Agreement;
  - d. if there is more than one of you named as Borrower you are liable jointly and severally meaning you are each liable to pay Squirrel the entire amount owed;
  - e. if the Secured Property described in the Loan Agreement is owned by you, you give Squirrel a security interest in the Secured Property described in the Loan Disclosure Statement and if you don't repay Squirrel any amount owing to Squirrel, it has the right to sell the Secured Property and apply the sale proceeds towards repayment of the amount owing;
  - f. if there is more than one of you named as Borrower:
    - i. you appoint each and any of you to be your agent for service for the purposes of section 355 of the Property Law Act 2007 for the service of notices under this Loan Agreement;
    - ii. Squirrel may accept communications from either or any of you as being on behalf of you all without reference to the other or others; and
    - iii. you consent to Squirrel providing your personal information to the other Borrower/s.
- E. We may be required to provide you with information about your account relating to continuing disclosure. You agree that this information will be provided via Squirrel's online platform only, which you are able to access at all reasonable times.

# The Terms and Conditions:

## 1. Definitions and Interpretation

### Definitions

1.1 In this Loan Agreement, terms have the meaning given in the Loan Disclosure Statement and, unless the context otherwise requires:

**Amount Outstanding** means, at any time, the principal, interest (including default interest), costs and all other moneys payable by you to Squirrel under this Loan Agreement;

**Business Day** means a day on which registered banks are open for business in Auckland, excluding Saturdays, Sundays and public holidays;

**CCCFA** means the Credit Contracts and Consumer Finance Act 2003;

**Date of Advance** means the date on which the Loan Facility is or is to be drawn;

**Default Interest Rate** means the aggregate of the Ordinary Interest Rate plus 10% per annum;

**Event of Default** means any of the events specified in clause 5.1;

**FMCA** means the Financial Markets Conduct Act 2013;

**Final Repayment Date** means the date specified by Squirrel as the last payment date in the Loan Disclosure Statement as that date may be accelerated under this Loan Agreement;

**GST** means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985;

**Guarantee and Indemnity** means a guarantee and indemnity entered into by a guarantor in relation to the obligations of the Borrower under this Loan Agreement in favour of Squirrel;

**Guarantor** means a person named as the Guarantor in any Guarantee or Indemnity;

**Initial Period** means the period from the Date of Advance to (but not including) the Rollover Date;

**Loan Disclosure Statement** means the initial disclosure provided to you in the document entitled Loan Disclosure Statement by Squirrel as required by the CCCFA;

**Loan Facility** means the loan facility the terms of which are set out in this Loan Agreement to the amount specified in the Loan Disclosure Statement as the Credit Limit as that amount may be as reduced or cancelled under this Loan Agreement;

**Ordinary Interest Rate** means, for the Initial Period, the rate specified as such in the Loan Disclosure Statement, and for the period after the Initial Period, the fixed rate of interest per annum for a period of the length of the period from the Rollover Date to the scheduled Final Repayment Date as advertised by Squirrel on the Rollover Date on its website (currently <https://www.squirrel.co.nz/>) (which rate shall be set in accordance with Squirrel's methodology for setting fixed interest rates at that time);

**Participating Investors** means the investor or investors from time to time who are participating in providing this Loan Facility under the peer-to-peer lending service provided by Squirrel Money Limited pursuant to its licence under the FMCA;

**PPSA** means the Personal Property Securities Act 1999;

**Rollover Date** means the date 12 months following the Date of Advance;

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

**Secured Property** means your property described as such in the Loan Disclosure Statement but excludes any property in relation to which it is prohibited to provide for a security interest under Part 3A subpart 6 of the CCCFA;

**Secured Obligations** means all present and future obligations which you (whether alone or with any other person and in any capacity) have or owe to Squirrel (whether alone or with any person and in any capacity) other than obligations to pay or deliver any Amount Outstanding;

**Securities** means the security over the Secured Property and a Guarantee and Indemnity together with each other agreement at any time intended to secure your obligations under this Loan Agreement (whether or not it guarantees or secures other obligations as well);

**Security Interest** means a mortgage, pledge, charge, lien, assignment, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase or sale-and-leaseback arrangement, and any other arrangement of any kind that in substance secures payment or the performance of an obligation without regard to the form of the transaction and the identity of the parties and a "security interest" as defined in the PPSA; and

**Tax** includes any present or future tax, levy, impost, duty, charge, fee, excise deduction or withholding of any nature whether direct or indirect by whatever method collected and recovered and whatever called together with any interest, penalty, charge, fee, additional tax, expense, fine, other additional statutory charge or any other amount imposed or made on or in respect of, or incidental or related to, the imposition of any of the foregoing.

## **1.2 In this Loan Agreement:**

- a. where the context permits, the singular includes the plural and vice versa;
- b. references to any party means a party to this Loan Agreement and includes the successors, executors, administrators and permitted assignees (as the case may be) of that party;
- c. references to clauses are to clauses in this Loan Agreement (unless stated otherwise);
- d. references to any document (however described) shall include references to that document as modified, novated, supplemented, varied or replaced from time to time; and
- e. references to a month or a year are references to a calendar month or calendar year.

## **2. Availability of the Loan Facility**

### **Facility**

2.1 Squirrel agrees to make the Loan Facility available to you on the terms of this Loan Agreement, subject to satisfaction of the condition precedent that Squirrel has matched the Loan Facility with bids from Participating Investors.

### **Availability**

2.2 Squirrel will advance the Loan Facility to you in one amount on any Business Day if:

1. Squirrel has received and found satisfactory all documentation required by Squirrel; and
2. no Event of Default subsists.

2.3 The account details into which the Loan Facility will be advanced are as set out in the Loan Disclosure Statement.

If the purpose of the Loan Facility is to purchase a motor vehicle from a dealer, Squirrel will advance that loan directly to the bank account of the motor vehicle dealer.

### **Purpose**

2.4 The purpose of the Loan Facility is as set out in the Loan Disclosure Statement.

2.5 You agree and undertake that you will only use the Loan Facility for the purpose specified in clause 2.4.

## **3. Payment of Loan Facility and Interest**

## Repayment of Loan and Interest

- 3.1 Interest will be calculated on the unpaid balance on a daily basis at the Ordinary Interest Rate from the Date of Advance and ending on (but excluding) the Final Repayment Date.
- 3.2 You will pay outstanding interest from the Date of Advance, by fortnightly or monthly instalments in arrears.
- 3.3 You will repay the Loan Facility from the Rollover Date, by fortnightly or monthly instalments in arrears, payable on the same day as outstanding interest, with the first such payment being on the first payment date after the Rollover Date.

## Prepayment of the Loan Facility

- 3.4 You may prepay the Loan Facility in full or in part without penalty on any date. Squirrel will, on request, provide you with written confirmation of the amount required to prepay in full.

Any prepayment you make (other than a prepayment in full) will not affect your obligation to make repayments in the way set out in section 3.1 of this Loan Agreement except that the last payment date may be earlier, may be a different amount and the total number of payments may reduce.

## 4. Representations and warranties

- 4.1. You represent and warrant that:
  - a. you have the legal capacity to enter into this Loan Agreement and the Securities and to perform your obligations under this Loan Agreement and the Securities;
  - b. your obligations under the Loan Agreement and the Securities constitute valid and binding obligations enforceable against you in accordance with this Loan Agreement's and the Securities' terms, subject to insolvency laws of general application;
  - c. there is no present or subsisting Event of Default;
  - d. except as notified to Squirrel in writing prior to the date of this Loan Agreement, you are not acting as trustee of a trust;
  - e. except as notified to Squirrel in writing prior to the date of this Loan Agreement, there are no Security Interests over the Secured Property (other than under the Securities);
  - f. except as notified to Squirrel in writing, no litigation, arbitration or administrative proceeding exists or is pending, and you do not know of any which is threatened, that may have a material adverse effect on your ability to perform obligations under this Loan Agreement and the Securities;
  - g. you are solvent and are able to pay your debts as they become due;
  - h. you have disclosed to Squirrel all material matters that you know of which affect your ability to perform obligations under this Loan Agreement and the Securities;
  - i. entering into this Loan Agreement and the Securities and carrying out your obligations under them will not contravene any law to which you are subject or any agreement which is binding on your assets; and
  - j. your execution of this Loan Agreement and the Securities does not give rise to a need for an authority, license, consent or exemption that you do not already hold.

## 5. Events of Default

5.1 If, at any time and for any reason, whether or not within the control of a party:

- a. you or the Guarantor (if any) fail to pay any amount payable under this Loan Agreement and/or the Securities on the due date; or
- b. you or the Guarantor (if any) do not perform or comply with any of your obligations under this Loan Agreement and/or the Securities; or
- c. any representation, warranty or statement by you or the Guarantor (if any) in or in connection with this Loan Agreement or the Securities proves to have been untrue, inaccurate or not complied with; or
- d. in the reasonable opinion of Squirrel, a material adverse change occurs in relation to you; or
- e. you are, or are presumed to be unable to pay your debts as they fall due; or
- f. Squirrel determines that it is or may become unlawful, impractical or contrary to any law, treaty or directive of any agency of state or other regulatory authority to make, fund or allow to remain outstanding all or part of the Loan Facility, to charge or receive interest at any applicable rate or to comply with any of your obligations or exercise any of your rights under this Loan Agreement and the Securities,

then, upon Squirrel notifying you in writing:

- g. Squirrel may cancel the Loan Facility;
- h. if the Loan Facility has been made, you shall repay the Amount Outstanding immediately; and
- i. the security interest created under this Loan Agreement will become immediately enforceable

## 6. Default Interest

### Default interest

6.1 You shall pay to Squirrel interest calculated on a daily basis at the Default Interest Rate on all monies (including interest) payable under this Loan Agreement which may from time to time be overdue, such interest to be payable on demand being made by Squirrel, provided that default interest is not payable on any amount that is payable due to the exercise by Squirrel of its rights under clause 5.1.

## 7. Securities

7.1 If you are the registered owner of the Secured Property identified in the Loan Disclosure Statement:

- a. you grant Squirrel a security interest in the Secured Property to secure the payment or delivery of the Amount Outstanding and compliance with the Secured Obligations. Squirrel has or will register a financing statement under the PPSA over the Secured Property.
- b. you must:
  - i. maintain the Secured Property in good condition; and
  - ii. insure the Secured Property for full replacement value and comply with all requirements of such insurance; and
  - iii. not sell, dispose of, lose possession or control of any Secured Property, create or permit to exist a security interest in any Secured Property or allow any Secured Property to become an accession to any property that is not Secured Property without Squirrel's prior written consent.
- c. You irrevocably appoint Squirrel (and any director of Squirrel) severally to be your attorney and in your name or otherwise do anything you have agreed to do and otherwise protect Squirrel's interests under this Loan

Agreement. Without limiting this power Squirrel may execute any document for the purposes of registering any mortgage or creating a security interest (or causing one to attach) under the PPSA. You ratify anything done by your attorney under this clause and indemnify any person acting in reliance of the power.

7.2 Sections 114(1)(a), 133 and 134 of the PPSA will not apply to the Securities and you will have none of the rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA.

7.3 If Squirrel has rights in addition to, or existing separately from, those in part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.

7.4 If clause 7.1 applies and the Secured Property includes land, you agree to grant Squirrel a mortgage over that land on the following terms and conditions:

- a. you will at Squirrels request authorise and instruct a lawyer of Squirrel's choice to register an "all obligations" mortgage instrument incorporating such covenants and conditions as are included in Mortgage Memorandum 2011/4300 as registered with Land Information New Zealand. The "Priority Amount" for the purposes of such mortgage will be recorded as a sum calculated by multiplying the Total Advances x 2 "plus interest";
- b. you authorise Squirrel to lodge and maintain a caveat against the title to the land for the protection of Squirrel's rights and interests as mortgagee under this credit contract, and to proceed to register the mortgage should Squirrel decide to so do. For the avoidance of doubt Squirrel may utilise the power of attorney given pursuant to clause 7.6 below to effect such registration; and
- c. you acknowledge Squirrel may lodge a caveat against the land to give notice of Squirrel's interest under this agreement to mortgage.

## **8. Payments and Taxes**

### All Payments on Business Days

8.1 Where a payment to be made under this Loan Agreement is due on a day which is not a Business Day the due date shall be the next Business Day (unless the next Business Day falls in the next month of the year, in which case the due date will be the previous Business Day).

### **Mode of Payments**

8.2 Each payment to Squirrel under this Loan Agreement and the Securities is to be made by 2.00pm (being the end of day for payment purposes) on the due date in immediately available freely transferable funds in the manner and to the account at the bank which Squirrel, by notice to you, specifies from time to time. If a payment is made on the due date but after the specified end of day for payment purposes, you shall pay to Squirrel, on request, interest on the amount paid until the next Business Day (as if the payment were made on the later day).

### **Payments to be Free and Clear**

8.3 Each payment by you to Squirrel under this Loan Agreement and the Securities is to be made:

- a. free of any restriction or condition; and
- b. free and clear of and without any deduction or withholding for or on account of tax or on any other account, whether by way of set off, counterclaim or otherwise.

### **Reinstatement**

8.4 If a payment made by you to Squirrel pursuant to this Loan Agreement and the Securities is avoided by law:

- a. that payment shall be deemed not to have discharged or affected the obligation of you in respect of which that payment was made or received; and
- b. Squirrel and you shall be deemed to be restored to the position in which each would have been, and shall be entitled to exercise all the rights which each would have had, if that payment had not been made.

## **Resident Withholding Tax**

8.5 To the extent that you are required by law to deduct RWT from any payment to Squirrel pursuant to this Loan Agreement, Squirrel will deduct the RWT amount on your behalf and pay it to Inland Revenue and you acknowledge that you will not deduct or withhold any amount of RWT from any payment by you to Squirrel under this Loan Agreement.

## **9. Calculations and Evidence**

### **Basis of Calculation**

9.1 All interest shall accrue from day to day and shall be calculated on the basis of the number of days elapsed and a 365-day year.

### **Loan Accounts**

9.2 In the absence of manifest error or fraud, the entries made in the accounts maintained by Squirrel are to be conclusive evidence of the existence and amounts of the obligations of you recorded in them.

### **Certificates**

9.3 In the absence of manifest error or fraud, a certificate by Squirrel of an interest rate or amount payable under this Loan Agreement is to be conclusive evidence for all purposes including for any proceedings.

## **10. Assignment**

### **Benefit and Burden of this Loan Agreement**

10.1 This Agreement is binding upon and endures for the benefit of the parties and their respective successors and, in the case of Squirrel, its assignees or transferees and, in the case of you, your permitted assignees or transferees.

### **Squirrel As Trustee**

10.2 Squirrel has entered into this Loan Agreement as bare trustee for the Participating Investors and not in its personal capacity and Squirrel's liability under this Loan Agreement is limited to the assets from time to time under its control as trustee for the Participating Investors.

### **Squirrel May Assign**

10.3 Squirrel may assign or transfer all or part of its rights or obligations under this Loan Agreement and the Securities without your consent. Each assignee or transferee is to have the same rights against you under this Loan Agreement (or a proportion of those rights if it is the assignee or transferee of part only), including being appointed your attorney, as if named in this Loan Agreement as Squirrel.

### **Disclosure of Information**

10.4 Squirrel may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Loan Agreement are contemplated, any information about you whether or not that information was obtained in confidence and whether or not that information is publicly available.

### **You May Not Assign**

10.5 You may not assign or transfer all or part of your rights or obligations under this Loan Agreement and the Securities without the prior consent of Squirrel in writing.

## **11. Notices**

### **Addresses and References**

11.1 Any written notice required to be given pursuant to this Loan Agreement shall (without limitation, including any CCCFA disclosure statement) be deemed validly given if delivered by electronic means (including by email). You

nominate the email address specified in your loan application, or such other email address as you may notify Squirrel of, as the information system (within the meaning of section 209 of the Contract and Commercial Law Act 2017) to which communications can be sent.

### **Deemed Delivery**

11.2 No communication shall be effective until received. Communications to the Borrower, however, for the purposes of this Loan Agreement shall be deemed to be received:

- a. in the case of a notice delivered by email or delivered on a Business Day, or at any time on a non-Business Day, at 9.00am on the next Business Day; or
- b. in the case of any letter, on the third Business Day after posting.

Squirrel consents to receive notices or other communications from you in electronic form, whether by means of an electronic communication or otherwise.

## **12. Expenses**

### **Expenses**

12.1 You shall pay to Squirrel, upon demand, all costs and expenses on a full indemnity basis (including all legal fees on a solicitor and own client basis and taxes) incurred by Squirrel in connection with the enforcement of, any rights under this Loan Agreement and the Securities (including collection fees and sales and commission fees in relation to the sale of any Secured Property) following an Event of Default.

## **13. General**

### **Exercise of Rights and Waivers**

13.1 Time is of the essence of this Loan Agreement but no failure to exercise, and no delay in exercising, a right of Squirrel under this Loan Agreement and the Securities shall operate as a waiver of that right, nor shall a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by Squirrel of your rights under this Loan Agreement and the Securities shall be effective unless it is in writing signed by Squirrel.

### **Remedies Cumulative**

13.2 The rights, powers and remedies provided in this Loan Agreement and the Securities are cumulative and not exclusive of any rights, powers or remedies provided by law.

### **Amendments**

13.3 No amendment to this Loan Agreement shall be valid unless in writing and executed by both parties in the same manner as that in which this Loan Agreement has been executed except that Squirrel may amend this Loan Agreement if required by law.

### **Partial Invalidity**

13.4 If any provision of this Loan Agreement is or becomes invalid or unenforceable, that invalidity or unenforceability shall not affect the other provisions of this Loan Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

### **Conflict**

13.5 In the event of there being any conflict or inconsistency between the express provisions of this Loan Agreement and the express provisions of any other related document, the terms of this Loan Agreement will prevail and be paramount.

## Governing Law and Jurisdiction

13.6 This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Loan Agreement.

## 14. Trustee Provisions

14.1 **Representations by trustees:** if any of you are entering into this Loan Agreement as the trustee of a trust then you represent and warrant to the lender that:

- a. **Powers:** you have the power under the instrument under which you hold the property on trust to enter into this Loan Agreement;
- b. **Proper purposes:** the entry into this Loan Agreement is for a proper purpose and for the benefit of the trust under which you hold the Secured Property;
- c. **Right to be indemnified:** you have the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any of your actions including the entry into this Loan Agreement; and
- d. **All trustees approve or assent:** all of the persons who are trustees of the relevant trust have approved and have signed or assented to this Loan Agreement.

14.2 **Trustees have full and unlimited personal liability:** Unless you have been named in this Loan Agreement as a limited trustee (in which case the provisions of clause 14.3 will apply) all of you have full and unlimited personal liability for the repayment of the moneys owing and the compliance with all obligations of this Loan Agreement.

14.3 **Limited liability trustees:** If you have been named in this Loan Agreement as a limited liability trustee then your liability is not personal and unlimited but will be limited to an amount equal to the value of the assets of the trust under which you have entered into this Loan Agreement as a trustee that are (or, but for default would be) available to satisfy your liability for the moneys owing (the **limited amount**) unless your right as a trustee to be indemnified from the assets of the trust has been lost and, as a result, the lender is unable to recover from you the limited amount.