

# HOME LOAN AGREEMENT



Account Number \_\_\_\_\_

Under this Agreement, **Heartland Bank Limited** (whom we call the **Lender, we, or us** in this Agreement) agrees to make you a Loan and you grant to the Lender security in the Property (described below) as security for the Secured Debt and the Secured Obligations (**Loan, Secured Debt** and **Secured Obligations** are defined in the General Terms).

**IMPORTANT** – This Agreement sets out key information about your Loan. You should read it thoroughly. If you do not understand anything in this Agreement, you should seek independent advice. You should keep a copy of this Agreement in a safe place.

The law gives you a limited right to cancel this Agreement - see under "**Your right to cancel**" in the Other Key Information section for more information. Note that strict time limits apply.

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**LENDER** (we are the person making the Loan to you)

*You can send notices to us under this Agreement by:*

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

*Please also see clause 10 of the General Terms.*

<b>Name</b>	Heartland Bank Limited
<b>Address</b>	35 Teed Street, PO Box 9919, Newmarket, Auckland 1149
<b>Email</b>	home-loans@heartland.co.nz

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

Full Legal Name

Physical address

Postal address

Email

You consent to receiving all communications from us, including disclosure information required by law, in electronic form. See under "**Electronic communication**" in the Other Key Information section for more information.

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# COMMERCIAL TERMS

## EFFECTIVE DATE

**LOAN AMOUNT** (this is the amount you owe us on the date the Loan is advanced, including any fees we charge you on that date, and is also the total advances to be made under this Agreement)

\$ \_\_\_\_\_

made up of:

Advance Amount : \$ \_\_\_\_\_

Initial fees \$ \_\_\_\_\_

## ANNUAL INTEREST RATE

We will charge you interest on the Loan at a rate of: \_\_\_\_\_% per annum **fixed** for \_\_\_\_\_ months from the date the Loan is advanced.

If the Annual Interest Rate for any Loan Portion is fixed for a period which ends before the term of the relevant Loan Portion expires, that Annual Interest Rate will revert to our then-current standard variable rate upon expiry of the relevant fixed period (unless we agree otherwise).

If you are in default, a Default Interest Rate may apply - see under "**Fees and Charges**" in the Other Key Information section for more information.

## METHOD OF CHARGING INTEREST

Interest charges are calculated by multiplying the unpaid balance of each Loan Portion at the end of each day by the daily interest rate, which is the relevant Annual Interest Rate divided by 365. Interest is charged on each Payment Date (as part of the Payment Amount).

## TERM:

\_\_\_\_\_ year(s) from the date the Loan is advanced.

**PAYMENTS SCHEDULE** (these are the regular payments we require you to make during the term of your Loan)

Your Payment Dates are at \_\_\_\_\_ intervals.

First Payment Date: \_\_\_\_\_

Final Payment Date: \_\_\_\_\_

Total Payments: \_\_\_\_\_

Total Interest Payable: \_\_\_\_\_

Payment Number	Each Payment Amount
Payment	_____
Payment	_____

For the purposes of these Commercial Terms (including the calculation of your Payment Amounts), we have assumed that your Loan will be advanced on the Effective Date. If your Loan is advanced on another date, then your Payment Amounts may vary slightly (and if that is the case, we will provide you with an update as required in accordance with applicable law). This Payments Schedule is also given on the basis that there is no change to any Annual Interest Rate, that no fees or other charges are incurred (which are not included in the Loan Amount above and are not interest charges), that you make all payments in accordance with this Payments Schedule, and that you do not default under this Agreement.

We require you to have a primary account with us (into which your income is paid) and your payments to us under this Agreement must be made by direct debit from that account, unless we have agreed otherwise.

## INTEREST FREE PERIOD

There is no interest-free period under this Agreement.

## PROPERTY

Physical address	_____
Title Number	_____

## SECURITY UNDER THIS AGREEMENT

This is a secured loan. Security is given under the Mortgage (and any other Related Security Agreement) in the Property. If you fail to meet your commitments under this Agreement, we may be able to sell the Property. We can use the sale proceeds to pay back the total amount of the Secured Debt.

You make important promises to us about the Property in clause 4 of the General Terms and in the Mortgage (and any other Related Security Agreement). You should read these carefully and make sure you understand your obligations.

## SPECIAL CONDITION

If you receive a credit from us for entering into a variable rate Heartland Home Loan (**Credit**) and you (a) fix the interest rate on any part of that variable rate Heartland Home Loan or (b) prepay that variable rate Heartland Home Loan in full, within 12 months of entry into that variable rate Heartland Home Loan, you agree that you will refund the Credit in full.

# OTHER KEY INFORMATION

## FEES AND CHARGES

All fees and charges (including default fees and charges payable in the event of a breach of a Relevant Document or on the enforcement of a Relevant Document) that are or may become payable to us under this Agreement (which are not included in the Loan Amount and are not interest charges as specified in the Commercial Terms) are listed in the attached **Fee Schedule**. In the event of a default in payment and while the default continues, you must also pay default interest charges at a **Default Interest Rate** in respect of the amount of the default only. We give you information about the default interest charges in clause 5.1 of the General Terms. We can change the fees and charges you might have to pay under clause 9.2 of the General Terms.

## PREPAYMENT

You can pay the Loan back early by paying us the **Full Prepayment Amount** defined in clause 3.3(a) of the General Terms. The **Full Prepayment Amount** may include an administrative fee and (if any Loan Portion has an Annual Interest Rate which is fixed for any period ending after the prepayment date) an amount equal to the reasonable estimate of our loss arising from full prepayment (if any) – that is, a loss that relates to differences in interest rates. You can also pay us at any time a **Part Prepayment Amount**, which must be no less than any applicable Minimum Part Prepayment Amount, in accordance with clause 3.3(b) of the General Terms. We may also charge you an administrative fee and (if the relevant Loan Portion has an Annual Interest Rate which is fixed for any period ending after the prepayment date) an amount equal to the reasonable estimate of our loss arising from the part prepayment (if any). The **Minimum Part Prepayment Amount** is (for a variable rate Loan Portion) \$100 and (for a fixed rate Loan Portion) \$1,000. In each case, the **reasonable estimate of our loss** will be the amount we calculate to be the present day value of the economic cost to us arising from any differential between (a) the funding rate available to us, at the time that the fixed period commenced, for periods equal to the fixed period, and (b) if applicable, the lower funding rate available to us, at the time of prepayment, for periods equal to the unexpired portion of the fixed period. We do not calculate the reasonable estimate of our loss using a statutory formula under the Credit Contracts and Consumer Finance Regulations 2004. More information about prepayments is set out at clause 3.3 of the General Terms, and any applicable administrative fee is listed in the attached **Fee Schedule**.

## CONTINUING DISCLOSURE

Statements giving you information about your Loan will be provided at least every six months, unless we provide an online platform through which you can access the relevant information (in accordance with applicable legal requirements).

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

There could be serious consequences if you do not meet your commitments under this Agreement.

- **Nature of the security:** Unless we agree otherwise in writing, our security must be a first-ranking exclusive security interest in the Property. We must be the only person with security in the Property and there must not be any other security granted over the Property to anyone else without our consent.
- **Extent of security :** The security under the Mortgage (and any other Related Security Agreement) secures the payment of all amounts you owe us, now and in the future, and the performance of all of your obligations to us, under this Agreement or any other Relevant Document. However, we are not obliged to exercise our rights under the 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). If we exercise our rights under the security and the proceeds of sale of the Property are insufficient to repay the Secured Debt, you will still be liable to pay us the remaining amounts.
- **What happens if you give someone else security in the Property?** If you give security over the 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 6.1 of the General Terms. If that happens, we can give you notice declaring all amounts you owe us under this Agreement to be due immediately and we can enforce our rights under the security (which could include taking control of and selling the Property).

## YOUR RIGHT TO CANCEL

### Time limit for cancellation

You can cancel this Agreement by giving written notice to us within 7 working days of the day the completed Agreement is emailed or sent to you electronically. Saturdays, Sundays and national public holidays are not counted as working days.

### How to cancel

You can physically give the notice to us or our employee or agent, post the notice to us or our agent or email the notice to our email address listed on page 1 of this Agreement. **If you cancel this Agreement, you must immediately repay the Loan and any interest accrued for the period starting on the day you get the Loan until the day you repay us in full. You must also reimburse us for any reasonable expenses we have to pay in connection with this Agreement and its cancellation, including legal fees and credit report fees.**

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

If you are unable reasonably to keep up your payments or other obligations 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 (we call this a **Hardship Variation**). To apply for a Hardship Variation, you need to:

- (a) make an application in writing; and
- (b) explain your reasons for the Hardship Variation; and
- (c) request one of the following:
  - an extension of the term of this Agreement - this means we would reduce the Payment Amount due on each new Payment Date and increase the number of payments; or
  - a postponement of certain Payment Dates - please specify the period for which you want this to apply; or
  - both of the above – that is, postpone some payments and pay smaller amounts over a longer time period; and
- (d) give the application to us.

**Do this as soon as possible.** If you delay for too long in making an application, we may not have to consider your request.

## ELECTRONIC COMMUNICATION

By entering into this Agreement, you agree that we can (subject to applicable legal requirements) send you notices and other communications relating to this Agreement electronically, including by email or using any other electronic message address provided by you or (if we choose to) by making the information available by other electronic means such as access to an online platform. This includes any disclosure that we have to make to you under the Credit Contracts and Consumer Finance Act 2003. We agree to receive notices or other communications from you in electronic form.

## 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: 0800 805 950 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.

## REGISTRATION ON FINANCIAL SERVICE PROVIDERS REGISTER

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

**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 received a copy of this Agreement and have read, understood and agree to the terms of this Agreement – **if you do not understand anything in this Agreement please seek legal advice before entering into this Agreement.**
- all of the information that you have provided to us in connection with this Agreement is complete, accurate and not misleading.

We will rely on the information that you have provided to us (whether directly or through any other person who is assisting with this Agreement, such as your lawyer), unless we have a good reason to believe the information is not reliable.

Date of Agreement

**BORROWER'S SIGNATURE**

\_\_\_\_\_

**WITNESS SIGNATURE**

Signed by each Borrower in the presence of

Witness

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Occupation

\_\_\_\_\_

## FEE SCHEDULE

### STANDARD FEES AND CHARGES APPLIED TO HOME LOANS

All fees are inclusive of GST.

#### CREDIT FEES

**Variation fee** **\$98.00**

We may charge you this fee if we agree to vary the terms of this Agreement, the Mortgage or any other Relevant Document.

**Refinance fee** **\$98.00**

We may charge you this fee if you apply for an increase to your existing loan, including approval and acceptance.

**Discharge fee** **\$32.00**

We will charge you this fee if we release our security under the Mortgage.

**Prepayment administrative fee** **\$15.00**

We may charge you this fee if you make a full or part prepayment under this Agreement.

#### **Other prepayment costs (if fixed rate)**

We may charge you this fee if you make a full or part prepayment under this Agreement and any prepaid Loan Portion has an Annual Interest Rate which is fixed for any period ending after the prepayment date.

**Reasonable estimate of our loss** (see under "Prepayment" in the Other Key Information section for more information)

#### DEFAULT FEES

##### **Third party costs**

**Actual Cost**

We may charge you for any costs charged by third parties (e.g. legal fees) if you breach this Agreement, the Mortgage or any other Relevant Document or we take steps to enforce or protect our rights or our security. We can provide copies of the invoices on request.

##### **Other costs**

**Actual Cost**

We may also charge you for any costs that we incur on your behalf (e.g. arranging insurance over the Property if you fail to do so) or to compensate us for any other costs or losses we incur (e.g. our administrative costs) if you breach this Agreement, the Mortgage or any other Relevant Document or we take steps to enforce or protect our rights or our security. We can provide copies of the invoices on request.

#### **FEES AND COSTS ADDED TO LOAN BALANCE**

If we charge you any of the above fees or costs, we will add that amount to the Loan principal (unless it is paid separately). That means we will charge interest on that amount until you pay it.

# GENERAL TERMS

## Clause 1: Understanding and interpreting this Agreement

This Agreement means this Home Loan Agreement including:

- these General Terms
- the Commercial Terms
- the Other Key Information
- the Fee Schedule.

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** (clause 13).

## Clause 2: Getting your Loan

### 2.1 Your Loan

Your Loan will consist of all principal amounts owing under this Agreement, including each Advance Amount, and all accrued and unpaid interest, fees and charges payable under this Agreement.

### 2.2 When we will make the Loan to you

We will make the Loan in one amount if we consider the following conditions are met or we agree to waive them:

- (a) this Agreement (and any other Relevant Document that we require) 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 Property;
- (c) we have received a valuation of the Property, acceptable to us;
- (d) the Mortgage (and any other Related Security Agreement that we require) has been registered;
- (e) we have received a copy of an insurance policy or certificate of currency in respect of the Property that notes our interest as mortgagee and is otherwise satisfactory to us;
- (f) no Event of Default 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 When we will pay the Loan money to someone else

We will make the Loan to you, unless:

- (a) you have told us you need the Loan to repay another person (for example, to re-finance a home loan you already have with another bank), in which case we can choose to pay the other person directly; or
- (b) the Loan is to be used to purchase any property, in which case we can choose to pay the vendor directly.

## Clause 3: Paying us back

### 3.1 You have to pay the Loan back on time with interest and fees

- (a) You promise to:
  - (i) pay us the amounts (each a **Payment Amount**) on each of the dates and at the intervals (the **Payment Dates**) set out in the Payments Schedule; and
  - (ii) pay us back the Loan in full, plus all accrued and unpaid interest on each Loan Portion calculated at the relevant Annual Interest Rate, and all other fees, charges and other amounts that become due and payable to us under this Agreement. Each amount must be paid when due, and in any event no later than the final Payment Date specified in the Commercial Terms (or any earlier date on which the Loan is cancelled).
- (b) We calculate interest on each Loan Portion daily by multiplying:
  - the unpaid daily balance of the Loan Portion at the end of that day; by
  - the **daily interest rate**, which is the relevant Annual Interest Rate divided by 365.
- (c) Interest accrues daily. Accrued interest is payable in arrears on each Payment Date (as part of the Payment Amount). *This means that the interest you pay on a Payment Date relates to the previous month, fortnight or week, depending on the length of time between your Payment Dates.*
- (d) All fees and charges that you might need to pay us under this Agreement (which are not part of the Loan Amount nor interest charges as specified in the Commercial Terms) 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 in accordance with clause 9.2.
- (e) You may not re-borrow any principal amounts that have been repaid under the Loan (unless we agree otherwise in writing).

### 3.2 How should you pay us?

You must pay us the full amount due on each Payment Date (that is, you cannot deduct, set off or withhold any amounts from the amount that you pay). You must pay that amount by 3.00pm in New Zealand dollars to the account we have advised by direct debit, unless we have agreed otherwise. If a Payment Date is not a business day, you must pay on the next business day.

### 3.3 What happens if you pay us back early in full or in part?

**If you want to pay us back early, please contact us first to check what fees and other amounts may be payable.**

- (a) You can pay the Loan back early in full by paying us the **Full Prepayment Amount**. The **Full Prepayment Amount** will be no more than the total of:
  - (i) the unpaid Loan principal (*that is, the remaining unpaid balance*), plus accrued and unpaid interest and costs and all other amounts due to us under any Relevant Document at the time of the full prepayment; and
  - (ii) any fee that we charge to cover the administrative costs we incur due to your prepayment; and
  - (iii) (if any Loan Portion has an Annual Interest Rate which is fixed for any period ending after the prepayment date) an amount equal to the **reasonable estimate of our loss** arising from your prepayment (if any) (*that is, a loss that relates to differences in interest rates*).
- (b) If you don't want to pay your Loan in full, but do want to pay us an extra amount on top of your scheduled payments, you can pay us a **Part Prepayment Amount**. The **Part Prepayment Amount** must be no less than any applicable Minimum Part Prepayment Amount and will be applied:
  - (i) to reduce the unpaid Loan principal (or, if there is more than one Loan Portion outstanding at the relevant time, to reduce the unpaid principal of the Loan Portion directed by you), in each case after the application of the Part Prepayment Amount as described in (ii) to (iv) below; and
  - (ii) to any fee that we charge to cover the administrative costs we incur due to your prepayment; and
  - (iii) any other fees or charges that are due but unpaid under any Relevant Document at the time of prepayment; and
  - (iv) (if the relevant Loan Portion has an Annual Interest Rate which is fixed for any period ending after the prepayment date) to cover an amount equal to the reasonable estimate of our loss arising from your part prepayment (if any).
- (c) The **reasonable estimate of our loss** will be the amount we calculate to be the present day value of the economic cost to us arising from any

differential between (a) the funding rate available to us, at the time that the fixed period commenced, for periods equal to the fixed period, and (b) if applicable, the lower funding rate available to us, at the time of prepayment, for periods equal to the unexpired portion of the fixed period.

(d) Please note that this clause 3.3 may apply if you wish to:

- (i) switch to a different interest rate during the term of any Loan Portion (for instance, changing from a fixed rate to a variable rate);
- (ii) change the term of any Loan Portion or the term of any fixed rate period (for instance, changing from a 2 year fixed rate period to a 3 year fixed rate period); or
- (iii) change any Payment Amounts (for instance, to increase loan payments).

This is because, if we agree to the change, we need you to prepay and re-borrow the relevant Loan Portion to give effect to the change. We may also require you to pay the reasonable estimate of our loss (if applicable) if an Event of Default has occurred and the Loan is repaid early in full or in part following the exercise of our rights (see clause 6.2 for more information).

(e) **This clause 3.3 does not apply if you exercise your right to cancel this Agreement in accordance with the section of this Agreement headed "Your right to cancel".**

#### **Clause 4: You give us security in the Property and make important promises to us**

##### **4.1 You give us security**

(a) You grant us security in the Property to secure payment of the Secured Debt and performance of the Secured Obligations, on the terms set out in the Mortgage.

(b) You agree that each Related Security Agreement that you give also secures payment of the Secured Debt and performance of the Secured Obligations (unless otherwise agreed). We can exercise any of our rights under this Agreement and any other Related Security Agreement separately or at the same time.

##### **4.2 How this security can be released**

This Agreement, and each security created under or in connection with it, continues as a separate security until we agree that it has been unconditionally released in writing, and is not affected if any Relevant Document is not legally effective for any reason (and in that case we are not liable to you in any way, even if your rights are affected).

##### **4.3 Your promises in relation to the Property**

You make promises in relation to the Property in the Mortgage. Without limiting the terms of the Mortgage (or any other Related Security Agreement), you also promise us that:

- (a) you alone own the Property legally and beneficially (that is, it will not be owned by a trust);
- (b) you have not given and will not give security in the Property to anyone other than us;
- (c) you will not sell, transfer, loan, lease or otherwise part with possession or dispose of the Property;
- (d) you will tell us as soon as practicable if you enter into an agreement to sell the Property;
- (e) you will not do or fail to do anything that will affect the value of the Property in a material way;
- (f) you will provide us with access (on any business day) to inspect the Property following reasonable notice from us;
- (g) you will keep the Property insured against all risks that should sensibly be insured against (and otherwise take out and maintain insurance in accordance with the terms of the Mortgage) for a value agreed with us and with our interest as mortgagee noted on each policy. (If you don't organise this insurance we may be able to do so as your agent at your cost under clause 9.4);
- (h) claim under any insurance policy for the Property as we reasonably direct, hold any proceeds of any such insurance policy on trust for us, and pay any such proceeds as we reasonably direct, which may include replacing or reinstating the Property, applying the proceeds towards payment of the Secured Debt, or paying the proceeds into an interest-bearing account with us from which we can apply them (and interest credited to the account) for these purposes. (If you don't make and apply the proceeds of any claim as required we may be able to do so, including as your agent and at your cost under clause 9.4);
- (i) you will provide us on request with an up-to-date valuation for the Property. (If you don't organise this valuation we may be able to do so as your agent at your cost under clause 9.4);
- (j) you will pay all other outgoings in relation to the Property including rates and body corporate levies;
- (k) the Property is not used in a GST registered business nor to carry on a taxable activity for GST purposes (and you will notify us immediately if this statement is incorrect at any time); and
- (l) if the Property includes any stratum estate under the Unit Titles Act 2010, you will:
  - (i) make sure the body corporate complies with the Unit Titles Act 2010;
  - (ii) give to us a copy of any notice received from the body corporate (and notify us of any resolution to amend the body corporate rules, or which requires a unanimous vote or special resolution); and
  - (iii) vote in relation to a body corporate resolution to amend the body corporate rules, or which requires a unanimous vote or special resolution, as we reasonably direct. (If you fail to vote in accordance with this clause, we may be able to do so as your agent at your cost under clause 9.4).

##### **4.4 Other promises**

On each day of this Agreement, you promise us that:

- (a) you will not change your name or contact details without giving us at least 14 days' prior notice;
- (b) you will promptly give us any other information about yourself, your financial condition, your insurance arrangements, the Property, or your compliance with the terms of this Agreement or any other Relevant Document that we reasonably request;
- (c) you will provide us with any information or documents we may require from time to time for the purposes of Regulatory Compliance; and
- (d) you will 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.

##### **4.5 You will give effect to your promises**

You promise to provide us with all documents we ask for, and to 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 or any other Relevant Document.

#### **Clause 5: What happens if you do not pay us what you owe on time?**

##### **5.1 If you do not pay us on time, we will charge you extra interest**

(a) If you do not pay an amount when it is due (under clause 3 above), 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 **Default Interest Rate** is a rate equal to the relevant **Annual Interest Rate at the time of the default plus 2% per annum**.

(b) 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, default interest is added to the principal amount of the Loan on each Payment Date. *(This means that default interest is added to the Loan, on which you pay interest, until you pay us.)*

**If you do not pay on time:**

- **this will cause an Event of Default** (see clause 6 below)
- **we can charge you extra fees** (see clause 3.1 above).

## Clause 6: Events of Default and our enforcement rights

### 6.1 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 any Secured Debt or any other amount you owe us when it is due under a Relevant Document, unless the non-payment is caused solely by the failure of the payment system which is beyond your control and we receive payment within 2 business days of its due date; or

(b) **Security**

you have granted, or purported to grant, a mortgage or other security over the Property to someone else in addition to us without our prior written consent;

(c) **Breach of obligations**

you do not perform your obligations or you fail to keep any of your promises under a Relevant Document (this includes any Related Security Agreement) in a material respect and you do not remedy that failure to our satisfaction within 5 business days after we have notified you of that failure; or

(d) **Fraud or untrue statement**

you have acted fraudulently or given us materially incorrect, misleading or deceptive information in connection with a Relevant Document; or

(e) **Legally ineffective documents**

- (i) a Relevant Document is not legally effective against you; or
- (ii) you or someone else disputes the legal effectiveness of a Relevant Document; or

(f) **Bankruptcy (etc)**

we reasonably believe that you are unable to pay your debts as they fall due or are bankrupt or insolvent, or you are deemed to be unable to pay your debts as they fall due or are deemed to be bankrupt or insolvent under any law; or

(g) **Enforcement**

- (i) another person takes enforcement action against your property, whether or not it includes any Property, and that enforcement action continues after five business days; or
- (ii) another person appoints an insolvency official (for example, a receiver, trustee, manager, administrator or similar officer) to you or any of your property, including any Property; or

(h) **Material adverse effect**

an event or circumstance has arisen that, in our reasonable opinion, has materially adversely affected, or is capable of materially adversely affecting:

- (i) our ability to exercise our rights under a Relevant Document; or
- (ii) your ability to perform your obligations under a Relevant Document; or

(i) **Material change affecting Property**

- (i) an event or circumstance has arisen that, in our reasonable opinion, has materially adversely affected, or is capable of materially adversely affecting, the value of the Property or the ability for the Property to be occupied as a personal residence in the same manner as previously (this may include, but is not limited to, an event or circumstance relating to the Property's zoning or consent status, any action in respect of the Property taken or threatened by a government agency or other authority, an environmental or health and safety issue in respect of the Property or the occurrence or risk of natural disaster, and the value of the Property is materially adversely affected for the purpose of this clause if it is reduced by 20% or more); or
- (ii) any damage occurs in relation to the Property which results in a loss or claim totalling 20% or more of the sum insured of the improvements and buildings for insurance purposes, and we do not receive payment of all of the Secured Debt within one month; or

(j) **Cross-default**

an event happens which has the same effect as an event of default or termination (no matter what it is called) under another Relevant Document.

### 6.2 Our rights if there is an Event of Default

Subject to applicable law, including our obligations as a responsible lender, we have all the following rights if an Event of Default happens:

- (a) We can, at any time, by notice to you, declare all or any part of the Secured Debt or any other amount owing under the Relevant Documents to be immediately due and payable (and, if we give such notice, the Loan is automatically cancelled). *(This means we can tell you to pay us the whole amount of the Loan principal, plus all unpaid interest, fees and charges and other amounts you owe us, immediately.)*
- (b) The security given under the Mortgage and each security created under any Related Security Agreement will become immediately enforceable. *(This means that we can sell the Property and use the proceeds of sale to pay down the Loan, among other things.)*
- (c) We have all other rights given to us by law and in any Relevant Document.

### 6.3 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.

## Clause 7: Our extra rights and protections

### 7.1: 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 a Relevant Document, then:

- (a) we are under no further obligation to provide the Loan; and
- (b) we can, at any time, by notice to you, declare all or any part of the Secured Debt or any other amount owing under the Relevant Documents to be immediately 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.)*

### 7.2 We are free to enforce our rights as we choose

We can enforce our rights as we choose to, in any order, under:

- (a) any security, guarantee or other entitlement that we hold at any time; or
- (b) any money or property that we hold or may receive at any time.

### 7.3 Our right to "set off"

You agree that we can use any funds you have deposited or invested with us (or which we otherwise owe you) to pay down the amount of any unpaid debt which is overdue under a Relevant Document at any time.

### 7.4 Giving effect to promises

You promise to provide us with all documents we reasonably ask for, and do anything else we reasonably 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 and each other Relevant Document.

### 7.5 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.

## **Clause 8: Assignment**

### **8.1 The Lender**

You agree that we can assign or transfer any of our rights or obligations under this Agreement and each other Relevant Document without your further specific consent (and, to the fullest extent permitted by law, without notice), and each of our assignees and transferees has the same rights against you under the Relevant Documents as if it were named in this Agreement as the Lender.

### **8.2 You**

You cannot assign or transfer any of your rights or obligations under this Agreement or any other Relevant Document without our prior written consent.

## **Clause 9: Other important things to note**

### **9.1 Multiple Borrowers:**

If there is more than one Borrower, each Borrower has joint and several liability. *(That means we can sue all Borrowers together, or any Borrower alone, for the full amount owed to us.)*

### **9.2 Changes to this Agreement**

- (a) No change to this Agreement will be effective unless the change is made in writing agreed between us and you, except for the changes listed in subparagraph (b) below.
- (b) The following changes will be effective on the date we tell you they are effective:
  - (i) **Changes to fees or charges you must pay:** We can change any of the fees or charges you have to pay us or introduce any new fee or charge at any time, provided we do so in accordance with all applicable law.
  - (ii) **Changes to Annual Interest Rate:** If any Annual Interest Rate is specified to be a variable rate, we can change that Annual Interest Rate at any time. We cannot change any Annual Interest Rate that is specified to be a fixed rate during the fixed rate period.
  - (iii) **Changes to the Default Interest Rate:** We can change the Default Interest Rate at any time (including the amount of any margin that forms part of that calculation), provided we do so in accordance with all applicable law.
  - (iv) **Changes to our privacy statement:** We can change our privacy statement in accordance with its terms.
- (c) We will give notice of any change to this Agreement (including notice of the effective date of the change) in accordance with applicable law.

### **9.3 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.

### **9.4 When we can do things on your behalf**

You promise to do all the things you have said that you will do in this Agreement and each other Relevant Document in a timely manner. You appoint us as your agent to do (at your expense) anything that you have promised to do under this Agreement and each other Relevant Document but have failed to do, or that we reasonably believe is necessary to protect our rights under this Agreement or any other Relevant Document or in relation to the Property, and (subject to applicable law) you cannot undo this appointment. This includes making payments on your behalf (such as rates and body corporate levies), arranging any insurance or valuation for the Property, and exercising body corporate voting rights. However, we cannot take security over your property, or property you acquire rights in (including property you lease), after the date of this Agreement using this right, and we will only act as your agent if (and to the extent that) it is reasonable for us to do so in all the circumstances and permitted by applicable law. If we make any payments on your behalf or incur any costs under this clause, these amounts will be charged to you and added to the principal balance of the Loan. We can also declare these amounts to be due and payable at any time by giving notice to you.

### **9.5 When part of the Agreement does not legally "work"**

If any part of this Agreement is illegal, invalid or unenforceable, the other parts of the Agreement will still be legal, valid and enforceable.

### **9.6 Lender does not have to be a party**

You agree that we can enforce our rights, and hold you to all promises and obligations, under a Relevant Document even if we are not a party to the Relevant Document for the purposes of the Contract and Commercial Law Act 2017.

### **9.7 Counterparts**

This Agreement can be signed or accepted in one or more counterparts, which together constitute the same document.

### **9.8 Entire agreement**

To the fullest extent permitted by law, this Agreement and each other Relevant Document contains all the terms in relation to their subject matter that apply between you and us, and supersede all previous agreements, understandings and negotiations in relation to their subject matter.

### **9.9 Governing law**

This Agreement is governed by and must be interpreted under New Zealand law.

## **Clause 10: Communications**

### **10.1 How to communicate with us**

In respect of this Agreement and each other Relevant Document, 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 on page 1 of this Agreement (or any updated details subsequently provided by us).

### **10.2 How we will communicate**

In respect of this Agreement and each other Relevant Document, we must give notices and other formal communications to you in writing, which may be by means of an electronic message, using the details provided on page 1 of this Agreement (or any other details we reasonably believe to be your details). In some circumstances, we may instead communicate with you indirectly through our website, our branches, the internet or the media, or otherwise as we see fit and permitted by applicable law.

### **10.3 When received**

Notices and other communications given under this Agreement or any other Relevant Document in writing will be deemed to have been received by the addressee:

- (a) if delivered personally, at the time of service;
  - (b) if sent by post, on the fourth business day after being posted by prepaid postage; or
  - (c) if sent by electronic message, on the second business day after sending,
- or, in each case, any earlier date specified by applicable law for the purpose in connection with which the notice or other communication was given.

### **10.4 Electronic messages**

For the purposes of this Agreement and each other Relevant Document, the conditions relating to sending and receiving information in electronic form are those in Part 4 of the Contract and Commercial Law Act 2017 (and any other applicable law from time to time). You consent (subject to applicable legal requirements) to receiving information relating to this Agreement (including, but not limited to, information required by law) in electronic form, by

means of an electronic communication, and signed by means of an electronic signature. This may include receiving electronic messages allowing access to statements from a website or by means of the internet.

#### 10.5 We can rely on communications

If we receive any communication that we reasonably believe to be from you (or that we reasonably believe to be from someone authorised by you), 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 we receive contradictory communications from you.

### Clause 11: Privacy and information sharing

#### 11.1 Our privacy statement

By entering into this Agreement, you consent to the collection, use, disclosure, storage and processing of information about you 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 11.2 to 11.6 summarise some important information from the Privacy Statement as at the date of this Agreement.

#### 11.2 What information we collect about you

We collect various types of personal information about you, which may include your name, age, gender, address, contact details (including phone numbers and email addresses), images of you, your biometric data and financial information, including your payment information. If the information we request from or about you is not provided, we may not be able to provide the requested services.

#### 11.3 How we collect information about you

We collect information about you when you interact with us, including when you:

- (a) apply for a loan (or commence the process for applying for a loan), including when you provide personal information when completing this Agreement;
- (b) visit our website;
- (c) contact us with queries or feedback; and
- (d) 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.

#### 11.4 Your rights to request access to and correction of your information

You have the right to access and request correction of information we hold about you. You can do so by contacting us at [home-loans@heartland.co.nz](mailto:home-loans@heartland.co.nz).

#### 11.5 What we can do with your information

Subject to any update to our privacy statement in accordance with clause 11.1 (which applies to you), information that we collect, or that is provided to us, about you may be used by us for the following purposes:

- (a) consider any application for an account or service (and any future application involving you), including to establish and verify your identity and to assess your creditworthiness and financial position from time to time;
- (b) carry out our business functions and activities;
- (c) collect amounts owed to us, including taking enforcement action and to notify credit reporting agencies of your repayment history and account details;
- (d) exercise our rights and fulfil our obligations under any agreement;
- (e) exercise our rights and fulfil our obligations for the purposes of Regulatory Compliance;
- (f) generally administer and monitor services provided to you (or any related entity); and
- (g) provide information about our other services, or the services of selected third parties in which we think you may have an interest, including by post, telephone and electronic message – **you can opt out of receiving information about our other services and/or the services of selected third parties by telling us in writing.**

#### 11.6 Who we can share your information with

Subject to any update to our privacy statement in accordance with clause 11.1 (which applies to you), you agree that we can share any information we get with:

- (a) our related companies;
- (b) existing and potential business partners;
- (c) identity verification agencies;
- (d) credit reporting agencies – credit reporting agencies may retain information (including default information) and use it to provide their credit reporting services;
- (e) 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 identify verification and fraud detection purposes;
- (f) the New Zealand Transport Agency's 'Driver Check' service;
- (g) insurers;
- (h) any person providing us with guarantees or security for the Loan;
- (i) anyone to whom we consider assigning or transferring any of our rights or obligations;
- (j) anyone that we engage with about selling all or part of our business;
- (k) anyone providing any credit or funding support to all or any part of our business and anyone else involved in the funding process;
- (l) government agencies and regulators, 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.

### Clause 12: Online services/internet banking

By using any online services provided by us from time to time, you consent to our online services/internet banking terms of use (which are available on our website). We can change those terms of use from time to time in accordance with their terms.

### Clause 13: Dictionary

Some of the terms used in this Agreement are defined in the Commercial Terms. Otherwise:

<b>accrued (interest)</b>	interest which is calculated and grows on the principal amount of the Loan
<b>Advance Amount</b>	each advance amount specified in the Loan Amount section of the Commercial Terms
<b>Agreement</b>	this Agreement including these General Terms, the Commercial Terms, the Other Key Information and the Fee Schedule

<b>Annual Interest Rate</b>	each rate applicable to a Loan Portion being, as at the Effective Date, each rate stated in the Annual Interest Rate section of the Commercial Terms (or the relevant updated Annual Interest Rate if we have updated it in accordance with clause 9.2)
<b>assign</b>	to pass rights to another person (but not obligations)
<b>Borrower</b>	the person or persons named on page 1 of this Agreement
<b>business day</b>	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
<b>Commercial Terms</b>	the terms set out under the heading Commercial Terms in this Agreement
<b>cost</b>	includes all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes that we incur
<b>debt</b>	includes any obligation you have to us now or in the future in any capacity relating to the payment of money
<b>Default Interest Rate</b>	is defined in clause 5.1
<b>dispose</b>	includes any assignment, transfer, lending arrangement, variation of terms, lease, sublease and sale and anything that has the same effect as any of those things
<b>due</b>	owed to us on a specific date
<b>Event of Default</b>	any event listed in clause 6.1
<b>Fee Schedule</b>	the terms set out under the heading Fee Schedule in this Agreement
<b>General Terms</b>	the terms set out under the heading General Terms in this Agreement
<b>law</b>	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
<b>liable</b>	legally responsible
<b>Loan</b>	the principal amount that you owe under this Agreement (as at the date the Loan is advanced, this is the Loan Amount)
<b>Loan Amount</b>	the loan amount specified in the Commercial Terms
<b>Loan Portion</b>	each portion of the Loan (as at the date the Loan is advanced, this is each Loan Portion described in the Loan Amount section of the Commercial Terms)
<b>Minimum Part Prepayment Amount</b>	each minimum part prepayment amount specified in the Other Key Information section
<b>Mortgage</b>	the mortgage instrument and authority and instruction form entered into by you in relation to this Agreement granting us a mortgage over the Property
<b>Other Key Information</b>	the terms set out under the heading Other Key Information in this Agreement
<b>Payment Amount</b>	is defined in clause 3.1(a)(i)
<b>Payment Date</b>	is defined in clause 3.1(a)(i)
<b>Payments Schedule</b>	the terms set out under the heading Payments Schedule in the Commercial Terms (as updated, varied or replaced in accordance with this Agreement)
<b>person</b>	an individual and any entity, such as a company, whether or not it exists as a separate person at law
<b>principal</b>	the principal amount of the Loan is the amount you borrow from us (this does not include accrued interest or fees relating to the Loan unless we add them to the principal amount of the Loan in accordance with this Agreement)
<b>Property</b>	the Property described in the Property section of the Commercial Terms and any other property over which you give us security under a Related Security Agreement
<b>Regulatory Compliance</b>	the requirements for us to comply with all applicable laws, including those relating to money laundering, terrorist financing, bribery, corruption, tax evasion, fraud or similar, and manage all economic and trade sanction risks
<b>Related Security Agreement</b>	the Mortgage and each other security agreement, guarantee or other agreement or document (present or future) that guarantees or secures all or any part of the Secured Debt or the Secured Obligations (directly or indirectly)
<b>Relevant Documents</b>	this Agreement, each Related Security Agreement and each other agreement (present or future) evidencing or relating to the Secured Debt or Secured Obligations
<b>Secured Debt</b>	the Loan, and all accrued but unpaid interest, and any other fees, charges or other amounts owing to us under this Agreement or any other home loan agreement you have entered into with us
<b>Secured Obligations</b>	all obligations (whether present or future) owing to us under this Agreement or any other home loan agreement you have entered into with us, other than Secured Debt
<b>security</b>	an interest in property that, in substance, secures payment or performance of an obligation
<b>sue</b>	take legal action (such as taking you to court)
<b>unpaid (interest)</b>	interest which, at a particular time, is due but has not been paid or which has not been added to the principal amount of the Loan at that time
<b>we (or us)</b>	the Lender, Heartland Bank Limited
<b>you</b>	the Borrower or, if there is more than one Borrower, all Borrowers equally

#### INTERPRETING THIS AGREEMENT

The Agreement must be interpreted using the following rules (unless it would not make sense to do so):

- The Commercial Terms prevail over any other part of this Agreement if there is any inconsistency.
- Ignore all headings, **bolded text** and *italicised text* when interpreting this Agreement.
- Where we have provided an explanation of a legal word (in brackets), the legal word or phrase takes priority over the explanation.
- Where we refer to one thing (the singular), we include multiple things (the plural), and the other way around.
- Where we define a word or expression in the Dictionary or in the Commercial Terms, then other grammatical forms of that word or expression have corresponding meanings.
- Where we refer to any statute, we include all future versions if it, including all changes to it, all re-enactments or replacements of it, and all regulations and orders in-council made in connection with it.
- Where we refer to a document we mean that document as varied or replaced from time to time.
- Where we refer to you, we include any person that legally takes over your responsibilities or rights, or both.
- Where we refer to the Lender (or we or us), we include any person that legally takes over our responsibilities or rights, or both. This includes any of our transferees or assignees under clause 8.1.
- 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.