

Term Loan Agreement

Trading name:			
Are you a (circle those appropriate)	Company, community centre, charitable trust, partnership, sole trader, other (specify)		
Street address			
Email			
Phones – centre and mobile			
Years trading		Occupancy rate, % average per day	
Accountants name		Accountants phone	
Are these up to date? (Tick if Yes)	<input type="checkbox"/> PAYE <input type="checkbox"/> GST <input type="checkbox"/> staff pay including holiday pay <input type="checkbox"/> income tax		
Do you have an IRD payment plan?	<input type="checkbox"/> Yes <input type="checkbox"/> No. (If yes, please attach latest statement)		
Bank account loan to be deposited into	(must be same account the bulk funding is deposited into)		
What will you use this loan for			
Next anticipated bulk funding amount	\$	When is this due (date)	
Have you submitted all MOE required forms including audited accounts?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Is there any reason whatsoever the MOE will not pay the next bulk funding	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the MOE currently clawing back any payments previously paid?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Loan Schedule

Parties to the Term Loan Agreement			
Lender	New Zealand Childcare Finance Ltd		
Borrower	Full legal name (if sole trader, then individual person's name):		
Guarantor/s	Full name:		
	Full street Address:		
	Date of birth:		
	Email and phone number:		
Guarantor/s	Full name:		
	Full street Address:		
	Date of birth:		
	Email and phone number:		
Loan details			
Loan (loaned in multiples of \$5,000):	\$		
Commencement Date: (actual date)		Repayment Date:	
Availability:	In one sum on the Commencement Date.		
Administration Fee:	<p>For term loans for a Term of less than 30 days, administration fees shall be calculated at \$375.00 for each \$5,000.00 (or part thereof) advanced.</p> <p>For term loans for a Term of more than 30 days but less than 60 days, administration fees shall be calculated at \$475.00 for each \$5,000.00 (or part thereof) advanced.</p> <p>For term loans for a Term of more than 60 days but less than 90 days, administration fees shall be calculated at \$575.00 for each \$5,000.00 (or part thereof) advanced.</p> <p>For term loans for a Term of more than 90 days, administration fees shall be calculated at \$675.00 for each \$5,000.00 (or part thereof) advanced.</p>		
Default Fee:	2.5% of the outstanding Monies Owed per month or part thereof, calculated monthly.		
Payments Required:	The amount of the Loan outstanding and all fees owing under this Agreement shall be repaid in full on the Repayment Date in accordance with clause 4.		



Terms of Loan

1. Interpretation

In this Agreement:

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

"Collateral" means all and any present and after-acquired property over which the Lender has security in terms of or as a result of this Agreement;

"Memorandum of General Terms" means the Memorandum of General Terms and Conditions 2011/4301, registered by the Registrar General of Land pursuant to section 155A, Land Transfer Act 1952.

"Moneys Owed" means all moneys of whatever nature owed or payable to the Lender under this Agreement and includes, without limitation, the amount of the Loan, the Administration Fee, any Default Fee and any other costs or charges for which this Agreement provides;

"PPSA" means the Personal Property Securities Act 1999.

"Term" means the period from Commencement Date to the date the Lender receives full repayment of all Moneys Owed, irrespective of the agreed Repayment Date;

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

The Loan Schedule at the beginning of this Agreement forms part of this Agreement. Expressions defined in the Loan Schedule have the same meanings in these Terms of Loan and the converse also applies.

2. Loan

The Lender agrees to advance the Loan to the Borrower in one sum on the Commencement Date on the terms and subject to the conditions of this Agreement.

3. Administration Fee

The Borrower shall pay to the Lender an Administration Fee calculated on the basis set out in the Loan Schedule.

4. Repayment and prepayment

The Borrower shall repay in full to the Lender on the Repayment Date the Moneys Owed then outstanding. The Borrower may prepay to the Lender the whole of the Loan at any time on paying to the Lender the Moneys Owed then outstanding.

5. Representations and Warranties

The Borrower and each Guarantor represents and warrants to the Lender that each of them is authorised and has the power to enter into and perform its respective rights and obligations under this Agreement.

6. Grant of security interest

6.1 **Grant of Security Interest:** The Borrower and the Guarantor/s, as security for the payment of the Moneys Owed, and the performance by the Borrower of all the Borrower's other obligations to the Lender at any time under this Agreement each grant to the Lender a security interest in all of their respective present and after-acquired property on terms which incorporate all of the provisions of the Memorandum of General Terms with the intention that this Agreement and the Memorandum of General Terms shall together comprise a single instrument which includes a general security agreement. If there is a conflict between any of the terms of this agreement and any of the provisions of the Memorandum of General Terms, this Agreement prevails.

6.2 **Accounts Receivable:** The security interest granted under clause 6.1 shall, so far as concerns all of the Borrower's and Guarantor/s' present and future accounts receivable, and all of the Borrower's and Guarantor/s' present and future rights in relation to any accounts receivable, in consideration of the ongoing provision of the Moneys Owed, take effect as and shall be deemed a transfer.

6.3 **Ordinary Course of Business:** Unless otherwise restricted by written notice to the Borrower or the Guarantor/s at any time given by the Lender, the Borrower or the Guarantor/s may, in the ordinary course of business of the Borrower or the Guarantor/s, without the consent of the Lender, sell or purchase, or lease (whether as lessor or lessee), inventory and collect accounts receivable which are the proceeds of inventory.

7. PPSA

7.1 To the maximum extent permitted by law, the Lender and the Borrower and the Guarantor/s contract out of:

7.1.1 section 114(1)(a) of the PPSA; and

7.1.2 the Borrower's and Guarantor/s' rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

7.2 The Borrower and the Guarantor/s waive their right to receive a copy of any verification statement in respect of any security interest granted to the Lender by the Borrower or the Guarantor/s.

7.3 The Borrower and the Guarantor/s agree to indemnify the Lender, upon demand, for all costs and expenses (including legal fees) incurred by the Lender:

7.3.1 as a result of the occurrence of an Event of Default (including upon actual or attempted enforcement of any security interest granted to the Lender by the Borrower or the Guarantor/s); and

7.3.2 in complying with any demand made under section 162 of the PPSA.

7.4 On the request of the Lender, the Borrower and the Guarantor/s shall promptly do all things and provide all information necessary to enable the Lender to perfect and maintain the perfection of any security interest granted to the Lender by the Borrower or the Guarantor/s (including by registration of a financing statement).

8. Events of default

An event of default shall occur if:

8.1 The Borrower fails to pay any amount or sum due under this Agreement on its due date (or within two (2) business days of its due date where non-payment on its due date has arisen solely by reason of a bank, technical, computer or similar error outside the control of the Borrower); or

8.2 The Borrower commits any breach of or omits to observe or perform any of its obligations or undertakings under this Agreement and the Security Documents on its due date; or



- 8.3 An application or an order is made for the dissolution or liquidation of the Borrower or the Borrower is placed in receivership; or
- 8.4 Any other indebtedness for borrowed money of the Borrower is not paid when due or shall become due and payable prior to its stated maturity; or
- 8.5 The Borrower is unable to pay its debts when due, or is deemed to be unable to pay its debts when due, or otherwise is insolvent; or
- 8.6 Any prior security or charge over any property that is the subject of the Security Documents becomes enforceable or is enforced; or
- 8.7 If any event should occur that, if the references in clauses 9.1 to 9.6 (both inclusive) to the Borrower were replaced with the word "Guarantor", would constitute an event of default.

9. **Remedies on default**

On default by the Borrower or the Guarantor/s, the Lender may, in addition to any other rights or remedies available to it, cancel any undrawn portion of the Loan.

10. **Set-off & Combination of Accounts**

The Borrower and each Guarantor each irrevocably authorise the Lender (without prior notice or demand and despite any settlement of account or other matter) at any time after the occurrence of an event of default under clause 9 to set off against any debt or liability of the Lender to the Borrower or Guarantor any part of the Moneys Owed, and to apply any credit balance held with the Lender in satisfaction of any debt or liability of the Borrower or Guarantor to the Lender under this Agreement.

11. **Indemnities**

The Borrower and each Guarantor each indemnify, and agree to save harmless, the Lender from and against all losses, claims, demands, liabilities, payments, charges and expenses which may be made against or incurred by the Lender arising from or relating to this Agreement and the Security Documents. This clause shall survive the termination of this Agreement.

12. **Payments**

All payments to be made to the Lender under this Agreement shall be made, in cleared funds, without set-off, counterclaim, abatement or deduction and prior to 3.00 pm on the day on which payment is due. Such payments shall be made to a bank account nominated by the Lender in writing or, if the Lender fails to nominate a bank account, then payment shall be made to the address of the Lender specified at the beginning of this Agreement. Payments received after 3.00 pm shall be deemed to have been received on the following business day. The Lender may apply any payment received by the Lender under this Agreement to the repayment of the principal, fees, or any other amount due under this Agreement, in the order and manner as the Lender may determine from time to time.

13. **Notices**

All notices, requests, demands or other communications to or upon the parties in connection with this Agreement shall be given or made in writing, signed by the party or an authorised person for the party giving such notice, and served upon or delivered to the recipient personally, or sent by post or facsimile to the recipient at the address specified in the Loan Schedule. A notice, request, demand or other communication shall be deemed to have been received, in the case of personal delivery on a business day, on the date of that delivery, in the case of a letter posted by mail, on the second business day after posting, and in the case of a facsimile sent on a business day, during normal business hours in the place of receipt, upon successful transmission.

14. **Costs**

The Borrower shall pay to the Lender on demand the amount of all reasonable costs, charges and expenses (including legal fees and disbursements calculated on a solicitor and own client basis) incurred by the Lender in connection with the negotiation, preparation, execution, enforcement and administration of this Agreement and the Security Documents.

15. **Waiver**

The failure or delay by the Lender in exercising, or the Lender's single or partial exercise, of any right, power, discretion, remedy or privilege in connection with this Agreement shall not operate as a waiver of that right, power, discretion or remedy.

16. **Conflict**

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

17. **Amendment**

This Agreement shall not be amended or varied except in writing signed by the Borrower, any Guarantor and the Lender.

18. **Assignment**

Neither the Borrower nor any Guarantor shall assign or transfer any of their respective rights or obligations under this Agreement. The Lender may assign all or part of its rights and benefits under this Agreement without the consent of the Borrower or Guarantor/s.

19. **Privacy Act 1993**

The Borrower and Guarantor/s each consent to the Lender obtaining such information and making such enquiries about either of them from any source, including credit reference agencies and companies related to the Lender, in relation to the Loan and disclosing information about either of them to credit reference agencies, companies related to the Lender, sureties or assignees or anyone who is considering becoming a surety or assignee. A person has the right to access personal information (within the meaning of the Privacy Act 1993) held by the Lender and to request correction of any errors in that information.

20. **Credit (Repossession) Act 1997**

For the avoidance of doubt, nothing in this Agreement shall have the effect of contracting out of any provision of the Credit (Repossession) Act 1997.

21. **Law**

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

22. **Guarantee**

In consideration of the advance of the Loan by the Lender to the Borrower, the each Guarantor guarantees to the Lender, and indemnifies the Lender against loss incurred by the Lender from a breach in the due and punctual payment of the Moneys Owed and the observance and performance of the Borrower's obligations under this Agreement and the Security Documents granted in favour of the Lender for the payment of the Moneys Owed. Each Guarantor is liable under this guarantee and this Agreement as if it were the sole principal debtor and not merely a surety. Each Guarantor agrees that no indulgence, granting of time, waiver or forbearance to sue or any other thing whereby the Guarantor/s would be released as a surety or otherwise shall in any way release the liability of the Guarantor/s under this Agreement. The guarantee under this clause 25 is in addition to and not in substitution for or in replacement of any further guarantee and indemnity granted by the Guarantor to the Lender in relation to obligations of the Borrower.

Consent, Acknowledgment and Waiver of Independent Advice

1. The Borrower and Guarantor/s each authorise New Zealand Childcare Finance Ltd, to make contact with the Ministry of Education and the Early Childhood Council, and obtain any information held in respect to past, present and future Government funding subsidies, bulk funding and grants pertaining to the Borrower, as described on this form. This consent has been provided after obtaining legal advice or having the opportunity to seek legal advice.
2. The Borrower and Guarantor/s each acknowledge they have obtained a copy/ies of and understand the **Memorandum of General Terms and Conditions** which is available from the **Apply** page of the Lender's website, www.childcarefinance.co.nz.
3. By executing this Agreement below, the Borrower and Guarantor/s each acknowledge receipt of a copy of this Agreement and each Security Document and further acknowledge that the Loan is for business purposes.
4. This Agreement is not binding upon the Lender until such time as the Agreement is executed by the Lender. This document does not create a loan agreement until it is fully executed by the Borrower, the Guarantor/s and the Lender, and the Lender has notified the Borrower that the loan has been approved.
5. The Lender, at the request of the Borrower and the Guarantor/s and in reliance on the information provided in the loan application, has agreed to advance a loan to the Borrower according to the terms set out in this Loan Schedule and the Terms of Loan attached (together the "Agreement") and according to the terms of all other existing and future security documents at any time granted by the Borrower, Guarantor/s or any third party as security for the payment of the Moneys Owed and the performance of the obligations under this Agreement and Security Documents.
6. The Guarantor/s acknowledge and confirm that, prior to executing and entering into the Loan Agreement and Deed of Guarantee and Indemnity and any other Security Documents ("Documents"), he/she/it was requested and advised by New Zealand Childcare Finance Limited to seek and obtain independent legal advice in relation to the nature and extent of his/her/its rights and obligations under the Documents. Notwithstanding this advice, the Guarantor/s each hereby waives his/her/its right to seek independent legal advice and confirms that the effect of the Documents have been explained to him/her/it and acknowledges that he/she/it fully understands his/her/its obligations and liabilities under the Documents, in particular that the Guarantor/s have agreed to grant the Lender a security interest over all of their present and after-acquired property as security for their obligations in terms of this Agreement.

Borrower and Guarantor/s signatures

If Borrower is a "COMPANY" - SIGNED for and on behalf of the Borrower by its director/s:**Executed as a deed**

Signature of 1 st director		Name of 1 st director	
Signature of 2 nd director		Name of 2 nd director	
In the presence of Witness , signature		Name of Witness	
Address and occupation of Witness			

If Borrower is an "INDIVIDUAL OR COMMUNITY CENTRE" - SIGNED by the Borrower/s:**Executed as a deed**

Signature of Borrower		Name of Borrower	
Signature of Borrower		Name of Borrower	
In the presence of Witness , signature		Name of Witness	
Address and occupation of Witness			

Signed by GUARANTOR/S:

Signature of 1 st Guarantor		Name of 1 st Guarantor	
Signature of 2 nd Guarantor		Name of 2 nd Guarantor	
In the presence of Witness , signature		Name of Witness	
Address and occupation of Witness			

Signed by NEW ZEALAND CHILDCARE FINANCE LIMITED as Lender by its director:

Signature of Director		Name of Director	Nigel Thomson
		Date signed/Date of Agreement	
In the presence of Witness , signature		Name of Witness	
Address and occupation of Witness			



Deed of Guarantee and Indemnity

Parties	
Lender	New Zealand Childcare Finance Ltd
Guarantor/s	1 st Guarantor full name: 2 nd Guarantor full name:
<i>In respect of the obligations and liabilities of</i>	Legal name of Borrower:

Covenants

1. Guarantee and indemnity

- 1.1 **Guarantee:** In consideration of the Lender providing loan accommodation to the Borrower, the Guarantor unconditionally and irrevocably guarantees to the Lender the due payment by the Borrower of the Guaranteed Indebtedness and the due performance of and the compliance by the Borrower with the Guaranteed Obligations. The **Guaranteed Obligations** means every present or future obligation of the Borrower to the Lender whether in relation to the loan agreement signed by the Lender, the Borrower and the Guarantor/s on or about the date of this deed, or otherwise.
- 1.2 **Payment and Performance:** If the Borrower defaults in the due and punctual payment of the Guaranteed Indebtedness or any part of it, the Guarantor shall pay to the Lender such monies immediately on demand by the Lender. If the Borrower defaults in the due and punctual observance and performance of any one or more of the performance obligations of the Borrower under the Guaranteed Obligations, the Guarantor shall indemnify the Lender in respect of any loss suffered by the Lender directly or indirectly as a result of any such default, and shall pay to the Lender upon demand a sum equal to the amount of such loss.
- 1.3 **Crystallisation:** If the Guarantor commits an act of bankruptcy or becomes insolvent, the Guarantor is to pay immediately to the Lender an amount equal to the maximum contingent liability under this deed at that time. That amount will be a debt due from the Guarantor to the Lender.

2. Nature of guarantee and indemnity obligations

- 2.1 **Guarantor's Obligations:** The obligations of the Guarantor under this deed are principal obligations of the Guarantor and shall be treated as in addition to, and not in substitution for or collateral to, any security or right that the Lender may have in respect of the Guaranteed Indebtedness or any part thereof and/or any of the Guaranteed Obligations. The Lender may enforce this deed without first taking steps or proceedings against any Borrower or any other person.
- 2.2 **Liability Not Prejudiced:** No release, delay or other indulgence given by the Lender to the Borrower or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release, prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
- 2.3 **Continuing Guarantee:** The Guarantor's obligations under this deed:
- 2.3.1 are by way of continuing security, notwithstanding intermediate payments, settlement of accounts or payments or any other matter or thing whatsoever;
- 2.3.2 are in addition to, are not to be merged in and are without prejudice to, any security interest, guarantee, indemnity or other agreement whenever in existence in favour of any person, whether from the Guarantor or otherwise; and
- 2.3.3 are to remain in full force and effect until the execution by the Lender of an unconditional discharge of the obligations of the Guarantor under this deed.
- 2.4 **Joint and Several:** Should there be more than one Guarantor their liability under this guarantee shall be joint and several.

EXECUTED as a DEED			
Signature of 1 st Guarantor		Name of 1 st Guarantor	
Signature of 2 nd Guarantor		Name of 2 nd Guarantor	
In the presence of Witness , signature		Name of Witness	
Address and occupation of Witness			
Signed by the Lender, New Zealand Childcare Finance Ltd , director Nigel Thomson			
		Date of Deed	

Attach the following and email to admin@childcarefinance.co.nz	
<input type="checkbox"/> Copy of your current centre licence <input type="checkbox"/> Identification for each Guarantor – driver's license and credit card	<input type="checkbox"/> Bank account deposit slip <input type="checkbox"/> Copies of bank statements showing the last 3 bulk funding deposits
If you are a first time borrower, post or courier your original signed Direct Debit Authority to:	New Zealand Childcare Finance Ltd PO Box 137-375, Parnell, Auckland 1052 Level 2, 41 Bath Street, Parnell, Auckland
If you have questions, please call Lena Thomson on free phone 0800 777-559 prior to signing this Term Loan Agreement. Thank you.	

