

Loan Deed

Deed recording terms of Loan Agreement

Dated.....

This Deed records an arrangement between the Lender and the Borrower, and Guarantor/s (if any), for the Lender from time to time to make advances to the Borrower on condition that the agreed guarantees and securities are provided.

Parties

Borrower: Full legal name

Guarantor/s: Full name/s

Lender: The company as described in clause 1.11 of this Deed.

Borrower Details

Trading name:.....Type (circle): Company, community centre, charitable trust

Full street address

Contact name Email

Mobile..... Centre phone

Years trading..... Occupancy rate, % average per day

Accountant name Accountant phone.....

Agreement

1. The Lender (which trades as New Zealand Childcare Finance) will make available to the Borrower from time to time (subject in each case to the Lender's assessment of the Borrower's ability to service and give security for them) advances and other finance products.
2. On each occasion when this is done a separate Loan Agreement which records the specific terms of the advance or finance product, and any guarantees or security provided for them, will be prepared by the Lender and signed by the Borrower and Guarantor/s.
3. In respect of each and every advance or finance product provided to the Borrower under this facility the Lender's general terms and conditions ("**General Terms**") a copy of which is attached to this Deed, will also apply and the Borrower and the Guarantor/s now give the security interests described in that document, over the Property described in the Schedule below.
4. The Guarantor/s (if more than one jointly and severally) will also guarantee to the Lender the due and punctual payment of all advances and finance products made available to the Borrower and performance by the Borrower of all obligations in respect of them on the terms and conditions set out in a separate Deed of Guarantee, as is recorded in clause 23 of the General Terms.
5. The Borrower and Guarantor/s each acknowledge:
 - 5.1. this Deed is not binding upon the Lender until it is executed by the Lender and all securities agreed to be provided are provided to the satisfaction of the Lender; and
 - 5.2. entering into this Deed does not imply that on any occasion the Lender will make advances or finance products available. On each occasion there will be an assessment of serviceability, security, available funds and other relevant decisions prudent for a lender to make; and
 - 5.3. having received copies of the documents described in clause 3; and
 - 5.4. words and phrases that are defined in the General Terms have the same meanings in this document; and
 - 5.5. having been advised of the need to seek independent legal and financial advice about the transactions and documents being entered into.

General Terms and Conditions

The Lender, at the request of the Borrower and the Guarantor/s, has agreed from time to time to advance loans and to provide other finance products to the Borrower. Unless expressly otherwise agreed all loans and finance products made available by the Lender to the Borrower are made subject to these general terms and conditions.

Security Documents

All existing and future securities at any time granted by the Borrower, Guarantor/s or third party are given as security for the payment of the Moneys Owed and the performance of the Agreed Obligations. This Agreement includes the grant of a security interest under the Personal Property Securities Act 1999, and an agreement to mortgage Property.

1. Interpretation. In these general terms and conditions:

- 1.1. "Advance" means any loan advanced or finance product made available to the Borrower.
- 1.2. "Agreed Obligations" means all obligations of the Borrower and each Guarantor to the Lender from time to time.
- 1.3. "Borrower" means the borrower named in the Loan Deed and each Loan Agreement.
- 1.4. "Borrower's Property" means the property identified in the Loan Deed, and other property of the Borrower from time to time.
- 1.5. "Business Day" means a day on which registered banks are generally open for business in New Zealand;
- 1.6. "Collateral" means the Borrowers Property and the Guarantors Property, being both Personal Property and Non PPSA Property. A reference to "Collateral" includes any part of it.
- 1.7. "Default Rate" means the default rate of interest agreed under any Loan Agreement to be paid when any payment or obligation is overdue, and if in any case no rate is agreed then 2.25% per month or part thereof of the overdue Moneys Owed.
- 1.8. "Event of Default" means an event described in clause 8.
- 1.9. "Guarantor" refers to any person or entity which guarantees the Moneys Secured and/or the Agreed Obligations to the Lender.
- 1.10. "Guarantor's Property" means the property identified in both this Deed and any Loan Agreement, and other property of the Guarantor/s from time to time,
- 1.11. "Lender" means the Fifo Capital New Zealand Ltd trading as New Zealand Childcare Finance.
- 1.12. "Loan Agreement" refers to any document recording the terms of a loan or finance product made available to the Borrower by the Lender.
- 1.13. "Moneys Owed" means all moneys of whatever nature owed or payable by the Borrower to the Lender including Advances, interest, default interest and fees and Service Charges.
- 1.14. "Mortgage" means the mortgage charge granted under clause 5.1.
- 1.15. "Non PPSA Property" (which includes interests in land) has the meaning ascribed to it in clause 6.1.2.

1.16. "Party" refers to the Borrower, the Lender and any Guarantor. "Parties" refers to all of them.

1.17. "Personal Property" has the meaning given to that term in the PPSA.

1.18. "PPSA" means the Personal Property Securities Act 1999.

1.19. "Property" means each and all of the Borrower's Property; and the Guarantor's Property; and all other land or other property owned by the Borrower and/or the Guarantor/s at the time any Moneys Owed are outstanding to the Lender.

1.20. "Security Documents" refers to the documents described above, including all of the provisions contained in Memorandum of General Terms 2015/4326 published by ADLS Inc.

1.21. "Service Charges" means all third party costs (without limitation) incurred by the Lender in relation to any Advances.

1.22. 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 for any obligation.

2. Fees default interest and Service Charges

2.1. The Borrower shall pay to the Lender all fees (including any establishment and legal fees) agreed from time to time.

2.2. If an Event of Default occurs then interest calculated at the Default Rate will be payable calculated on the Moneys Owed then outstanding on a daily basis for the period commencing the first day of the default and finishing on the date the default is remedied. Such interest shall accrue after as well as before judgment and up to and including the date of actual payment.

2.3. Service Charges will be invoiced directly to the Borrower and payable in each case on or before the date when the relevant Advance is first made available to the Borrower.

3. **Repayment and prepayment:** Except as specifically otherwise agreed the Borrower shall repay the Moneys Owed to the Lender on the Repayment Date as stated in the respective Loan Agreement or otherwise upon demand and the Borrower may prepay to the Lender the whole of an Advance at any time on paying to the Lender the Moneys Owed then outstanding.

4. **Warranties and Covenants:** The Borrower and each Guarantor represent and warrant to the Lender that:

4.1. each of them has the power to enter into and perform their respective rights and obligations recorded in these General Terms and Conditions and in respect of each Loan Agreement and the Security Documents;

- 4.2. no Event of Default has occurred or will occur as a result of making an Advance;
 - 4.3. they have declared any prior charges of any nature over the Collateral;
 - 4.4. the Borrower and each Guarantor undertake to the Lender that they shall comply with all laws applicable to them;
 - 4.5. provide to the Lender all financial information in relation to them as reasonably requested by the Lender during the term of any Advance.
5. **Agreement to mortgage**
- 5.1. The Borrower grants a mortgage (“the Mortgage”) over their Non PPSA Property to secure payment of the Moneys Owed and the due performance and observance of the Agreed Obligations.
 - 5.2. The Borrower and the Guarantor/s each authorise the Lender to lodge and maintain a caveat against the title to any of their Property for the protection of the Lender’s rights and interests as mortgagee, and to proceed to register the Mortgage should the Lender decide to so do. For the avoidance of doubt the Lender is authorised to utilise the power of attorney given pursuant to clause 11.1 below to effect such registration.
 - 5.3. The Borrower and the Guarantor/s will, at any time before repayment of the Moneys Owed, forthwith on demand in writing being made by the Lender, execute such documents as the Lender may require to complete registration of the Mortgage and recording any priority arrangements with any other mortgagee. The “Priority Amount” for the purposes of the Mortgage will be recorded as a sum calculated by multiplying the Moneys Owed by a factor of 2 then adding an amount equal to 24 months interest at the Default Rate on all Moneys Owed plus also costs to enforce the Mortgage and all security interests securing the Moneys Owed.
6. **Grant of security interest**
- 6.1. Grant of Security Interest: The Borrower, as further security for the payment of the Moneys Owed, and the performance of the Agreed Obligations to the Lender at any time:
 - 6.1.1. grants to the Lender a security interest in all of the Borrower’s present and after-acquired property, and all of the Borrower’s present and future rights in relation to any Personal Property; and
 - 6.1.2. each security interest is a security over all of the Borrower’s present and future interests and rights in any land and any other property or asset, other than any Personal Property to which the PPSA applies (“Non PPSA Property”), in favour of the Lender. In respect of the security interest over Personal Property this includes interests in chattel paper and intangibles such as book debts and accounts receivable and all proceeds of any property secured.
 - 6.1.3. agree that the security interest operates as a general security over all such Property for all their obligations from time to time to the Lender.
 - 6.2. Continuing Security: The Securities granted under clauses 5.1 and 6.1 shall each operate as a continuing security between the Lender and the Borrower for all Moneys Owed, irrespective of any sum or sums that may be paid to the credit of any account of the Borrower with the Lender, and notwithstanding, the appointment, retirement or removal, at any time, of a receiver; the exercise by the Lender or a receiver of any power conferred by these General Terms and Conditions, by any other relevant document, or by law; or any settlement of account or any other matter or thing whatever, and shall remain in full force and effect and extend to cover all of the Moneys Owed and Agreed Obligations until a final release has been executed by the Lender
 - 6.3. Nature of Charge over Non-PPSA Property: The security in clause 5.1 is a fixed charge in relation to all Non PPSA Property, except where, but only to the extent that, it is not legally and fully effective as a fixed charge, in which event that charge will be a floating charge.
 - 6.4. Conversion: Any floating charge will become a fixed charge automatically and immediately in relation to all Non PPSA Property subject to that floating charge, without the need for any notice or act by the Lender, if an Event of Default occurs; and if in relation to any Non-PPSA Property specified in any notice which may be given by the Lender to the Borrower at any time, in the opinion of the Lender, any Non-PPSA Property is at risk, including the risk of being damaged, destroyed, seized, taken or becoming subject to any security.
 - 6.5. No Other Financing Statements: The Borrower shall notify the Lender immediately if the Borrower becomes aware of any person taking any steps to file a financing statement against the Borrower or the Collateral.
 - 6.6. Priority: The security interest granted in Personal Property under this Deed has the same priority in relation to all Moneys Owed including future advances as specified in clause 5.3.
 - 6.7. Application of Insurance Proceeds: Any moneys recoverable under any insurance on the Collateral or any part thereof shall be applied at the option of the Lender either in or towards replacement or reinstatement of the Collateral, or in or towards satisfaction of the Moneys Owed.

7. PPSA

- 7.1. To the extent permitted by law, the Lender and the Borrower contract out of section 114(1)(a) of the PPSA; and the Borrower's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.
- 7.2. The Borrower waives their right to receive a copy of any verification statement in respect of any security interest granted to the Lender by the Borrower.
- 7.3. The Borrower agrees to indemnify the Lender, upon demand, for all costs and expenses (including legal fees) incurred by the Lender 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) and in complying with any demand made under section 162 of the PPSA.
- 7.4. On the request of the Lender, the Borrower shall promptly do all things required by the Lender 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 (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 Monies Owed on their due date (or within two (2) business days of 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 or the Guarantor gives incorrect, misleading or deceptive information in connection with any Advance; or
- 8.3. The Borrower commits any breach of or omits to observe or perform any of its Agreed Obligations or undertakings under any Loan Agreement and/or the Security Documents on its due date; or
- 8.4. An application or an order is made for the dissolution or liquidation of the Borrower or the Borrower is placed in receivership; or
- 8.5. Any other indebtedness for borrowed money of the Borrower to any other party is not paid when due or shall become due and payable prior to its stated maturity; or
- 8.6. 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
- 8.7. Any prior security or charge over any Collateral becomes enforceable or is enforced; or
- 8.8. If any event should occur that, if the references in clauses 8.1 to 8.6 (inclusive) to the Borrower were replaced with the word "Guarantor", would constitute an Event of Default; or

- 8.9. The Collateral is "at risk" within the meaning of s109(2) of the PPSA.

9. Remedies on default

- 9.1. Upon or at any time after the occurrence of an Event of Default, the Lender may at its discretion and without prejudice to its other rights and remedies take all or any of the following actions:
 - 9.1.1. Demand immediate repayment of all or any of the Moneys Owed. If so demanded the Borrower shall immediately repay the amount demanded to the Lender; or
 - 9.1.2. Enforce, or procure the enforcement of, its rights and remedies under any Loan Agreement these General Terms and Conditions (and the Security Documents or any of them) in such order as it thinks fit; or
 - 9.1.3. Enter any premises where the Collateral is located to take possession of the Collateral as it is entitled to do pursuant to the PPSA, and may do all things in relation to the Collateral as if the Lender had absolute ownership of the Collateral.
 - 9.1.4. Appoint a Receiver who shall have all of the powers set out in the Receiverships Act 1993 and in particular shall have the power to take possession of all or any Collateral identified as the Borrower's or Guarantors present and after acquired property and to sell or lease such Collateral.
 - 9.1.5. In addition, the Lender may charge for its directors time at a rate of \$375 per hour for time spent with the consequence of an event of default including, but not limited to, corresponding with the Borrowers and/or the Guarantor/s regarding the default and/or the legal action, liaising and instructing solicitors regarding enforcement action and liaising with receivers and/or liquidators regarding receivership or liquidation.

10. **Set-off:** 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 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/s to the Lender.

11. Attorney

- 11.1. The Borrower irrevocably appoints the Lender, and every director, officer or duly appointed agent for the time being of the Lender severally, the lawful attorney of the Borrower in the Borrower's name and on their behalf at any time from time to time and in such manner as the Lender in its absolute discretion shall think fit: to take all steps and proceedings and to do all acts, matters and things as the Lender shall think

proper to remedy any default or breach of the terms and provisions herein and in any Loan Agreement or Security Documents, to exercise any of the rights, powers and remedies of the Lender contained in this Deed and the Security Documents; to perfect any security interest, to execute, on behalf of the Borrower and register the Mortgage, any deed, instrument or document necessary for the Lender to perfect its security interest or the Security Documents.

- 11.2. For the avoidance of doubt, this power extends to the execution of any memoranda of priority of mortgage; and the execution of any other instrument or document that may be necessary or desirable to further assure to the Lender the security conferred by these General Terms and Conditions.
 - 11.3. The Lender as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes as it may require.
 - 11.4. The Borrower agrees to ratify and confirm whatever the Lender or its substitutes may lawfully do or cause to be done by virtue of this clause.
 - 11.5. The Borrower hereby instructs their solicitors to deliver, to the Lender or the Lender's solicitors, all documentation required to register the Mortgage referred to in clause 5 of these General Terms and Conditions on demand by the Lender or the Lender's Solicitors.
 - 11.6. The Borrower agrees that the production of this document by the Lender to Land Information New Zealand and any other relevant person (as applicable) shall be sufficient evidence of the power of attorney conferred by clause 11.1.
 - 11.7. The Borrower acknowledges that the power of attorney conferred on the Lender in clause 11.1 is given for valuable consideration (the Lender agreeing to make Advances available to the Borrower) and cannot be withdrawn by the Borrower until all of the Moneys Owed are paid and all of the Agreed Obligations are performed.
12. **Indemnities:** The Borrower indemnifies, and agrees 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 the Loan Deed, any Loan Agreement and the Security Documents. This includes legal fees (costs on a solicitor/client basis). This clause shall survive the termination of these agreements.
 13. **Payments:** All payments to be made to the Lender shall be made without set-off, counterclaim, 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 in the relevant Loan 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 to the repayment of the principal, interest, default interest, fees, or any other amount due, in the order and manner as the Lender may determine from time to time.

14. **Notices:** All notices, requests, demands or other communications to or upon the Parties 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 or email or to the recipient at the address specified in the relevant Loan Agreement or if no notice is specified at the registered address for service of notices or last known place of residence. 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 or email sent on a Business Day, during normal business hours in the place of receipt, upon successful transmission. The Borrower and each Guarantor appoints the Lender to be their agent for the purposes of service pursuant to section 355 of the Property Law Act 2007 and for the service of any notice given under these General Terms and Conditions.
15. **Further assurance:** The Borrower and Guarantor shall when required by the Lender at the Borrower's and Guarantor's cost make, execute, do and perform all such further assurances, instruments, acts or things as the Lender may from time to time reasonably require to perfect any Agreed Obligation and the security conferred under the Security Documents, or the guarantee of the Guarantor under clause 23, and to enable the Lender to exercise any of its rights, powers or remedies under these General Terms and Conditions, under the Loan Deed any Loan Agreement any Security Document or conferred by law, whether on enforcement (including, but not limited to, allowing entry to, or procuring permission for the Lender to enter, any property or premises where the Collateral is believed to be located to enable the Lender to obtain possession of and sell Collateral) or otherwise; and transfer to, or vest in, the Lender (or any purchaser from the Lender) any Collateral.
16. **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 the Loan Deed, any Loan Agreement and the Security Documents.
17. **Waiver:** No failure or delay by the Lender in exercising, or the Lender's single or partial exercise, of any right, power, discretion, remedy or privilege shall operate as a waiver of that right, power, discretion or remedy.
18. **Conflict:** Where any conflict or inconsistency shall arise between any of the terms, conditions and provisions,

whether express or implied, herein, in the Loan Deed, in any Loan Agreement or Security Document and those of any loan offer or correspondence from the Lender, then in the absence of a binding agreement in writing to the contrary (including special conditions in any Loan Agreement or other document which are expressed to modify the terms in them), these General Terms and Conditions shall prevail, and thereafter (in order of priority) the Loan Deed, the relevant Loan Agreement, Security Documents, and then any loan offer or correspondence.

19. **Amendment:** No agreement between the Parties can be amended or varied except in writing signed by them.
20. **Assignment:** Neither the Borrower nor any Guarantor is able to assign or transfer any of their respective rights or obligations in respect of any Advance. The Lender may however assign all or any part of its rights and benefits without the consent of the Borrower or Guarantor/s.
21. **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.
22. **Trustees:** Any Party signing any agreement in respect of an Advance (Loan Deed, Loan Agreement or any Security Document) in their capacity as a trustee of a trust represents warrants and covenants to the Lender as follows:
 - 22.1. They have taken all necessary action to authorise the execution of the relevant document;
 - 22.2. The trust of which they are trustee is duly constituted and validly existing under the laws of New Zealand;
 - 22.3. the deed of trust, together with other documents or deeds constituting the trust of which it is trustee, as provided to the Lender, are true and up-to-date copies;
 - 22.4. they are entering into the relevant document as part of the due and proper administration of the trust of which they are trustee;
 - 22.5. all rights of indemnity that they have or will have from time to time against the trust assets or the beneficiaries of the trust of which they are trustee have not been and will not be excluded or limited by the provisions of such trust, or by any breach of such trust, or by any rights or set-off or counter claim or otherwise, and they will not release or otherwise prejudice such rights of indemnity;
 - 22.6. they have not and will not commit a breach of the terms and conditions of the deed of trust of which it is trustee;
 - 22.7. they will not resign as trustee of any trust without a successor being appointed to its position of trustee. They will ensure that any successor to their position of trustee will execute any document as the Lender may require to ensure that the documents they sign are binding on such successor; and
 - 22.8. they will not amend the deed of trust for the trust of which they are trustee or do or allow or omit to do anything to be done that in the Lender's opinion may prejudicially affect the Lender's recourse against the assets of that trust.
23. **Guarantee:** In consideration of each Advance made by the Lender to the Borrower, each Guarantor: guarantees to the Lender the payment of the Moneys Owed in accordance with these General Terms and Conditions and will enter into a separate Deed of Guarantee in the Lender's standard form to more fully record the Guarantors obligations.
24. **Waiver of independent legal advice:** The Guarantor/s each acknowledge and confirm that, in respect of the Loan Deed, and each Loan Agreement and Security Document, they should obtain independent legal advice in relation to the nature and extent of their rights and obligations as guarantors and providers of security and that notwithstanding this advice, they each hereby waive their right to seek independent legal advice, confirm that they fully understand the nature and effect of these obligations and give this guarantee freely and without duress.
25. **Counterparts:** This Deed and any Loan Agreement may be executed in two or more counterparts all of which will together be deemed to constitute one and the same Deed. A party may enter into this Deed by signing a counterpart copy and sending it to the other party or parties, including by facsimile or email.

Borrower Declaration

Business loan declaration: For the purposes of section 14 of the Credit Contracts and Consumer Finance Act 2003 the Borrower confirms the credit obtained is to be used for business purposes, they have signed this declaration prior to entering into the credit contract, and that they have read and understood this declaration.

Borrower Director signature: _____

Witness signature: _____

Borrower Director name: _____

Witness name: _____

Witness occupation: _____

Witness address: _____

Borrower Director signature: _____

Witness signature: _____

Borrower Director name: _____

Witness name: _____

Witness occupation: _____

Witness address: _____

Executed by

Borrower

Borrower Director signature: _____

Witness signature: _____

Borrower Director name: _____

Witness name: _____

Witness occupation: _____

Witness address: _____

Borrower Director signature: _____

Witness signature: _____

Borrower Director name: _____

Witness name: _____

Witness occupation: _____

Witness address: _____

Guarantor

Guarantor signature: _____

Witness signature: _____

Guarantor name: _____

Witness name: _____

Witness occupation: _____

Witness address: _____

Guarantor signature: _____

Witness signature: _____

Guarantor name: _____

Witness name: _____

Witness occupation: _____

Witness address: _____

Lender

Lender Director signature: _____

Witness signature: _____

Lender Director name: Nigel Thomson

Witness name: _____

Witness occupation: _____

Witness address: _____