

This agreement made on the [insert date] \_\_\_\_ day of \_\_\_\_\_ 20\_\_ between Credit Capable Limited a duly incorporated company and,

[insert company name] \_\_\_\_\_ a duly incorporated company.

This agreement witnessed and the parties agree:

## Background and Purpose:

Credit Capable provides a finance service by way of credit contracts and lease agreements and the parties propose that it provide a finance brokerage service to the retailer's ("Dealer") customers ("Purchaser/s") for the purpose of their buying the Dealer's goods.

### 1. Use:

The terms and conditions of this agreement: do not apply in substitution for any other terms and conditions in any prior agreement between the Dealer and Credit Capable and do not abrogate or prejudice any existing terms and conditions which continue to apply to any prior agreements, proposals, assignments or conditional purchase agreements (and the goods described therein) and guarantees in accordance with their terms.

### 2. Interpretation:

(a) "Relevant documents" means (a) in the case of the Dealer, the sale agreement between the Dealer and the Purchaser and the loan agreement to which that Purchaser is party and any Guarantee of a Purchaser's obligations and (b) in the case of a Purchaser, the sale agreement and the loan agreement to which that Purchaser is a party; and (c) in the case of a Co-signer, the Guarantee under which that Co-signer is the Co-signer and (d) in each case, each other agreement required or contemplated thereby.

(b) Expressions not defined shall bear the meanings ascribed to them in the Personal Property Securities Act 1999 and the Credit Contracts and Consumer Finance Act 2003 notwithstanding that an agreement may not be a consumer credit contract.

### 3. Procedure for Dealer and Purchaser loan processing:

#### Instore purchases (Dealer Completion)

##### Submitting of Application

(a) The Purchaser will complete a Credit Capable online or printed application form. The Dealer will only provide advice on the goods and price of the purchase. The Dealer cannot provide advice or direction on the Purchaser's application form and will not amend any proposal after signature from the Purchaser without the Purchaser's written consent.

##### Application processing

(b) Credit Capable will with all reasonable speed process the proposal and notify the Purchaser and Dealer of approval or rejection. Or that it requires further information or conditions for processing or approval by way of a conditions notice being emailed to the Purchaser and Dealer.

##### Application approval

(c) On the acceptance of a proposal, a loan agreement for the purchase will be sent via email to the Purchaser and Dealer. The Dealer shall explain to the Purchaser and any Co-signer the obligations of the Purchaser and any Co-signer and disclose a copy of the agreement to the Purchaser and to any Co-signer at the time of signature by either or both. No loan agreement may be amended after being received.

##### Contract processing and payment

(d) The Dealer will as soon as reasonably possible forward to Credit Capable a copy of the Relevant documents including the original signatures of the Purchaser and any Co-signer including any associated paperwork, with a copy of the invoice for the purchase. On receipt of the completed Relevant Documents and Invoice that includes the pickup date of the purchase, Credit Capable's chosen financier will pay to the Dealer in respect of the loan agreement the sum agreed by Credit Capable and the Dealer (inclusive of any GST). That sum shall be applied in payment for the goods which the Dealer is selling to the Purchaser. The Dealer will post all original printed and signed loan agreement documents for the purchase to Credit Capable.

#### Delivered purchases (Purchaser Completion)

##### Submitting of Application

(e) The Purchaser will complete a Credit Capable online or printed application form. The Dealer will only provide advice on the goods and price of the purchase. The Dealer cannot provide advice or direction on the Purchaser's application form.

##### Application processing

(f) Credit Capable will with all reasonable speed process the proposal and notify the Purchaser and Dealer of approval or rejection. Or that it requires further information or conditions for processing or approval by way of a conditions notice.

##### Application approval

(g) On the acceptance of a proposal, a loan agreement including any guarantee to the Purchaser and the Dealer for the purchase will be sent via email to the Purchaser and Dealer. No loan agreement may be amended after being received.

##### Contract processing and payment

(h) The Purchaser will forward to Credit Capable a copy of the loan agreement and any guarantee containing the original signatures of the Purchaser and any Co-signer, including any associated paperwork. On receipt of the completed paperwork from the Purchaser, Credit Capable will request the invoice and dispatch date for the purchase from the Dealer. Upon receipt of invoice, Credit Capable will send to the Dealer a payment notification detailing payment for the purchase via Credit Capable's chosen financier, who will pay to the Dealer in respect of the loan agreement the sum agreed by Credit Capable and the Dealer (inclusive of any GST). That sum shall be applied in payment for the goods which the Dealer is selling to the Purchaser.

I have read and understand the terms and conditions printed on page 1 and 2 of this document and are happy to be bound by the terms of this Dealer Agreement.

Signed for and behalf of [company name] X \_\_\_\_\_ by:

[name of signatory] X \_\_\_\_\_ [sign here] X \_\_\_\_\_

[name of witness] X \_\_\_\_\_ [sign here] X \_\_\_\_\_

# Credit Capable

## Dealer Agreement (Further Terms and Conditions)

### 4. Representations and Warranties:

The Dealer represents and warrants that at the time when it forwards any proposal or relevant document to Credit Capable and from time to time:

- a. All information provided to Credit Capable by any Relevant Party in connection with a Proposal, any Relevant Document or other matter was true, accurate and not misleading at the date when that information was provided.
- b. The terms of each sale agreement, loan agreement, and guarantee contain the full and complete requirement between the parties to it and the Dealer has made no collateral or other agreement with the Purchaser or any Co-signer which affects or may affect those terms.
- c. All disclosures required to be made pursuant to statute or any other requirement to any Relevant Party in respect of the goods or the moneys lent or to be lent to the Purchaser Relevant Documents have been made in accordance with and in the manner and time specified by the appropriate statute or other requirement.
- d. No loan agreement or guarantee can be cancelled, terminated, rescinded or revoked as a result of any act or omission on the part of the Dealer.
- e. Each sale agreement, loan agreement and guarantee was signed by the Relevant Party at the Dealer's trade premises.
- f. All goods (and, in the case of paragraph (a) below, all services) supplied to a Purchaser:
  - (a) complied, or will comply, at the time of delivery or supply to the relevant Purchaser or at any other applicable time with all applicable statutory conditions, warranties, representations or guarantees (including under the Consumer Guarantees Act 1993);
  - (b) complied, or will comply, at the applicable time with any conditions, warranties, representations or guarantees made or given by the Dealer to the relevant Purchaser or Credit Capable;
  - (c) were, or will be, delivered to the relevant Purchaser at the Dealer's trade premises;
  - (d) and it will perform and comply with each warranty, service or other obligation imposed on the Dealer by any contractual or other arrangement (whether legally binding or not) made with that Purchaser; or at law whether or not in its capacity as a Dealer in any particular goods.
- g. The Dealer has not made any false or misleading statements or representations to any party to a sale agreement, loan agreement or guarantee with respect to any goods or services supplied under or in connection with any agreement of the Relevant Documents and has not in relation to any such party engaged in conduct that could be construed as being misleading or deceptive or which is likely to mislead or deceive.
- h. It is not aware of any dispute arising under any Relevant Documents except as disclosed in writing to Credit Capable.
- i. Any services supplied to the Dealer by Credit Capable under or in relation to any Relevant Documents are acquired by the Dealer for the purposes of a business and accordingly nothing in the Consumer Guarantees Act 1993 will apply to any supply of those services.

### 5. Undertakings: The Dealer undertakes that it will:

- a. Ensure that any proceeds of the relevant documents or the goods that are paid by the relevant Purchaser or Co-signer to the Dealer after Credit Capable has financed a relevant purchase are held on trust by the Dealer and immediately paid by the Dealer in each case, without deduction, counterclaim or set-off to such account of Credit Capable as Credit Capable directs from time to time.
- b. Notify Credit Capable of (i) any breach of or failure to comply with any relevant document on its part and (ii) any claim or dispute which arises or may arise under or in connection with any goods, sale or loan agreement or guarantee of which the Dealer becomes aware and deliver to Credit Capable immediately upon receipt any notice received by the Dealer from a Purchaser, Co-signer or any other person in respect of the goods or the loan agreement or guarantee.
- c. Furnish to Credit Capable promptly any information concerning the Relevant Documents as Credit Capable may request from time to time.

### 6. Negative undertakings relating to Goods: The Dealer undertakes that it will not:

- a. Do, omit to do, or allow to occur, anything which might render any of the Relevant Documents or any provision of this agreement invalid or unenforceable, or liable to forfeiture or cancellation, or which might cause or contribute to a deterioration in the value of any Goods, or which might adversely affect the security interest of Credit Capable in any Goods.
- b. Purport to agree to any variation of any agreement comprised in the Relevant Documents or purport to release any person from any obligation or claim or purport to waive any breach of it.
- c. Make (and the Dealer acknowledges that it has no authority to make) any agreement, condition, warranty, representation, guarantee or promise on behalf of Credit Capable and undertakes that (except as otherwise expressly provided in this agreement) nothing in this agreement or with respect to any transactions contemplated hereby shall constitute the Dealer as agent of Credit Capable for the purpose of procuring sales of goods on credit terms to Purchaser's and the Dealer shall in all dealings with third parties deny any agency on behalf of Credit Capable. The Dealer unconditionally indemnifies Credit Capable against any costs claims liabilities and causes of action which Credit Capable may suffer by reason of or rising out of the Dealer being found to be an agent of Credit Capable or a transaction being found to be a credit sale.

### 7. PPSA:

- a. The Dealer undertakes that it will not provide the Purchaser with credit for the purchase of goods which are collateral for a Credit Capable loan agreement that Credit Capable will, on execution by the Purchaser of its loan agreement, acquire a purchase money security interest in the Goods.
- b. The Dealer shall procure that the registration of any security interest that is registered under the PPSA in respect of any Goods, other than one in favour of Credit Capable, is discharged before receipt of the Purchaser's loan money for the purchase of those goods from the Dealer unless Credit Capable agrees in writing to the contrary.

### 8. Indemnity:

- a. The Dealer acknowledges that Credit Capable has signed this agreement, and will accept each Proposal and grant loans to the Dealer's Purchasers (when it exercises its discretion to do so) in reliance upon the representations and warranties in paragraphs 3 to 7 inclusive of this agreement and will on demand indemnify and hold Credit Capable harmless against each cost, loss (including loss of profit or margin), expense (including all legal expenses on a solicitor and own client basis and taxes) and liability sustained or incurred by Credit Capable as a result of any breach of or failure to comply with those paragraphs on the part of the Dealer.
- b. This indemnity is unconditional and irrevocable, is to survive termination of any Relevant Document and is not to be discharged or impaired by any act, omission, matter or thing that might discharge or impair it but for this sub-clause.

### 9. Non-recourse:

Except for breaches of the Dealer's obligations to a Purchaser or to a Co-signer Credit Capable shall not have recourse to the Dealer in respect of any failure or default by a Purchaser or Co-signer to perform or comply with that person's obligations under a Loan Agreement or under a Guarantee.

### 10. Termination:

Credit Capable or the Dealer may terminate this agreement on not less than 30 days' notice in writing to the other but any such termination of this agreement shall not affect any rights or obligations accrued or incurred before the date on which such termination takes effect.

### 11. Set-off:

The Dealer authorises Credit Capable to apply (without prior notice or demand) any credit balance of the Dealer on any account in or towards satisfaction of any indebtedness of that specific Dealer then due to Credit Capable under a Relevant Document and unpaid. Credit Capable's rights under this clause are contractual rights affecting the terms upon which a credit balance is held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

### 12. Accounts:

The entries made in the accounts maintained by Credit Capable are to be conclusive evidence of the existence and amounts of the obligations of the Dealer recorded in them. A certificate by Credit Capable of an amount payable under this agreement is to be conclusive evidence for all purposes including for any proceedings.

### 13. Assignment:

The Dealer may not assign or transfer any of its rights or obligations under this agreement or any other Relevant Document without the consent of Credit Capable.

### 14. Remedies and waivers:

Time is of the essence in respect of all dates and times for performance by the Dealer of its obligations under this agreement. However, no failure to exercise, and no delay in exercising, a right of either party under this agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by either party of its rights will be effective unless it is in writing signed by both parties. The rights and remedies of each party under the Relevant Documents are cumulative.

### 15. Limitation of Trustee Liability:

("the Trustee") is limited to the assets of the Trust ("the Trust"). However, if loss is incurred by the lender due to an intentional default or dishonesty in breach of trust by the Trustee, the Trustee will be personally liable to the lender to the extent that the assets of the Trust do not satisfy the loss.

### 16. Miscellaneous:

No amendment to this agreement will be effective unless it is in writing signed by the Dealer and Credit Capable.

### 17. Partial invalidity:

The illegality, invalidity or unenforceability of a provision of this agreement or any Assignment under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

### 18. Counterparts:

This agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this agreement by executing any counterpart.

### 19. Governing law:

This agreement is governed by, and is to be construed in accordance with, New Zealand law.

[Dealer to initial here] x \_\_\_\_\_

[company name here] x \_\_\_\_\_