

Introducer Details (include full details of Introducer, including name of partnership, company or individual)

Legal Trading Name:		Partner Contact:	
Physical Address:		Email:	
Postal Address: (if different)		Phone:	
IRD No:		Estimated gross turnover:	\$
No. of directors:		Accounting system used:	<input type="checkbox"/> AO <input type="checkbox"/> APS <input type="checkbox"/> Lawbase <input type="checkbox"/> Other _____
No. of employees:		Accounts Rec' Contact:	
Trading years:		Accounts Rec' Email:	
Professional Membership:	<input type="checkbox"/> Chartered Accountant <input type="checkbox"/> TiNZ <input type="checkbox"/> NZ Law Society <input type="checkbox"/> Other _____		

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Agreement and Acceptance

The Introducer wishes to establish a funding arrangement whereby the Introducer may offer its Clients an option for FFL to partially or fully fund amounts that are or may become payable by such Clients for Professional Supplies provided by the Introducer.

This agreement (including the general terms and conditions) sets out the terms and conditions on which the Introducer agrees to offer the Facility to its Clients and FFL agrees to consider credit applications from such Clients.

By signing below (or affirming its acceptance electronically), the Introducer acknowledges that it has read, understood and agrees to be bound by the terms and conditions of this agreement (including the general terms and conditions), provided that no agreement will arise between the Introducer and FFL until FFL has received the Introducer's signed agreement and confirms its acceptance in writing, at which time this agreement will constitute the valid and binding contractual arrangements of FFL and the Introducer in accordance with its terms.

If a partnership then all partners to sign		If signed by only one director then witnessed by	
Signed for and on behalf of the Introducer by:		Signature	
Signature _____	Signature _____	Name	
Name _____	Name _____	Occupation	
		Address	

General Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this agreement, unless the context requires otherwise:

Client means any client of the Introducer that is liable to pay any amount in relation to Professional Supplies provided by the Introducer;

Client Application Form means the application form described in clause 5.1 pursuant to which a Client may apply for funding from FFL and which upon signing by the Client and acceptance by FFL forms part of the Facility Agreement;

Confidential Information means any and all information (in any form, whether written, electronic or otherwise) concerning the activities, business, finances, software, know-how, data (technical or non-technical), trade secrets, projects, forecasts, information as to systems or processes, marketing information, customer information or any other information relating to this agreement and/or any party to this agreement, other than any such information which:

- (a) is within the public domain or subsequently enters the public domain without the fault of a receiving party;
- (b) at the date of disclosure to the receiving party is known to the receiving party; or
- (c) is at any time received in good faith by the receiving party from a third party which is lawfully in possession of the information and had the right to disclose it;

Drawdown means any advance under the Facility;

Drawdown Amount means the amount approved by FFL for funding under the Facility, being the "Funded Amount" set out in the Client Application Form in respect of the initial Drawdown and the additional amount that FFL has agreed to fund pursuant to clause 5.3 in respect of any subsequent Drawdown;

Facility means the funding facility provided by FFL to a Client following acceptance by FFL of a signed Client Application Form and payment of the Initial Instalment;

Facility Agreement means the agreement between a Client and FFL in respect of the Facility and includes the Client Application Form and FFL's general terms and conditions;

FFL means feeSmart Finance Limited, a limited liability company incorporated in New Zealand under number 2149768;

GST Act means the Goods and Services Act 1985 and **GST** means goods and services tax payable under the GST Act;

Initial Instalment means the amount described in the relevant Client Application Form;

Professional Supplies means the provision of advisory and/or compliance services, software, hardware and/or other goods or services by the Introducer to a Client;

Unpaid Amount means, at any given time, the total amount due and owing or otherwise payable by a client under the relevant Facility Agreement.

1.2 **General interpretation:** In this agreement, unless the context requires otherwise:

Including: any reference to "including" is without limitation to the generality or specificity of the surrounding words;

Person: reference to a person includes a reference to a natural person, body corporate, government agency and to an unincorporated body of persons; and

Liability: if a party comprises more than one person, each such person's liability is joint and several.

3 **Construction:** This agreement may not be construed adversely to a party just because that party prepared, or procured the preparation of, this agreement.

2. TERM

3. **Commencement and expiry:** This agreement will commence on the date that it is signed by the Introducer and accepted by FFL in writing and will continue until terminated by either party in accordance with clause 13.

4. FACILITY PROMOTION

4.1 **Promotion:** The parties acknowledge and agree that the Introducer may, from time to time, promote the Facility to its Clients on the basis that FFL may provide funding to such Clients in relation to the provision of Professional Supplies.

4.2 **Conditional Facility:** In promoting the Facility, the Introducer will ensure that the Client is aware that any funding arrangement is subject to FFL's acceptance in accordance with the terms of this agreement.

5. OFFER AND ACCEPTANCE

5.1 **Offer:** The Introducer may from time to time request FFL to fund Professional Supplies by forwarding to FFL an original Client Application Form duly completed by the Introducer and signed by the Client. Each Client Application Form must be in the form approved by FFL from time to time and include the following information:

- (a) Client name and contact details;
- (b) the amount to be funded;
- (c) details of the invoice(s) to which the Professional Supplies relate (if available); and
- (d) repayment details (as advised to the Introducer by FFL at the relevant time), including the:
 - (i) number of instalments payable by the Client;
 - (ii) amount of each instalment; and
 - (iii) any interest, fees and charges payable.

The Introducer acknowledges and agrees that FFL is entitled to access the Introducer's premises and place of business (upon provision of reasonable notice) to review, and if required make copies of, any original invoices or other information referred to in a Client Application Form.

5.2 **Acceptance:** Upon receipt of a Client Application Form from the Introducer, FFL will consider such application and, within 10 business days of receiving the Client Application Form (or such longer period as the Introducer may allow), notify the Introducer whether it rejects the relevant application or any conditions of acceptance, such decision being at FFL's sole discretion. The Introducer will promptly notify the Client of such rejection or conditions of acceptance.

5.3 **Scope of acceptance:** If FFL accepts a Client Application Form, such acceptance will only apply to the "Funded Amount" described and/or contemplated in such application. The Introducer may from time to time request in writing that FFL extend the scope of the Facility to cover the payment of any other Professional Supplies provided or to be provided to the Client named in the original Client Application Form, provided that such requests must include the information required under clause 5.1 and be signed by the Client acknowledging its agreement to such request.

6. PAYMENT OF DRAWDOWN AMOUNT

6.1 **Payment:** Unless otherwise agreed by FFL (in its sole discretion), if FFL accepts a Client Application Form as contemplated in clause 5.2 or a request for further funding under clause 5.3, then FFL will pay the relevant Drawdown Amount to the Introducer as follows:

- (a) in respect of the initial Drawdown, within 14 days of the date that the relevant Client has paid the Initial Instalment to FFL in full and without setoff or deduction; and
- (b) in respect of any subsequent Drawdown, within 14 days of the date of acceptance by FFL of the relevant request for further funding,

provided that if the Initial Instalment is not paid by the Client in the manner required, then FFL will be under no obligation to pay any Drawdown Amount to the Introducer.

7. ASSIGNMENT OF FACILITY AGREEMENTS

7.1 **Right to require:** Subject to clause 7.2, FFL may (at any time and in its sole discretion) require, by written notice, the Introducer to purchase its right, title and/or interest in and to all or part of the Unpaid Amount under any or all Facility Agreements (the **Repurchase Amount**) and, upon receipt of such notice, the Introducer will, within 14 days of the date of FFL's written notice, pay to FFL an amount equal to the Repurchase Amount in full and without setoff or deduction.

7.2 **Assignment:** Upon payment by the Introducer of the amount set out in clause 7.1, FFL will immediately assign its entire rights, title and interest in and to the Repurchase Amount under the relevant Facility Agreements to the Introducer and the Introducer will become the absolute beneficial owner of such rights, provided that FFL gives no warranty as to the validity and/or enforceability of such rights.

7.3 **Default Interest:** Interest at the rate that is 5% above the Flat Interest Rate set out in the Facility Agreement to which the Unpaid Amount relates will be payable on any amount that is overdue for payment by the Introducer to FFL under this agreement, calculated on a daily basis from the date payment fell due until the date payment is received by FFL in full.

8. OBLIGATIONS OF THE INTRODUCER

8.1 **Obligations:** During the term, the Introducer will:

- (a) do such things as FFL requires in relation to the enforcement and collection of any Unpaid Amount;
- (b) pay to FFL any amount that it receives from a Client or any other third party in payment of any Professional Supplies funded or to be funded by FFL in cleared funds and without setoff or deduction. The parties acknowledge and agree that until such payment is made, the Introducer holds the relevant amount in trust for FFL;
- (c) to the extent that it is a partnership, promptly notify FFL of any changes or proposed changes in its partnership and upon demand by FFL ensure that any new or existing partner accepts and becomes bound by this agreement in such manner as FFL may reasonably require;
- (d) promptly notify FFL of any proposed or anticipated change of shareholding, ownership, sale of receivables or any other action or circumstance that may materially affect its ability to comply with any obligations under this agreement and any failure to comply with this clause will be deemed a material breach of this agreement for the purposes of clause 13;
- (e) upon request by FFL, procure that any of its principal partners, shareholders and/or other officers required by FFL (as the case may be) enter into a deed of guarantee and indemnity in respect of the Introducer's obligations under this agreement in the form provided by FFL at the relevant time;
- (f) promptly notify FFL of any actual or anticipated breach by a Client of its Facility Agreement and any dispute or expected dispute in respect of Professional Supplies provided or fees charged to a Client;
- (g) give all Clients any notices required to be given by law or under this agreement to such Clients;
- (h) provide all services to Clients professionally, diligently and with reasonable skill and care;
- (i) comply with all requests for information and lawful and reasonable policies and directions of FFL and its duly authorised delegates in relation to any Facility (except to the extent they are inconsistent with the terms of this agreement or otherwise against sound commercial practice);
- (j) comply with, and assist FFL to comply with, all applicable laws, regulations, orders and decrees in respect of the matters contemplated under this agreement; and
- (k) otherwise comply with all of its obligations under this agreement.

9. REPRESENTATIONS AND WARRANTIES

9.1 **Representations and warranties:** The Introducer represents and warrants to FFL for the purposes of the Credit Contracts and Consumer Finance Act 2003, that all Professional Supplies relate to a Client's business or investment undertakings and were not incurred for such Client's personal, domestic or household purposes.

10. INDEMNITY

10.1 **Indemnity:** The Introducer will indemnify FFL against all actions, claims, demands, losses, damages, liabilities, costs and expenses (excluding any consequential losses) sustained or incurred by FFL arising directly or indirectly from:

- (a) any failure by a Client to pay any amount payable under a Facility Agreement by the relevant due date for payment;
- (b) a claim that a payment, obligation, transaction, or transfer in connection with any amount paid under a Facility Agreement is void or voidable under any law relating to insolvency or bankruptcy;
- (c) FFL acting on any notice, request, direction or instruction given by or on behalf of the Introducer at any time in connection with this agreement; or
- (d) any breach of any representations and warranties given by, or obligations of, the Introducer under this agreement.

11. CONFIDENTIALITY

11.1 **Mutual obligations:** Each party acknowledges that in performing its obligations under this agreement it will have access to Confidential Information of the other party and will keep all such Confidential Information confidential and only use such Confidential Information for the purposes of this agreement. Each party will ensure that all directors, employees, and agents of that party observe and comply with the provisions of this clause.

12. INTELLECTUAL PROPERTY

12.1 **Ownership:** The Introducer acknowledges and agrees that FFL, or its duly contracted business partners, is and remain the owner of all documentation, other physical property and intellectual property supplied to the Introducer by such parties in relation to the performance of this agreement. If requested by FFL, the Introducer will return to FFL (at the Introducer's cost) all such documentation and other physical property that is in the Introducer's possession or control.

12.2 **Restrictions on use:** During the term, the Introducer will not do any of the following without FFL's prior written consent:

- (a) use any logos or trademarks or publish any documentation in relation to the "feeSmart" fee funding business or any other matter covered by this agreement (including but not limited to marketing material such as brochures, advertisements, articles, editorials and posters) other than as supplied or otherwise approved by FFL;
- (b) amend any logos, trademarks or documents supplied by FFL or its business partners; or
- (c) publish or circulate any advertising material in relation to the Introducer's accreditation by FFL.

13. TERMINATION OF THIS AGREEMENT

13.1 **Termination for convenience:** Either party may terminate this agreement by giving the other party 30 days' prior written notice.

13.2 **Termination for default:** FFL may terminate this agreement without notice to the Introducer, if the Introducer:

- (a) is in material breach of any term of this agreement which is not capable of remedy, or where the breach is capable of remedy, the Introducer fails to remedy such breach within 5 days of receipt of written notification from FFL requiring it to do so;
- (b) becomes insolvent, fails to pay its debts as and when they become due, makes or attempts to make any composition, assignment or other arrangement with, or for the benefit of, its creditors or any class thereof; or
- (c) ceases to carry on business, or proceedings are commenced to have it wound up, or a receiver and manager (or other administrator) is appointed to all or any part of its assets and undertakings.

13.3 **Consequences of termination:** Upon termination:

- (a) the parties will, to the fullest extent possible, continue to perform their obligations under this agreement in relation to any Unpaid Amount outstanding as at the date of the relevant termination; and
- (b) this sub-clause and those provisions of this agreement which by their nature are intended to survive termination will survive termination, including but not limited to clauses 7 to 12 (inclusive).

14. NOTICE AND DELIVERY

14.1 **Notice:** Any notice or other communication in connection with this agreement will be:

- (a) in writing; and
- (b) left at the address or sent by prepaid post to the address of the relevant party or any replacement address notified by that party, or sent by email to an address provided by the addressee for the receipt of email.

14.2 **Deemed receipt:** Notices or other communications are deemed received:

- (a) if delivered by hand, on delivery;
- (b) if delivered by post:
 - (i) on the third day following posting if sent and received within New Zealand; and
 - (ii) on the tenth day following posting if sent to or from an overseas destination;
- (c) if delivered by email, on the business day the email is sent or the next business day if sent outside normal business hours, provided that the email was correctly addressed to the address provided by the addressee for the receipt of email and no error message was received by the information systems used by the sender to send the email.

15. MISCELLANEOUS

15.1 **Costs:** Unless otherwise agreed in writing as between the parties or expressly specified in this agreement, each party will bear its own costs in relation to the negotiation, preparation, execution and performance of this agreement.

15.2 **Privacy:** The Introducer will comply with the Privacy Act 1993 as it applies to this agreement and agrees to fully indemnify FFL against any loss, cost, expense, damage or liability which FFL may suffer arising out of a breach by the Introducer of its obligations under this clause.

15.3 **GST:** All payments to be made by the Introducer under or in connection with this agreement for which an amount is specified, are inclusive of GST at the rate which applies under the GST Act as at the date of the relevant payment. If the Introducer is required to reimburse or indemnify FFL for any amount, the Introducer will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit FFL determines that it is entitled to claim in respect of that amount. Subject to the requirements of the GST Act, if FFL gives notice to the Introducer in relation to a calculation of consideration under this clause, giving reasonable details of the calculation, it will be binding on the Introducer in the absence of manifest error.

15.4 **Assignment:** The Introducer acknowledges and agrees that FFL may at any time and at its sole discretion, assign or otherwise deal with its rights and interests under or in connection with this agreement without the Introducer's consent. The Introducer may not assign or otherwise deal with its rights, interests or obligations under or in connection with this agreement without FFL's prior written consent (which may be granted or withheld at FFL's sole discretion).

15.5 **Amendment:** Unless otherwise provided, no amendment to this agreement will be effective unless it is in writing and signed by both parties.

15.6 **Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by a party in respect of any breach of the other party's obligations under this agreement is to:

- (a) operate as a waiver or prevent the subsequent enforcement of that obligation; or
- (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.

15.7 **Time of the essence:** The Introducer acknowledges and agrees that time is of the essence in respect of the performance of its obligations under this agreement.

15.8 **Severance:** Any unlawful or voidable provision in this agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this agreement without affecting the validity, legality or enforceability of the remaining provisions, provided that the reading down or severing of such provision does not materially affect the purpose of or frustrate this agreement.

15.9 **Preservation of rights:** Unless expressly provided, the rights and/or remedies exercised by either party under this agreement will be without prejudice to any of its other rights and/or remedies under law or in equity.

15.10 **Governing law:** This agreement is governed by the laws of New Zealand. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the New Zealand courts