



**LEGAL**  
CONSOLIDATED  
BARRISTERS & SOLICITORS

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Your Reference: Loan Agreement  
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Friday, 14 July 20

Melissa Thomas  
2 Park Avenue  
Coffs Harbour NSW  
Australia

Build this legal document at  
<https://www.legalconsolidated.com.au/loan-agreement-intro/> – telephone us, we can help you complete the questions.

Attached is the Loan Agreement

Please read the Loan Agreement carefully to confirm that the document is correct for your needs, print out a copy of the agreement for each person and sign the agreement.

Adj Professor, Dr Brett  
Davies - Partner

your accountant, when you have reviewed the document and it is appropriate and correct for your needs, print out a copy of the agreement for each person and sign the agreement.

We have not given you any legal advice in respect of this document or the transactions to which it relates. We have also not given advice as to whether it is in your best interests, or otherwise, to lend any money or whether you are legally able to do so or not. We have given no advice as to whether this document or transaction is appropriate.

### How to print your Loan Agreement

When you are satisfied that the Loan Agreement is correct in everyway please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document.)

### Steps to sign your Loan Agreement

1. You, as the Lender, hand the unsigned Loan Agreement to the Borrower.
2. The Borrower signs first.
3. If there are Guarantors in the Loan Agreement, then, they sign next.
4. You, as the Lender, are last to sign the Loan Agreement.
5. Each person gets a copy of the fully signed Loan Agreement. (You may wish to email it to all parties, as this is evidence that all parties received a copy.)
6. If you are going to lodge the Loan Agreement as a security (e.g. mortgage, caveat) then instruct your conveyancer to do so before you hand over any money.

7. Only transfer the money to the Borrower **after** all parties have signed, and received a copy of the Loan Agreement, and securities and encumbrances are lodged (if any).

### **What is a Loan Agreement?**

A Loan Agreement is an agreement between a Lender (e.g. you) and a Borrower (the person you are lending the money to). The Loan Agreement is a formal way of setting out the terms and conditions of the loan.

The Loan Agreement sets out the rights between the parties. This includes:

1. the amount lent (or to be lent over time) to the Borrower
2. how the amount is repaid by the Borrower to the Lender
3. interest payable by the Borrower (if any)

### **Lend the money only after all the parties have signed the Loan Agreement?**

Do not lend any money until all parties have:

1. signed the Loan Agreement;
2. received a copy of the Loan Agreement; and
3. if you are going to use the Loan Agreement to support a Mortgage, caveat or some other encumbrance, the Loan Agreement is so lodged.

### **What if I lent the money before the Loan Agreement was signed?**

If you hand over the money **before** all the parties sign then the Loan Agreement then the Loan Agreement may not work. Even if it the Loan Agreement is still valid the Loan Agreement is less enforceable. This is especially the case if the Loan Agreement is used in dealings with such entities as the ATO, Family Court and Bankruptcy Court.

Legal Consolidated does not provide advice on dealing with these entities. You need to speak with your specialist lawyers and your accountant. They also know your individual circumstances.

### **Using a Loan Agreement to protect your interests in the Family Court**

Legal Consolidated is only providing general advice. Legal Consolidated does not practice in family law. This example is for illustrative purposes only:

Parents may, for example, give money to their son and his wife. This is without a Loan Agreement. If the son and his wife break up, the parents do not want the ex-wife to get any of the money that they 'lent'.

The parents argue that the money was not a gift, but a loan. If that is true the parents are more likely to get 100% of the money back. The ex-daughter-in-law may get none of the money. To counter this the ex-wife argues that:

1. the money was not a loan, it was a gift, and
2. that the parents are now trying to turn the gift into a loan because their precious son has deserted her.

If, the parents had signed the Loan Agreement signed **before** the money was handed over then the parent's position is stronger.

Similar issues arise in ATO matters, bankruptcy and insolvency.

Get your Loan Agreement signed first, and then hand over the money.

### **When does the loan start?**

We do not put a start date into the Loan Agreement. Instead, you need to keep evidence that the loan was made. If there is a transfer of money via your bank account, then print out the receipt provided by your bank and keep the receipt with the Loan Agreement.

If it is cash, then there should be an exchange of emails or a receipt to say that the Borrower received the cash. If you provided a personal or bank cheque, then keep a copy of the cheque or the bank records with the Loan Agreement.

If you lend more money, then also keep those new records as well.

### **Loans 'expire' every 6 years**

Even with your Loan Agreement there is a risk that over time it stops working. In Australia each State and Territory has a Statute of Limitation. Your unsecured loan goes 'stale' or 'expires' if no repayments are paid or none are demanded. This is after a certain number of years.

The limitation periods for each State and Territory for unsecured loans are:

- **Australian Capital Territory: 6 years**
- **New South Wales: 6 years**
- **Queensland: 6 years**
- **South Australia: 6 years**
- **Tasmania: 6 years**
- **Victoria: 6 years**
- **Western Australia: 6 years**
- **Northern Territory: 3 years**

For all jurisdictions (except the Northern Territory) your Loan Agreement is 'barred' after 6 years under the Statute of Limitation. Have the Borrower pay \$1.00 just before the 6-year period to start the 6-year period again.

For the Northern Territory have the Borrower pay \$1.00 just before the 3-year period to start the 3-year period again.

The 6 year period may also be re-started if the Borrower acknowledges the debt in writing. This document is called a Recognition of Loan Deed. You need to sign the Recognition of Loan Deed before the 6 year period expires. We can prepare this document for you if you require it.

### **Professional lenders of money**

There are two types of Lenders:



1. **Professional lenders:** banks such the Commonwealth Bank of Australia and ANZ, other lending institutions such as AMP; pawn brokers and shop owners providing laybys.
2. **Non-professional lenders:** other people such as mum and dad lending money to a child; a person lending money to a friend; a person or company lending money not as part of their business or as a one off transaction.

This Loan Agreement is for **non-professional lenders**. If you are a professional lender please contact us.

#### **Who gets copies of the Loan Agreement?**

Keep a fully signed original of the Loan Agreement for yourself. The Borrower also keeps a copy. Your financial professional should also keep a copy. If you have Guarantors, then each Guarantor must also get a fully signed copy of the Loan Agreement.

Keep records of any repayments with the Loan Agreement. If you lend more money keep evidence of this also with the Loan Agreement.

Keep the receipts and other documents with the Loan Agreement so it is all kept together and up-to-date.

#### **Who should be my witness?**

The witness to the Loan Agreement is a person over the age of 18 and who is of sound mind. They are not involved in the transaction in any way, such as a relative.

The best person to use as a witness is a 'stranger'. Someone like a neighbour, accountant or financial planner. Your spouse and children should never witness your signature.

#### **What checks should I do on the Borrower – BEFORE I lend any money?**

Legal Consolidated is providing no advice as to the identity, ability to repay the loan, legal right to sign a deed, legal right to enter into a Loan Agreement or creditworthiness of the Borrower. The information below is of a general nature only:

- The Lender must seek its own advice and due diligence, legal and otherwise, on the credit worthiness and ability for the Borrower to make repayments and perform its obligations under the Loan Agreement.
- The Lender should seek such advice independently. You should not rely on any person associated or related to the Borrower to give you such advice.
- You need to make sure the person you are lending to is the person they say they are. If you are in doubt, seek professional and legal help.
- You should undertake extensive checks on the identity of the person you are lending money to. You should ask to see their Drivers Licences, Passports and perform other due diligence.
- If you are lending to a company, then do a full historical search of that company with the Australian Securities and Investments Commission (ASIC). You should also make sure that the directors of the company are either the Borrowers as well, or as least are Guarantors under the Loan Agreement.

- There are professional businesses that provide extensive and written credit checks on potential Borrowers. Use their services before you hand over any money. Use their services before you sign the Loan Agreement.

### **Is this a secured loan?**

This Loan Agreement is currently unsecured. This means that if the person who borrowed the money goes bankrupt, you stand in line with the other unsecured creditors.

However, the Loan Agreement authorises you to lodge caveats, mortgages and other securities with the relevant regulators. This may increase your chances of getting your money back.

### **Do I need to secure this loan?**

Securing a loan is optional. However, it is beneficial. It increases your chance of getting back your money if the Borrower goes bankrupt.

For example, you loan money to a company.

Later, the company takes a loan from the bank. You never registered your Loan Agreement. But the bank registers its Loan Agreement.

Now the company declares bankruptcy. Its assets are sold. This is to repay its debts.

But the bank takes priority over you. This is because it registered its Loan Agreement. The bank takes what it wants. And walks away. Anything left is fought over by you the unsecured creditors.

However, had you registered your interest when the loan agreement was created, you would have taken priority over the bank. This is because you would have been first in time.

However, had you registered the interest in your Loan Agreement then the bank is less likely to have given the second loan.

Therefore, a secured loan protects your interests. If the Borrower is unable to repay the loan, you may get a priority over the unsecured credits.

### **How can I secure this loan?**

Consider registering your Loan Agreement. For example, you can register the Loan Agreement over real estate owned by the Borrower. Such security is by way of mortgage, equitable mortgage and caveat. Registration is through your local State or Territory land registration office. Your local conveyancer can arrange this for you.

Legal Consolidated does not give advice on securities and their registration.

### **Personal Property Securities Register (PPSR).**

As well as the above if the Borrower has non-land assets, then consider registering a security under the Personal Property Securities Register (PPSR).

The PPSR replaces a number of existing registers. These include the old ASIC Register of Charges and the Register of Encumbered Vehicles (REVs). Registration of certain chattels are streamlined into one national register.



The PPSR applies to tangible (you can touch it) and intangible owned by the Borrower. Such chattels include:

- vehicles, boats and aircraft
- crops and livestock
- stocks in trade
- artworks
- equipment
- new or second-hand goods
- patent and copyright
- commercial licenses
- debts and bank accounts
- shares, cash and cheques

The Lender may be able to register their Loan Agreement with the PPSR over these assets. PPSR registration needs to be made at the time the Loan Agreement is created.

Loan agreements can often be registered by the Lender through the PPSR website: <https://www.ppsr.gov.au/registering/you-create-registration>

Legal Consolidated provides no advice on securities and their registration. You must seek your own legal advice regarding the benefit and procedures of effecting proper security of your loan.

#### **What happens if the Lender dies?**

You are owed money. You now die. Your rights under the Loan Agreement now go to your beneficiaries named in your Will. The debt is still owing. The person now owes the money to your Estate. The executors collect the debt just as you would have collected the debt.

For example, a Loan Agreement may be from a dad (Lender) to a child (Borrower). Let us say your son owes the debt to you and your son is one of the beneficiaries. In your Will you leave everything to your three children. You now die. Your son's entitlement under the Will may be reduced by the debt.

#### **What happens if the Borrower dies?**

The Borrower owes you money under the Loan Agreement. The Borrower dies. The debt does not usually die with the Borrower. The debt normally survives death. The executor of the Borrower's Will may be then obliged to pay off the debt. Instead of enforcing the Loan Agreement against the Borrower you now seek to enforce the loan against the dead Borrower's estate.

#### **Can I set up the Loan so that when the Lender dies the loan is automatically forgiven?**

You do not do this in the Loan Agreement. If you wish to forgive a debt at the Lender's death, then put that as a specific gift in your Will. But speak with your Estate Planning lawyer first.

However, why would you want to forgive the debt at death? Let us say you have 3 children. You lend them each \$100,000 each via three Loan Agreements. You and your spouse die, and you leave everything to the children equally. Well, the children just collapse the debt themselves. All is fair and equal.

But what if:

1. you lent a further \$250,000 to only one child. Then at death, you would expect that the child pays back the \$250,000 to make the gifting to all 3 children the same.
2. or instead, what if one of the children does the right thing and pays back the \$100,000. If you forgave all debts, then the child would have been given less than your other two children. It would be unfair.

Think long and hard about whether you want to forgive the debt at death. But if you do, then do it in your Will.

Legal Consolidated does not give advice on this. We also do not know your individual circumstances. Speak with your accountant, lawyer and financial planner before you sign the Loan Agreement or lend the money.

**Can the Lender borrow money and then on-lend it to the Borrower? And claim a tax deduction?**

Legal Consolidated is providing no advice on the taxation implications of the Loan Agreement and any other related matters such as deductions for tax purposes. You should approach your accountant on such matters.

**Do the Lenders and Borrowers have the mental capacity to sign a Loan Agreement?**

The Loan Agreement can be attacked. This is by arguing that some or all the parties that signed the Loan Agreement lacked mental capacity.

To sign a Deed, or enter into any legal agreement, you need to be of sound mind.

To reduce the chance of someone arguing that you lacked mental capacity get a doctor's note. This is to say you are of sound mind. And keep all such doctor notes with the Loan Agreement.

Where the Lender or Borrower is a company, then the director(s) needs to get a doctor's certificate. This is to confirm that the director is of sound mind.

To put the matter beyond doubt every human that signs the Loan Agreement needs to have a doctor's certificate to say they are of sound mind.

The doctor's note should be obtained on or around the date that the Loan Agreement is signed.

**Are the Lenders or Borrowers tricked or coerced into signing the Loan Agreement?**

Another way to render the Loan Agreement of no effect is to argue that one of the parties did not sign the Deed freely. There is no free will.

The person making the attack argues duress, undue influence or elder abuse. Duress is when you are forced to do something against your own will.

The signing of a Loan Agreement should be treated to the same high standard that is given to the signing of a Will. For example, the people potentially benefiting should not be anywhere near the other parties when they sign the Loan Agreement.

The witnesses should be people of substance and independent. They must never be family members or related to people involved in the loan.

### **Related party 'at call' loans provided to your company Debt/Equity Rules**

We are not providing any commercial or tax advice. But we may this general comment:

If you hand money to a company, it is either a loan (good) or an injection of equity (generally bad). If you built this Loan Agreement for the Debt/Equity rules, only then is the following information relevant to you.

#### **Background**

The Debt/Equity tax rules started 1 July 2001. They bias financial interests in companies as equity, rather than debt.

Often your accountant will argue that it is generally better to treat money you put into your company as a 'loan' rather than an injection of 'equity'. If your loan is classified as equity rather than debt then:

1. any interest payable on the loan is not tax deductible (but potentially frankable as a dividend).
2. any repayment of the loan by your company is often treated as the payment of a dividend.
3. the thin capitalisation rules that apply to disallow debt deductions may also be impacted by the debt/equity classification of 'at call' loans.

In other words, if the loan is deemed to be an injection of equity it may be expensive and hard to get the money out of the company.

#### **What are 'related party at-call' loans?**

A 'related party at-call' loan is a financing arrangement. This is between a company and someone related or connected to your company. For example, the lender maybe you, your spouse, children, shareholder or a Family Trust. 'At call' means that the lender can demand back the money at any time. (In contrast a loan may be for a fixed period. E.g. you will pay me back the money in 5 years' time.)

Let us say you make a loan to your company – but there is nothing in writing. There is no written loan agreement. In your minutes and in your accounts, you classified the loan as a related party 'at-call' loan. But sadly, this is not good enough.

#### **Debt / Equity rules for 'at-call' loans**

Consider this 'at call' loan:

Keith owns shares in his company. Keith lends \$100,000 to his company. He forgets to get a loan agreement. Sadly:



1. there is no written loan agreement
2. there is, therefore, nothing documenting the loan
3. there is no fixed repayment term for the loan

The arrangement between Keith and his company is that the loan is repaid when Keith demands repayment – 'at call'.

Sadly, under the Debt/Equity rules (subject to the *de minimis* exception) the ATO treats the loan as an injection of equity; and not as a loan.

Therefore it may be the case, subject to your accountant's views as to your individual circumstances, of which Legal Consolidated is not privy to:

1. any interest payable on the loan is not deductible to Keith's company.
2. where the loan is subsequently repaid to Keith, the repayment is often classified as a non-share dividend paid from his company. Therefore, Keith is assessed on the repayment of the loan.

**\$20 million turnover exception (*de minimis* exception)**

The above rules do not apply to companies with an annual turnover of less than \$20 million (excluding GST). However, it is not worth the risk. Your accountant, for proper accounting standards and business practice, requires the attached Loan Agreement. This puts the matter beyond doubt.

Further, if in any year your company does achieve a \$20m plus turnover all loans are turned into equity, at that time.

Again, the above information is of a general nature. Legal Consolidated does not know your individual circumstances or what you are using this Loan Agreement for. Your accountant knows your individual circumstances. Speak to your accountant before you sign the Loan Agreement.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

*This is a sample of the document you are building on our law firm's website.*

*Depending how you answer the questions the document and our letter may be different.*

*We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.*

*Dr Brett Davies Partner Legal  
Consolidated Barristers &  
Solicitors*

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## **Loan Agreement**

Melissa Thomas  
**(Lender)**

Joseph Thomas  
**(Borrower)**

## Loan Agreement

This Loan Agreement is between:

Melissa Thomas  
2 Park Avenue, Coffs Harbour NSW 2450, Australia

(Lender)

and

Joseph Thomas  
3/250 Queensberry Street, Carlton VIC 3053, Australia

(Borrower)

Apex Digital Pty Ltd ACN 732 402 377  
12 Elizabeth Street, Toowong QLD 4066, Australia

(Guarantor)

The parties agree as follows:

### Background

- a) The Borrower wishes to borrow money from the Lender
- b) The Lender is prepared to lend the money to the Borrower
- c) The Borrower allows encumbrances, mortgages and other security interests over the Borrower's assets and real estate, at any time

## 1 Dictionary

These words mean:

- 1.1 **Amount Lent** as lent from time to time plus any further amounts lent from time to time
- 1.2 **Borrower** also includes executors, administrators, successors and assignees of the Borrower
- 1.3 **Consideration** is the Lender providing the Amount Lent and the Borrower paying the Repayment Amount
- 1.4 **Date of the Loan** the date that the Consideration was advanced on or the date the Loan Agreement was signed, whichever is the earlier or as agreed by an exchange of emails
- 1.5 **Instalment Amount** the Amount Lent payable as an instalment as agreed by the parties from time to time or on the Term of the Loan
- 1.6 **Instalment Dates** as advised by the Lender from time to time
- 1.7 **Interest or Interest Rate** as demanded by the Lender from time to time
- 1.8 **Lender** includes executors, administrators, personal representatives, successors and assignees of the Lender
- 1.9 **Loan Agreement** this loan agreement
- 1.10 **Mortgage** includes any security documents including a mortgage that makes reference to this Loan Agreement
- 1.11 **Repayment Amount** includes:

Build the legal document at <https://www.legalconsolidated.com.au/loan-agreement-intro/> – telephone us. We can help you answer the questions.

1. On our law firm's website, you:
  - Retain legal professional privilege
2. Receive legal advice
3. Get a signed letter on our law firm's letterhead with the legal document
4. We take responsibility for the legal document

Only a law firm provides the above. We also offer a 100% money back guarantee on every document you build.

Adj Professor, Dr Brett Davies - Partner



1.11.1 Amount Lent

1.11.2 Interest

1.11.3 all other moneys, costs, charges, damages and expenses owing to the Lender under this Loan Agreement and includes:

- (a) all sums advanced by the Lender to protect any property
- (b) all amounts expended by the Lender to cure or attempt to cure the Borrower's failure in its performance of the Borrower's obligations and covenants in this Loan Agreement
- (c) all other moneys, interest, costs, charges, damages and expenses as owing to the Lender for the time being under this Loan Agreement
- (d) any further advances or credit accommodation
- (e) where there is a Mortgage then this definition is increased so that it includes Secured Moneys as defined by that Mortgage

1.12 Security as that term is defined in the Loan Agreement

1.13 Term of the Loan payable on demand as demanded by the Lender plus any extension as stated by the Lender

### Interpretation

1.14 If the Borrower comprises two or more persons, the terms on their part bind and are observed and performed by them jointly and each of them severally, and may be enforced against any one or any two or more of them. Each of them are liable for 100% of the Repayment Amount.

1.15 Headings are for convenience only and do not affect interpretation.

1.16 A reference to a 'person' includes a reference to: an individual; body corporate (wherever incorporated); body politic; association of persons (whether incorporated or unincorporated) partnership; trust; person in the capacity as a trustee; person in the capacity as the personal representative of a deceased estate and superannuation fund.

1.17 The plural includes the singular and vice versa and a reference to a gender includes every other gender.

1.18 A reference to this Loan Agreement includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time.

1.19 A reference to any party to this Loan Agreement includes successors, assigns and assignees.

1.20 A reference to laws in this Loan Agreement refers to those laws as amended or replaced as consistent with the overall purpose of this Loan Agreement and shall not lead to an anomaly.

1.21 A reference to any statute, subordinate legislation or instrument in force includes any statutes, subordinate legislation or instruments amending, modifying, re-writing, re-enacting or replacing them and a reference to a statute includes subordinate legislation and instruments made under that statute.

## 2 Due diligence by the Lender before the mortgage is made

2.1 The Lender lends the Amount Lent to the Borrower.

2.2 The Borrower pays the Repayment Amount to the Lender pursuant to the terms of this Loan Agreement.

*Sometimes you might not want to set a specific date in the agreement. You can leave it as the default answer; "payable on demand as demanded by the Lender".*

*Or you can put in an actual date, or you can add the instalment dates or time periods.*

2.3 The parties acknowledge that the law firm that prepared this Loan Agreement only acts for the Lender in their personal capacity. And where there is more than one Lender then the law firm only acts for the first Lender as appearing in this Loan Agreement. And the law firm only acts for that Lender in their personal capacity. And in no other capacity such as a trustee. As set out in the cover letter to the Lender that accompanied this Loan Agreement, the Lender must seek its own advice and due diligence, legal, tax and otherwise, and also on the credit worthiness and ability for the Borrower to make repayments and perform its obligations under the Loan Agreement. Full identity checks of the Borrower should be carried out. This should be done before any moneys are lent to the Borrower.

The Lender should seek such advice and perform such checks that are not associated or related to the Borrower.

2.4 The law firm that prepared this Loan Agreement has provided the Lender with and registration advice of any securities and the nature of the money. The Lender is advised to speak to their financial planner before they sign the Loan Agreement.

2.5 The law firm has performed no due diligence or enquiries and the Lender is at liberty to sign this Loan Agreement or lend or borrow the money.

2.6 The law firm has provided no advice as to whether the loan is a prudent purpose or appropriate for the Lender or any other person.

### 3 What Happens if an Instalment is not Paid?

Irrespective of anything in this Loan Agreement, if the Lender is in default of the Loan Agreement, the Lender has 30 days after the relevant Instalment Date (whether formally or informally) to advise the Borrower is in default of the Loan Agreement.

### 4 Is there Security?

4.1 For the Consideration, the Lender is authorised to sign all documents unconditionally and unequivocally, to sign all documents required to register all forms of security and other interests in and over the Borrower's assets and rights, of any description. The Borrower, unconditionally and unequivocally, consents that such encumbrances can be exercised and carried out by the Lender at any time and from time to time, including:

- 4.1.1 land, real estate and other interests in property the Borrower owns or controls from time to time (this includes the right to lodge equitable mortgages, mortgages, caveats and other encumbrances of any nature whatsoever); and
- 4.1.2 other assets, fixtures, choses in action and chattels owned or controlled by the Borrower, including by way of debentures, fixed and floating charges, mortgages, equitable mortgages, caveat, Personal Property Securities Register and share capital securities and mortgages.

(collectively **Security**)

This Security is also for the repayment of the Repayment Amount and all interest accrued on the Repayment Amount and costs incurred by the Lender because of the Borrower failing to observe and perform such promises under this Loan Agreement. Any Security is

*The Loan Agreement addresses what the rights are of the parties, including:*

1. Retain legal professional privilege
2. Receive legal advice
3. Get a signed letter on our law firm's letterhead with the legal document
4. We take responsibility for the legal document
5. Mortgages, debentures, charges and PPSR registrations.

subject to the requirements of the law and is read down if it breaches any laws including the *Superannuation Industry (Supervision) Act 1993*.

- 4.2 The security created by this Loan Agreement has priority over every interest except a prior encumbrance.
- 4.3 The Lender must seek its own legal advice on the Security and the value or worthwhileness of any such Security and the registration thereto. The lawyer that prepared the Loan Agreement has given no advice, support or other information in respect to any aspects of the Security or protection of the Loan Agreement.

#### **Irrevocable Power of Attorney**

- 4.4 For the Consideration, the Borrower provides an irrevocable power of attorney to sign all documents expedient or necessary to deal with and otherwise register any Security or security document or documents.
- 4.5 For the Consideration, the Borrower (and where more than one jointly and severally), irrevocably appoints the Lender (and where more than one jointly and severally) as the Borrower's true and lawful attorney to:
  - 4.5.1 complete any blanks left in the Loan Agreement;
  - 4.5.2 do, execute and perform any other deed, agreement, matter, act or thing which, in the Lender's opinion, ought to be done, executed or performed to perfect or to perform the transactions and any Security contemplated by the Loan Agreement; and
  - 4.5.3 sign all documents expedient or necessary to deal with and otherwise register any Security or security document or documents
- 4.6 The Borrower declares that:
  - 4.6.1 this irrevocable power of attorney is given for valuable consideration and is irrevocable without the Lender's prior written consent
  - 4.6.2 the powers and authorities given under this irrevocable power of attorney remain in full force and effect until their revocation by written notice to the Borrower, given with the Lender's prior written consent
  - 4.6.3 the Borrower ratifies and confirms whatever the Lender lawfully does, or causes to be done, under this irrevocable power of attorney
  - 4.6.4 the Borrower indemnifies and keeps the Lender indemnified against all claims, demands, costs, damages, losses and expenses, howsoever arising, consequent upon the exercise of all or any of the powers and authorities contained in this irrevocable power of attorney

## **5 What other Costs and Charges Does the Borrower Pay?**

- 5.1 The Borrower pays to the Lender all the Lender's costs and expenses:
  - 5.1.1 the instructions for, and the preparing, executing, transmitting (if any) and registering of, this Loan Agreement and any Security or security document or documents;
  - 5.1.2 any exercise or attempted exercise of the Lender's powers and authorities;
  - 5.1.3 any breach of the Borrower's promises under this Loan Agreement.

*If you don't know the amount that you are lending, you can leave it as the default answer; "as lent from time to time". This gives you some wiggle room.*



- 5.2 The Borrower pays the Interest Rate to the Lender on all outstanding costs and expenses. The Lender calculates this from the date of demand for payment.
- 5.3 The Borrower pays all duties, stamp duty, registration fee, due diligence fees, ongoing registration fees and replacement registration fees payable for any transaction required and all filing and registration fees regarding this Loan Agreement, and any discharge and costs relating to the recovery of all or any part of the Repayment Amount.

## 6 Where the Borrower is acting as a Trustee

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- 6.1 When the Borrower is acting in the capacity of trustee, then the Borrower has the power in the capacity as trustee to:
  - 6.1.1 borrow and raise money from any person, on a full or non-recourse basis, with or without security, mortgage or charge, including via an overdraft
  - 6.1.2 provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations
  - 6.1.3 mortgage, lien, pledge, charge, guarantee or otherwise provide the trust asset for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the trust or not
  - 6.1.4 provide the Security
  - 6.1.5 give and execute any mortgage, charge or other security over all or any part or parts of the assets of the trust fund as the Lender wishes, to secure the payment or the performance of any contract obligation under or in connection with any transaction including this Loan Agreement
- 6.2 The Borrower further warrants that:
  - 6.2.1 the terms of the trust do not restrict the right of a Lender to have recourse to the assets of the trust to satisfy any liability to the Lender incurred by the Borrower as trustee.
  - 6.2.2 any trust document authorises the Borrower (and while a company, its directors) to enter into transactions despite any conflict of interest and duty that may arise on the part of the Borrower as trustee.
  - 6.2.3 notwithstanding anything to the contrary, the Borrower's relationship (legal or otherwise) irrespective of whether it is a personal interest, with any person, including related parties (whether the Borrower is a sole trustee) to do all things in such manner as may be (favourable, unfavourable or otherwise), whether they are or are not, as the Borrower thinks fit.
  - 6.2.4 the terms of the Loan Agreement do not restrict the Borrower from being fully indemnified out of the assets of the trust to satisfy any liability incurred by the Borrower arising out of any transaction under or in connection with the Loan Agreement.
- 6.3 The Borrower:
  - 6.3.1 is empowered to open and operate bank accounts
  - 6.3.2 is empowered to enter into contracts personally with the trust

*The lender may be a human or a company. The Borrower can be a human or a company.*

*This loan agreement can be used for intercompany loans also – from one company to a related company.*

6.3.3 irrespective of the above the Borrower, whether acting as trustee or not, is always personally liable for the obligations, debts and the Amount Lent under this Loan Agreement

## 7 What happens if a Transaction is void?

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If any claim is upheld, conceded or compromised that any transaction affecting in any way the Repayment Amount or the observance or performance of any of the promises is void or voidable then the Lender becomes entitled to the same rights for the Repayment Amount or the observance of the other terms of the Loan Agreement if that transaction had not taken place.

Build the Loan Agreement  
here:

## 8 What are the other Terms of the Loan Agreement?

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<https://www.legalconsolidated.com.au/loan-agreement-intro/>

### 8.1 Continuing Security

This Loan Agreement is a continuing security until satisfaction of all terms of the Loan Agreement. This is notwithstanding any settlement of account or intervening payment.

### 8.2 Statutory Powers

The powers given under any statute (except to the extent inconsistent with the terms in this Loan Agreement) are in addition to the powers given under this Loan Agreement. The Lender may exercise such powers when the Lender becomes entitled to demand payment of any part of the Repayment Amount.

### 8.3 Not to Prejudice Other Securities

This Loan Agreement does not extinguish, merge, prejudice or affect any other security that the Lender may at any time hold for the Repayment Amount.

### 8.4 Where the Borrower is a Company

Where the Borrower is a company all current and future directors agree to be bound by this Loan Agreement jointly and severally as though they were the Borrower.

### 8.5 Notice Demand or Consent

8.5.1 any communication under this Loan Agreement is in writing and signed by the party giving it or via email. Except as otherwise provided the communication may be delivered or sent by registered post or via email.

8.5.2 communications by post are deemed received 48 hours after posting and immediately if sent by email.

### 8.6 Power to Remedy Default

If the Borrower defaults under this Loan Agreement then the Lender may do such things and pay all such moneys as in the absolute opinion of the Lender are desirable to secure the faithful performance of every promise in this Loan Agreement. This is to protect the Lender against the risk of loss or damage of such default by the Borrower. All moneys and payments made by the Lender under this clause are repayable by the Borrower to the Lender upon demand. Until so repaid the money is deemed part of the Repayment Amount and bears Interest as provided under the Loan Agreement.

### 8.7 Liability of Lender

The Lender is not answerable or accountable for any involuntary losses that may happen in the exercise of any powers given under this Loan Agreement or any statute or law.

### 8.8 Third Parties

Where the Lender (or attorney) exercises any of the powers, given under this Loan Agreement or by statute, no purchaser or other person dealing with the Lender is concerned to inquire whether the Lender has authority or correctly exercised the powers. Such exercise of the power is unimpeachable.

### 8.9 Effect of Waiver

No consent or waiver by the Lender under this Agreement releases the Borrower from any part of this Loan Agreement. The Lender accepting any interest payments after the Borrower's default does not prejudice the Lender of any rights under this Loan Agreement.

### 8.10 Certificate by Lender States How Much is Owing

A certificate signed by the Lender (or by the Lender's solicitors, attorneys or officers) as to the amount of the Repayment Amount and Interest and any other act is prima facie evidence of the facts.

### 8.11 No Merger

Notwithstanding any judgment that the Lender may recover against the Lender holds such judgment collaterally with this Loan Agreement for the the Repayment Amount with interest and this Loan Agreement does not judgment.

*Because of the freedom to determine when repayments are made, it is also possible for this loan agreement to be used as an "at-call" loan, where it is payable on demand if that is what the Lender chooses.*

### 8.12 Proper Law

This agreement is governed and construed according to the laws of the in which the Lender resides in, as evidenced by the Lender's address in Agreement. Each party irrevocably submits unconditionally to that jurisdiction courts competent to hear appeals for any legal action, suit or proceeding Loan Agreement.

### 8.13 Effect of Signing

This Loan Agreement is binding upon each person who has signed it no that:

- 8.13.1 another party has failed to sign it;
- 8.13.2 part of the Loan Agreement is avoidable or unenforceable;
- 8.13.3 the whole or part of the Loan Agreement is avoidable or unenforceable against another party.

### 8.14 Severability

If any part of this Loan Agreement becomes void or unenforceable then only that part is severed from this Loan Agreement. All parts that are not void remain in full force and remain unaffected by the severance.



#### 8.15 Changing the Instalment Amount

The Instalment Amount may be varied from time to time by agreements between the parties evidenced by an exchange of emails or letters.

#### 8.16 Changing the Instalment Dates

The Instalment Dates may be varied from time to time by agreements between the parties evidenced by an exchange of emails or letters.

#### 8.17 Changing the Interest Rate

Unless stated otherwise, the Interest payable and Interest Rate may be varied from time to time by agreement between the parties evidenced by an exchange of emails or letters.

#### 8.18 Allocating the Repayment Amount

The monies provided by the Borrower for the Repayment Amount are allocated at the discretion of the Lender. The Lender sees fit from time to time to either the repayment of capital, Interest, or both, in any amount, whether currently payable or not.

#### 8.19 Where there is more than one Lender

Unless there are minutes signed by all the Lenders to the contrary, the Amount Lent is provided equally by each of the Lenders.

*With your interest, you have a few options too. You can charge Nil, or leave it open to be decided in writing later ('as demanded from the lender from time to time') or a flat rate or varying rate.*

## 9 Guarantee

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In consideration of and to induce the Lender to enter in to the Loan Agreement, the Guarantor provides this guarantee (**Guarantee**):

- 9.1 unconditionally and absolutely guarantees to the Lender, the full and prompt payment and performance by the Borrower of all the Borrower's obligations under and pursuant to the Loan Agreement. This includes paying the Repayment Amount. It further includes the full and prompt payment of any and all costs and expenses of and incidental to the enforcement of this Guarantee, including, without limitation, reasonable lawyer and accounting fees.
- 9.2 agrees that the Lender, may from time to time, without notice to the Guarantor, which notice is waived by the Guarantor, extend, waive, renew or compromise the Repayment Amount, in whole or in part. This is without releasing, extinguishing or affecting in any manner whatsoever the liability of the Guarantor. The Guarantor consents to the above acts.
- 9.3 agrees that the Guarantee remains in full force and effect and is binding upon the Guarantor until the terms of the Loan Agreement are performed in full plus the Repayment Amount is paid in full.
- 9.4 agrees that so long as any portion of the Repayment Amount is due and owing or to become due and owing by the Borrower to the Lender, the Guarantor must not (without the prior written consent of the Lender) collect or seek to collect from the Borrower the claim, if any, by subrogation or otherwise, acquired by the Guarantor or through payment of any of the Repayment Amount.
- 9.5 agrees that the Guarantor will not seek to recover any monies from the Borrower until the terms of the Loan Agreement are performed in full plus the Repayment Amount is paid in full (unless the Lender has given its written prior permission).

- 9.6 agrees that the possession of the Guarantee by the Lender is conclusive evidence of due execution and delivery by the Guarantor.
- 9.7 agrees that the Guarantee is binding upon the legal representatives, successors and assigns of the Guarantor, and inures to the benefit of the Lender and its successors, assigns and legal representatives.
- 9.8 agrees that the Guarantor may be joined in any action or proceeding against the Borrower under this Loan Agreement. Further, recovery may be had against the Guarantor in any such action or proceeding or in any independent action or proceeding against the Guarantor. This is if the Borrower fails to duly and punctually pay and perform any of the obligations under the Loan Agreement is without any requirement that the Lender first assert, prosecute or exhaust any remedy or claim against the Borrower.
- 9.9 agrees that the Lender may start an action or proceeding against the Guarantor without requiring or joining the Borrower to such an action.
- 9.10 agrees that this Guarantee is deemed a contract made under and pursuant to the laws in the State in which the Lender is situated, as evidenced by the Lender's address in the Loan Agreement. Where more than one Lender, then the Guarantor is governed by and construed under the laws of the State in which the Lender's address and is governed by and construed under the laws of the State in which the Lender's address is located. Further, wherever possible, each provision of this Guarantee is interpreted in such manner as to be effective and valid under applicable law. But if any provision of this Guarantee is prohibited by or invalid under the applicable law, such provision is ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Guarantee.
- 9.11 agrees that no failure on the part of Lender to exercise, and no delay in exercising, any right or remedy operates as or constitutes a waiver. Nor does any single or partial exercise of any right or remedy preclude any other or further exercise or the exercise of any other right or remedy granted or by any related document or by law.
- 9.12 agrees that where there is more than one Guarantor, they are all liable jointly and severally. Each Guarantor is liable for 100% of the Repayment Amount.

The Guarantor agrees that:

- 9.13 the Guarantor is not presently insolvent or bankrupt and will not be rendered insolvent or bankrupt by virtue of the execution and delivery of this Guarantee;
- 9.14 the Guarantor has not executed or delivered this Guarantee with actual intent to hinder, delay or defraud the Guarantor's or Lender's creditors; and
- 9.15 that the Lender has entered into the Loan Agreement in reliance upon this Guarantee.

*If you don't know the amount that you are lending, you can leave it as the default answer; "as lent from time to time". This gives you some wiggle room.*

**SIGNED as a Deed on the ..... day of ..... 20 .....**

**SIGNED, SEALED AND DELIVERED by  
Melissa Thomas**

Lender:

\_\_\_\_\_  
**Melissa Thomas**

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

**SIGNED, SEALED AND DELIVERED by  
Joseph Thomas**

The Borrower acknowledges the warning to have this Loan Agreement explained by an independent professional advisor and by signing below declares and warrants to the Lender an understanding of the nature of this Loan Agreement and the financial nature of the loan.

Borrower:

\_\_\_\_\_  
**Jose**

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

*If the Lender wishes,  
the Lender can add  
some additional  
people to guarantee  
the repayment of the  
loan.*

EXECUTED for and on behalf of

**Apex Digital Pty Ltd**

**ACN 732 402 377**

Guarantor, by authority of its Directors in  
accordance with section 127

*Corporations Act 2001 (Cth)*

The Guarantor acknowledges the warning to have this Loan Agreement explained by an independent lawyer. The Guarantor by signing below declares and warrants to the Lender an understanding of the nature of this Loan Agreement and the financial nature of the loan.

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Signature of Director or Secretary

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Signature of Director (if a 2<sup>nd</sup>)

*You can build this document here:*

[https://www.legalconsolidated.com.au/loan  
-agreement-intro/](https://www.legalconsolidated.com.au/loan-agreement-intro/)