

MASTER PARTICIPATION AGREEMENT

Dated

31 May 2017

**GOOD SHEPHERD MICROFINANCE
ABN 36 151 124 408**

Good Shepherd Microfinance

NILS Provider

Participant

TABLE OF CONTENTS

1	INTERPRETATION	2
2	APPOINTMENT	4
3	TERM OF THE AGREEMENT	4
4	LICENCE.....	5
5	COMPLIANCE WITH SCHEME.....	5
6	REPRESENTATIONS BY THE PARTICIPANT	6
7	REPORTING OBLIGATIONS	6
8	INTELLECTUAL PROPERTY.....	7
9	INDEMNITIES	7
10	SHARED INFRASTRUCTURE	7
11	COMPLAINT HANDLING	8
12	DISPUTES	8
13	NOTICES	9
14	MISCELLANEOUS	10
15	ASSIGNMENT AND SUBCONTRACTING.....	10
16	FORCE MAJEURE	10
17	ENTIRE UNDERSTANDING.....	11

MASTER PARTICIPATION AGREEMENT

DATED 31 May 2017

BETWEEN

GOOD SHEPHERD MICROFINANCE ABN 36 151 124 408 of Level 11, 350 Queen Street,
Melbourne, Victoria 3000
(Good Shepherd Microfinance)

AND

NILS PROVIDER

(Participant)

BACKGROUND

- A. Good Shepherd Microfinance is a world leader in financial inclusion products, services and advisory services. Its purpose is to enable economic wellbeing for people on low incomes, especially women and girls. This approach leaves clients feeling valued and in control of their finances. We offer fair and affordable financial programs. We work collaboratively with corporate, government and community sectors to create people-centred programs that enable clients to realise their own economic wellbeing.
- B. The Participant has agreed to participate in some or all of the programs as specified in a Service Agreement/s.
- C. Good Shepherd Microfinance and the Participant enter into this Agreement to agree the programs which the Participant will provide and record their respective rights, obligations and responsibilities in relation to those programs.

AGREEMENT

1 INTERPRETATION

1.1 Definitions

In this Agreement:

- 1.1.1 “**Agreement**” means this document, including each Service Agreement as they stand amended from time to time.
- 1.1.2 “**APP**” means the Australian Privacy Principles as referred to in the Privacy Act.
- 1.1.3 “**Borrower**” means a person who has successfully applied and been approved for a Loan.
- 1.1.4 “**Business Days**” means a day, other than a Saturday, Sunday or public holiday, on which banks are open for general banking business in both Melbourne and the capital city of the state or territory where the Participant is located.
- 1.1.5 “**Confidential Information**” means any information that Good Shepherd Microfinance makes available by any means to the Participant and includes all information relating to or developed in connection with:
 - (a) the business, technology or other affairs of Good Shepherd Microfinance or a Related Body Corporate of it;

- (b) a Program; and
 - (c) the Intellectual Property Rights of Good Shepherd Microfinance.
- 1.1.6 “**Client**” means a person who accesses or enquires about any product and/or service offered by the Participant including, but not limited to, Borrowers.
- 1.1.7 “**Corporations Act**” means the *Corporations Act 2001* (Cth).
- 1.1.8 “**Dispute**” has the meaning given to it in clause 12.1
- 1.1.9 “**Funding**” means any operational funding provided to the Participant by Good Shepherd Microfinance or facilitated by Good Shepherd Microfinance in accordance with a Funding Agreement.
- 1.1.10 “**Government Agency**” means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity (whether national or local).
- 1.1.11 “**Handbook**” means the Good Shepherd Microfinance standard procedures and product features (including loan purposes, loan amount, eligibility criteria).
- 1.1.12 “**Intellectual Property Rights**” means all intellectual property rights, whether capable of registration or otherwise whether registered or otherwise, including all copyright, trademark rights, patent rights, design rights, trade secrets, business names, programs, proposals, templates, processes, research, procedures and manuals.
- 1.1.13 “**Licensed IP**” means the Intellectual Property Rights of Good Shepherd Microfinance which the Participant is permitted to use under a Service Agreement.
- 1.1.14 “**Principles**” means the aims, values and principles of the Scheme, including those contained in the Service Agreement/s attached to this document as amended or updated from time to time by Good Shepherd Microfinance.
- 1.1.15 “**Privacy Act**” means that *Privacy Act 1988*.
- 1.1.16 “**Programs**” means the NILS No Interest Loan Scheme and/or other programs provided or arranged by Good Shepherd Microfinance.
- 1.1.17 “**Related Body Corporate**” has the meaning given to it in the Corporations Act.
- 1.1.18 “**Relevant Law**” means any:
- (a) statute (including the APP), ordinance, code or other law including regulations and other instruments under them; and
 - (b) code of practice, guidelines or standards issued by relevant regulators or industry bodies, whether or not having the force of law,
- applicable to either party, this Agreement, the Confidential Information and any other obligations to be performed under this Agreement, including any relevant consumer credit, trade practices, fair trading, privacy and financial services legislation in Australia.
- 1.1.19 “**Service Agreement**” means each agreement attached to this document and any other agreement which the parties may agree in writing will be a Service Agreement.
- 1.1.20 “**Shared Infrastructure**” means the technology provided by Good Shepherd Microfinance to run the Programs.

1.1.21 “**Trade Mark**” means such trade marks as specified in a Service Agreement, and such other trade marks as Good Shepherd Microfinance may notify in writing to the Participant from time to time.

1.1.22 Construction

Unless expressed to the contrary:

1.1.23 words importing the singular include the plural and vice versa;

1.1.24 if a word or phrase is defined, cognate words and phrases have corresponding definitions; and

1.1.25 a reference to:

- (a) a person includes a firm, incorporated or unincorporated association, corporation, a Government Agency or a statutory body or authority;
- (b) a person includes its legal personal representatives, successors and assigns;
- (c) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a right includes a benefit, remedy, discretion, authority or power;
- (e) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (f) provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
- (g) “\$” or “dollars” is a reference to the lawful currency of Australia; and
- (h) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties, and

1.1.26 headings do not affect the interpretation of this document.

2 APPOINTMENT

2.1 Good Shepherd Microfinance with effect from the appointment date appoints the Participant as the role as stipulated in a Service Agreement to this Agreement.

2.2 Good Shepherd Microfinance and the Participant must comply with each Service Agreement to this Agreement.

2.3 If there is any inconsistency between a Service Agreement and the balance of this Agreement, the Service Agreement will prevail to the extent of the inconsistency.

3 TERM OF THE AGREEMENT

3.1 This Agreement continues until it has come to an end in accordance with clauses 3.2 or 3.3.

3.2 Good Shepherd Microfinance can end this Agreement by giving the Participant one month notice. This Agreement will end when that notice is given or, if a termination date is specified in the notice, on the specified termination date.

3.3 The Participant can end this Agreement by giving Good Shepherd Microfinance one month's notice.

3.4 When this Agreement ends that does not affect the rights and obligations of a party which have

arisen before the termination.

- 3.5 The Service Agreement shall commence on the date of execution of the Service Agreement, if a commencement date is specified in the Service Agreement, on the specified commencement date.
- 3.6 The Service Agreement continues until it has come to an end in accordance with clause 3.7 or 3.8 or when this Agreement come to an end in accordance with clause 3.2 and 3.3.
- 3.7 Good Shepherd Microfinance can end individual Service Agreement/s by giving the Participant one month notice.
- 3.8 The Participant can end individual Service Agreement/s by giving Good Shepherd Microfinance one month's notice.

4 LICENCE

- 4.1 Good Shepherd Microfinance grants the Participant a non-exclusive, non-transferable licence to use the Licensed IP and the Confidential Information for a purpose specified in a Service Agreement from the appointment date as stipulated in a Service Agreement to this Agreement.
- 4.2 The licence referred to in clause 4.1 is effective for the duration of this Agreement.

5 COMPLIANCE WITH SCHEME

- 5.1 The Participant agrees to conduct itself in accordance with this Agreement.
- 5.2 In exercising its rights and fulfilling its obligations under this Agreement, the Participant must:
 - 5.2.1 comply with the terms of this Agreement;
 - 5.2.2 comply with all Relevant Laws;
 - 5.2.3 ensure that all personnel who perform any task on behalf of the Participant in relation to a Program or represent the Participant in relation to a Program hold the qualifications, undertake a police check and have the training as specified by Good Shepherd Microfinance or, in the absence of that specification, as is appropriate for the tasks which the person will perform;
 - 5.2.4 comply with the requirements of Good Shepherd Microfinance in relation to each program in which the Participant is to Participate;
 - 5.2.5 contact Good Shepherd Microfinance before approaching or contacting any Government Agency in respect of a Program and advise Good Shepherd Microfinance the reasons for contacting the Government Agency;
 - 5.2.6 act at all times in good faith and with all due care, skill and diligence;
 - 5.2.7 return to Good Shepherd Microfinance any Confidential Information on request by Good Shepherd Microfinance;
 - 5.2.8 comply and cooperate with any request by Good Shepherd Microfinance for an audit of all or any of the Participant's books and records (whether in hard copy or electronic form) relevant to a Program; and
 - 5.2.9 comply with all other reasonable requirements as may be advised from time to time by Good Shepherd Microfinance.
- 5.3 The Participant must not:

- 5.3.1 engage in any misleading or deceptive conduct or make any representation whatsoever to any third party in exercising its rights and fulfilling its obligations under this Agreement;
- 5.3.2 make any representation to or promote or sell or attempt to promote or sell any product provided by Good Shepherd Microfinance unless it is specified in a Service Agreement that the Participant may do so;
- 5.3.3 use Good Shepherd Microfinance's name or its trade marks, symbols or logos (save for the Licensed IP) or cause to be placed any advertisement alluding to Good Shepherd Microfinance or its products or permit to be made statements relating to Good Shepherd Microfinance for publication in any circulation, book, magazine, newspaper or any media (including social media) without the prior written consent of Good Shepherd Microfinance;
- 5.3.4 communicate with the media or make any representations to the media in relation to Good Shepherd Microfinance or its products (including any Program), without the prior consent of Good Shepherd Microfinance; or
- 5.3.5 represent itself to any third party that it is agent of Good Shepherd Microfinance.

6 REPRESENTATIONS BY THE PARTICIPANT

- 6.1 The Participant represents and warrants to Good Shepherd Microfinance that:
 - 6.1.1 if it is a corporation, it is duly incorporated under the laws of its place of incorporation and it is empowered to enter into this Agreement and to do all things that will be required by this Agreement;
 - 6.1.2 all things have been done as may be necessary to render this Agreement legally enforceable against it in accordance with its terms (subject to equitable principles and laws affecting creditors' rights generally) and fully valid and binding on it;
 - 6.1.3 all authorisations by any Government Agency that are required or will be required to be obtained by it in connection with the execution and delivery of, the performance of obligations under, or the validity and enforceability of, this Agreement have been obtained or effected and are fully operative and in full force and effect; and
- 6.2 The Participant must tell Good Shepherd Microfinance if any change to its legal entity and or senior officers occur.
- 6.3 The Participant must tell Good Shepherd Microfinance if anything occurs which means that the Participant could not truthfully repeat each of those representations and warranties.

7 REPORTING OBLIGATIONS

- 7.1 The Participant must maintain its books and records in accordance with the Relevant Laws. In particular the Participant must record all transactions to which it is a party concerning the Program it participates in in accordance with the Relevant Laws.
- 7.2 The Participant must provide a copy of its annual financial statements and insurance, if requested, to Good Shepherd Microfinance within a reasonable time.
- 7.3 The Participant must effect and maintain with an insurer of good financial standing insurance which must (at a minimum) include broad form public liability insurance for an amount of not less than \$10,000,000 for any one claim and professional indemnity insurance for an amount of not less than \$5,000,000 for any one claim.
- 7.4 The Participant must provide to Good Shepherd Microfinance a copy of the certificate of currency and policy schedule for the insurances on request if requested by Good Shepherd Microfinance within a reasonable time.

8 INTELLECTUAL PROPERTY

- 8.1** The Participant acknowledges and agrees that, except for the rights expressly provided for in this Agreement and any rights otherwise agreed upon between the Participant and Good Shepherd Microfinance, the Participant will not acquire any rights, title or interest in or to any Intellectual Property Rights (including in respect of the Licensed IP) of Good Shepherd Microfinance existing before the date of this Agreement or created during the term of this Agreement.
- 8.2** The Participant undertakes, at Good Shepherd Microfinance's request, to swear all oaths, make all declarations, execute all documents and do all other things necessary to vest any of Good Shepherd Microfinance's Intellectual Property Rights in Good Shepherd Microfinance, its assigns or successors in title. If for any reason, such Intellectual Property Rights are not capable of being transferred to or vested in the rightful owner, the Participant holds such Intellectual Property Rights on trust for Good Shepherd Microfinance.
- 8.3** Good Shepherd Microfinance acknowledges and agrees that, except for the rights expressly provided for in this Agreement and any rights otherwise agreed upon between the parties, Good Shepherd Microfinance will not acquire any right, title or interest in or to any Intellectual Property Rights of the Participant either existing before the date of this Agreement or created during the term of this Agreement.
- 8.4** Without limiting the generality of clause 8.1 and except for the rights expressly provided for in this Agreement in respect of the Licensed IP, the Participant must not, use or alter any trademark or business name of Good Shepherd Microfinance.

9 INDEMNITIES

- 9.1** The Participant indemnifies and must continue to indemnify Good Shepherd Microfinance and hold Good Shepherd Microfinance harmless from and against all damages, losses, claims, actions, liability, expenses and costs (including legal costs on a solicitor and client basis) which Good Shepherd Microfinance incurs as a result of or arising out of any negligent or wilful act (including misrepresentations) or omission of the Participant related to this Agreement.
- 9.2** Good Shepherd Microfinance indemnifies and must continue to indemnify the Participant against all damages, losses, claims, actions, liability, expenses and costs which the Participant incurs as a result of or arising out of any negligent or wilful act (including misrepresentations) of Good Shepherd Microfinance.
- 9.3** Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the party providing the indemnity and survives termination of this Agreement for whatever reason.

10 SHARED INFRASTRUCTURE

- 10.1** The Participant may access the Shared Infrastructure for a purpose specified in a Service Agreement. The information which is available through the Shared Infrastructure and the functions which can be carried out using the Shared Infrastructure will be determined by Good Shepherd Microfinance from time to time. It is the Participant's responsibility to obtain and maintain any equipment necessary to use the Shared Infrastructure. It is the Participant's responsibility to obtain and maintain any equipment (apart from the Shared Infrastructure) necessary to use the Shared Infrastructure.
- 10.2** It is the Participant's responsibility to maintain the accuracy and integrity of data input in the Shared Infrastructure.
- 10.3** Good Shepherd Microfinance can end, suspend or restrict, the Participant's use of the Shared Infrastructure at any time without giving the Participant notice.
- 10.4** Good Shepherd Microfinance may allow access to the Shared Infrastructure to any person supplying the identifier (log in) given to the Participant and the confidential character sequence

(password) given to the Participant or entered on the Shared Infrastructure. The Participant will determine who should have access to the Shared Infrastructure and the Shared Infrastructure and must ensure that individual user passwords provided by Good Shepherd Microfinance are changed the first time it is used. The Participant must also ensure that each log in and password are not misused; they are not disclosed to an unauthorised person; any record of the log in is kept separate from any record of the password; and any record of the log in and password is kept secure.

- 10.5** The Participant is responsible for and is bound by everything which is done using the Shared Infrastructure. The Participant must tell Good Shepherd Microfinance as soon as possible after the Participant becomes aware of the loss, theft or misuse of an individual's password and/or log in, or after the Participant suspects it has become known to an unauthorised person.

11 COMPLAINT HANDLING

- 11.1** Good Shepherd Microfinance has an internal dispute resolution system that covers complaints made by the Participant and any users of a Program. Good Shepherd Microfinance will respond to the complaints promptly and fairly. Information regarding the complaint handling process is available from Good Shepherd Microfinance.
- 11.2** The Participant must establish and maintain an internal dispute resolution system that covers complaints which a user of a Program has in relation to the Participant. The Participant must respond to those complaints promptly and fairly and provide information regarding the complaint handling process to anyone who may request it.
- 11.3** At Good Shepherd Microfinance's election it may investigate the complaint. The Participant is to co-operate with Good Shepherd Microfinance and in any investigation.

12 DISPUTES

- 12.1** Dispute Resolution
- A party must not start arbitration or court proceedings (except proceedings seeking injunctive, declaratory or interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause 13.
- 12.2** Notification of Dispute
- A party claiming that a Dispute has arisen must notify the other party, giving details of the Dispute (each party involved in the Dispute, is called a **Disputant**).
- 12.3** Resolution of Dispute
- During the 21 day period after a notice is given under clause 13.2 (or such longer period agreed in writing by the Disputants), each Disputant must each use their best efforts to resolve the Dispute.
- 12.4** Mediation
- If the Disputants are unable to resolve the Dispute within the period set out in clause 13.3, each Disputant agrees that the Dispute will be referred for mediation, at the request of any Disputant, to:
- 12.4.1 a mediator agreed on by the Disputants; or
- 12.4.2 if the Disputants are unable to agree on a mediator within 7 Business Days after the end of the period set out in clause 13.3, a mediator nominated by the current President of the Law Institute of Victoria or the President's nominee.
- 12.5** Role of Mediator
- The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.
- 12.6** Confidentiality

Any information or documents disclosed by a Disputant under this clause 13:

12.6.1 must be kept confidential; and

12.6.2 may not be used except to attempt to resolve the Dispute.

12.7 Costs

Each Disputant must bear its own costs of complying with this clause and the Disputants must bear equally the costs of any mediator engaged.

12.8 Termination of Dispute Resolution

After the period set out in clause 13.3, a Disputant that has complied with clauses 13.2, 13.3 and 13.4 may terminate the Dispute resolution process by giving notice to each other Disputant.

12.9 Performance

Unless prevented by the nature of the dispute, the Disputants will continue to perform this Agreement while attempts are made to resolve the dispute.

13 NOTICES

13.1 Notices

A notice, demand, certification, process or other communication relating to this Agreement is to be written in English and may be given by an agent of the sender.

13.2 Method of Service

In addition to any lawful means, a communication may be given by:

13.2.1 being personally served on a party;

13.2.2 being left at the party's current address for service;

13.2.3 being sent to the party's current address for service by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid air mail;

13.2.4 facsimile to the party's current number for service; or

13.2.5 by email to the party's nominated email address.

13.3 Particulars of Service

13.3.1 The particulars for service are initially:

Good Shepherd Microfinance:

Address: Level 11
350 Queen Street
MELBOURNE VIC 3000

Telephone: (03) 9495 9600

Fax: (03) 9495 9699

Email: info@gsmicrofinance.org.au

Attention: Chief Operating Officer

Participant

As specified in the Service Agreement

13.3.2 A party may from time to time change its particulars of service by notice to the other party.

13.4 Service

If a communication is given by:

13.4.1 post, it will be deemed received if posted within Australia to an Australian address 3 Business Days after posting and in any other case 7 Business Days after posting;

13.4.2 facsimile, and the sender's facsimile machine produces a transmission confirmation report indicating that the facsimile was sent to the addressee's facsimile, the report

will be prima facie evidence that the facsimile was received by the addressee at the time indicated on that report; or

13.4.3 email, it will be deemed received at the time shown on the delivery receipt stating that the email was received by the sender.

14 MISCELLANEOUS

14.1 Costs

14.1.1 Each party will pay its own legal costs in connection with the negotiation and execution of this Agreement and any consent, approval or non-exercise of rights, waiver or variation of the Agreement.

14.1.2 Unless otherwise specified in this Agreement, no amounts are payable by either party to the other under this Agreement.

14.2 Appointment

The licence granted under this Agreement in no way establishes or implies any relationship of agency, partnership or joint venturer between Good Shepherd Microfinance and the Participant. The Participant has no authority to bind Good Shepherd Microfinance or act on its behalf at any time, except as may be set out in this Agreement or as Good Shepherd Microfinance may specifically authorise in writing.

14.3 Amendment

This Agreement may only be varied or replaced by a document duly executed by both parties.

14.4 Waiver and Exercise of Rights

14.4.1 A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.

14.4.2 A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

14.5 Further Assurance

A party shall promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

14.6 Severability

The provisions of this Agreement are deemed to be severable and any invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions of this Agreement.

14.7 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of Victoria and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts which have jurisdiction to hear appeals from any of those courts.

15 ASSIGNMENT AND SUBCONTRACTING

15.1 No party shall assign any of its obligations or rights under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

15.2 The Participant may only sub-contract the performance of its obligations under this Agreement with the prior written approval of Good Shepherd Microfinance.

16 FORCE MAJEURE

If a party is totally or partially unable to fulfil one or more of its obligations under this Agreement as a result of acts or occurrences beyond the control of the party such as, but not limited to, actions, omissions or impositions by a Government Agency, fire, flood, earthquake or other natural disasters, acts of God, war,

revolution, strike or fuel shortages, the party involved shall be totally or partially relieved from fulfilling its obligations during the period of force majeure, provided that the party involved notifies the other party of the circumstances as soon as reasonably possible.

17 ENTIRE UNDERSTANDING

17.1 This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no party will be liable to any other party in respect of those matters.

17.2 No oral explanation or information provided by a party to the other party:

17.2.1 affects the meaning or interpretation of this Agreement; or

17.2.2 constitutes any collateral agreement, warranty or understanding between the parties.