



# Loan Terms and Conditions

**Effective 27 January 2016**

This document sets out the general terms and conditions that apply to your Loan and, together with your Loan Schedule and our Credit Fees and Charges Schedule (each as amended from time to time), form your Loan Agreement with us.

Please read these Loan Terms and Conditions carefully and keep them in a safe place.

## **Loan Products**

We have two loan products.

### ***Term Loans***

With a Term Loan, you draw down the loan once (on the Drawdown Date) and then you repay your Term Loan over the term by regular (usually equal) repayments of principal and interest. You can make additional repayments of your Term Loan and can repay your Term Loan in full at any time.

### ***Flexi Loans***

Flexi Loans operate like an overdraft. You can draw down and repay your Flexi Loan as often as you like as long as you stay within the Credit Limit of your Flexi Loan. As your Flexi Loan is like an overdraft, we can require you to repay your Flexi Loan at any time (whether you are in breach of your Loan Agreement or not) and we do not have to give you any reason for this. We can also reduce the Credit Limit on your Flexi Loan at any time, and you will need to make any payment required to bring the unpaid balance of your Flexi Loan within the reduced Credit Limit.

## **Loan Types**

We also have a number of different types of Term Loan and Flexi Loan as follows:

- Residential
- Welcome Home Loan (Term Loan only)
- Residential Investing
- Commercial
- Rural

Your Loan Schedule will set out what Loan product you have and the type of that Loan. You may have more than one Loan with us. For example, you may have more than one Term Loan and/or a Term Loan and a Flexi Loan.

## **Application of these Loan Terms and Conditions**

These Loan Terms and Conditions apply to every type of both Term and Flexi Loans.

## **General Terms and Conditions**

Your Loan and your Repayment Account are also subject to our General Terms and Conditions and any applicable Specific Terms and Conditions. Copies of these terms and conditions are available on our website ([sbsbank.co.nz](http://sbsbank.co.nz)) or free of charge on request.

## **Capitalised Terms appearing in these Loan Terms and Conditions**

Terms which are capitalised in these Loan Terms and Conditions have a specific meaning. The meaning of these terms is set out in clause 29 (unless the term is defined in your Loan Schedule).

### **Consumer Credit Contracts**

You will see that various provisions throughout your Loan Schedule and these Loan Terms and Conditions only apply if your Loan is a "consumer credit contract" for the purposes of the CCCFA.

The meaning of "consumer credit contract" is set out in section 11 of the CCCFA.

Generally your Loan will be a "consumer credit contract" where you are an individual and the Loan will be used by you solely or mainly for a personal purpose (for example, buying a residential home). If you are a company (or other incorporated entity or group of persons) or a trustee of a family trust, or the Loan will be used solely or mainly for business or investment purposes, then your Loan will not be a consumer credit contract.

The above summary of when your Loan will be a consumer credit contract is provided to assist you to determine what provisions in your Loan Schedule and these Loan Terms and Conditions will apply to your Loan. It does not constitute, and is not a substitute for, legal advice. If you are unsure whether your Loan is a consumer credit contract, we recommend that you obtain separate legal advice.

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## 1. Conditions that Apply Before You Can Draw Down Your Loan

Before we will make your Loan available to you:

- We must have received signed originals or copies of your Loan Agreement, any Security, any Guarantee and all other documents we require (including a certificate from your solicitor).
- You must have in place any insurance we have notified you or your solicitor that we require in respect of any Secured Property.
- You must satisfy any conditions noted or set out in your Loan Schedule or in any other correspondence from us to you or your solicitor, including in any Pre-Approval Letter.
- Any Guarantor who is providing us with a Guarantee of your Loan must have satisfied all of our conditions and requirements in relation to the Guarantee, including in relation to any property they are providing us with security over to support their Guarantee.
- We must be satisfied that nothing has occurred that, in our opinion, adversely affects:
  - Your financial position;
  - A Guarantor's financial position;
  - Your ability to meet your obligations under your Loan Agreement; or
  - A Guarantor's ability to meet their obligations under their Guarantee.
- We must be satisfied that nothing has occurred that adversely affects:
  - the value of any Security, Secured Property or property a Guarantor is providing us with security over; or
  - our ability to enforce the Security (including any Guarantee).

## 2. Drawdown

### Term Loan

You can only draw down your Term Loan in one amount and on one day. If you do not draw down the full amount of your Term Loan on the Drawdown Date, we can cancel any undrawn amount and you will not be able to draw down or borrow that amount. You cannot redraw any amounts that you repay against your Term Loan.

If you do not draw down your Term Loan within 3 months from the date of your Term Loan Schedule, we will have no obligation to allow you to draw down your Term Loan or any part of it. We may agree to extend this time period on your request.

### Flexi Loan

You can draw down your Flexi Loan at any time up to the Expiry Date and you can make any number of drawdowns under your Flexi Loan provided that the unpaid balance of your Flexi Loan does not (including as a result of any proposed or attempted drawdown), at any time, exceed the current Credit Limit of your Flexi Loan.

Any amounts that you repay on your Flexi Loan can be redrawn (again provided that such drawdown would not cause the unpaid balance of your Flexi Loan to exceed the current Credit Limit of your Flexi Loan).

### 3. Credit Limit

This clause only applies to Flexi Loans.

The Credit Limit (or initial Credit Limit) of your Flexi Loan is set out in your Loan Schedule.

#### Construction Flexi Loan

If your Flexi Loan is being used for, or to fund, a development or the construction of a property:

- The initial Credit Limit will increase from time to time as we allow you to make further drawdowns under your Flexi Loan (our requirements in relation to further drawdowns under your Flexi Loan will be set out in the 'Special Conditions' section of your Flexi Loan Schedule or will be notified by us).
- We can, at any time by notice to you, temporarily reduce the Credit Limit on your Flexi Loan. We do not have to provide you any reason for reducing the Credit Limit.

#### Reducing Flexi Loan

If you have requested a reducing Credit Limit, or we require that you have a reducing Credit Limit, the Credit Limit of your Flexi Loan will reduce in accordance with the table attached to your Flexi Loan Schedule for your Flexi Loan or as otherwise notified by us (this is referred to as a "**Reducing Flexi Loan**" in these Loan Terms and Conditions).

The amount of each reduction of the Credit Limit will generally be an amount equal to the amount of principal that would have been repayable during the relevant period if your Reducing Flexi Loan was a Term Loan:

- with a principal amount equal to the initial Credit Limit of your Reducing Flexi Loan or, where you request (or we require that you have) a Reducing Flexi Loan during the Term, the Credit Limit of your Flexi Loan at the time of your request (or when we advise you of our requirement); and
- repayable by equal instalments over the Term from the date your Flexi Loan is first available to be drawn down to the Expiry Date.

You can, at any time during the Term, request that your Flexi Loan is changed to a Reducing Flexi Loan. We will notify you of the amount of your regular reductions.

#### Changing your Credit Limit

You can ask us to reduce the Credit Limit of your Flexi Loan at any time. We will notify you once we have reduced your Credit Limit.

If you reduce the Credit Limit of your Reducing Flexi Loan we will notify you of the future regular reductions to the Credit Limit.

### **We can reduce your Credit Limit**

We may, at any time, by notice to you, reduce the Credit Limit on your Flexi Loan. We do not have to give you any reasons for reducing your Credit Limit. You must, immediately following any such reduction, make any payment required to bring the unpaid balance of your Flexi Loan within the reduced Credit Limit.

## **4. Your Right to Cancel**

If your Loan Agreement is a consumer credit contract, you are entitled to cancel your Loan for a short period of time after you receive your Loan Agreement.

### **How to Cancel**

To cancel your Loan, you must give us written notice that you intend to cancel your Loan by providing the notice to any of our branches or posting, faxing or emailing the notice to us (our details are set out at the top of the front page of your Loan Schedule) within 9 Business Days of the day you receive your Loan Agreement.

### **What you may have to pay if you cancel**

If you cancel your Loan, you will need to repay any advance that you received under your Loan Agreement. We can also charge you:

- the amount of any reasonable expenses we had to pay in connection with your Loan and its cancellation (including legal fees and fees for credit reports etc); and
- interest for the period from the day you received any advance under the Loan until the day you repay the advance.

## **5. Interest on Your Loan**

### **Term Loan**

You must pay us interest on your Term Loan at the interest rate applicable to your Term Loan from the Drawdown Date until you fully repay your Term Loan. See clause 6 if you are unsure of the interest rate applicable to your Term Loan.

Interest is calculated daily by multiplying the unpaid balance of your Term Loan at the end of each day by a daily interest rate. The daily interest rate is the applicable interest rate on that day divided by 365.

Interest is debited to your Term Loan on each date a regular repayment of your Term Loan is due. However, when you repay your Term Loan in full, interest is charged up to the day before you repay your Term Loan.

## **Flexi Loan**

You must pay us interest on the unpaid balance (if any) of your Flexi Loan at the interest rate applicable to your Flexi Loan from the Drawdown Date until the Expiry Date (or earlier termination or cancellation of your Flexi Loan in accordance with your Loan Agreement). See clause 6 if you are unsure of the interest rate applicable to your Flexi Loan.

Interest is calculated daily by multiplying the unpaid balance of your Flexi Loan at the end of each day by a daily interest rate. The daily interest rate is the applicable interest rate on that day divided by 365.

Interest is debited to your Flexi Loan Account on each monthly anniversary of the Drawdown Date or as agreed by us following a request from you. However, at the end of the Term or the earlier termination or cancellation of your Flexi Loan in accordance with your Loan Agreement, interest is charged up to the end of the Term or the day before your Flexi Loan is terminated or cancelled.

## **6. Interest Rates**

### **Floating Interest Rate**

Unless we have agreed to fix the interest rate under your Loan Agreement, you must pay us interest on your Loan at our current Floating Interest Rate plus or less any Margin applicable to your Loan.

You cannot fix the interest rate on any Flexi Loan you have.

### **Fixed Interest Rate**

You may request that the interest rate for your Term Loan be fixed for a certain period. If we agree to fix the interest rate for your Term Loan for a Fixed Rate Period, we may charge you an Interest Rate Fix Fee as set out in the Credit Fees and Charges Schedule.

The interest rate applicable for any Fixed Rate Period will (unless you have a Booked Fixed Rate and comply with the terms of any Booked Fixed Rate Confirmation) be our prevailing interest rate for that Fixed Rate Period on the start date of that Fixed Rate Period, or such other interest rate we advise you will apply prior to the start date of that Fixed Rate Period.

If during any Fixed Rate Period you request that the interest rate on your Term Loan is changed to a different Fixed Interest Rate or fixed for a different Fixed Rate Period or changed to a Floating Interest Rate, we may charge you an Early Repayment Charge.

At the end of any Fixed Rate Period, the interest rate shall automatically become our Floating Interest Rate (plus or less any Margin applicable to your Term Loan) unless you have requested (and we have agreed) to fix the interest rate on your Term Loan for a further Fixed Rate Period. We will notify you of any automatic change to the interest rate on your Term Loan.

### **Change to Floating Interest Rate**

We may change our Floating Interest Rate at any time. We will notify you of any change to our Floating Interest Rate before we make any change. A change to our Floating Interest Rate will only affect the amount of interest you must pay on your Loan if it happens during a Floating Rate Period.

#### *Term Loan*

If our Floating Interest Rate increases during a Floating Rate Period, the amount of your regular repayments will automatically increase to an amount so that you fully repay your Term Loan over the Term (unless you have previously asked us to fix your regular repayments at an amount higher than your increased regular payment amount).

If our Floating Interest Rate decreases during a Floating Rate Period, we will notify you of the amount of your regular repayments following such decrease. If you continue to make payments at the same level (as before the decrease in our Floating Interest Rate) you will pay off the Term Loan earlier than the Expiry Date.

#### *Flexi Loan*

If you have a Flexi Loan and our Floating Interest Rate increases, you may need to make additional payments to ensure that the unpaid balance of your Flexi Loan does not exceed your Credit Limit. If our Floating Interest Rate decreases, you can either continue making the same payments as before the decrease or reduce the amount of any payments you make.

### **Current Interest Rates**

You can get information about our current Floating Interest Rates and Fixed Interest Rates by contacting us via our website ([sbsbank.co.nz](http://sbsbank.co.nz)), calling us on 0800 SBS BANK (0800 727 2265) or from any of our branches.

### **Margin**

Except for any period we have agreed the Margin is set (as set out in your Loan Schedule or otherwise notified by us), we can, at any time, change any Margin applicable to your Loan, including cancelling any Margin, on giving you notice of such change. Your Loan Schedule will set out whether a Margin has been applied to your Loan.

## **7. Booked Fixed Rates**

For Residential Term Loans and Residential Investing Term Loans, we may allow you to have a Booked Fixed Rate on payment of the relevant booked fixed rate fee (the current amount of this fee is set out in our Credit Fees and Charges Schedule).

You will be able to fix the interest rate applicable to your Term Loan at the Booked Fixed Rate even if interest rates have moved between the date of your Booked Fixed Rate Confirmation and the date you fix the interest rate or draw down your Term Loan.

If you fix the interest rate on your Term Loan in accordance with the terms of any Booked Fixed Rate Confirmation, we will refund to you any fee you paid to book that fixed rate. If you decide not to fix the interest rate on your Term Loan in accordance with the terms of any Booked Fixed Rate

Confirmation (because, for example, interest rates have fallen by the time you draw down your Term Loan), or you cannot use your Booked Fixed Rate (for example, you draw down your Term Loan after the expiry of your Booked Fixed Rate), any fee you paid to book your Booked Fixed Rate will be non-refundable.

## **8. Repaying Your Loan**

### **Term Loan**

You must repay your Term Loan on the dates and in the amounts set out in your Term Loan Schedule. The unpaid balance of your Term Loan, including principal, interest, Credit Fees and Charges and costs, must be paid in one sum on the Expiry Date or the earlier termination or cancellation of your Term Loan in accordance with your Loan Agreement.

#### *Principal and Interest Repayments*

If your Term Loan Schedule provides for Principal and Interest Repayments, each regular repayment is made up of a component of principal and interest, and your regular repayments are calculated so that you will repay your Loan in full over the Term.

#### *Interest Only Repayments*

If:

- your Term Loan Schedule sets out an Interest Only Period; or
- at any time we agree that your repayments of your Term Loan shall be Interest Only Repayments for a set period,

the amount payable on each date a regular repayment is due during that Interest Only Period will be equal to the amount of interest that has accrued on your Term Loan since your previous regular repayment was due.

### **Flexi Loan**

You do not have any set regular repayments of your Flexi Loan. However, you must make such payments to your Loan Account to ensure that, at all times, the unpaid balance of your Flexi Loan does not exceed your current Credit Limit.

You must also repay, in full, the unpaid balance of your Flexi Loan on the Expiry Date of your Flexi Loan or the earlier termination or cancellation of your Flexi Loan in accordance with your Loan Agreement.

#### *Nil Balance*

If at any time before the Expiry Date (or before the earlier termination or cancellation of your Flexi Loan in accordance with your Loan Agreement) the unpaid balance of your Flexi Loan is nil (or you have a credit balance in your Loan Account), your Flexi Loan will not be considered to have been terminated or cancelled and your Flexi Loan will continue, unless you request us to cancel your Flexi Loan.

### *On Demand*

We can require you to repay your Flexi Loan in full or in part at any time (whether you are in breach of your Loan Agreement or not) and we do not have to give you any reason for this. If we give you notice requiring you to repay all or part of your Flexi Loan, you must immediately repay your Flexi Loan in accordance with that notice.

## **9. Payments**

### **Repayment Account**

If you have a Term Loan, the initial Repayment Account for that Term Loan is set out in your Term Loan Schedule. You can request that your Repayment Account is changed to another account with us. We will notify you whether or not we agree to change your Repayment Account.

If you have a Flexi Loan, the Loan Account for that Flexi Loan is also your "Repayment Account" for your Flexi Loan (and these two terms "Repayment Account" and "Loan Account" are used throughout these Loan Terms and Conditions interchangeably to refer to the same account).

You agree that we can debit (or take) the amount of your regular repayments for your Term Loan from your Repayment Account on each date your regular repayment is due and apply it against your Term Loan.

You agree that we can debit (or take) the amount of any other payments due by you under your Loan Agreement from your Repayment Account.

You acknowledge that we can debit your Repayment Account even if that means that your Repayment Account will go into overdraft or exceed any credit limit applicable to your Repayment Account.

### **Business Day Payments**

The regular repayments on your Term Loan and interest on your Flexi Loan will be debited from, and any regular reduction of the Credit Limit on your Reducing Flexi Loan will be applied to, your Repayment Account on the due date regardless of whether the due date is a Business Day or not.

You should ensure that you have sufficient funds in your Repayment Account (or sufficient credit available) to cover any regular repayment amount, interest charge or Credit Limit reduction. If you are transferring funds into your Repayment Account, you should ensure you leave sufficient time for those funds to clear in your Repayment Account.

### **Irregular Payments Dates**

If any payment is due on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> of a month that does not contain such a date, the payment will be debited on the last day of that month. This also applies to any Credit Limit reduction scheduled to occur on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> of a month that does not contain such a date.

### **Order of Payments**

We will apply any payments you make to us in relation to your Loan in any order we choose. Generally we will apply payments first in payment of any Credit Fees and Charges and costs, second in payment of any accrued interest, including default interest, and third in repayment of the principal amount of the Loan.

### **Clear payments**

All amounts due under your Loan Agreement must be paid in full. If you are required by law to withhold or deduct any amount from any payment or repayment to us, you must increase the amount you pay us so that we receive the full amount payable to us.

### **Set-off**

You waive any rights you have to set-off any amounts we owe you against amounts you owe us under your Loan Agreement unless we specifically agree that you can set-off such amounts.

### **Debit your accounts**

If any amount under your Loan Agreement is due and owing to us, including principal, interest and Fees and Charges, you agree that we can take any such amounts from any account you have with us. To allow us to do this, you agree that we can break any term deposit you have with us.

## **10. Change to Principal and Interest Loan or Interest Only Loan**

You can request that repayment of your Term Loan change from Principal and Interest Repayments to Interest Only Repayments, or from Interest Only Repayments to Principal and Interest Repayments. If we agree to your request, we may charge you a fee as set out in the Credit Fees and Charges Schedule. We will notify you of any changes to your Term Loan (including your new regular repayment amount) in writing.

## **11. Continuing Disclosure**

For Term Loans, we will provide you with account statements six monthly.

For Flexi Loans, we will provide you with account statements monthly.

## **12. Early Repayment**

### **Term Loan**

You may, at any time, make additional repayments of your Term Loan over and above your regular repayments and/or repay the whole or part of your Loan, provided that we may charge you an Early Repayment Charge if you do so during any Fixed Rate Period. We can set a minimum amount that you must pay if you want to repay some of your Term Loan early.

If you make any additional repayment of your Term Loan (over and above your regular repayments) or repay part of your Term Loan, we will ask you whether you want your regular payment amount to

remain the same (in which case you will repay your Term Loan earlier than the Expiry Date) or you want your regular payment amount to reduce to an amount so that your Term Loan is repaid at the end of the Term.

### **Flexi Loan**

You can repay all or part of your Flexi Loan at any time.

If at any time before the Expiry Date (or the earlier termination or cancellation of your Flexi Loan in accordance with your Loan Agreement) you repay your Flexi Loan in full (or you have a credit balance in your Loan Account), your Loan Agreement will not be considered to have been terminated or cancelled and your Flexi Loan will continue, unless you request us to cancel your Flexi Loan.

### **13. Early Repayment Charge (applicable to term loans only)**

The Early Repayment Charge is made up of two separate fees being the Early Repayment Administration Fee and the Early Repayment Recovery Fee (if applicable).

An Early Repayment Charge may be charged by us if during a Fixed Rate Period you:

- Make an additional payment or repay the whole or part of your Term Loan (including where we require you to repay early because you have breached your Loan Agreement);
- Change any of the payment terms of your Term Loan, for example you change the amount, date or frequency of your regular repayments; or
- Switch your Term Loan to our Floating Interest Rate or to another Fixed Interest Rate and/or Fixed Rate Period (including where you have breached your Loan Agreement and we switch your Term Loan to the Floating Interest Rate).

Where you (or we) switch your Term Loan:

- from a Fixed Interest Rate to our Floating Interest Rate; or
- to another Fixed Interest Rate or Fixed Rate Period,

you agree that we will calculate the Early Repayment Recovery Fee component of the Early Repayment Charge as if you had fully repaid your Term Loan on the date of the switch (and taken out another loan with us).

Any Early Repayment Charge must be paid on the day you repay your Term Loan (in full or part), make an additional payment, change the payment terms of your Term Loan or switch the interest rate.

### **Explanation of why we charge an Early Repayment Recovery Fee**

#### *Hedge Transactions*

If we agree to fix the interest rate on your Term Loan, we will enter into an agreement with other financial institutions in the wholesale market (which we refer to as a "hedge transaction") where we

effectively exchange with them the fixed interest payments we receive from customers (including you) for floating interest rate payments from them. This hedge transaction protects us from future interest rate movements by better matching interest we receive with interest we must pay.

When we enter into this hedge transaction, we are doing so on the basis that you will not make any changes to your Term Loan for the Fixed Rate Period. If you repay all or some of your Term Loan or change the payment terms of your Term Loan before the end of your Fixed Rate Period, we still have to make fixed interest payments under our hedge transactions, but we will not receive the fixed interest payments we expected to receive from you. We may also need to amend (or terminate) our hedge transaction as a result of your early repayment or changed payment terms.

#### *Movements in Wholesale Interest Rates*

If wholesale interest rates have moved between when we agreed to fix the interest rate on your Term Loan and when you repay or alter your Term Loan, we may incur a loss by having to continue to make payments of interest or change our hedge transaction. The Early Repayment Recovery Fee helps us to recover any such loss.

While we have, in the explanation above, referred to entering into a specific hedge transaction when you fix the interest rate on your Term Loan, we actually enter into hedge transactions in respect of all of our Term Loans (on an aggregate basis) and not specific Term Loans. However, in order to calculate an estimate of the loss we incur (if any) when you repay your Term Loan early or change the payment terms, a reasonable way to do this is to calculate it as if we did enter into a specific hedge transaction in respect of your Term Loan.

The amount of the Early Repayment Recovery Fee will not be the same for all people nor all Term Loans. The fee applied will be dependent on a number of factors including:

- the amount being repaid (or deemed to be repaid);
- the remaining term of the Fixed Rate Period; and
- any change in wholesale rates.

While we understand that unexpected situations occur, you may want to consider the following possibilities before deciding on the term(s) of any Fixed Rate Period:

- any extra payments that you may make over the Fixed Rate Period (for example, bonuses, inheritance); and
- whether you are likely to fully repay the Term Loan over the Fixed Rate Period (for example, selling a property).

#### **Early Repayment Recovery Fee - Formula**

The formula we use to calculate the Early Repayment Recovery Fee which applies to your lending is a complex mathematical calculation, which is neither easy to explain nor use. It is not the same as the formula set out under the Credit Contracts and Consumer Finance Regulations 2004 ("**Regulations**").

The Regulations allow us to adopt a formula that calculates a reasonable estimate of our loss. The exact formula we use is a derivative of the formula set out under Regulations and is available on request.

To assist our members, we have provided a simplified version of the formula below for you to determine an approximate estimate of the Early Repayment Recovery Fee which may apply to you:

$$\text{Early Repayment Recovery Fee estimate} = (A-B) \times C \times D/365$$

where:

A = the wholesale interest rate for the Fixed Rate Period at the start of the Fixed Rate Period

B = the current wholesale fixed interest rate for a term equivalent to the remaining Fixed Rate Period

C = the total amount that is being repaid on the Term Loan (the current balance on the Term Loan if the Term Loan is being fully repaid)

D = the number of days remaining on the Fixed Rate Period

Wholesale interest rates we use in these calculations are the close of day rates from Thomson Reuters, which are generally available on the Reserve Bank of New Zealand's website ([rbnz.govt.nz](http://rbnz.govt.nz)).

**Example:**

You wish to repay \$50,000 (C=50,000) of your 5.35% 3 year fixed rate loan which has 730 days (D=730) remaining on the fixed rate. The 3 year wholesale rate at the start of the Fixed Rate Period for 3 years was 4.00% (A=4.00%) and the current wholesale rate for 730 days is 3.00% (B=3.00%).

$$\text{Early Repayment Recovery Fee estimate} = (4.00\% - 3.00\%) \times 50,000 \times 730/365 = \$1,000$$

Please be aware this is only an approximation of the actual Early Repayment Recovery Fee and should not be relied upon as an accurate calculation of the fee that will apply to you. To obtain a copy of the actual formula we use or a quote from us using the formula, please contact us on 0800 SBS BANK (0800 727 2265).

## 14. Unforeseen Hardship

If your Loan Agreement is a consumer credit contract and you are unable reasonably to keep up your payments or other obligations under your Loan because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, you can apply to us to vary your Loan. You will need to:

- Make your application in writing;
- Explain your reason(s) for the application;
- Request one of the following:

- an extension of the Term of your Loan (which will reduce the amount of each payment due under your Loan); or
- a postponement of the dates on which payments are due under your Loan (specify the period for which you want this to apply); or
- both of the above; and
- Give the application to us.

You should do this as soon as possible. If you leave it for too long, we may not have to consider your application.

## 15. Security

The security that we require in relation to your Loan is set out in your Loan Schedule.

Any Security that you have given to us or will give to us, whether in relation to your Loan or any other agreement between you and us, subject to any limitation in the relevant Security, secures all amounts you owe to us (and all of your obligations) under your Loan Agreement and all other agreements you have with us.

## 16. Breach of Your Loan Agreement

If you breach your Loan Agreement, we can:

- Require you to immediately repay your Loan and all other amounts you owe us under your Loan Agreement (including any interest, Credit Fees and Charges and costs) and/or cancel any undrawn portion of your Loan and, if you have a Flexi Loan, we can cancel or reduce your Credit Limit;
- Change or cancel any Margin applicable to your Loan;
- Break any Fixed Interest Rate applicable to your Loan;
- Exercise our rights under any Security, and require any Guarantor to pay to us all amounts owing to us under your Loan Agreement; and
- Charge you interest at the Default Interest Rate on any amount you are in default in accordance with clause 17.

Our ability to cancel or reduce your Credit Limit if you breach your Flexi Loan does not restrict or affect our rights to, at any time, require full or partial repayment of your Flexi Loan or to cancel or reduce your Credit Limit.

You will be in breach of your Loan Agreement if any of the following occur:

- You do not pay any amount due under your Loan Agreement on its due date;
- You fail to comply with any of your other obligations under your Loan Agreement or any other agreement you have with us, including any Security;

- You or any Guarantor breach our General Terms and Conditions or any applicable Specific Terms and Conditions, or we have the right to immediately cancel your Account or withdraw a product or service under our General Terms and Conditions;
- Any Guarantor fails to comply with any of its obligations under the Guarantee;
- You or any Guarantor become insolvent, or we consider there is any reason that you or any Guarantor may not be able to meet your/their obligations under the Loan Agreement or Guarantee;
- Your Loan Agreement was not signed in accordance with, or is in breach of, any constitutional documents (including any trust deed);
- We consider that, for any reason, the value of any Security (including any Guarantee), any Secured Property or any property a Guarantor has provided us with security over, has reduced significantly;
- We consider that any Security (including any Guarantee), or our ability to enforce that Security, has been adversely affected by any event or situation; and/or
- Any information you or any Guarantor provide to us (or have previously provided to us) is, or proves to be, wrong or misleading.

## 17. Default Interest

### Term Loans

If:

- you overdraw your Repayment Account (where there is no credit limit on your Repayment Account), you must pay interest on the overdrawn amount (the "**Default Amount**") at the Default Interest Rate from the date the Repayment Account is overdrawn until the Repayment Account ceases to be overdrawn; or
- you do not pay any amount due under your Term Loan (including principal, interest or Credit Fees and Charges) when due, you must pay interest at the Default Interest Rate on the amount in default (the "**Default Amount**") from the date payment was due until the Default Amount is repaid.

Interest is calculated by multiplying the Default Amount at the end of each day by the daily Default Interest Rate. The daily Default Interest Rate is the Default Interest Rate divided by 365.

Interest under this clause may be debited from your Repayment Account or capitalised and added to your Term Loan from time to time at our discretion. Any interest that is capitalised will accrue interest from the date it is capitalised.

If your Repayment Account for your Term Loan is also the Loan Account for a Flexi Loan and you exceed the credit limit on your Repayment Account, interest will accrue on that excess amount under the terms of your Flexi Loan (in other words, you will not be charged interest under this clause on both your Term Loan and your Flexi Loan).

## **Flexi Loans**

If you exceed the credit limit on your Repayment Account, you must pay interest on the excess amount at the Default Interest Rate.

Interest will be charged at the Default Interest Rate from the date you exceed your Credit Limit until the date your Repayment Account ceases to exceed the Credit Limit, and is calculated by multiplying the excess amount at the end of each day by the daily Default Interest Rate. The daily Default Interest Rate is the Default Interest Rate divided by 365.

Interest under this clause may be debited from your Repayment Account or capitalised and added to your Flexi Loan from time to time at our discretion. Any interest that is capitalised will accrue interest from the date it is capitalised.

## **18. Default Fees**

If you are in breach of your Loan Agreement, we may charge you default fees as specified in the Credit Fees and Charges Schedule.

## **19. Fees and Costs**

The fees payable by you in connection with your Loan Agreement are set out in your Loan Schedule and in our Credit Fees and Charges Schedule.

You must also pay to us any costs or losses we incur (including any legal and other professional advisers' costs):

- relating to the preparation, completion and registration of your Loan Agreement and any Security;
- relating to any subsequent withdrawals, releases, variations and consents given or requested in respect of your Loan Agreement or any Security; and
- in obtaining payment of any amounts payable under your Loan Agreement or any Security or exercising or attempting to exercise any of our rights, powers or remedies under your Loan Agreement or any Security.

You agree that we may debit the amount of any Credit Fees and Charges and costs and losses we incur from any account you have with us.

## **20. Changes to the Terms and Conditions of Your Loan Agreement**

We may agree to changes to your Loan Agreement with you. In such case, we will confirm to you the new terms of your Loan Agreement before the changes take effect.

We can also change these Loan Terms and Conditions or the terms and conditions set out in your Loan Schedule at any time without your consent (for example, we may change the Floating Interest Rate or Credit Fees and Charges applicable to your Loan). We will notify you of the new terms and conditions of your Loan Agreement at least 14 days before any change takes effect (other than for changes to the interest rate(s) applicable to your Loan).

Where we change the Floating Interest Rate during any Floating Rate Period or we change any of our Fees and Charges, we may notify you of this change directly (for example, by sending you a notice or letter) or we may notify you of this change by displaying it on our website, at our branches and/or advertising it in a major daily newspaper.

## **21. How We Will Contact You**

If we need to provide you with any information in relation to or about your Loan or Loan Agreement, including any changes to your Loan Agreement (whether they have been agreed by you and us or we have made changes without your consent), you agree that we can provide that information to you in any one (or more) of the following ways:

- personally providing you with a notice or letter;
- posting a notice or letter to your address;
- sending you an email to your email address;
- sending you a fax to your fax number;
- making the information available on a website maintained by us and which is available to you;
- displaying a notice on our website and at our branches; and/or
- publishing a notice in a major daily newspaper.

Certain laws require us to disclose some information in a specific manner (for example, the CCCFA). We will comply with any legal requirements when providing you with any information in relation to your Loan Agreement.

Any notice or information provided to you will be considered to have been received by you on:

- the day it was given, emailed or faxed to you;
- three Business Days after it was posted to you;
- the day the information was made available by us on any website maintained by us and available to you; and
- the day any notice was displayed on our website, at our branches or published in a major daily newspaper.

## **22. Information We Hold About You**

You agree and acknowledge that we can collect information about you, your Loan, any Security and/or Secured Property from anyone else, including any insurer and that we can use any information we hold at any time for the purpose of establishing, maintaining and managing our relationship and your Loan, and to exercise or use any of our rights under the Loan Agreement and any Security.

You agree that we may share and disclose any information we hold about you to anyone we consider necessary, including any credit reporting agencies, any insurer and debt recovery agencies.

Under the CCCFA, we are required to provide certain information about you and your Loan to any Guarantor. You agree that we can provide information about you, your Loan, Loan Agreement and any Security, including any changes to your Loan Agreement and/or Security, any transactions under your Loan Agreement and/or Security and any breach of your Loan Agreement and/or any Security, to any person that has given us security for your Loan, including any Guarantor.

## 23. Complaints

If you have any problems or complaints, whether about your Loan or any other matter, we have a free internal dispute resolution process which you can access by:

- Talking to us, in confidence with our Customer Complaints team by phoning 0800 727 2265.
- Writing to us, complete a Customer Complaints brochure which are available in branch or we can post one to you. Alternatively you can email us.

Write:                    Customer Complaints Team  
                              Southland Building Society  
                              PO Box 835  
                              INVERCARGILL

Email:                    customercomplaints@sbsbank.co.nz

Fax:                        03 211 0734

We will do the best to resolve your problem or complaint as soon as possible.

We are a member of the Banking Ombudsman dispute resolution scheme. If you do not think we have resolved your problem or complaint, or you are not satisfied with our response, you can make a complaint to this scheme. The contact details of the Banking Ombudsman are:

- Phone: 0800 805 950
- Website: [bankomb.org.nz](http://bankomb.org.nz)
- Business address: Freepost 218002, PO Box 25327, Featherston Street, Wellington 6146

We are a registered financial service provider on the Financial Service Providers Register. Our registered name is Southland Building Society and our registration number is FSP30921.

## 24. Trustees

If you have entered into your Loan Agreement as the trustee of a trust, subject only to the limitation of liability below for Independent Trustees, you are personally liable for all amounts payable to us under the Loan Agreement.

If you are an Independent Trustee, your liability under your Loan Agreement shall be limited to an amount equal to the value of the assets of the relevant trust available from time to time to meet your liability as trustee, to which shall be added the sum (if any) by which the value of those assets has been diminished by any breach of trust caused by your wilful default or dishonesty.

You are an "**Independent Trustee**" if you have no right to, or interest in, any of the assets or property of the relevant trust (other than as trustee).

## 25. Provide Information

You must, at your cost (unless agreed otherwise), provide to us (or to any other person advised by us) any information about you, your Loan Agreement and/or your financial position that we reasonably require on request from us.

## 26. Multiple Borrowers

You agree that where there is more than one of you borrowing money under your Loan, any of you can ask us to make changes to your Loan and we are authorised to act on any request or instructions from any one of you. Subject to any mandatory disclosure requirements in the CCCFA, any disclosure provided or notice sent to one of you will be deemed to have been received and provided to all of you.

## 27. Assignment

You may not assign or transfer any of your rights and obligations under your Loan Agreement without our consent.

We can assign or transfer any of our rights and obligations under your Loan Agreement without your consent. If we assign or transfer some or all of our rights and obligations under your Loan Agreement, the person we have assigned or transferred your Loan Agreement to will have the same rights as they would have had if they had been a party to your Loan Agreement.

You agree that we may disclose information about you, your Loan and Loan Agreement to any person we may or are looking to assign or transfer our rights and obligations.

## 28. General

In the event of any conflict between the terms of your Loan Schedule, these Loan Terms and Conditions and/or any other agreement you have with us, we will decide which terms will apply.

Your Loan Agreement is governed by New Zealand law and any dispute in relation to your Loan Agreement must be brought before a New Zealand court.

If we do not exercise any of our rights under your Loan Agreement immediately when they are available to us, we can choose to exercise those rights at a later time. By not exercising our rights immediately, we are not waiving or agreeing not to exercise or enforce our rights, unless we have agreed in writing to do so.

You agree that, unless we have made a clear administrative error, any certificate issued by us, or any determination made by us, in relation to any amount payable under your Loan Agreement or any debit or credit to any account we maintain in relation to your Loan, correctly represents the amount owing or the debit or credit made.

Any information, document, confirmation or evidence that you are required to provide to us, or that we may request or require, under your Loan Agreement must be acceptable to us.

Where there is more than one person named as "Borrower" in your Loan Schedule, each of you can sign a separate copy or original of your Loan Agreement. Each copy of your Loan Agreement that has been signed will, when combined with all other signed copies (including any copy sent by fax or attached to an email as a PDF document), constitute one and the same Loan Agreement.

## 29. Definitions

Terms used in your Loan Agreement have the following meaning:

**"Booked Fixed Rate"** means an interest rate you have 'booked' or locked in.

**"Booked Fixed Rate Confirmation"** means written confirmation from us setting out:

- the Booked Fixed Rate;
- the details of the Term Loan to which the Booked Fixed Rate applies; and
- any other applicable conditions of the Booked Fixed Rate.

**"Business Day"** means any day other than a Saturday or Sunday on which we are open for business.

**"CCCFA"** means the Credit Contracts and Consumer Finance Act 2003 (as amended or re-enacted from time to time).

**"Credit Fees and Charges"** means any fees and charges that may be charged by us as set out in your Loan Schedule or our Credit Fees and Charges Schedule.

**"Credit Fees and Charges Schedule"** is a document outlining our standard credit fees and charges, as amended from time to time.

**"Credit Limit"** means, at any time, the maximum amount that can be drawn down under your Flexi Loan (including all interest and Credit Fees and Charges debited to your Flexi Loan).

**"Default Interest Rate"** means the Default Interest Rate disclosed in your Loan Schedule or such other rate that we notify you from time to time is our Default Interest Rate.

**"Drawdown Date"** means:

- for a Term Loan, the date you first draw down your Term Loan or any part of it; and
- for a Flexi Loan, the date the Flexi Loan is first available for you to draw down.

**"Early Repayment Administration Fee"** means the "Early Repayment Administration Fee" disclosed in our Credit Fees and Charges Schedule.

**"Early Repayment Charge"** means:

- the Early Repayment Administration Fee; plus
- the Early Repayment Recovery Fee.

**"Early Repayment Recovery Fee"** is described in clause 13.

**"Expiry Date"** means the last day of the Term of your Loan.

**"Fixed Interest Rate"** means our applicable interest rate for a Fixed Rate Period for the relevant type of your Term Loan.

**"Fixed Rate Period"** means any period of your Term Loan where we have agreed that the interest rate applicable to your Term Loan will be fixed, including any Initial Fixed Rate Period.

**"Flexi Loan"** means any Loan described as a "Flexi Loan" in the relevant Loan Schedule, and includes any Reducing Flexi Loan.

**"Flexi Loan Account"** means the Loan Account described in your Flexi Loan Schedule.

**"Flexi Loan Schedule"** means any documents described as a Flexi Loan Schedule.

**"Floating Interest Rate"** means our floating interest rate, as varied by us from time to time, applicable to your Loan product and type.

**"Floating Rate Period"** means any period of your Term Loan where the interest rate is a Floating Interest Rate, and the entire Term of your Flexi Loan.

**"General Terms and Conditions"** means our General Terms and Conditions for our accounts and services (as updated from time to time).

**"Guarantee"** means any document, agreement or deed under which a person agrees to guarantee your obligations to us.

**"Guarantor"** means any person that has guaranteed your obligations to us by entering into a Guarantee.

**"Initial Fixed Rate Period"** means any Initial Fixed Rate Period disclosed in your Loan Schedule.

**"Interest Only Period"** means any "Interest Only Period" set out in your Term Loan Schedule or any other period we agree that the repayments on your Term Loan will be Interest Only Repayments.

**"Interest Only Repayments"** means repayments, for a specified period, of interest that has accrued over that specified period (but no principal).

**"Loan"** means any loan from us to you on the terms and conditions set out in a Loan Agreement.

**"Loan Agreement"** means your Loan Schedule, these Loan Terms and Conditions, the Credit Fees and Charges Schedule and any letter or notice varying the terms and conditions of your Loan.

**"Loan Schedule"** means a Term Loan Schedule or a Flexi Loan Schedule.

**"Loan Terms and Conditions"** means the terms and conditions set out in this booklet, as amended and varied from time to time.

**"Margin"** means any margin applicable to the Floating Interest Rate under your Loan as set out in your Loan Schedule or as otherwise notified by us.

**"person"** includes any individual, company, firm, club, partnership, limited partnership, joint venture, organisation, trust, state or governmental agency, in each case, whether or not having separate legal personality.

**"Pre-Approval Letter"** means any letter or other correspondence from us to you setting out an offer to provide you with finance.

**"Principal and Interest Repayments"** means repayments of principal and interest such that your Loan is repaid in full over the Term.

**"Reducing Flexi Loan"** means a Flexi Loan where the Credit Limit reduces monthly in an amount determined in accordance with clause 3 of these Loan Terms and Conditions.

**"Repayment Account"** means:

- if you have a Term Loan, the account with us noted in your Term Loan Schedule as the Repayment Account, or such other account selected by us or that you request and we agree, from which the regular repayments of your Term Loan will be deducted; and
- if you have a Flexi Loan, your Loan Account.

**"Residential Investing Term Loan"** means any Loan described as a "Residential Investing Term Loan" in the relevant Loan Schedule.

**"Residential Term Loan"** means any Loan described as a "Residential Term Loan" in the relevant Loan Schedule.

**"Security"** means any security listed in your Loan Schedule under the heading "Security".

**"Secured Property"** means any property the subject of any Security you have granted us.

**"Specific Terms and Conditions"** means our Electronic Banking Terms and Conditions, Telephone Banking Terms and Conditions, Cheque Terms and Conditions and Card Terms and Conditions (each as amended from time to time) and any other terms and conditions relating to a specific product or service that we provide to you from time to time.

**"Term"** means the term of your Loan, commencing on the Drawdown Date, as set out in your Loan Schedule.

**"Term Loan"** means any Loan described as a "Term Loan" in the relevant Loan Schedule.

**"Term Loan Schedule"** means any documents described as a Term Loan Schedule.

**"unpaid balance"** means, on any day, all amounts you owe us under a Loan (including on account of interest and Credit Fees and Charges).

**"we", "us" or "our"** means Southland Building Society and, if we assign or transfer our rights under your Loan Agreement, means the person we have transferred or assigned our rights to.

**"you"** means the person or persons named as "Borrower" in your Loan Schedule. Where there are two or more persons, "you" means each person individually and all persons jointly, and each person must comply with the Loan Agreement and is individually responsible for paying all amounts payable under your Loan Agreement.