

# **RESIMAC Home Loans Limited**

## **General Terms**

### **for Loan Agreements**

## K: General Terms and Conditions

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### Where to find key information about your loan

<b>Name and address of Credit Provider:</b>	This is set out in Part A.
<b>Initial Unpaid Balance:</b>	The unpaid balance at the end of the <i>disclosure date</i> is set out in Part E.
<b>Subsequent Advances:</b>	The subsequent advances intended to be made after the <i>disclosure date</i> (if any) are set out in Part E.
<b>Total Advances:</b>	<p>The total of all advances to be made in connection with <i>this agreement</i> (for portions other than line of credit) is set out in Part E.</p> <p>If you have more than one <i>portion</i>, the <i>loan amount</i> is split between each such <i>portion</i> as set out in Part E.</p>
<b>Credit Limit:</b>	If you have a line of credit <i>portion</i> , the credit limit for that <i>portion</i> is the <i>loan amount</i> set out in Part E.
<b>Annual Interest Rate:</b>	The <i>annual interest rate</i> for each <i>portion</i> is set out in Part E.
<b>Fixed Rate Period:</b>	If a <i>fixed rate</i> applies to a <i>portion</i> during a <i>fixed rate period</i> , the <i>fixed rate period</i> is set out in the financial table for that <i>portion</i> in Part E.
<b>Method of Charging Interest:</b>	This is contained in clause 8 of these <i>General Terms</i> .
<b>Credit Fees and Charges:</b>	The fees and charges payable in connection with each <i>portion</i> are set out in Part E, Part H, clause 7 and clause 16 of these <i>General Terms</i> .
<b>Payments Required:</b>	The payments required for each <i>portion</i> are set out in the financial table for that <i>portion</i> in Part E.
<b>Full Prepayment:</b>	You may repay in full at any time. <i>Break costs</i> are payable if you make any early repayment in respect of any <i>fixed rate portion</i> . The <i>break costs</i> are calculated as set out in Part H and clause 16 of these <i>General Terms</i> .
<b>Security Interest:</b>	<p>As security for all moneys that you may owe us, you will give us or arrange for us to receive each <i>security</i> detailed in Part F.</p> <p>Each <i>security</i> will be security for all moneys and all of the obligations that each of you owe us either alone or jointly with any other person under any agreement or arrangement both now and in the future. This applies whether or not you are aware that obligations have been incurred by, or money lent by us to, the other person.</p>
<b>Default Interest Charges and Default Fees:</b>	<p><b>Default Interest:</b> If you do not make a payment by its due date, default interest is payable at the rate set out in Part I and clause 20 of these <i>General Terms</i>.</p> <p><b>Default Fees:</b> The fees and charges that may apply if you default under <i>this agreement</i> are set out in Part I.</p>
<b>Continuing Disclosure Statements:</b>	We will provide you with regular statements of account as set out in clause 23.5 and 23.6 of these <i>General Terms</i> .
<b>Debtor's Right to Cancel</b>	A statement about your right to cancel <i>this agreement</i> pursuant to the Credit Contracts and Consumer Finance Act 2003 is set out in Part D of <i>this agreement</i> .
<b>Unforeseen Hardship</b>	A statement about your rights if you suffer an unforeseen hardship is set out in Part D of <i>this agreement</i> .
<b>Complaints and Dispute Resolution</b>	A statement about the complaints procedure and our external dispute resolution scheme is set out in Part D of <i>this agreement</i> .
<b>Financial Service Provider Registration</b>	Our registration number on the register of financial service providers is set out in Part D of <i>this agreement</i> .

## Navigating Around Your Loan Agreement

It is important to us and to you that you understand your obligations when you borrow money.

Navigating your way around a series of documents can sometimes be confusing so here are some tips to help you find your way around our documents.

### Parts:

We have broken the documents down into Parts.

Parts A, B, C, and D apply at all times and to all of your loan *portions*. This applies to the initial *portions* and all future *portions*. Any change to create a future *portion* is always made at our discretion.

Parts E, F, G, H, I, and J contain the specific details that apply to each *portion*. If we add or change *portions* then we will do so by giving you a *Variation Loan Details* document that amends these Parts.

Part K contains the general terms that apply to all of your *portions*. Please note that all of these terms may not apply to certain types of *portions*, for example provisions relating to fixed interest rates only apply if you have one,

Part L contains *special features* that only apply to particular types of *portion*. A *special feature* will apply to you if:

- you have a *portion* that is a standard line of credit;
- you are not resident in New Zealand; and/or
- your *loan product* specified in Part A includes the word “Specialist”

Part M contains the Account Operating Terms that apply to the internet banking facility that we make available to you.

### Definitions

Some words and expressions have special meanings whenever they are used through *this agreement*. These words are defined in clause 37 of these *General Terms*. You can identify a defined word or expression because it will be in *italics*.

### Key Information

The Credit Contracts and Consumer Finance Act 2003 requires us to disclose certain key information. The list on the previous page refers to the items of key information and explains where the information can be found in *this agreement*.

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## K: General Terms

### How you obtain the loan amount

#### 1 How we lend the loan amount

1.1 We agree to lend you the *loan amount* at the time you request it. The *loan amount* is only available in one drawing but you may split it into separate *portions*. Except to the extent that the *Loan Details* indicate that the *loan amount* is to be paid to others, we pay the money to your solicitor or to you or as directed by you or your solicitor.

#### Line of credit option

1.2 If we offer you a line of credit option, the entire *loan amount* available under the *portion* of the *loan* under the line of credit option must be fully drawn down by you on the *settlement date*.

#### 2 What must happen first

2.1 However, we only have to lend if:

- (a) the title to each *property* is satisfactory to us;
- (b) all searches, certificates (including certificates from trustees and company directors and solicitors), valuations, reports and consents we request relating to a *property* have been provided and are satisfactory to us;
- (c) if the *property* is sensitive land, you are eligible to buy the *property* under the Overseas Investment Act 2005.
- (d) we have received:
  - evidence to our satisfaction that council, water and other rates, taxes or charges for each *property* are paid up to date;
  - each *security* and its related documents (such as title documents and certificates of independent advice for guarantors);
  - and are satisfied in all respects with all applicable documentation, including but not limited to the documentation that makes up *this agreement* and all certificates and declarations from individuals, directors, trustees and solicitor's.
  - evidence of any insurance we require (such as fire and all risks, public

liability insurance and strata title insurance) noting our interest as mortgagee – house insurance must cover the full replacement value of the buildings and built structures on the *property* (or such other value as we agree in writing);

- agreement from an insurer of our choice to give us *lender's mortgage insurance* cover for the *loan* if we require it;
- any report, valuation or survey we require; and

- a direct debit authority,

which are satisfactory to us;

- (e) you have complied with any other conditions that we have reasonably requested that you satisfy;
- (f) you are not in default under *this agreement* (for example, you have paid all relevant fees and interest charges and have not given us any misleading financial or other information) and no-one who provides a *security* is in default under that *security* or has withdrawn from it;
- (g) nothing has happened since you applied for the *loan* which has led or could lead to a deterioration in your financial circumstances; and
- (h) when a *guarantee* is being given:
  - our solicitors have confirmed that each guarantor has received a copy of each part of *this agreement* and the *guarantee*; and

we have received either:

- a certificate of independent legal advice satisfactory to us for each guarantor from a solicitor who does not work for the firm of solicitors acting for you or the firm acting for us in relation to your loan; or
- if we have agreed to accept it, a declaration satisfactory to us by each guarantor that the guarantor is directly or indirectly receiving a benefit under the loan and prior to signing the *guarantee* has read and understood the *guarantee* and has elected not to receive independent legal advice.

### Time Limit for first advance

- 2.2 Even if our requirements in clause 2 are met, our obligation to lend you the *loan amount* ends if the *settlement date* does not occur within the time limit specified in *this agreement*.

### Trustees' acknowledgement

- 2.3 If you enter into *this agreement* as trustee of any trust or settlement, you acknowledge that this contract is for the benefit of the trust, you have authority to enter into *this agreement* and you have the right to be fully indemnified out of trust assets for obligations incurred under *this agreement*.

### Loans to trustees

- 2.4 If you have entered into *this agreement* as a trustee of any trust, you are liable under this contract in your own right and as trustee of the trust.

Accordingly, we can recover against your personal assets as well as the trust assets.

You must not change a trustee, terminate the trust, or change any terms of the trust without our consent.

### Limited liability trustees

- 2.5 If any one of you is a trustee and is named in *this agreement* as a limited liability trustee then, despite what we say in clause 2.4, we agree that the liability of the limited liability trustee under *this agreement* and under any *security* is not personal and unlimited but will be limited to an amount (the "limited amount") equal to the value of the assets of the trust from at the time of enforcement under which the limited liability trustee has entered into *this agreement*.
- 2.6 However, if the right of the limited liability trustee to be indemnified from the assets of the trust has been lost and, as a result, we are unable to recover the limited amount from the limited liability trustee then the limitation of liability under clause 2.5 does not apply and the limited liability trustee is liable personally for the amount which, but for the trustee's loss of indemnity, we would have been able to recover from the assets of the trust.

### GST

- 2.7 We have accepted a *security* over each *property* on the basis that it is used for residential purposes and is not used for the purposes of carrying on a "taxable activity" (as that term is defined in the Goods and Services Tax Act 1985).

If this assumption is not correct or your GST status in respect of the *property* changes then:

- (a) we may revalue the *property* to determine its value net of GST;
- (b) if, following a revaluation, the total amount owing exceeds the amount we would otherwise have lent against the value of the *property*, you must repay immediately an amount sufficient to reduce the total amount owing to such amount as we require; and
- (c) you must pay us immediately the amount of any GST payable by us on the sale of the *property* following the exercise of any rights under a *security* without the need for any demand.

If you apply for an input tax credit in respect of any *property* the total amount of the *loan* is reduced immediately the application is made by an amount equal to the input tax credit claimed and the amount of the reduction must be repaid to us immediately without the need for any further demand.

## Split loan facility

### 3 Portions

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#### Splitting the loan into portions

- 3.1 You may ask us (but we are not obliged to agree) to have a *loan* split into *portions* (which need not be under the same interest rate option or repayment option) or to change the features of existing *portions* of the *loan* or adjust the limit of each *portion* of the *loan*. We may agree or decline your request at our discretion. If we agree to your request we treat each *portion* of the *loan* separately for various purposes under *this agreement*.

To request the above changes, you can write to the *programme manager*.

#### How we assign debits and credits

- 3.2 We open a sub-account for each *portion* of a *loan*. Interest charges applicable to each *portion* are debited to the sub-account for that *portion*. We decide in our absolute discretion to which sub-account other amounts are debited. However, you may direct us to debit all fees and charges payable under *this agreement* to a particular sub-account. If you do not direct, we normally debit fees and charges to the sub-account for *portion 1* (but we need not).

## Permitted combinations

- 3.3 If we agree, under certain circumstances you may split a *loan*. For example, you may want to identify a separate *portion* of the *loan* as having a different purpose, or as relating to a specific *security property* (but identifying a *property* in this way would not limit the amount secured by the mortgage we hold over that *property*). If we agree, you may also change the interest rate option, repayment features and number of *portions* of the *loan* when it is already split. Without limiting our discretion, we will require the minimum opening balance for a *portion* under the fixed rate option to be \$50,000.

Generally, after the *settlement date* we will only agree to a split at the same time as a further advance (this does not include a redraw) or if you are creating a fixed rate *portion*.

Please note that your *loan product* may prohibit or restrict the terms on which you may split your loan

### How to split

- 3.4 Contact the *programme manager* to organise a split or a change to the *portions* of a *loan*. The change takes effect as soon as practicable after we are notified by the *programme manager*.

### Combining *portions* of a loan

- 3.5 We may combine two or more *portions* of a *loan* at any time if they have identical:

- repayment types;
- *annual interest rates*;
- fixed rate periods (if relevant); and
- interest only periods (if relevant),

unless the *portions* of the *loan* have different loan purposes or you have identified, under clause 3.3, a *portion* of the *loan* as relating to a specified *property*.

## What you must pay and when

### 4 What you must pay

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You must repay all amounts you borrow from us and pay us interest charges, and other amounts under clause 7.

## 5 Repayments

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### Frequency

- 5.1 You must make repayments at the frequency indicated in the *Loan Details* (unless you change the frequency under clause 6.3).

### Type

- 5.2 The repayment types are as follows. The *Loan Details* indicate the type (or types) applying to the *loan* or each *portion*. Your *loan product* may be subject to *special features* as set out in Part L that may restrict the loan types available for your *loan product*.

### Principal and interest repayments

- 5.3 We calculate *principal and interest repayments* so that:

- the *balance owing on your loan account* or, where applicable, the *balance owing on the sub-account* at the start of the period; and
- all interest charges and other fees and amounts we notify you as being included in the repayment amount which accrue or become payable during the period,

are repaid during the period they are payable.

The part of each repayment which repays the *balance owing on your loan account* or, where applicable, the *balance owing on the sub-account* at the start of the period gradually increases throughout the period but repayments are equal as long as:

- the *annual interest rate* applying to the *loan* or that *portion* of the *loan*; and
- any other fee or amount we notify you as being included in the repayment amount,

remain constant. However, the last repayment may be different as it equals the *total amount owing* or, where applicable, the *sub-account total amount owing*, on the last day of the *loan term*.

### Interest only repayments

- 5.4 Each *interest only repayment* equals the sum of:
- interest charges for the week, fortnight or month covered by that repayment; and
  - other fees and amounts we notify you as being included in the repayment amount.

If you ask, and we agree, you need not make *interest only repayments* in respect of a *portion*



under a line of credit option. In this case, an amount equal to each *interest only repayment* that you do not make will be added to the *balance owing on your sub-account* on the date that the repayment would have been due. Once the *balance owing on your sub-account* is equal to the *portion* of the *loan amount* for the line of credit *portion*, you must resume making repayments as required by *this agreement*. At the end of the *interest only period* we calculate your *principal and interest repayments* on the basis that the *portion* is fully drawn.

### Interest only repayments - special provision

- 5.5 Despite clauses 5.4 and 6.2, any *interest only repayment* amount which we notify to you (including any *interest only repayment* amount specified in the *Loan Details*) is calculated on the basis of a 31 day month, a 7 day week and a 14 day fortnight. The *interest only repayment* amount for a month may be less if the month covered by the repayment has fewer than 31 days.

### Changing the interest only period - except any line of credit portion

- 5.6 You may ask to lengthen or shorten an *interest only period* before it ends by notifying the *programme manager* in writing at least 5 *business days* before you want the change to take effect. If we agree, the period can only be changed by whole months (or years). Generally, we will not lengthen an *interest only period* if it results in the *loan* or a *portion* of the *loan* being under the interest only option for more than 5 years in total. This clause 5.6 does not apply to a *portion* under a line of credit option.

### Initial repayment amount

- 5.7 If an *annual interest rate* at the *settlement date* is different from the rate shown in the *Loan Details*, the relevant initial repayment amount also changes from the amount shown in the *Loan Details*. In this case, we notify you in writing of the changed initial repayment amount within 5 working days of the change taking effect.

### Changing repayment amounts

- 5.8 We may also change the amount of following repayments in line with changes to the *annual interest rate* for the *loan* or a *portion* or fees and charges or otherwise as necessary to ensure that the *loan amount* and all other amounts you must pay are repaid within the *loan term* (for example, to make up for any repayments you have made late). We will notify you in writing within 5 working days of the change taking effect.

For any *loan* or any *portion* under a dynamic variable rate principal and interest option, each time you repay an amount early or redraw an amount we recalculate your repayment amount

so that the *balance owing on your loan account* and all other amounts you must pay are repaid within the *loan term*. The recalculation of your repayment amount takes effect on the next day on which interest is debited to your *loan account*.

## 6 When and how to pay

### When repayments are due

- 6.1 Your repayments for each *portion* of a *loan* are due monthly, fortnightly or weekly (whichever is indicated in the *Loan Details*). Your first repayment is due as described in the *Loan Details*.

Monthly repayments are due on the same date in each following month as the first repayment.

Fortnightly repayments are due every 14 days following the first repayment.

Weekly repayments are due every 7 days following the first repayment.

If your repayments are due on the 29th, 30th or 31st of a month, and a particular month does not have that date, you must pay your repayment on the last day of that month.

#### Example

If your normal repayment date is the 31st of each month, then in June and September and the other 30 day months, and in February, you must pay the repayment on the last day of the month.

### Repayments due on a non-business day

- 6.2 Despite clause 6.1, if a repayment is due on a day which is not a *business day*, you may make the repayment on the next *business day*. However, if that means that the repayment would be made in the next calendar month, then the repayment is payable on the last *business day* of the calendar month in which the repayment is due.

### Switching repayment frequencies and repayment date

- 6.3 You may switch between monthly, fortnightly and weekly repayments for any *portion* of a *loan* that is subject to a variable rate option. If a *loan* is split, you may have different repayment frequencies for different *portions* of the *loan*. Following any change, we recalculate the amount of your repayments to take account of the new frequency and we tell you the new repayment amount or amounts.

After the *settlement date*, you may not switch between monthly, fortnightly and weekly repayments in relation to any *portion* of the *loan* that is subject to the fixed rate option unless:

- (a) the *fixed rate period* expires; or
- (b) the *fixed rate period* is broken.

You may only switch the repayment frequency for the *loan* or any *portion* once each month. If you are in default, you may only switch the repayment frequency for the *loan* or any *portion* if we consent.

You may also choose to change the day or date of each week, fortnight or month your repayments are due, but you may not choose to make monthly repayments on the 29th, 30th or 31st of the month. The next repayment amount after you change the day or date of your repayment may be different from your usual repayment amount. If this is the case we will advise you separately of the amount of the next repayment.

Your *loan product* may be subject to *special features* that restrict your ability to switch between repayment frequencies or repayment dates.

## Final repayment

- 6.4 On or before the last day of the *loan term*, you must pay the *total amount owing*.

## How to pay

- 6.5 Unless we agree otherwise, you must pay by permitting us to debit amounts directly from an account you have with a financial institution. You must not cancel any direct debit authorisation you give us or close the account referred to in any direct debit authorisation unless you first give us another direct debit authorisation acceptable to us. You must also ensure there is enough money in the account to meet each debit.

If we allow you to make a repayment or repayments by any other method, you must ensure that you have sufficient funds to make that method of repayment.

## 7 Other amounts

Enforcement expenses may become payable under *this agreement* or any mortgage or other *security* in the event of a breach.

### Other amounts to be paid

- 7.1 You must pay us:

- (a) all fees and charges in the circumstances indicated in the *Loan Details* and any changed or new fee or charge notified to you;
- (b) an amount equal to any government charges and duties on receipts or withdrawals under *this agreement*, calculated in accordance with the relevant legislation. These are payable whether or not you are primarily liable for such charges and duties;
- (c) any expenses we reasonably incur in enforcing *this agreement* or a *security* after you are in default (including:
  - (i) in the case of a mortgage, expenses incurred in preserving and maintaining the *property* - such as by paying insurance, rates and taxes for the *property*; and
  - (ii) the use of our staff and facilities);
- (d) any costs or expenses we reasonably incur in doing anything that you are required to do under *this agreement* but have failed to do; and
- (e) the amount of any GST that is payable by us under section 5.2 of the Goods and Services Tax Act 1985 upon exercise of the power of sale under any *security*.

These payments are due and payable on the dates specified in the *Loan Details* and if no such dates are specified they are due and payable when we incur them whether or not demand has been made for them.

These payments include any amount which we pay because we reasonably believe it is or may be payable, even if we subsequently discover that it was not necessary to pay the amount (for example, if you renew your insurance over mortgaged *property* but fail to tell us that you have done so, and we then take out insurance over the same *property*).

### How to pay other amounts

- 7.2 You authorise us to debit these amounts to your *loan account*. (If a *loan* is split this will be in accordance with clause 3.2.) We may do so on or after the date we pay them or the date they become due or payable by you or us (whichever is earlier). Where possible, we will give you advance notice before debiting enforcement expenses or reimbursement of GST to your *loan account* in accordance with clauses 7.1(c) and 7.1(d).

## Changes to fees and charges

- 7.3 To the extent they are known, the amounts of the fees and charges current at the *disclosure date* are shown in the *Loan Details*.

By giving you notice within 5 working days of the change taking effect (in writing, or by regional newspaper advertisement and our website), we may change the amount of any fee or charge or impose a new one.

Information on current *annual interest rates* and fees and charges is available from the *programme manager* on request.

## 8 Interest charges

### Obligation to pay

- 8.1 You must pay us interest charges for each day on the *balance owing on your loan account*, or if a *loan* is split, each *balance owing on the sub-account*, for the end of that day. Interest charges are calculated daily at the *annual interest rate* applying to the relevant amount for that day on the basis of a 365 day year (including in a leap year).
- 8.2 The interest charges accrue daily from and including the *settlement date*. They are debited to your *loan account* (if the *loan* is split this will be in accordance with clause 3.2):
- (a) monthly; and
  - (b) on the last day of the *loan term*.

The monthly debiting of interest charges starts in the month following the month in which the *settlement date* falls. Interest charges for each month will be debited on the same day of the relevant month as the *settlement date*, or on the last *business day* of the relevant month if:

- that is earlier, or
- the relevant month has no corresponding day.

### Example

If the *settlement date* is 31 January, interest charges for February will normally be debited on 28 February. However, if 28 February is a Sunday, interest charges for the period ending 26 February will be debited on Friday 26 February, the last *business day*.

### Default interest

- 8.3 If you are in default in making any payment, the interest charges are higher (see clause 20). In such a case, we exclude from the *balance owing*

on your *loan account*, or if the *loan* is split, the applicable *balance owing on the sub-account*, for the purpose of calculating interest charges under clause 8.1 any amount on which interest charges are payable at the higher rate under clause 20 and charge interest instead on that amount under clause 20.

## Interest rates

### 9 Under the variable rate option

#### The initial annual interest rate

- 9.1 Whenever an amount is under a variable rate option, we may change the *variable rate* (or the *annual interest rate*) which applies to that amount at any time. Therefore, if the *loan* or a *portion* of it starts under the variable rate option, the *annual interest rate* shown in the *Loan Details* is the rate applying at the *disclosure date* and is only a guide - the actual rate may have changed by the *settlement date*.

#### Changing the annual interest rate

- 9.2 Whenever:
- (a) the *loan* or a *portion* is under the variable rate option; or
  - (b) in the case of a *portion* with a *discounted rate period* the *discounted rate period* is at an end,

the *annual interest rate* at any time for the *loan* or the *portion* is the *variable rate*. At any time, the *variable rate* (and the *annual interest rate*) applying to the *loan* or the *portion* is the *variable rate* most recently notified to you (see clause 32 below).

### 10 Under the fixed rate option

#### Effect of fixing

- 10.1 Under this option, we agree to fix the *annual interest rate* for the *loan* or a *portion* of it for an agreed period of approximately 1, 2, 3, 4 or 5 years (the "**fixed rate period**"). During a *fixed rate period*, the *annual interest rate* for the *loan* or the *portion* remains fixed even if other interest rates rise or fall.

#### Selecting the fixed rate option

- 10.2 Under *this agreement*, you may choose the fixed rate option either:
- (a) in the case of a *portion* with a *discounted rate period*, subject to clause 12, at any time after the end of the *discounted rate period*; or

- (b) for all other *loans*:
- (i) at the start of the *loan term*; or
- (ii) subject to clause 12, during the *loan term*.

#### Fixed rate at the start of the loan term

10.3 For all *loans*, other than portions with a *discounted rate period*, if you choose to fix the rate for the *loan* or a *portion* of it at the start of the *loan term*:

- (a) the *fixed rate period* begins on the *settlement date*; and
- (b) the *annual interest rate* which applies for the first *fixed rate period* is the *fixed rate* (being the *fixed rate* for that period on the *settlement date*, for the *loan* or the *portion*).

The *fixed rate* specified in the *Loan Details* for the relevant *fixed rate period* applies as at the *disclosure date* but is only a guide unless the *loan* is advanced on or prior to the *fixed rate lock date*, in which case the *fixed rate* specified in the *Loan Details* will be the *fixed rate*. Otherwise, the actual *fixed rate* may have changed by the *settlement date*. We notify you in writing of the actual *fixed rate* (ie the *annual interest rate* for the relevant *fixed rate period*) and repayment amount or amounts on or before the *settlement date*.

#### Fixed rate during the loan term

10.4 If you choose to fix the rate for a *loan* or a *portion* during the *loan term* in accordance with clause 10.2:

- (a) the *fixed rate period* begins on a *business day* that has been agreed between you and us; and
- (b) the *annual interest rate* which applies for the relevant *fixed rate period* is the *fixed rate* for that period at the start of the *fixed rate period*, for the *loan* or the *portion*.

The *annual interest rate* for each *portion* that is under the *fixed rate* will be the *fixed rate* for that *fixed rate period* applying to that particular *portion* for that period.

#### Calculating the exact fixed rate period

10.5 The *fixed rate period* always ends on, but excludes the first occurring tenth day of a month after the relevant anniversary of the start of the *fixed rate period* (or, if that day is not a *business day*, the next *business day*). Therefore the exact length of the *fixed rate period* is longer than 1, 2,

3, 4 or 5 years unless the *fixed rate period* starts on the 10th of a month.

#### Examples

Nominal fixed rate period	start date	end date	Exact fixed rate period length
1 year	11 Feb 2010	10 Mar 2011	13 months less 1 day
2 year	2 Feb 2010	10 Feb 2012	24 months plus 8 days

#### What happens at the end of the fixed rate period?

10.6 When the *loan* or a *portion* of it is under the fixed rate option (whether you choose this at the start of the *loan term* or whether you change to it during the *loan term*), you may choose to continue under the fixed rate option at the end of the current *fixed rate period* by contacting the *programme manager* in writing at least 14 days before the end of the current *fixed rate period*. However, you may only continue under the fixed rate option if:

- we are offering the *fixed rate* option at the time you request to continue under the *fixed rate* option; and
- we agree at our absolute discretion to your request to continue under the *fixed rate* option.

Any continuation under the *fixed rate* option is therefore separately agreed between us and you as a change to the terms of *this agreement*. (See clause 12.3 for the relevant procedure.)

If you do not tell us on time, or at all, or we do not agree to a continuation of the *fixed rate* option, the *loan* or relevant *portion* of it automatically changes to the *variable rate* option at the end of the current *fixed rate period*.

## 11 Under a line of credit option

### Annual interest rate

11.1 Whenever a *portion* of a *loan* is under a line of credit option, the *annual interest rate* is the *variable rate* most recently notified to you (see clause 9 above).

If more than one *portion* of a *loan* is under a line of credit option at any time then we may notify you that a different *variable rate* applies to each of those *portions*. In that case, more than one *variable rate* will apply to a *loan*. The *annual interest rate* for each *portion* of a *loan* that is under a line of credit option will be the *variable rate* most recently notified to you (see clause 32 below) as applying to that particular *portion*.

11.3 The entire *loan amount* available under a *portion* of a *loan* under a line of credit option must be fully drawn down by you on the date that the *portion* of the *loan* is created.

## **12 Changing interest rate options**

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### **Interest rate restrictions**

12.1 Your *loan product* may contain *special features* that restrict your interest rate options so that only a *variable rate* option may apply to your *loan portions*. If this is the case then the provisions of this clause will not apply to your *loan*.

### **Automatic change - fixed to variable**

12.2 If a *loan* or a *portion* of it is under a fixed rate option, it automatically changes to the variable rate option at the end of the *fixed rate period* unless you are allowed to continue under the fixed rate option under clause 10.7. However, in the case of a *portion* with a *discounted rate period*, you may only elect to change after the end of the *discounted rate period*.

### **Choosing to change - variable to fixed**

12.3 You may change a *loan* or a *portion* of it from a variable rate option to the fixed rate option by contacting the *programme manager* in writing.

However, you may only change a *loan* to the fixed rate option if:

- we are offering the fixed rate option at the time you request to change to the fixed rate option; and
- we agree at our absolute discretion to your request to change to the fixed rate option.

Any change to the fixed rate option is therefore separately agreed between us and you as a change to the terms of *this agreement*.

### **Procedure for changing to fixed or continuing with fixed after the end of a current fixed rate period**

12.4 When you contact the *programme manager*, they advise you whether the fixed rate option is available. If so, they tell you in a variation document the *fixed rate period* being offered and the probable *fixed rate* and repayment amount.

To offer to change the *loan* or a *portion* of it to the fixed rate option or to continue it under the fixed rate option at the end of a current *fixed rate period*, you must sign and return the completed variation document to the *programme manager*.

Once you return the variation document in accordance with this clause, you may not change

your mind. If we accept the offer you make to us by signing and returning the variation document then the *loan* particulars will change.

### **Choosing to change - fixed to variable**

12.5 You may change a *loan* or a *portion* of it from the fixed rate option to the variable rate option. However, if you change during a *fixed rate period*, you may have to pay a *switching fee*.

### **Procedure for changing to variable**

12.6 To change the *loan* or a *portion* of it from a fixed rate option, you must tell the *programme manager* in writing. Once you have done so, you cannot change your mind and we will make the change from the fixed rate option within 5 *business days* after the *programme manager* tells us that you want to change.

## **Early repayment**

### **13 Repaying early under the variable rate option or line of credit option**

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#### **How much and when you may prepay**

13.1 Whenever a *loan* or a *portion* of it is under a variable rate option or a line of credit option, you may repay early:

- (a) part of the *loan* or part of the *portion* at any time by:
  - (i) paying one or more lump sums; or
  - (ii) increasing the amount of your scheduled repayment or repayments;
- (b) the *loan* (that is, the *total amount owing*) without giving notice;
- (c) the *portion* without notice.

#### **Redrawing amounts**

13.2 Once you make an early repayment, you may only *redraw* the amount under the *redraw* provisions in clause 17

### **14 Repaying early under the fixed rate option**

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#### **How much and when you may prepay**

14.1 Whenever a *loan* or a *portion* of it is under a fixed rate option, you may repay early:

- (a) the *loan* (that is the *total amount owing*) at the **end** of the *fixed rate period* without giving notice;

- (b) the *loan* (that is the *total amount owing*) **during** the *fixed rate period* without giving notice. However, you may have to pay *break costs* (see clause 16);
- (c) all or part of the *portion* at the **end** of the *fixed rate period*, without giving notice;
- (d) all of the *portion* **during** the *fixed rate period* without giving notice, but you may have to pay a *switching fee* (see clause 16);
- (e) part of the *loan* at the **end** of the *fixed rate period*, without giving notice.

You may not:

- (f) repay early only **part** of a *loan* or part of the *portion* of it **during** the *fixed rate period* unless we agree. (If we do agree, you may not *redraw* the amount and clause 17 does not apply and you may have to pay a *switching fee* (see clause 16)); or
- (g) voluntarily increase your scheduled repayment amount or change the frequency of your repayments during a *fixed rate period*. But, despite paragraph (f), you can voluntarily increase the amount of your scheduled repayment immediately before the *fixed rate period* begins and without incurring any *switching fees*.

We may, in our absolute discretion, determine whether to credit or refund any repayment made by you contrary to clause 14.1(f) or 14.1(g).

### Redrawing amounts

- 14.2 You may not *redraw* any prepaid amount and clause 17 does not apply to any part of the *loan* while that part is subject to a *fixed rate period*.

## 15 Repaying under all options

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### Your decision is final

- 15.1 Once you have notified us or the *programme manager* of your decision to repay, you cannot change your mind - you must repay.

### Early repayment with split loan

- 15.2 If the *loan* is split, you may direct us to credit any early repayment to a particular sub-account or sub-accounts.

### Effect of partial early repayment

- 15.3 If you repay part of a *loan* or part of a *portion* of it early, your repayment amount does not change

(unless we specifically agree to your request for a change) but it may mean you repay the *loan* or the *portion* quicker.

## 16 Break costs and switching fees

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### Breaking the fixed rate period

- 16.1 If a *loan* or a *portion* of it is under a fixed rate option, you are taken to have broken your *fixed rate period* where *this agreement* is terminated by:

- you repaying all of the *balance owing on your loan account*; or
- the *total amount owing* becoming repayable because you are in default.

*Break costs* are then payable.

Where *this agreement* is **not** terminated, you are also taken to have broken your *fixed rate period* by:

- you repaying part of the *balance owing on your loan account* or all or part of the *balance owing on the sub-account* for the relevant *portion* during the *fixed rate period*; or
- you changing from the fixed rate option to a variable rate option or a line of credit option during the *fixed rate period*.

A *switching fee* is then payable.

### Calculation of break costs and switching fees

- 16.2 *Break costs* are an amount equal to our reasonable estimate of our loss arising as a result of you breaking the *fixed rate period*. This loss usually arises because of changes in market interest rates between the start of the *fixed rate period* and when you break. We calculate the *break costs* using the *break costs method* set out in clause 16.3.

A *switching fee* is also calculated using the *break costs method*, so that the amount of the *switching fee* is equal to the amount of *break costs* that would have been payable by you if the amount you repay or the amount in relation to which you change from the fixed rate option represented all of the *balance owing on your loan account* and you had terminated *this agreement* by repaying all that amount.

## Explanation of break costs method

16.3 The *break costs method* is the means by which we calculate the *break costs*.

When we agree to lend under a fixed rate option we enter into hedging arrangements with a bank or financial institution to cover our interest rate risk. When you break a *fixed rate period* under *this agreement* we may be required to break that hedging contract.

When we break a hedging contract we may be required to pay a fee to the other party. That fee represents our loss and the *break costs method* calculates our loss as the break costs payable to our counterparty plus an amount calculated to be the reasonable administration costs incurred by us in arranging to break the arrangement.

If there is no fee payable to our counterparty then the *break costs* payable by you are simply our administration costs in determining this.

If the *loan* is split, the calculation of *break costs*, using the *break costs method*, is done for each *portion* under a fixed rate option which you are taken to have broken. *Break costs* are equal to the total of each amount so calculated.

The method used to calculate *break costs* is not the formula prescribed by the Credit Contracts and Consumer Finance Regulations 2004

### **Warning**

*Break costs* and *switching fees* can be high and will increase the amount you owe us as a result, for example, of your default. You can get an estimate of applicable *break costs* and *switching fees* at any time by contacting the *programme manager*.

## Redraw

### 17 Redrawing amounts

#### When redraw may be available

17.1 If you have prepaid amounts under *this agreement* in relation to a *portion* of it (including a *portion* of the *loan* under a line of credit option), you may ask to be allowed to *redraw* (or re-borrow) any amount prepaid for that *portion*. However, we will not consent to a *redraw* in respect of the *portion* while the *portion* is under the fixed rate option.

#### Conditions to redraw

17.2 We agree to allow you to *redraw* an amount if:

- (a) you pay us any *redraw* fee; and

- (b) the *programme manager* is, at the time, offering the *redraw* facility (which is in its absolute discretion). (We will advise you immediately upon receiving your request if the *programme manager* is not offering the *redraw* facility at that time); and
- (c) you satisfy the conditions of the *redraw* facility applicable at that time, of which we will advise you when we receive your request; and
- (d) the *redraw* amount does not result in the *balance owing on your loan account* exceeding your then current loan curve balance or, where relevant, the *balance owing on the sub-account* for a particular *portion* of the *loan* exceeding the current sub-account curve balance.

For the purpose of these *redraw* provisions, your "loan curve balance" is the amount that would be the *balance owing on your loan account* at that date if you had paid all scheduled repayments on time and not prepaid any amounts.

Where relevant, the "sub-account curve balance" is the amount that would be the *balance owing on the sub-account* for a particular *portion* if you had paid all scheduled repayments on time and not prepaid any amounts.

If we agree to a request to change your repayment amount or require you to reduce the *balance owing on your loan account* or the *balance owing on the sub-account* for a particular *portion*, we also recalculate your loan curve balance at that time. If you have a *loan* or *portion* of it under a dynamic variable rate principal and interest option and your repayment amount for the *loan* or that *portion* is recalculated after you repay an amount early or redraw an amount, we do not recalculate your loan curve balance.

#### Effect of redraw

17.6 Any amount redrawn becomes part of the *balance owing on your loan account* (and part of the *balance owing on the sub-account*, if applicable).

#### Declarations you make

17.7 Each time you request a *redraw*, you declare to us:

- (a) that you have not dealt with any *security* without our consent; and

- (b) that you are not relying on any statement or representation by us or the *programme manager* (including our employees and the *programme manager's* employees) or our agents or the *programme manager's* agents relating to the taxation effects of making the *redraw*. (You should take your own tax advice.)

You can find out how much you have available for *redraw* by:

- calling us
- checking your statement.

You may access *redraws* from your *loan account* through the following means:

- by Internet access to your loan account at [www.loanenquiry.co.nz](http://www.loanenquiry.co.nz).
- General outward direct debit payments.
- Direct debits established for credit card payments.
- any other means which may be notified to you from time to time.

- (f) you are, or a *security provider* is, in material default under a *security* or withdraws from it or materially breaches its terms, or a *security* is or may be unenforceable; or
- (h) you (if you are an individual) die, become legally incapacitated in any way or become insane; or
- (i) all or any part of any provision of *this agreement* or any *security* is or becomes illegal, void, voidable, unenforceable, invalid, or otherwise of limited force or effect or you allege or claim such an event has occurred; or
- (j) if at any time we consider that the value of any *property* that is subject to a *security* has reduced below a level acceptable to us; or
- (k) if you are a trustee of a trust, you cease being a trustee or a resolution is passed by the settlor, trustees or beneficiary of that trust, or any other action is taken to dissolve the trust or the trust deed is amended, varied or revoked, unless otherwise approved by us in writing; or
- (l) an event occurs which materially adversely affects our rights under *this agreement* or a *security*.

## Default

### 18 When you are in default

You are in default if:

- (a) you do not pay on time any repayment or other amount due under *this agreement*, another loan agreement, or *guarantee* you have with us or anyone else. (This includes if our direct debit instruction for your account is subsequently reversed by the paying institution); or
- (b) you breach any clause or fail to perform any of your obligations under *this agreement*; or
- (c) you give, or another person acting with your knowledge or permission gives, us incorrect or misleading information in connection with *this agreement* or a *security*; or
- (d) we reasonably believe you or another person acting with your knowledge or permission has acted fraudulently in connection with *this agreement* or a *security*; or
- (e) you become, or a *security provider* becomes, *insolvent* or steps are taken to make you or them so; or

### 19 What can happen then?

#### Consequences of default

- 19.1 If you are in default, then we may, at any time, give you notice stating that you are in default and take any of the following actions.
- (a) cancel the *loan* or any *portion* or the *loan*;
- (b) declare any or all of the *total amount owing* to be due and payable either immediately or at such later date as we may specify whereupon that *total amount owing* will become so due and payable; or
- (c) exercise all or any of our rights under any *security* and at law.

### 20 Higher interest charges

Under *this agreement*, a *default rate* of interest may be charged when payments are in default.

#### Default interest

- 20.1 In the event you default in making payment, the *default rate* of interest set out in the *Loan Details*



may be charged daily on the amount due but unpaid while it is overdue.

### Capitalising default interest

- 20.2 If you do not pay these default interest charges, we add them to the overdue amount (this is known as "capitalising") on each *repayment date* and monthly after the end of the *loan term*. You are then liable for default interest charges on the new amount overdue.

### Default rate

- 20.3 The *default rate* for an amount is always 3% per annum more than the *annual interest rate* applying to that amount at any particular time and therefore, if the *annual interest rate* changes (including because you switch interest rate options), so does the *default rate*.

### Obligations not affected

- 20.4 Your obligation to pay on time is not cancelled by this clause.

## General matters

### 21 Credit law

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This clause applies to the extent that any *credit law* applies to *this agreement*.

If:

- (a) a *credit law* would otherwise make a provision of *this agreement* illegal, void or unenforceable; or
- (b) a provision of *this agreement* would otherwise contravene a requirement of that *credit law* or impose an obligation or liability which is prohibited by that *credit law*,

*this agreement* is to be read as if that provision were varied to the extent necessary to comply with that *credit law* or, if necessary, omitted.

### 22 Loan term

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The *loan term* begins on the *settlement date*. The length of the *loan term* is specified for each *portion* in part E of the *Loan Details*.

### 23 Establishing your loan account and accounting for transactions

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- 23.1 You authorise us to open a *loan account* in your name and to debit to it each part of the amount you borrow on the date we lend it and any amount which you must pay under *this*

*agreement* on or after the date it becomes due, without first notifying you.

- 23.2 We may assign any date we consider appropriate to a debit or credit to the *loan account* (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs).

However, we credit payments to the *loan account* as soon as practicable after we (and not the *programme manager* or any other person) actually receive them. This is not necessarily the same day that you pay. Alternatively, at our absolute discretion, we may credit any payment received in accordance with the repayment terms set out in the *Loan Details*.

- 23.3 We may subsequently adjust debits and credits to the *loan account*, the *balance owing on your loan account* or the *balance owing on the sub-account*, so as to accurately reflect the legal obligations of you and us (for example, because of an error or because a direct debit authority is dishonoured). If we do this, we may make consequential changes (including to interest charges).

- 23.4 Unless otherwise specifically provided or required by law, we may use any payment we receive in connection with *this agreement* to reduce the *total amount owing* in any order we choose.

- 23.5 We give you a statement for your *loan account* every 6 months (generally, in July and January) until there is no *balance owing on your loan account*.

- 23.6 In the case of a line of credit portion, we give you a statement at monthly intervals until the *sub-account total amount owing* for the line of credit portion is zero.

- 23.7 If you have consented to receiving statements electronically then we may send those statements to you in an electronic form and/or in an electronic communication.

- 23.8 Where there are two or more of you we are authorised to act on and each of you are bound by the instructions of any one of you without the need to obtain confirmation or instructions from each of you.

### 24 Consents

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You must comply with all conditions and requirements in any consent we give.

### 25 Lender's mortgage insurance and valuations are for our benefit

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- 25.1 Some of our loans are covered by a *lender's mortgage insurance* policy. Depending on the

valuation of the *security* and the *loan amount*, we may require you to pay the cost of the *lender's mortgage insurance* at or before the *settlement date*. If we do not do so, we pay the cost of that *lender's mortgage insurance*.

You acknowledge that *lender's mortgage insurance* protects us and not you. If you default under *this agreement* or any *security* resulting in a need to sell the *property* and the sale proceeds are insufficient to fully repay the *loan*, we may incur a loss. We may recover this loss under the *lender's mortgage insurance* policy. However, you become legally responsible for repaying to the insurer the amount outstanding under the agreement or *security* because you are not protected by the *lender's mortgage insurance*.

Thus, the only advantage you receive from paying for any *lender's mortgage insurance* is the ability to borrow more than we would permit if we did not have that insurance.

### **Obligation to provide valuation/ other financial information**

25.2 We may require you to provide information at any time about your financial position and we may require a valuation to be completed by a registered valuer of any *property*.

Any *property* valuation is for our use only.

### **26 Insurance cover and proceeds**

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26.1 You must maintain insurance that provides cover for the full replacement value of the buildings and built structures on the *property* (or other such value that we agree in writing), against every risk normally covered in a comprehensive policy including but not limited to loss or damage by fire, theft, vandalism, flood, natural disaster and any other risks we require.

26.2 We can require you to use the proceeds of any insurance claim to repay all principal, interest, fees and other amounts owing to us under *this agreement* and we can ask the insurance company to pay out any claim directly to us.

26.3 By signing *this agreement*, you are giving us an irrevocable power of attorney to act on your behalf to make, discuss, deal with and to settle with the insurer or any other party all claims that may arise under the house insurance policy or in connection with any damage or destruction to the *property*.

### **27 How we may exercise our rights**

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27.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing conditions.

27.2 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.

27.3 Our rights and remedies under *this agreement* are in addition to other rights and remedies provided by law independently of it.

27.4 Our rights and remedies may be exercised on our behalf by:

- any of our employees whose job title includes the word "manager"; or
- (unless we notify you otherwise in writing) any directors of the *programme manager* or any employee of the *programme manager* whose job title includes the word "manager"; or
- any other person we authorise.

27.5 Despite clause 27, the *programme manager* and their officers or other employees are not authorised to:

- vary the *loan term*;
- increase the *loan amount*;
- waive your obligation to pay or repay an amount under *this agreement*;
- vary the method of calculating the *annual interest rate*; or
- vary the method of calculating the repayment amounts.

27.6 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

### **28 Blanks**

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You agree that we may fill in any blanks in any document related to *this agreement* (such as an acknowledgment).

### **29 Our certificates**

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We may give you a certificate or formal statement about a matter or about an amount (including *break costs* and *switching fees*) payable in connection with *this agreement*. This is sufficient evidence of the matter or amount, unless it is proved to be incorrect. You may, however, show us evidence that the matter or amount is incorrect if you wish to do so.

### **30 Assignment and set off**

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- 30.1 We may assign, transfer or otherwise deal with our rights and obligations under *this agreement* in any way we consider appropriate without your consent or the consent of any security provider. You agree that we may disclose any information or documents we consider desirable to help us exercise this right. You also agree that we may disclose information or documents at any time to a person to whom we assign or transfer our rights and obligations under *this agreement*.
- 30.2 Your rights are personal to you and may not be assigned without our written consent.
- 30.3 Except to the extent you may have a right of set-off granted by law which we cannot exclude by agreement, you must pay all amounts owed under *this agreement* (including any *guarantee* and any *security*) in full without setting off amounts you believe we owe you and without counterclaim.
- 30.4 We may (without prior notice or demand) set off any obligation due from you under *this agreement* (including any *guarantee* and any *security*) against any obligation owed by you to us (whether or not matured).

### **31 Notices, other communications and service of documents**

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- 31.1 Notices, certificates, consents, approvals and other communications in connection with *this agreement* must be in writing or in any other form permitted by it.
- 31.2 Communications from us or the *programme manager* may be signed by any employee of the *programme manager* whose job title includes the word "manager" or any other person we authorise. If you are a company, communications from you must be signed by a director.
- 31.3 Communications to you may be:
- (a) given personally (if you are a company, to one of your directors) at; or
  - (b) left at; or
  - (c) sent by post to; or
  - (d) sent by electronic communication to,
- the address you tell us for that purpose or your address last known to us; or
- (e) given in any other way permitted by law.

31.4 Communications for us must be:

- (a) given personally to one of the *programme manager's* employees at:
  - its address stated in the *this agreement*; or
  - any other address it tells you; or
  - its registered office; or
- (b) sent by prepaid post or electronically (such as by fax or email) to any of those places; or
- (c) given in any other way permitted by law.

31.5 A communication is taken to be given:

- (a) in the case of a communication given personally - on the date it bears or the date it is received by the person to whom it is addressed, whichever is the later; or
- (b) in the case of a communication sent by post - on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later; or
- (c) in the case of a communication sent by fax or some other form of electronic transmission - on the date it bears or the date on which the machine from which it was sent produces a report indicating that the communication was sent to the fax (or other) number of the person to whom it is addressed, whichever is the later; or
- (d) in the case of a communication given by newspaper advertisement - the date it is first published

31.6 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to your residential address in *this agreement* (or any changed residential address notified to us) or by leaving it there. This does not prevent any other method of service.

### **32 Notice of changes to variable rates**

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32.1 We will notify you in writing (which may be by advertisement in regional newspapers and on our website) no later than 5 working days after the date of any increase in a *variable rate* for a *loan*. We notify you of a reduction in the *variable rate* in the next statement of account sent to you after it takes effect.

32.2 You can also find out the *variable rate* at any time by contacting the *programme manager*.

### **33 Variations**

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We may vary any term of *this agreement* for one or more of the following reasons (without seeking your consent):

- (a) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general banking practice;
- (b) to reflect any decision of a court, ombudsman or regulator;
- (c) to reflect a change in our systems or procedures, including for security reasons;
- (d) as a result of changed circumstances (including by adding benefits or new features);
- (e) to respond proportionately to changes in the cost of providing the *loan* (including by changing *annual interest rates*); or
- (f) to make them clearer.

We must notify you of any variation no later than 5 days after it takes effect.

### **34 Your warranties**

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You warrant that all representations you make and all information and documents you, or another person acting with your knowledge or permission, give to us in connection with *this agreement* are true and correct and not misleading in any way.

You acknowledge that we have relied upon the accuracy of those representations, information and documents in entering into *this agreement* and will continue to do so in dealing with you.

You undertake and agree:

- (a) that you will not materially default under, withdraw from, or materially breach the terms of any *security* or take any action that may result in any *security* being unenforceable;
- (b) to ensure that any *security* provider does not materially default under, withdraw from, or materially breach the terms of any *security* or take any action that may result in any *security* being unenforceable;
- (c) that you must not become *insolvent* and that steps will not be taken to make you *insolvent*;

- (d) to ensure that any *security* provider does not become insolvent and that steps will not be taken to make any *security* provider *insolvent*;
- (e) that you will not breach the terms of any trust letter you sign in connection with *this agreement* or any *security*;
- (f) to ensure that no other person who signs a trust letter in connection with *this agreement* or any *security* breaches the terms of that trust letter; and
- (g) to take all steps to prevent any event occurring which may materially adversely affect our rights under *this agreement* or a *security*.

### **35 Goods and Services Tax Act Declaration**

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35.1 Unless you have provided us with information to the contrary, we are lending to you on the basis that neither you nor any person providing security are a "registered person" for the purposes of the Goods and Services Tax Act 1985. If you or any person providing security is a registered person for the purposes of the Goods and Services Tax Act 1985; then unless you have provided us with information to the contrary, you warrant that you are not using any property given as security for the loan for a "taxable activity" under that Act.

35.2 By signing *this agreement* you irrevocably grant us a power of attorney for the purposes of obtaining information from the Inland Revenue Department relating to your GST status and any GST that may have been claimed by you or may be or become payable in respect of any *property*.

### **36 Applicable law**

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*This agreement* is governed by the law in force in New Zealand. You and we submit to the non-exclusive jurisdiction of the courts of that place.

## 37 Meaning of words

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These meanings apply in *this agreement*.

**annual interest rate** means a per annum rate of interest.

**balance owing on the sub-account** means, for a sub-account, at any time, the difference between all amounts credited and all amounts debited to that sub-account at that time. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

**balance owing on your loan account** means, for a *loan account*, at any time, the difference between all amounts credited and all amounts debited to the *loan account* at that time. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

**break costs** see clause 16.

**break costs method** see clause 16.

**business day** means a day other than a Saturday or Sunday, or a public or special holiday in Auckland.

**credit law** means the Credit Contracts and Consumer Finance Act 2003 as amended or replaced and any other law that governs or regulates the provision of credit.

**default rate** see clause 20.

**disclosure date**, for a *loan*, is stated in part of *this agreement*.

**discounted rate period**, is stated in the *Loan Details*.

**fixed rate**, for a particular *fixed rate period*, means the *annual interest rate* for that *fixed rate period*.

**fixed rate lock date** means the date specified in the *Loan Details*.

**fixed rate period** see clause 10.

**General Terms** means this document as updated, varied and replaced from time to time.

**GST** has the same meaning it has in the *Goods and Services Tax Act 1985*.

**guarantee** means a guarantee and indemnity in the form prepared by us under which each

person named a Guarantor in *this agreement* guarantees the repayment of all moneys owing by the Borrower(s) to us under this agreement or any other agreement and indemnifies us against any loss suffered as a result of default by the Borrower(s).

**insolvent** means:

- in respect of a company, any step taken for the liquidation, voluntary administration, receivership, reconstruction, winding up, dissolution, deregistration, or any arrangement or compromise proposed by the company to its creditors or the company being declared at risk pursuant to the Corporations (Investigations and Management) Act 1989, or a statutory manager being appointed or any step taken with a view to any such appointment in respect of the company under that Act or being otherwise unable to pay its debts as they fall due, and
- in respect of an individual, that person committing an act of bankruptcy as set out in ss17-28 of the Insolvency Act 2006, being adjudicated bankrupt, or the debtor filing an application for bankruptcy with the Official Assignee (as defined in the Insolvency Act 2006).

**interest only period**, for a *loan*, is stated in the *Loan Details* under "Repayments and *loan term*".

**interest only repayment** see clauses 5.4 and 5.5.

**intro rate** see clause 39.2.

**lender's mortgage insurance** means insurance to protect us against a shortfall between the net sale proceeds of any mortgaged *property* and the sum insured under the policy. (It may incorporate timely payment insurance - that is, insurance to protect us against your failing to pay any scheduled repayment under *this agreement*).

**loan** means a loan facility of a type described in the *Loan Details* which we provide to you under *this agreement*.

**loan account** means, for a *loan*, the account we establish in your name for recording all transactions in connection with the *loan*. If the *loan* is split, it includes each sub-account we establish for recording all transactions relating to each *portion* of the *loan*.

**loan amount**, for a *loan*, is set out in the *Loan Details*. If a *loan* is split into *portions*, there is a *loan amount* for each *portion* and, depending on the context, *loan amount* refers to the *loan amount* for a *portion* or the *loan amount* for all *portions*.

**Loan Details** means, for a *loan*, the *Loan Details* we provide to you when we offer you the *loan* and which form part of *this agreement* and where the context requires, includes any *Variation Loan Details*.

**loan term**, for a *loan*, is described in clause 22 and is stated in the *Loan Details* section for each *portion* of *this agreement*.

**loan product**, the product type associated with your loan. The loan product type is described in Part A.

**on time period**, means a period of 12 consecutive months (excluding any months that form part of a previous *on time period*) during which you have paid on time all amounts due under this agreement.

**payment frequency** means the frequency at which you choose *repayment dates* to occur being any of weekly, fortnightly or monthly.

**portion** means a specific portion of the *loan* as set out in the *Loan Details* or *Variation Loan Details* section of *this agreement*.

**principal and interest repayment** see clause 5.3.

**programme manager** means the person who is named as programme manager in part A of *this agreement* and includes its successors and assigns and any person performing (in any capacity) the functions to be performed under *this agreement* or any *security* by the *programme manager*.

**property** means the *property* the subject of any mortgage of real *property* described in the *Loan Details* under "Security" comprises all the mortgagor's estate and interest in the *property* and rights which may arise in connection with it; and rights to personal property left on the *property* if we take possession; and rights to set off any money we owe the mortgagor against the amount secured by that mortgage.

**redraw** means accessing any prepaid amounts available under a *portion* of a *loan* and includes a drawdown by you under a *portion* under a line of credit option.

**repayment date** means, for a *loan*, each date you are scheduled to make a repayment under *this agreement*.

**risk fee** means the credit fee so described and disclosed in Part G of the *Loan Details*. If we have obtained *lender's mortgage insurance* for your loan from a third party insurer a *risk fee* will not apply. A *risk fee* represents a fee that is paid to a related party to provide the same protection for the lender as is provided under *lender's mortgage insurance*.

**security** means each *security interest* described in the *Loan Details* under "Security" and any substitute or additional *security interest* given in connection with *this agreement*.

**security interest** means any *security* for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power. *Security interest* also includes a guarantee or an indemnity.

**security provider** means each person (other than you) who gives a *security*.

**settlement date** means, for a *loan*, the date you tell us to lend you the *loan amount* (even though the actual date we lend you the *loan amount* may be a later date).

a **special feature** means and refers to the special features set out in Part L that may be applicable to your *loan product*, your *portion* or your *loan*.

**specialist lending variable rate** means the rate we publish from time to time as our advertised "specialist lending variable rate" or a name that we substitute for that name.

**sub-account total amount owing** means, for a sub-account, at any time, the *balance owing on a sub-account* for that sub-account at that time, plus all accrued interest charges, default interest charges and other amounts which you must pay under *this agreement* but which have not been debited to that sub-account at that time.

**switching fee** see clause 16.

**this agreement** means all the documents that make up the credit contract and include the document titled Loan Agreement, each set of *Loan Details*, the *General Terms*, each *security*, each *guarantee*, and any *Variation Loan Details*

**total amount owing** means, at any time, the *balance owing on your loan account* at that time, plus all accrued interest charges, default interest charges, costs, expenses, GST and all other amounts which you must pay under *this agreement* but which have not been debited to your *loan account* at that time.

**variable rate** see clause 9.

**Variation Loan Details** means in relation to each further advance and each agreement to vary the terms of *this agreement*, the document that we send you that records the terms of that further advance or variation. Each *Variation Loan Details* document that we give you becomes part of *this agreement*.

**we** means RESIMAC Home Loans Limited and includes its successors and assigns.

**you** means the person or persons named in the *Loan Details* as “Borrower” and where the context permits or requires includes the person or persons named as “Guarantor”. If there are more than one, **you** means each of them separately and every two or more of them jointly. **You** includes your successors and assigns.

A reference to:

- any thing includes the whole and each part of it.
- a document includes any variation or replacement of it.
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them).
- the words **including** or **such as** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- the word **person** includes an individual, a firm, a body corporate, an unincorporated association or an authority.

The singular includes the plural and vice versa.

Headings are for convenience only and do not affect the interpretation of *this agreement*.

## L: Product Features

### 38 Standard Line of Credit

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The features set out in this clause apply if any portion of your loan includes a line of credit option.

#### Nature of line of credit portion

38.1 The entire *loan amount* available under a *portion* of a *loan* under a line of credit option must be fully drawn down by you on the date that the *portion* of the *loan* is created.

The line of credit option is in essence, a standard variable portion:

- commencing with *interest only repayments*;
- converting later to become *principal and interest repayments*; and
- with more flexible *redraw* terms.

#### Annual interest rate

38.2 Whenever a *portion* of a *loan* is under a line of credit option, the *annual interest rate* is the *variable rate* most recently notified to you (see clause 9 above).

If more than one *portion* of a *loan* is under a line of credit option at any time then we may notify you that a different *variable rate* applies to each of those *portions*. In that case, more than one *variable rate* will apply to a *loan*. The *annual interest rate* for each *portion* of a *loan* that is under a line of credit option will be the *variable rate* most recently notified to you (see clause 32 above) as applying to that particular *portion*.

#### Interest only period - line of credit portion

38.4 If a *portion* is under a line of credit option then the *interest only period* may be up to a maximum of 15 years, as agreed by us. You may not ask to lengthen or shorten the *interest only period* of a *portion* under a line of credit option. However, we may review the *interest only period* every 5 years.

As a result of any such 5-yearly review, we may choose to terminate the *interest only period* if we consider it reasonably necessary:

- (a) in order to respond proportionately to changes in the cost of providing the *loan* or to changes in the markets in which we operate;
- (b) in order to comply with any change or anticipated change in any relevant law,

code of practice, guidance or general banking practice;

- (c) in order to reflect a change in our systems or procedures; or
- (d) as a result of changed circumstances (including by changing product features).

Should we choose to terminate the *interest only period*, your repayments will be *principal and interest repayments* as described above in clause 5.3 from the date we specify in a notice to you indicating our decision to terminate the *interest only period*.

#### Conversion to principal and interest repayments

38.5 At the end of the *interest only period* under a line of credit option, *principal and interest repayments* for the balance of the *loan term* are calculated as the amount required to repay the *loan amount* for that portion over the balance of the *loan term* together with interest at the applicable *annual interest rate* from time to time regardless of whether any amount has been repaid and is available for *redraw*.

If at the end of the *interest only period* the full *loan amount* has not been drawn, you may ask us to reduce the *loan amount* for this portion and calculate *principal and interest repayments* on the reduced *loan amount*.

Any amount undrawn is treated as a prepayment and is available for *redraw* in accordance with clause 17.1

#### Redraw

38.6 If a portion of a *loan* is under a line of credit option, then in respect of that *portion*, and despite any published conditions of the *redraw* facility, we do not, subject to the limitation in clause 17.2(d), impose any limit on the amount of any *redraw* or the frequency of any *redraws*.

38.6 During the *interest only period* for a *portion* of a *loan* under a line of credit option, you are required to only make *interest only repayments*. However, if you do make payments which reduce the principal, you may access such prepaid amounts by using the *redraw* facility.

### 39 Discounted Loan

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The features set out in this clause apply if your loan is a Discounted Loan.

#### Interest Rate during Discounted Rate Period

39.1 If the *Loan Details* indicate that your *loan* is a Discounted Loan then the *loan* (or a *portion* of it) is under the variable rate option, the *annual interest rate* for the *loan* or the *portion* during the



*discounted rate period* is referred to in the Loan Details as the *intro rate*.

At any other time, the *annual interest rate* applying to the *loan* or the *portion* is the *variable rate* most recently notified to you (see clause 32 above).

#### **Interest Rate after Discounted Rate Period**

39.2 At any time after the end of the *discounted rate period* you may request to switch to a *fixed rate* option by contacting the *programme manager* in writing. However, you may only switch to a *fixed rate* option if:

- we are offering a *fixed rate* option at the time you request; and
- we agree at our absolute discretion to your request to switch to a *fixed rate* option.

Any switch to a *fixed rate* option is therefore separately agreed between us and you as a change to the terms of *this agreement*. (See clause 12 for the relevant procedure.)

#### **Settlement Fee**

39.3 If your *loan* is a Discounted Loan you must pay the settlement fee specified in the *Loan Details*. The fee is payable on the *settlement date*.

### **40 Non resident loan**

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**The features set out in this clause apply if you are not resident in New Zealand**

#### **Loan purpose**

40.1 If you are a New Zealand or Australian citizen or permanent resident living overseas, the loan purpose may only be for the purchase of an investment property in New Zealand.

#### **Appointment of agent for service**

40.2 If you are a New Zealand or Australian citizen or permanent resident living overseas, you must appoint a person in New Zealand as an agent in New Zealand for service of notices under section 355 of the Property Law Act 2007 and any other notices served on you. This appointment must include granting that person an irrevocable power of attorney.

### **41 Specialist Product**

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**The features set out in this clause apply if your loan product description includes the word "Specialist"**

#### **Interest rate**

41.1 Unless the *Loan Details* provide otherwise, the *annual interest rate* is the *specialist lending variable rate* and cannot include a *fixed rate*.

#### **On time period reduction**

41.2 We may reduce the *annual interest rate* for your loan or a portion by applying a reduction to the *specialist lending variable rate* as set out in the *Loan Details*.

#### **No fixed rate portion**

41.3 Any provision in these general terms relating to a fixed rate will not apply including by way of example and not limitation, any provision that would otherwise permit you to switch to a *fixed rate*.

#### **Minimum portion**

41.4 Without limiting our discretion, we will require the minimum opening balance for a *portion* to be \$10,000.00.