

**Southern Cross Partners Limited  
General Terms and Conditions**

These General Terms and Conditions apply to your browsing and use of our Platform and also set requirements to use the Platform as an Investor or a Borrower. By accessing the Platform, you agree to be bound by them.

Capitalised words and phrases are defined in the Glossary ([here](#)).

**Investing through us**

1. In order to become an Investor on the Platform, you must:
  - (a) for an individual, be a permanent New Zealand resident, unless we otherwise agree;
  - (b) for any other entity, be incorporated or constituted in New Zealand or otherwise have a place of business in New Zealand, unless we otherwise agree;
  - (c) for an individual, be 18 years of age or older at the time you submit your application;
  - (d) have a New Zealand bank account;
  - (e) submit an Investor Application Form and meet any other eligibility requirements we may set from time to time;
  - (f) provide all of the information required in our Investor Application Form, or that we subsequently ask for;
  - (g) complete our verification processes in relation to your identity and personal information to our satisfaction; and
  - (h) not be carrying on the business of providing or offering to provide a financial service, namely being a creditor under a credit contract (as defined in the CCCFA), unless registered to do so under the FSP Act; and
  - (i) meet any other requirements notified by us to you from time to time.
2. We can accept or decline your application for registration at our discretion.
3. You may withdraw an application to become an Investor at any time by notifying us.

**Borrowing through us**

4. In order to become a Borrower on the Platform, you must:
  - (a) for an individual, be a permanent New Zealand resident, unless we otherwise agree;
  - (b) for any other entity, be incorporated or constituted in New Zealand or have a place of business in New Zealand, unless we otherwise agree;
  - (c) for an individual, be 18 years of age or older at the time you submit your application;
  - (d) have a New Zealand bank account;

- (e) submit a Borrower Application Form and meet any other eligibility criteria we may set from time to time;
  - (f) complete all credit checks and assessments we undertake in relation to your application and have an acceptable credit record as determined by us; and
  - (g) provide all of the information required in the Borrower Application Form or that we subsequently ask for.
5. You authorise us to undertake or obtain any credit, identity, verification or other checks we consider necessary in relation to your application as well as the on-going performance of your obligations under a Loan.
  6. If the Loan you have applied for will be a Regulated Loan, we will refer you to a Financial Adviser to assess your needs before reviewing your Loan application.
  7. You can withdraw an application to become a Borrower at any time by notifying us before entering into the Loan Documents.
  8. If you want there to be more than one Borrower for a Loan, each Borrower must be approved by us.
  9. Once accepted as a Borrower on our Platform, to apply for a Loan you must provide the information and follow the process set out in the relevant Borrower Terms, or as otherwise agreed with us.
  10. Although we may permit Investors to fund a Loan at the time it is originated, we will generally initially fund Loans ourselves or through Southern Cross Finance, a company within our group, as the Initial Investor. Alternatively, the Initial Investor may be a Third Party Lender. We then attempt to arrange for new Investors to step in to the shoes of the Initial Investor and become replacement funders for the Loan (but if Investors cannot be found for the whole Loan, the Initial Investor may remain as an Investor with an interest in all or part of the Loan).

#### **Suspension of registration, warranties and indemnity**

11. If you are not party to any Loans you can deregister as a Borrower or Investor at any time by notifying us at the following email address or phone number.

Ph 09 535 2239

Email [admin@scpartners.co.nz](mailto:admin@scpartners.co.nz)

*Whenever we refer to notifying us or giving notice in these terms, you must do so by contacting us in this way.*

12. We can suspend or terminate your registration and/or your status as an Investor or Borrower at any time by notifying you. Any Loan in which you have an interest which is outstanding at that time will, however, continue until terminated or expiring in accordance with its terms.
13. By agreeing to these terms as an Investor or Borrower, you warrant and represent that:
  - (a) you meet the eligibility criteria to become a Borrower or Investor, as set out above;
  - (b) all of the information provided by you to us is complete and accurate and that you have not omitted to provide any information to us which may reasonably affect our decision to register you on to the Platform or approve you as an Investor or Borrower; and

- (c) you will notify us immediately in the event of any changes to the information previously provided by you to us and on becoming aware of any errors or omissions in respect of any information previously provided.
14. You agree to indemnify us, the Trustee and each other relevant Investor against any cost, loss, expense or liability any such party may incur if, in relation to a Loan, your warranty and representation at paragraph 13(a) above (as an Investor) is false, misleading or incorrect.

### **Primary and Secondary Markets**

15. We, or our related company, Southern Cross Finance, generally (but not in all cases) make all Loans on the Platform in the first instance as the Initial Investor. This allows for Loans to be quickly filled and for Borrowers' needs to be met. Alternatively, the Initial Investor may be a Third Party Lender. There may also be instances where a loan is placed onto the platform for initial investment by Investors, and when this occurs, the listings will be noted accordingly.
16. Investors then acquire interests in these Loans by transfer from the Initial Investor (but if Investors cannot be found for the whole Loan, the Initial Investor may remain as an Investor for all or part of the Loan). We or Southern Cross Finance may choose to offer a portion only of a Loan to Investors and may retain part of the Loan itself. Any such arrangement, including any applicable Priority Arrangements, will be disclosed to Investors on the Platform.
17. Further information regarding the Secondary Market can be found in the [Secondary Market Rules](#).

### **Investing with us**

18. When you invest in Loans through the Platform your interest in each Loan will be held on bare trust for you by the Trustee. The Trustee holds any other Investor's interest in that Loan on a separate bare trust for that Investor.
19. That is, where there are multiple Investors participating in a Loan, each Investor will have an interest (held by the Trustee as bare trustee) in the principal and interest payable under the Loan based on the proportion of the value of the Loan contributed by the relevant Investor and, if applicable, subject to any Priority Arrangements agreed between Investors.
20. Unless otherwise agreed in the Loan Documents and disclosed to Investors via the Platform, interest on the Loan is payable monthly, and principal is due on the date set out in the Loan Documents. Note however, that your Investment Principal can only be repaid once the Borrower repays their Loan, so that if this does not occur on the due date of the Loan (for example, if we agreed to a renewal or extension of the Loan), then your investment will continue until that repayment occurs, unless we agree to repay your Loan interest or to permit you to offer your Loan interest on the Secondary Market (see the Investor Agreement for more details on when this may occur).
21. As an Investor, you cannot deal directly with the Borrower or any Guarantor. We will look after all correspondence and actions required in respect of a Borrower on behalf of the Trustee as lender.

### **How do Investors select Loans?**

22. All Loans will initially be made available on the Platform, and Investors will make their own investment decisions, depending on their own risk/reward profile and needs.

23. We may correct any error in a Loan Document or other document at any time (and take any further steps we consider necessary, including any transfer of funds) where a document does not match the agreement between the parties.
24. We will operate the Platform at all times in compliance with our [Fair Dealing Policy](#).

### **Monitoring Borrowers**

25. We have a system in place to keep track of Loan repayments and any arrears. This includes daily monitoring of Loan arrears.
26. The main focus of our Loan arrears management is to concentrate on loans of more than 30 days in arrears. Loan arrears below this level are also monitored and Borrowers contacted to organise remedial action. Loans that are in arrears for more than 30 days are referred to our management team to discuss appropriate actions to take (in accordance with our internal policies). There will also be monthly credit reporting provided to our management including arrears reporting showing number, value and percentage of Loans in arrears. In the event that the Loan is outstanding for 30 days or more, Investors are notified, and Borrowers are further contacted for Loan payments. Appropriate action is taken, which is determined by the circumstances of each Loan including the Borrower's credit history and the Borrower's response.

### **Security and guarantees**

27. We require Borrowers to provide security in relation to a Loan subject to requirements notified by us from time to time. When a Borrower provides security, it will be held by the Trustee in accordance with the terms of the Loan Documents, the Security Documents and any Priority Arrangements.
28. If security is provided by a person other than the Borrower, we will require that person to provide a guarantee of the Loan. Where we require a guarantee, Borrowers must ensure that each Guarantor signs the Loan Documents and provides us with all information we require in relation to the Loan, the Guarantors and the guarantee. We may also agree with a Borrower that a guarantee is to be provided in other circumstances.
29. We will disclose to Investors whether security has been provided in relation to the Loan before it is entered into. This disclosure will include any Priority Arrangements. We may, at our discretion, disclose to you any guarantee in relation to a Loan. We will disclose to Investors details of security provided in relation to a Loan, after the Loan is entered into, as part of our ongoing transaction reporting as detailed in the Investor Agreement.

### **Priority Arrangements**

30. Where Priority Arrangements (for example, where a Security Sharing Deed is in place) apply to a Loan, unless the terms of the Loan specify otherwise, any security granted by a Borrower in favour of the Trustee for the purposes of securing obligations under a Loan will be held for the benefit of the Investors and the net proceeds of enforcement of any such security (**Enforcement Proceeds**) will be applied as follows:
  - (a) first, to the payment of all fees, costs and expenses properly incurred in relation to the Loan and the security property, including statutory costs, enforcement costs, insurance, rates, or any other fees, costs or expenses of any nature whatsoever relating to the Loan or the security property;
  - (b) secondly, in or towards payment of all amounts owed to each Investor under that Loan, other than any Initial Investor whose interest in the Loan is subordinated under the Priority Arrangements (**Subordinated Initial Investor**), on a pro rata basis;

- (c) thirdly, in or towards payment to each Subordinated Initial Investor under that Loan for application against any amount of the Loan owing to that Initial Investor; and
- (d) then, the payment of the surplus (if any) to any other person entitled to it.

### **Southern Cross Partners**

31. The Investors and the Trustee have appointed us to act as agent for the Trustee in relation to:
- (a) entering into this agreement and any documents comprising the Borrower Terms on the Trustee's behalf in relation to the use of the Platform by Borrowers;
  - (b) entering into Investor Agreements on the Trustee's behalf in relation to the use of the Platform by Investors;
  - (c) entering into Loan Documents with Borrowers and any Guarantors on the Trustee's behalf;
  - (d) transferring funds and otherwise settling all Loans in accordance with the Loan Documents;
  - (e) entering into the Priority Arrangements with the Investors on the Trustee's behalf;
  - (f) administering (including by collection and enforcement) Loans and any security or guarantee, and providing the Borrower Disclosure (in relation to Regulated Loans) and any required disclosure to Guarantors for the purposes of the CCCFA;
  - (g) opening and administering the Clearing Account;
  - (h) performing all or any of the other functions or obligations of the Trustee under this agreement or any other agreement relating to the Loans; and
  - (i) performing all or any other functions including entering into any other agreement or documentation which are reasonably incidental to any of the functions or duties set out in this paragraph.
32. You agree to our appointment as the Trustee's agent on the basis set out above.
33. You agree that we may process direct debit payments in relation to any of the fees set out in this agreement that may become due and payable by you from time to time.
34. To the extent permitted by law, we may delegate any of our rights, functions or duties set out in this agreement to any member of our corporate group. Any delegation will not relieve us of any liability under this agreement.

### **Fees**

35. We are entitled to the fees published on the Platform or otherwise disclosed to you.

### **Tax**

36. We will deduct RWT on each Borrower's behalf and pay it to IRD and each Borrower agrees that it will not deduct or withhold any amount of RWT from any payment by the Borrower to the Trustee under a Loan.

### **Information on our website**

37. Unless otherwise stated, you may access, view, copy, print (in limited quantities) or temporarily store textual material published by us on this website for your personal use only. Any copyright notice on that information must be retained on the copy. You may not reproduce, adapt, distribute or incorporate in any other work, in whole or in part, anything from this website without written permission from us. You may not create a link from any other website to any part of this website, other than the homepage, without our express consent.
38. While we have tried to ensure that the information on this website is accurate, current and complete, we do not accept liability for any error, misstatement or omission. We may change the material on this website at any time without prior notice. In the unlikely event that an unauthorised person makes changes to this website, we do not accept responsibility for those changes.
39. You are solely responsible for the actions you take in reliance on the content on this website.

### **Management intellectual property rights**

40. The copyright in all materials (including rights in text, graphics, arrangement and overall design of this website) displayed or available on this website belongs to us unless otherwise stated. If we are not the owner of any material published on this website, then your rights in relation to that material will be as defined by the copyright owner of the material.

### **Access to other websites**

41. This website may contain links to third party websites. Those websites are not under our control. The links are provided for convenience and informational purposes only. Accordingly, the inclusion of any link does not imply an endorsement by us of that website. We are not responsible for the content, validity, accuracy, or the use, of any other website. You must check the terms and conditions applicable to any other websites you use or verify such information with the third parties directly.

### **Our liability**

42. Your use of this website is at your own risk. Subject to any terms implied by law which cannot be excluded, we will not be responsible or liable, in contract, tort (including negligence), equity or otherwise for any direct, indirect, incidental, consequential, special, or punitive damage, or for any loss of profit, income or savings, or any costs or expenses incurred or suffered by you or any other person, arising out of, or in connection with, your access to, or use of, this website or any linked websites, other than claims arising under the Consumer Guarantees Act 1993, where applicable. In this paragraph, **we** also includes the Trustee and Southern Cross Finance.
43. All warranties, whether expressed or implied, as to the accuracy, currency, completeness, fitness for purpose or usefulness of the information contained on this website are excluded to the extent permitted by law.
44. It is up to you to take precautions to ensure that whatever information you select for your use is free of items such as spyware, viruses, worms, trojan horses or other items of a destructive nature.

45. To the extent permitted by law, neither we nor the Trustee will be liable to you:
  - (a) for any failure by us or the Trustee to comply with the terms of this agreement if the failure is caused by reasons beyond our or their reasonable control; or
  - (b) for not accepting any Loan application.
46. We do not guarantee that the Platform will be available at all times and we will not be liable to you if the Platform is not available for you to access from time to time.
47. Nothing within this agreement excludes or restricts any rights you may have under the Consumer Guarantees Act 1993.
48. You agree and acknowledge that neither we nor the Trustee provide any advice regarding the suitability or appropriateness of the Platform for you to source funding in relation to a Loan.

### **Privacy**

49. We have a Privacy Policy governing the collection, use and disclosure of your personal information by us. A copy of the Privacy Policy can be accessed [here](#)

### **Other general terms**

50. Unless otherwise defined within any of the Platform Documents, the following provisions and the Glossary apply to, and are incorporated by reference in, each of the Platform Documents.
51. This document is governed by, and must be interpreted in accordance with, the laws of New Zealand and each party submits to the jurisdiction of the New Zealand courts.
52. You may not assign, transfer or otherwise deal with any of your rights or obligations under this document without our prior written consent. We can give or withhold our consent withheld at our discretion.
53. We may provide you with a notice or other communication (including any disclosures) under, or in connection with, this document by mail or electronic means (including email). You agree that we may use the email address provided in your application for membership or such other email address as you notify to us from time to time to provide such notices, communications and/or disclosures to you. Any electronic communication will be deemed to have been received by you when it is transmitted by us.
54. In the event of any inconsistency between the provisions of this document and the provisions of any other Platform Document, we may determine (in our discretion) which of the provisions will prevail.
55. We may amend any Platform Document by providing notice of the amendments on the Platform provided that the amendments will only apply to new Loans entered into by you following the date on which such amendments are made.
56. As registered financial service providers, we and the Trustee are both members of the Financial Services Complaints Limited dispute resolution scheme. Further details regarding the scheme can be found at <http://www.fscl.org.nz>.

57. In this document:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect the interpretation of these terms;
- (c) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (d) references to any legislation or any clauses of any legislation (including regulations and orders) include: (i) that legislation or provision as from time to time amended, re-enacted or substituted, and (ii) any statutory instruments, regulations and orders issued under any such legislation or provision; and
- (e) references to a document or agreement include that document or agreement as amended, supplemented or replaced from time to time.

### **Glossary**

58. In this document, unless the context otherwise requires:

**Borrower** means a person who has been accepted as a borrower by us.

**Borrower Application Form** means an application form from a Borrower, in a form accepted by us from time to time.

**Borrower Disclosure** means the disclosure document provided to the Borrower in respect of a Regulated Loan for the purposes of the CCCFA.

**Borrower Terms** means, as applicable:

- (a) the General Terms and Conditions;
- (b) the Borrower Disclosure;
- (c) the Loan Documents:
  - [Regulated Loan Agreement](#);
  - [Non-Regulated Loan Agreement](#);
- (d) the Security Documents:
  - [Mortgage Memorandum](#);
- (e) the [Secondary Market Rules](#); and
- (f) any other agreement entered into between the Borrower, us and/or the Trustee in connection with a Loan from time to time.

**Business Day** means a day on which banks are open for business in Auckland other than Saturdays, Sundays or public holidays.

**CCCFA** means the Credit Contracts and Consumer Finance Act 2003.



**Clearing Account** means the bank account operated by us on behalf of the Trustee into which payments received will be deposited, and from which payments and deductions in relation to RWT may be made, in relation to the operation of the Platform.

**Credit Event** has the meaning in the Secondary Market Rules.

**Default Fees** means default fees, including default interest, payable by the Borrower in the event of:

- a) failure by the Borrower to make all or any part of an agreed Loan payment, on the day that it is due;
- b) failure by the Borrower to repay the principal sum on the maturity date;
- c) failure by the Borrower to keep the security property fully insured with our interests recorded; or
- d) any other material reason as fully outlined in the Loan Agreement.

in each case, as amended from time to time.

**Disclosure Statement** means our service disclosure statement provided to Investors for the purposes of FMCA.

**Establishment Fee** means the establishment fee payable by a Borrower as disclosed in the Letter of Offer and the Loan Agreement and deducted from the initial advance of the Loan.

**Fair Dealing Policy** means our policy setting out when we may exclude a Borrower from using the Platform where we have reason to believe that the Borrower has engaged in prohibited conduct under the FMCA in relation to a Loan.

**Financial Adviser** means an authorised financial adviser or registered financial adviser.

**FMCA** means the Financial Markets Conduct Act 2013.

**FSP Act** means the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

**FSPR** means the Register of Financial Service Providers.

**General Terms and Conditions** means these general terms and conditions.

**Guarantor** means a guarantor in relation to a Loan.

**Initial Investor** means us, Southern Cross Finance or a Third Party Lender who initially funds a Loan that is subsequently offered on the Secondary Market.

**Initial Investor Loan** means a loan entered into initially by an Initial Investor.

**Investor** means a person who has been accepted as an investor by us and includes Initial Investors and Related Party Investors, where relevant.

**Investor Account** means a notional transactional record that is maintained for each Investor, with the total of all such accounts reconciled to the Clearing Account.

**Investor Agreement** means the investor agreement which applies between an Investor, us and the Trustee when the Investor participates in funding a Loan via the Platform.

**Investor Application Form** means an application form from an Investor, in a form accepted by us from time to time.

**Investor Terms** means:

- (a) the General Terms and Conditions;
- (b) the **Investor Agreement**;
- (c) the **Service Disclosure Statement**;
- (d) the Loan Documents;
  - **Regulated Loan Agreement**;
  - **Non-Regulated Loan Agreement**;
- (e) the **Secondary Market Rules**;
- (f) the Priority Arrangements (if applicable); and
- (g) any other agreement entered into between the Investor, us and/or the Trustee in connection with a Loan from time to time.

**IRD** means the New Zealand Inland Revenue Department.

**Letter of Offer** means a letter provided to a proposed Borrower by the Trustee offering to enter into a Loan.

**Loan** means a loan to a Borrower from the Trustee on behalf of the participating Investors and includes, where the context requires, rights under any associated guarantee.

**Loan Documents** means the loan agreement between the Borrower and the Trustee, and where relevant, a Guarantor in relation to a Loan and includes, where applicable, any Security Documents. An example of a **Regulated Loan Agreement**; a **Non-Regulated Loan Agreement**; and a **Mortgage Memorandum** can be found [here](#).

**Nominated Account** means the account with a bank in New Zealand which is nominated by you for payment of investment interest and principal if you are an Investor, or the account from which Loan payments are deducted if you are a Borrower.

**Non-Regulated Loan** means a Loan that is not a Regulated Loan.

**Offer** means an offer by an Investor to participate in a Loan or Loans via the Platform.

**Privacy Policy** means our privacy policy.

**Platform** means our website and peer-to-peer lending platform.

**Platform Documents** means the Borrower Terms and the Investor Terms.

**Priority Arrangements** means arrangements between Investors in a Loan and the Trustee establishing each Investor's priority for repayment in respect of the Loan, that are enforced in accordance with the Priority Arrangements section in these General Terms and Conditions.

**Proposal** means the proposal provided by the Borrower to us detailing their requested Loan amount, details of how we will be repaid and a description of the security property.

**Regulated Loan** means a Loan that is made to a natural person (i.e. an individual, not an entity such as a company) and which is to be used, or is intended to be used, wholly or predominantly for personal, domestic, or household purposes, and which is made under a consumer credit contract for the purposes of the CCCFA.

**Related Party** means any of us, Trustee, Southern Cross Finance or any other company within the Southern Cross Group, or any of those persons' directors or employees or close family members of those directors and employees.

**RWT** means resident withholding tax imposed under the RWT rules in the Income Tax Act 2007.

**RWT Exemption Certificate** has the meaning in section YA 1 of the Income Tax Act 2007.

**Secondary Market** means a market operated by us on the Platform which enables Investors to transfer their interests in relation to Loans to other Investors.

**Secondary Market Rules** means the rules established by us in relation to the Secondary Market.

**Security Documents** means the documents granting security over a Borrower's property under a Loan, including any Priority Arrangements.

**Southern Cross Finance** means Southern Cross Finance Limited.

**Southern Cross Group** means us, Trustee and Southern Cross Finance and any other related company.

**Southern Cross Partners, we, us or our** means Southern Cross Partners Limited.

**Third Party Initial Loan** means an Initial Investor Loan entered into initially by a Third Party Investor.

**Third Party Lender** means an Initial Investor (other than us or Southern Cross Finance) who makes a Third Party Initial Loan, subject to the terms of a Third Party Origination Agreement.

**Third Party Origination Agreement** means an agreement under which a Third Party Investor can originate Loans through the Platform and in accordance with the Platform Documents, and subsequently transfer these Loans on the Secondary Market.

**Trustee** means Loan Investments Trustees Limited, or any replacement trustee or trustees appointed by us.

**Dated as at 19 October 2018**