

Southern Cross Partners Limited Investor Agreement

This Investor Agreement, together with the General Terms and Conditions, govern your participation as an Investor (also **you** or **your**) in peer-to-peer Loans on the Platform, operated by Southern Cross Partners. This agreement is our client agreement with you for the purposes of the FMCA.

By accepting the terms of this agreement, this agreement binds you, us and the Trustee for so long as you remain registered as an Investor on the Platform or until all Loans in which you have an interest have been terminated or expired in accordance with their terms.

Capitalised words and phrases are defined in the Glossary which is part of our [General Terms and Conditions](#).

Applying to Invest

1. Once you have registered with the Platform, you can submit Offers to invest in Loans. Each such Offer will constitute a legally binding offer to participate in Loans for the purposes of the FMCA on the terms of the Platform Documents.
2. You can withdraw an Offer at any time before it is accepted.
3. Loans may be offered by an Initial Investor directly through the Platform (a primary market loan) or by an Investor selling their interest (a Secondary Market loan). In both cases the Trustee will be the lender of record on the Loan Documents.
4. In both primary and Secondary Market transactions, the selling Investor's beneficial interest in the Loan made by the Trustee will be transferred to you.
5. You agree and acknowledge that you will not have any direct relationship or communication with other Investors who participate with you in a Loan, nor with any Borrower.
6. Each of your interest and that of other Investors participating in the Loan with you will be held through the Trustee as owners in common and not as joint owners.

Investor Account

7. We will establish an Investor Account in the name of the Trustee which will be held on separate bare trusts by the Trustee for each Investor who has transferred funds into, and for so long as such funds remain, in the Investor Account.
8. We will deal with any funds in the Investor Account on the basis set out in this agreement.
9. Unless we determine and notify you otherwise, you will not earn interest on any funds held on your behalf in the Investor Account.
10. Once a Borrower or selling Investor has accepted an Offer, you authorise us and the Trustee to transfer the value you have applied to invest from the Investor Account to the Borrower or selling Investor (as applicable) via the Clearing Account and to otherwise take such steps as are necessary to settle the Loan under the terms of the Loan Documents.
11. If you make an Offer to invest funds into a Loan with a future settlement (drawdown) date, that has not been prefunded by us or any other person, you must ensure that you have

lodged your investment principal in your Investor Account (in cleared funds) in advance of the settlement (drawdown) date of that Loan. These funds will be held in trust by the Trustee on your behalf and will only be used in settlement of a Loan where all Loan Documents (including the Security Documents) have been entered into by the Borrower, the Loan has been fully funded and we have received confirmation of registration of security in respect of the Loan. If there is a shortfall in the Investors' funds committed to fill the Loan amount, the shortfall may be funded by a member of the Southern Cross Group, a Third Party Lender or another investor/lender. Should the Loan remain undrawn for one week after the proposed settlement date, your funds will be returned to your Nominated Account, unless you instruct us otherwise. Any funds held in Investor Accounts are unsecured and will not earn any interest.

Security and guarantees

12. Borrowers will be required to provide security in relation to a Loan subject to the requirements notified by us from time to time. Any security provided will be held by the Trustee in accordance with the terms of the relevant Borrower Terms and the Loan Documents.
13. If we require a guarantee in relation to a Loan, Borrowers must ensure that each Guarantor signs the Loan Documents and any other documents, and provides us with all information, we require in relation to the Loan, the Guarantors and the guarantee.
14. We require all Loans to be secured and will disclose the security to Investors. This disclosure will include any Priority Arrangements. We may, at our discretion, disclose to you any guarantee in relation to the Loan. We will not disclose any personal information about Borrowers, as this could breach their rights under privacy law.
15. We will disclose details of any security provided in relation to a Loan after the Loan is entered into as part of our ongoing transaction reporting to you.

Loan repayments

16. 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.
17. Investment Principal is repaid from proceeds received from the repayment of the loan that has been invested in. If this Loan repayment does not occur on the due date of the Loan, for example because we choose to extend or renew the Loan (see the next paragraph), then investments will continue until that Loan is repaid. When this does occur, investments will continue with the same security and with the same interest rate.
18. Some Borrowers request extensions or renewals of their Loans, and as a responsible lender, we have a duty to act on these in a fair and responsible fashion. Any such term extension or renewal will be supported by appropriate updated information. When a Borrower does request an extension to or renewal of their Loan term, and we subsequently agree to such a request, the following procedures will occur:
 - a. We will contact Investors in the Loan and provide them with any updated information on the Loan (including any changes to the interest rate or other Loan terms). We will obtain instructions from each Investor as to whether they wish to remain invested in that particular Loan. If an Investor chooses to remain invested in the Loan, this will be on any updated terms of the Loan (including any changes to the interest rate or other Loan terms).
 - b. If individual Investors want to exit that Loan, we will endeavour to repay those Investors' Loan interests, such repayment being at our sole discretion and only

available where our liquidity allows for this (liquidity is assessed solely by us and changes on a daily basis). If we repay an Investor's interest in a Loan, subject to the Secondary Market Rules, we will re-list that interest on the Secondary Market.

- c. Where we are unable to fund the repayment of any Investor from our own funds, then, subject to the Secondary Market Rules, we will permit their interest in the Loan to be listed for sale on the Secondary Market at no cost.
 - d. Investors should be aware that the interest rate (and other terms) of an interest in a Loan to be listed on the Secondary Market may be different from the interest rate (and other terms) relating to other Investors' interests in the Loan (for example, Investors who elected to remain in the Loan at the time of renewal or extension).
- 19. If a Loan is subject to collection action at the due date of the Loan, then all Investors will be required to remain in that Loan pending resolution of these actions.
 - 20. All amounts of principal and interest received by the Trustee or us on the Trustee's behalf, to which you are entitled under Loans which you have participated in will be credited to the Clearing Account where it will be held on bare trust by the Trustee for your benefit or that of other Investors under the relevant Loan in proportion to the amounts contributed by each in respect of the Loan. You will also be entitled to 50% of the default interest (once and if it is received) if you did not receive your interest as a result of a Loan default. However, if the Loan is in default but you still receive your interest payments, you will not be entitled to be paid any default interest.
 - 21. We will deal with any funds held in the Clearing Account for your benefit as set out in this agreement.
 - 22. We will deduct RWT from the amounts paid into the Investor Account to the extent to which those amounts are interest subject to RWT unless you have provided us with a valid RWT Exemption Certificate.

Enforcement

- 23. When a Borrower has fully or partially missed a payment under Loan, we contact the Borrower to secure their commitment to remedy the default either by catching up with the missed payment or making a commitment to make the payment at a future agreed date.
- 24. If we do not reach an agreement with the Borrower or they do not honour their commitment, further contact is initiated and the consequences of non-payment are clearly explained. If appropriate, we also advise the Borrower of their rights if they are facing hardship.
- 25. We will initiate recovery action if no acceptable outcome is achieved. This may involve the sale of the security property through enforcement of the Security Documents. Where applicable, proceeds from enforcement of the Security Documents will be distributed to Investors in accordance with any Priority Arrangements, as set out in the Priority Arrangements section of the General Terms and Conditions.
- 26. If, after the sale of the security property or repayment of a Loan, there is a shortfall in payment to you, we will pursue the Borrower for the shortfall where we consider there is a reasonable expectation of a material recovery (after costs) at our sole discretion. Any payments received (less any expenses incurred) will be paid to you and other Investors, in proportion to your share of the Loan, subject to any Priority Arrangements.
- 27. Other than as provided for in clause 28 below, Investors are not included in this enforcement process. We are authorised to manage the Loans in our sole discretion

including managing enforcement actions and Investors are not entitled to influence the process.

28. If a Borrower offers a full and final figure in settlement of their Loan, which is less than the amount owed under the Loan, we will seek the relevant Investors' agreement to this. Where more than one Investor has invested in the Loan, the decision of more than 50% of the Investors voting on the decision (by investment amount) will be binding on the other Investors. If the decision is evenly split, we will have the deciding vote.

The Trustee

29. Each Loan which you participate in under the Platform will be made by the Trustee (as bare trustee) on your behalf and that of each other Investor participating in the relevant Loan.
30. You acknowledge that the Trustee will act as bare trustee in respect of all of your rights and interests in the Loans in which you participate, the Investor Account and the Clearing Account and all of your other interests, rights and obligations under the Investor Terms.
31. Where a Loan has been matched with your Offer, you agree to the Trustee entering into or continuing to be a party to the Loan Documents in respect of that Loan.
32. The Trustee agrees and acknowledges that:
- (a) the Investor Account is held on separate bare trusts for the benefit of each Investor who has transferred funds to the Investor Account in proportion to the amounts transferred by the relevant Investor;
 - (b) the Clearing Account is held on bare trust for the benefit of each Investor who is entitled to receive any payments received or recovered from Borrowers under the Loans from the Clearing Account less any fees, expenses or deductions permitted by this agreement in proportion to the interests of Investors in relation to the relevant Loans; and
 - (c) the interests, rights and obligations arising under the Loan Documents relating to a Loan are held on separate bare trusts for each Investor participating in that Loan in proportion to the amount of the Investors' respective participations in the Loan (as modified, where applicable, by any Priority Arrangements).
33. You agree and acknowledge that you may not pursue the Borrower or any Guarantor in the event of non-payment or default by the Borrower or any Guarantor or any other failure by the Borrower or any Guarantor to comply with their respective obligations under the Loan Documents.
34. You acknowledge and agree that, where applicable, the Trustee will distribute any proceeds from enforcement of the Security Documents in accordance with any Priority Arrangements.
35. The Trustee will remain as bare trustee as contemplated by this agreement and you may not terminate the trust and/or the Trustee's appointment under this agreement.
36. All instructions or directions given by you to the Trustee must be consistent with the Investor Terms and the Trustee will not be required to act in accordance with any instruction or direction that is inconsistent with the Investor Terms.
37. We will act as agent for the Trustee in respect of each Loan on the basis set out in this agreement. You agree to our appointment as agent for the Trustee as provided in this agreement.

38. You acknowledge that we and our Related Parties may, without any obligation to notify you, receive fees or other remuneration from third parties in respect of Loans you enter into through the Platform.
39. The Trustee may deduct any applicable fees from the Loan advance prior to transferring the balance of the Loan amount to the Borrower(s) under the terms of the Loan Documents.
40. We may appoint a replacement trustee or trustees from time to time on notification to you. The appointment of a replacement trustee will not affect your rights and obligations under the Investor Terms.

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41. You appoint us to act as your agent (and acknowledge our appointment as agent for the Trustee) in relation to the following:
 - (a) entering into this agreement and other Investor Agreements on the Trustee's behalf in relation to the use of the Platform by Investors;
 - (b) entering into any documents comprising the Borrower Terms on the Trustee's behalf in relation to the use of the Platform by Borrowers;
 - (c) opening and administering the Investor Account and the Clearing Account;
 - (d) entering into Loan Documents with Borrowers and any Guarantors on the Trustee's behalf;
 - (e) entering into the Priority Arrangements with the Investors;
 - (f) transferring funds and otherwise settling all Loans in accordance with the Loan Documents;
 - (g) administering Loans including by collection and enforcement in relation to the Loans and any security or guarantee provided in respect of the Loans and providing the Borrower Disclosure (in relation to Regulated Loans) and any required disclosure to the Guarantor for the purposes of the CCCFA;
 - (h) transferring any funds to you which are or may become payable from time to time in accordance with the terms of this agreement;
 - (i) 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
 - (j) 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.
42. You authorise us, acting on behalf of the Trustee, to deduct any fees under this agreement that may become due and payable by you or by a Borrower from time to time from amounts received from the Borrower under the Loan Documents and to transfer such fees to our account.
43. You acknowledge that you have delegated any decision making power you may hold in respect of amounts held by the Trustee for your benefit to us. We will exercise this delegated authority in accordance with the terms of this agreement.
44. To the extent permitted by law, we may delegate or assign any of our rights, functions or duties set out in this agreement to any member of the Southern Cross Group or to any

third party approved by the FMA for the purposes of business continuity. Any delegation will not relieve us of any liability under this agreement.

Declaration of bare trust

45. The Trustee agrees to hold all of your right, title and interest, present or future, vested or contingent under or in respect of each Loan in which you invest on bare trust for you subject to the provisions of this agreement.
46. The Trustee's interest in each Loan is limited to bare legal title only with you enjoying full beneficial ownership of your interest.
47. You are only entitled to that portion of the Loan which relates to you.
48. The Trustee will only deal with each Loan at our direction as your agent. The Trustee will not be required to take any action which would cause it to breach any law binding on the Trustee.

Tax

49. When you submit your application to become an Investor:
 - (a) you must provide to us:
 - (i) your IRD number;
 - (ii) a copy of your RWT Exemption Certificate (if applicable);
 - (iii) the rate at which RWT should be withheld from interest payments made to you; and
 - (iv) such other tax-related information as we may request.
50. If you do not provide us with a copy of your RWT Exemption Certificate (if applicable), we (as the Trustee's agent and on the Borrower's behalf) will deduct RWT from interest paid to you in respect of a Loan, at the rate you have notified to us (or at such higher rate as the law may require). If you do not provide us with your IRD number or your RWT rate (in each case as required under this agreement), you will automatically have RWT deducted at the maximum rate (currently 33%).
51. You agree and acknowledge as follows:
 - (a) we, the Trustee and the Borrower do not have to reimburse you for any tax amount that is deducted or withheld, whether under this agreement or under any other legal requirement, from any interest paid for your benefit;
 - (b) if we, the Trustee or the Borrower become liable to make any payment of tax in respect of any Loan, you indemnify each of us and them in respect of that liability; and
 - (c) references on the Platform to interest rates and rates of return are expressed as gross returns, before deduction of any fees and without any withholding or deductions, unless otherwise specified.

Loan transfers

52. You may not transfer, encumber or otherwise deal with your interest in a Loan, other than by way of sale on the Secondary Market with our permission.

Fees

53. We can charge you the fee for listing a Loan on the Secondary Market published on the website from time to time.

Reporting

54. We will provide, or make available, transaction information to you in accordance with the requirements of the FMCA and the regulations made under it.
55. You agree to receive transaction information and all other reports and information (including disclosure documents) which we may be required to provide to you from time to time in the way (including through the Platform on a substantially continuous basis) and at the intervals we choose to provide it in accordance with the FMCA.

Returns

56. A Borrower can repay the outstanding balance of a Loan early, with or without penalty depending on the terms of the Loan, provided the Borrower also pays all interest and fees accrued to the date of prepayment and you acknowledge that such early prepayment will result in your investment being repaid, inclusive of all interest up to the date of repayment.

Liability

57. 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; and
 - (b) for any failure of Borrowers to make repayment of all or any amounts under the Loan Documents.
58. We do not guarantee that the Platform will be available at all times and will not be liable to you if the Platform is not available for you to access from time to time.
59. Nothing within this agreement excludes or restricts any rights you may have under the Consumer Guarantees Act 1993.
60. You agree and acknowledge that neither we nor the Trustee provide any advice regarding the suitability or appropriateness of the Platform for you to provide funding in relation to a Loan.

Dated as at 19 October 2018