



# **BLUESTONE GENERAL TERMS AND CONDITIONS**

## **New Zealand - Version 11 NOVEMBER 2021 Edition**

Bluestone Servicing NZ Limited trading as Bluestone Mortgages is the manager of loans incorporating these terms and conditions.

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## KEY INFORMATION CONCERNING YOUR CREDIT CONTRACT

The following table explains where key elements concerning your **Contract** can be found. (\* sections marked with \* do not apply if the contract is not a consumer credit contract)

<b>Name and Address of Creditor and Trading Name</b>	NZGT Custodians (Bluestone) Limited (1262490) in its capacity as Trustee, Level 14, 191 Queen Street, Auckland Central, Auckland 1010, New Zealand-. The <b>Lender</b> and the <b>Manager</b> trade under the name Bluestone Mortgages.
<b>Initial Unpaid Balance</b>	The unpaid balance as at the <b>Disclosure Date</b> and a breakdown of how that balance is made up is set out in section 3 of your <b>Loan Agreement</b> .
<b>Total Advances</b>	The total of all advances to be made in connection with your <b>Contract</b> is set out in section 3 of your <b>Loan Agreement</b> , if it is ascertainable at the <b>Disclosure Date</b> .
<b>Annual Interest Rate</b>	The annual <b>Interest Rate</b> for each <b>Account</b> is set out in section 4 of your <b>Loan Agreement</b> .
<b>Fixed Rate Term</b>	If you have an Account with a fixed interest rate then the term that the <b>Interest Rate</b> is fixed, is set out section 4 of your <b>Loan Agreement</b> .
<b>Method of Charging Interest</b>	See clause 9 of the <b>Terms and Conditions</b> .
<b>Total Interest Charges &amp; Total Amount of Payments</b>	If the <b>Term</b> is for less than seven years, the total amount of interest and total amount of payments is set out in section 3 of the Loan Agreement. These figures are calculated using the assumptions in the <b>Regulations</b> .
<b>Credit Fees and Charges</b>	The fees and charges payable in connection with your <b>Contract</b> are set out in <b>Fees and Charges Schedule</b> and clause 10 and 11 of these <b>Terms and Conditions</b> or are as notified by us from time to time.
<b>Payments Required</b>	The repayments required under your <b>Loan Agreement</b> are set out in section 4 of your <b>Loan Agreement</b> .
<b>Full Prepayment</b>	A Break Cost Fee will be calculated if you make any early repayment in respect of any <b>Account</b> where the <b>Interest Rate</b> is fixed. How the Break Cost Fee is calculated is set out in clause 11 of these <b>Terms and Conditions</b> . We do not apply the statutory procedure prescribed by the <b>Regulations</b> to calculate the Break Cost Fee.
<b>Security Interest</b>	The security interests that you give us in connection with the loan are set out in section 5 of the <b>Loan Agreement</b> . You have given a <b>Mortgage</b> as security for all moneys and obligations that you owe us under the <b>Contract</b> and under any agreement or arrangement both now and in the future.
<b>Default Interest Charges and Default Fees</b>	If you do not make a payment by its due date, default interest is payable at the rate set out in section 7 of your <b>Loan Agreement</b> and in accordance with clause 12 of the <b>Terms and Conditions</b> . The fees and charges that may apply if you default under this <b>Contract</b> are set out in the <b>Fees and Charges Schedule</b> , or are as notified by us from time to time. You may also have to pay our enforcement expenses, which are referred to in clause 15 and set out in the memorandum of terms incorporated into a mortgage.

<b>* Your Right to Cancel</b>	The Credit Contracts and Consumer Finance Act 2003 gives you a right for a short time after the terms of this <b>Contract</b> have been disclosed to you to cancel the <b>Contract</b> . A statement of this right to cancel is set out in section 6 of your <b>Loan Agreement</b> .
<b>* Unforeseen Hardship</b>	The Credit Contracts and Consumer Finance Act 2003 gives you a right in times of unforeseen hardship to apply to the Lender for changes to this <b>Contract</b> . A statement of this right is set out in section 6 of your <b>Loan Agreement</b> .
<b>Our Consent to Electronic Communication</b>	You may communicate and send notices to us electronically by sending them to the following email address:  nzcustomerservice@bluestone.net.nz
<b>Continuing Disclosure Statements</b>	We will provide you with regular statements of <b>Account</b> as set out in clause 20 of the <b>Terms and Conditions</b> .
<b>Your Consent to Electronic Disclosure</b>	If you have given the <b>Lender</b> or <b>Bluestone Mortgages</b> your email address, you consent to the <b>Lender</b> giving you disclosure in an electronic form to that email address. You can withdraw your consent to electronic disclosure at any time by giving <b>Bluestone Mortgages</b> notice in writing that you wish to receive disclosure documents by ordinary post.
<b>Dispute Resolution</b>	The <b>Lender</b> is a member of the Financial Services Complaints Limited (FSCL) dispute resolution scheme. Section 6 of your <b>Loan Agreement</b> sets out the contact details FSCL.
<b>Financial Service Provider Registration</b>	The <b>Lender</b> is a registered Financial Service Provider. The Lender's registration number is: FSP40011. The Manager's registration number is FSP181924. The full registration details are set out in section 6 of your <b>Loan Agreement</b> .

## PLEASE READ

- You must read this booklet carefully. It tells you what you agree to when you have a loan with us or guarantee someone else's loan with us.
- If you feel uncomfortable about signing any of the documents we recommend that you ask your lawyer to explain your loan documents to you and your rights and obligations. Normally your loan documents will comprise:
  - (a) a document headed "Bluestone Mortgages Loan Agreement" (**Loan Agreement**);
  - (b) the **Fees and Charges Schedule**;
  - (c) these **Terms and Conditions**;
  - (d) a **Mortgage**, which incorporates a memorandum of terms and conditions; and
  - (e) if there is a guarantee involved, a Deed of Guarantee and Indemnity.
- Do not sign anything unless you are sure that you understand the liabilities and responsibilities that you are undertaking.

**Remember you do not have to go ahead by signing unless you are sure that this is what you want to do.**

- The **Mortgage** secures all money payable by you to us at any time, which is called 'the **Debt**'.
- The **Debt** includes any further loans or advances and any other amounts payable by you, for example, interest or any fees or expenses incurred if you default.
- The **Debt** may become repayable if any payment is not made or any other terms of the **Loan Agreement** are broken. If this happens, we can take possession of and sell the **Property** and use the money to repay the **Debt** ourselves.
- If the **Property** does not sell for enough money to repay us, you remain liable for the shortfall.
- You must look after the **Property** so that it keeps its value as our security.
- If your **Interest Rate** is a fixed **Interest Rate**, you may have to pay a significant Break Cost Fee if you repay the whole or any part of the fixed rate **Account** during the fixed rate term

**If you are the Guarantor:**

- You guarantee payment to us of the **Debt** due under the **Loan Agreement**. This means you must ensure each payment is made on the due date.
- You will be required to sign a separate guarantee document. Despite this, make sure you read the **Loan Agreement** carefully.

## INTRODUCTION

### 1. This booklet

- 1.1. These are the Bluestone General Terms and Conditions New Zealand Version 9 October 2017, which form part of the **Contract**.
- 1.2. Some words appearing in **bold** have special meanings as set out in clause 5.1.
- 1.3. Where the conditions in this booklet are inconsistent with the **Loan Agreement** incorporating these **Terms and Conditions**, the terms of the **Loan Agreement** prevail.

### 2. When your Loan Agreement becomes legally binding

- 2.1. There is no binding legal agreement between us until the **First Advance** is released or such earlier date as we decide. This means that until the **First Advance** is released:
  - a) you are not bound to go ahead;
  - b) we have the right to change the terms of the **Loan Agreement** or to withdraw it altogether and decline to make the **First Advance**. We will not release the **First Advance** until we are satisfied that all relevant conditions are fulfilled. You may be liable for costs even if we decide not to proceed.
- 2.2. Although we are free not to go ahead with any **Advance** at any time prior to the **First Advance** being made, generally, we will only decide not to proceed if:
  - a) the **First Advance** has not been made within 2 months of the disclosure date;
  - b) if our solicitor tells us that he cannot comply with any of our instructions, or cannot give a clear report on title;
  - c) if there is material change in your circumstances since you made your application for a loan;
  - d) if any of the information given in or in connection with your application for a loan is inaccurate or false;
  - e) if any further investigation recommended in any valuation reveals anything which affects the value or suitability of the **Property**;
  - f) if any of our conditions are not satisfied;
  - g) if for any other reason we have reasonable doubts about the value of the **Property** or any other security held for **Advances**;
  - h) if for any other reason we have reasonable doubts that **Advances** will be repaid;
  - i) if our lending policy or practice changes;
  - j) if for any reason any insurer is not prepared to agree to effect satisfactory buildings insurance for the **Property**; or
  - k) if there is any other valid reason.

### 3. Changes before settlement

- 3.1. Sometimes the **Interest Rate** quoted in a **Loan Agreement** may change before an **Advance** is made to you. If this happens, we will write to you on or before the **Advance** is made so that you can decide whether you want to go ahead.
- 3.2. Sometimes we charge establishment fees. These may include an application fee. This is a fee we charge to cover some of the costs of considering and processing your application for a loan. If a fee is to be charged, this will be made clear to you when you make your application for a loan.
- 3.3. You must let us know immediately if, before we release any **Advance**, there is any material change in your circumstances or other material change in the information supplied in or in connection with your application for a loan.
- 3.4. If you request, and we approve, a change to the loan and/or structure at any time following approval of your original application, and we consider that those changes require the loan to be redocumented, then a redocumentation fee may be charged as disclosed in the **Fees and Charges Schedule**.

### 4. General obligations

- 4.1. You must:
  - a) repay the **Debt** as specified in the **Loan Agreement**;
  - b) pay interest at the specified **Interest Rate**;
  - c) acknowledge that the **Interest Rate** may change from time to time (except during any fixed rate term);
  - d) give the security for the **Debt** as specified in the **Loan Agreement**; and
  - e) look after the **Property** as specified in the **Mortgage**.

## MEANING OF CERTAIN WORDS AND EXPRESSIONS

### 5. Meanings

- 5.1. Some of the words used in this booklet have a precise legal meaning whenever they appear headed by a capital letter and/or are in bold. The meanings are:

<b>Access Number</b>	means a seven-digit number given to you so you can access the <b>Loan Service Line</b> and the <b>Loan Service Net</b> .
<b>Account(s)</b>	means each account specified in section 4 of the <b>Loan Agreement</b> , as varied from time to time.
<b>Advance(s)</b>	any <b>First Advance</b> or <b>Further Advance</b> .
<b>Balance</b>	means the difference between all amounts credited and all amounts debited to an <b>Account</b> .

<b>Bluestone Mortgages</b>	means Bluestone Servicing NZ Limited and includes any successors, transferees and future assigns.
<b>Business Day</b>	a day on which banks and financial institutions generally are open for business in Auckland and Wellington.
<b>Contract</b>	means the <b>Loan Agreement</b> , the <b>Fees and Charges Schedule</b> , and these <b>Terms and Conditions</b> and includes any <b>Accounts</b> established or varied in relation to this agreement now and in the future.
<b>Debt</b>	is the aggregate of all <b>Advances</b> and any other money you owe us under all <b>Accounts</b> pursuant to the <b>Contract</b> or under any <b>Mortgage</b> .
<b>Default Rate</b>	is the default rate(s) specified in section 7 of the <b>Loan Agreement</b> .
<b>Disclosure Date</b>	is the disclosure date specified in section 3 of the <b>Loan Agreement</b> .
<b>End of Day</b>	means 5 pm on any day.
<b>Fees and Charges Schedule</b>	means Schedule headed, “Bluestone Credit Fees and Charges Schedule” which is a schedule to the <b>Loan Agreement</b> and as updated from time to time.
<b>First Advance</b>	is the first amount of money lent to you under the <b>Loan Agreement</b> .
<b>Further Advance</b>	any money lent by us to you in addition to the <b>First Advance</b> .
<b>Initial Unpaid Balance</b>	is the amount specified in section 3 of the <b>Loan Agreement</b> .
<b>Interest Rate</b>	means each interest rate(s) specified in section 4 of the <b>Loan Agreement</b> in respect of a relevant <b>Account</b> , as varied from time to time in accordance with the <b>Contract</b> .
<b>Lender</b>	means NZGT Custodians (Bluestone) Limited (1262490) and includes any successors, transferee’s and future assigns. Any right of the <b>Lender</b> may be exercised by the <b>Manager</b> or its or their agents, including any successors, transferees and future assigns.

<b>Loan Agreement</b>	the Bluestone Mortgages Loan Agreement which incorporates these <b>Terms and Conditions</b>
<b>Loan Service Line</b>	means our automated interactive voice response system you may access using a touch-tone telephone, if the service is made available to you.
<b>Loan Service Net</b>	means our Internet loan servicing system you may access from our website, if the service is made available to you.
<b>Manager</b>	means the manager specified in the Parties section of the Loan Agreement.
<b>Mortgage</b>	any security given for repayment of the <b>Debt</b>
<b>Outstanding Payment</b>	is the sum of every payment (or part of a payment) due but unpaid in relation to each <b>Account</b> .
<b>Password</b>	means a confidential six-digit code given to you or lodged by you with us which is used for accessing the <b>Services</b> .
<b>Property</b>	the property or properties described in the <b>Mortgage</b> , and any and every part of that property, together with all buildings, fixtures and fittings now or at any time after the date of the <b>Mortgage</b> on the <b>Property</b> , including your interest in it or in its sale proceeds, as well as any <b>Related Rights</b> .
<b>Redraw Advance</b>	means each principal amount which we relend to you under clause 17.
<b>Redraw Date</b>	means, in relation to a <b>Redraw Advance</b> , the date upon which we relend that <b>Redraw Advance</b> to you, or (as the context requires) the date upon which you have requested us to do so, as specified in the relevant <b>Redraw Request</b> .
<b>Redraw Facility</b>	means the facility described in clause 17.
<b>Redraw Limit</b>	means in respect of an <b>Account</b> for which a <b>Redraw Advance</b> is permitted the difference on any day between the scheduled <b>Balance</b> (being the <b>Balance</b> calculated on the basis that each payment due on that <b>Account</b> has been made on time and you have not made any additional early repayments) and the actual <b>Balance</b> on that day.
<b>Redraw Request</b>	means a request by you for a <b>Redraw Advance</b> , made in accordance with clause 17.



<b>Regulations</b>	means the Credit Contracts and Consumer Finance Regulations 2004, as amended from time to time.
<b>Related Rights</b>	means any amounts which may be or may become payable in respect of the <b>Property</b> or any damage or injury to it or depreciation to it and the benefit of any other obligation, security, right or indemnity affecting or concerning the <b>Property</b> .
<b>Services</b>	means the <b>Loan Service Line</b> and/or <b>Loan Service Net</b> provided to you in accordance with the <b>Loan Agreement</b> .
<b>Settlement Date</b>	the date on which the <b>First Advance</b> is lent.
<b>Term</b>	means the period of the loan so described in the section 4 of the <b>Loan Agreement</b> or the new term of the loan as varied from time to time.
<b>Terms and Conditions</b>	means these Bluestone General Terms and Conditions (as amended and updated from time to time).
<b>Total Loan Amount</b>	means the amount specified in section 3 of the <b>Loan Agreement</b> .

5.2. In this Contract:

- a) The headings are used for guidance only.
- b) If there is more than one Borrower, references to the Borrower are to each and any Borrower individually, as well as jointly.
- c) If there is more than one Guarantor, references to the Guarantor are to each or any Guarantor, individually, as well as jointly.
- d) Whenever we use the word “you” we mean each or any of you individually as well as jointly.
- e) “We” and “us” means the **Lender** named in the **Loan Agreement** and, where the context permits, the **Manager**. Any right of the **Lender** including giving notices may be exercised by the **Manager** or its or their agents.
- f) Any reference to the singular includes the plural.

5.3. Where any of these conditions prevents you from doing something without our consent or permission, we will not unreasonably withhold our consent. You agree that it is not unreasonable for us to refuse to consent to something if it adversely affects or might affect our security or the value of the **Property**.

## WHAT, WHEN AND HOW YOU MUST PAY US

### 6. Payments

- 6.1. You must make each repayment as specified in the **Loan Agreement**.
- 6.2. We must receive the complete amount of each repayment. If any direct debit fees, or any taxes or charges are payable then you must increase the amount of the payment to ensure we receive the amount specified in the **Loan Agreement**. We confirm that we hold a valid certificate of exemption from resident withholding tax.
- 6.3. When repayments or charges are due on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> of a month that does not contain such a date, then it must be paid on the last **Business Day** of that month.
- 6.4. If any repayment is due to be made on a day which is not a **Business Day**, the repayment must be made on the next following **Business Day**.
- 6.5. The payment date may be changed at any time:
  - a) by mutual agreement between us;
  - b) by us giving you not less than one month's notice.
- 6.6. All payments must be made by direct debit or such other way specified by us from time to time. If any payment is not made by direct debit, an additional administration charge is payable. You must complete a Direct Debit Request form and give it to us prior to the date of the **First Advance**.
- 6.7. You must continue to make your repayments until you have paid the **Debt** in full.
- 6.8. We may change the amount of your repayments if:
  - a) there is a change in the **Interest Rate**;
  - b) you borrow a **Further Advance** or pay off part of the **Debt** early;
  - c) there are any payments of principal, or any outstanding interest, costs, charges or expenses which are not paid when due;
  - d) in the case of an **Advance** which is to be repaid during the **Term** you are not paying enough to repay that **Advance** in full by the end of the **Term**; or
  - e) you switch or split an **Account**.

If we change the amount of your payments then we will provide written disclosure of the change as required by law.
- 6.9. You have the option to make repayments fortnightly or weekly instead of monthly. If you wish to make repayments more frequently, you can arrange to do so with **Bluestone Mortgages**.
- 6.10. You may repay your loan in full or in part at any time. However, if you have an **Account** with a fixed interest rate, you may need to pay a Break Cost Fee. See clause 11 for further information about the Break Cost Fee.
- 6.11. You must make payments without deducting or setting off any money you think we owe you for any reason.

## 7. Repayment of money owed to the Lender

- 7.1. No matter what any other conditions say, the **Debt** must be repaid no later than the last day of the **Term**.
- 7.2. You will repay any **Advances** to us and any further amounts payable to us under the **Loan Agreement** together with interest.
- 7.3. Any other amounts accruing due to us under the **Loan Agreement** will be repayable on demand.

## 8. Crediting of Payments

- 8.1. Unless we, in our absolute discretion, decide otherwise, any payments made by you or received on your **Account** will be credited to:
  - a) first, any charges or fees;
  - b) second, interest owing by you;
  - c) third, in reduction or repayment of the **Balance** of the loan.
- 8.2. If you have more than one **Account** with us and you make a payment without telling us in writing how the payment is to be applied, we can apply it to any one or more of the **Accounts** in any way we think fit.
- 8.3. We do not pay interest on any credit balance in your **Account**.
- 8.4. If you have more than one **Account** with us and one of those **Accounts** is in arrears, we can apply funds from one **Account** to cover the amount in arrears in the other **Account**.
- 8.5. Any payment received after the **End of Day** is unlikely under normal business conditions to be processed on that day.
- 8.6. Any payment received by way of electronic transfer or direct debit, will be credited to your **Account** on the electronic process date.

## INTEREST, DEFAULT INTEREST, FEES AND CHARGES

### 9. Interest

- 9.1. Interest is payable on the daily balance of any **Advance** outstanding from time to time together with all other amounts due, except interest. Interest is payable only on interest which has fallen due and remains unpaid after it is debited to your **Account**.
- 9.2. The following terms apply to interest calculation and when interest is debited to your **Account**:
  - a) Interest accrues daily and is debited to your **Account** monthly in arrears on the same day of each month as the **Settlement Date**.
  - b) If an interest debit date is on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> of the month that does not contain such a date, we will debit interest on the last **Business Day** of that month.

- c) If an interest debit date is not a **Business Day**, we will debit interest charges on the next **Business Day**.
  - d) On each interest debit date, interest is debited for the period ending on the day before the interest charges are debited. Interest charges for the subsequent month accrue from that interest debit date.
  - e) The **Interest Rate** applied each day is equal to the annual percentage rate applicable to the **Account** at the time divided by 365.
- 9.3. Interest accrues from the day we draw cheques or otherwise allocate money at your request to make the **First Advance**. This applies whether or not any real estate transactions to which the **First Advance** relates (e.g. refinance or purchase) occurs on that day.
- 9.4. In addition to debiting interest on the monthly payment date, we may debit interest whenever the loan is in default, there is any repayment of the loan, any further advance, or any change to the loan terms.
- 9.5. The **Interest Rate** can be varied by us at any time except in respect of a fixed rate loan during the fixed rate term.
- 9.6. Any changes to your **Interest Rate** during the **Term** will be notified to you within 5 working days of the day the rate changes, either in writing or by other means of advertisement as prescribed by law, unless the change reduces the **Interest Rate**, in which case we may include that information in your loan statement. If notified by advertisement, the change will also be confirmed in your next loan statement. Any change in the **Interest Rate** may mean that your repayments will need to change so that you repay your loan within its **Term**.
- 9.7. The **Interest Rates** shown in this **Loan Agreement** are correct at the **Disclosure Date**. They may change before the **Settlement Date** and also during the **Term** of your loan. You can find out what the **Interest Rate** is from **Bluestone Mortgages** any time during business hours. You may withdraw from the loan before it is advanced, but if you do so you will still be required to pay the application fee and any legal or out of pocket expenses.

## **10. Credit fees and charges**

- 10.1. The credit fees and charges that apply to this **Contract** are set out in the **Fees and Charges Schedule** and the procedure for calculation of the Break Cost Fee is set out below.
- 10.2. You must pay to us the credit fees and charges referred to in the relevant **Loan Agreement** and the **Fees and Charges Schedule** when the terms say that the fee is due and otherwise on demand as they are incurred.
- 10.3. We can alter credit fees or charges at any time and introduce new fees or charges but we must give you notice as required by law.
- 10.4. Certain actions that you ask us to take will be charged for at our current fee or charge for that action.

## 11. Break Cost Fee

11.1. If you have a fixed interest rate **Account** and you:

- a) make additional payments (either by increasing your payments or by making additional lump sum payments) on that fixed interest rate **Account** (including any additional payments you make at our request);
- b) repay the outstanding balance of your fixed interest rate **Account** before the expiry of the fixed rate term (including any additional payments you make at our request);
- c) request a switch from the current fixed interest rate **Account** to a variable interest rate **Account** or to a new fixed interest rate **Account**,

then a Break Cost Fee may be payable by you on the day that you change the payment terms of the fixed interest rate **Account**.

11.2. We borrow and enter into funding arrangements (“our funding”) to lend to our customers. When we give fixed interest rate loans to our customers, we also enter into ‘wholesale hedging contracts’ with other banks and large institutions (“interest rate swaps”). These interest rate swaps are designed to protect us if the interest we receive from our customers under fixed interest rate loans is less than the interest we have to pay under funding .

11.3. When you repay all or part of your fixed interest rate **Account** early, we still need to meet our obligations under our funding. We generally also need to adjust our swaps. In doing so, we will incur a loss if the relevant wholesale swap interest rate at the start of your fixed rate term is higher than the relevant wholesale swap interest rate that applies to the remainder of your fixed rate term on the date of your early repayment.

11.4. Although we enter into our funding and swaps in relation to pools of our fixed rate loans rather than on a loan-by-loan basis, a reasonable way for us to estimate our loss, if any, arising from your early repayment is by calculating the early repayment charge as if we had entered into a swap for your individual fixed interest rate **Account**.

11.5. The procedure that we use to calculate the Break Cost Fee due in respect of a fixed interest rate **Account** is set out below. If you do not understand this procedure, you should seek independent financial advice. You may request disclosure of a copy of the calculation we’ve made when you request an estimate of the Break Cost Fee.

### **Break Cost Fee Calculation Procedure**

- a) We calculate the terms of a theoretical swap transaction in the wholesale swap interest rate market that, if entered into at the start of your fixed rate term, would have offset our risk of changing interest rates on that fixed interest rate **Account** (“Swap A”). The terms of Swap A are calculated using wholesale swap interest rates as they were at the start of the relevant fixed rate term of your fixed interest rate **Account**.
- b) We then look at the payments due under Swap A after the break date and the part of Swap A that corresponds to the amount of your early repayment. We

then calculate the value to us as at the break date of the remaining payments under Swap A as if that Swap were commenced on the break date. This calculation takes into account:

- i.) the amount of the additional payment;
  - ii.) the difference between the wholesale fixed rate on Swap A, and what that wholesale fixed rate would have been as at the break date on the remaining term of the Swap A;
  - iii.) how the principal of Swap A would have declined as the principal of your loan reduced over the fixed rate term; and
  - iv.) the time value of money – a dollar payable today is worth more than a dollar payable in the future, so the value of the remaining payments is discounted to give a present value.
- c) If the value of the remaining payments calculated in point (b) above is a loss to us, then your Break Cost Fee is equal to the amount of that loss. If the value is no loss to us, then there is no Break Cost Fee.
- 11.6. Using this procedure, we can calculate a reasonable estimate of our loss as a result of the movements in interest rates. The method the Lender uses to calculate break costs is not the formula prescribed by the Credit Contracts and Consumer Finance Regulations 2004.
- 11.7. In addition to the Break Cost Fee you may be obliged to pay the Switch Fee, the Discharge Administration Fee, or the Partial Discharge Administration Fee.

## 12. Default interest

- 12.1. If you do not make a payment by its due date the **Interest Rate** on the **Outstanding Payment** may increase to the **Default Rate** specified in the **Loan Agreement**. The **Default Rate** will apply to your **Account** from the due date of the last payment that you made (or any later date that we may choose) until you have paid us both any **Outstanding Payment** and an amount equal to any additional interest at the **Default Rate** (or **Default Rates**) for each day during the default period. For the avoidance of doubt, the default period does not end until you have paid us both these amounts and the **Default Rate** will change during the default period if its corresponding **Interest Rate** changes.

## DEFAULT

### 13. When you are in default

- 13.1. You are in default of this **Contract** if:
- a) you do not pay any amount payable under the **Loan Agreement** by its due date for payment;
  - b) you breach any term of your **Contract**;
  - c) there is a breach under any **Mortgage**;
  - d) the **Mortgage** does not have the priority we expected;

- e) you are in default under any other credit contract you have entered into with us or any other **Mortgage** you have granted to us; or
- f) we believe on reasonable grounds that we were induced by fraud to enter this **Loan Agreement** or any **Mortgage**
- g) If the value of the **Property** falls substantially because:
  - i.) a building on it has been pulled down or damaged;
  - ii.) any lease or licence under which the **Property** or any part of the **Property** is held is terminated, surrendered, forfeited or cancelled or becomes liable to any of these events;
  - iii.) all or any part of the **Property** is taken or is proposed to be taken by any compulsory process without our written consent.
- h) If you become bankrupt or make any formal arrangement with your creditors or in our opinion there is a material adverse change in your financial condition.
- i) If we discover that any of the information given to us by you or by someone on your behalf before the **Loan Agreement** was signed is wrong or that you omitted to tell us something when you applied for an **Advance** and that information or omission had or has a material affect on our decision to lend or to continue to lend to you.
- j) If a mortgagee or other person interested in the **Property** takes proceedings for possession or to realise their interest in it or otherwise enforce their interest.
- k) If any change in your circumstances occurs which we reasonably believe might adversely affect your ability to perform your obligations under your **Loan Agreement**.
- l) If you die, become incapable of managing your own affairs or are jailed.
- m) If you give possession of the **Property** to us.
- n) If you are a company:
  - i.) there is any change in ownership or control of the company or any company of which you are a subsidiary;
  - ii.) a receiver, manager, receiver and manager, administrator, controller, provisional liquidator, or liquidator is appointed to any part of your assets;
  - iii.) any action is commenced to strike the company's name off any register of companies;
  - iv.) you sell or transfer to any other person the whole or any major part of your assets without our prior written consent; or
  - v.) you fail the solvency test as defined in section 4 of the Companies Act 1993; or
  - vi.) the company is, in our opinion, insolvent.
- o) If you are a trustee and without our prior written consent:

- i.) you cease to be a trustee of the trust;
- ii.) any trust property is transferred to another trustee who is not a party to the **Loan Agreement**;
- iii.) any part of the trust capital is distributed to beneficiaries;
- iv.) any court proceedings against the trustees is brought which in our opinion is adverse to our interests; or
- v.) any change is made to the documents creating or recording the trust.

#### **14. Actions we can take when in default**

14.1. At any time after default occurs, we can take any of the following actions:

- a) Subject to any notice restrictions at law, demand and require immediate payment of all or any part of the **Debt**.
- b) Exercise any right, power or privilege conferred by any law, the **Loan Agreement**, or the **Mortgage**.

14.2. Upon expiry of the statutory default notice that we issue pursuant to our rights under the **Mortgage** (the default notice), the **Debt** will be immediately become due and payable by you to us without the need for us to make any further demand for payment.

14.3. We can take action even if we do not do so promptly after the default occurs.

14.4. We can exercise these rights with or without taking possession of the **Property**. If we hold a **Mortgage** over more than one **Property**, we can enforce our security against any one of the **Properties** first or all of them at the same time.

14.5. You must pay the **Debt** whether or not the proceeds on sale of the **Property** or any other security for it are sufficient or are likely to repay the **Debt**.

#### **15. Enforcement expenses**

15.1. If you breach the terms of this **Loan Agreement** or of any **Mortgage** required by the **Loan Agreement**, you will be required to pay expenses which are reasonably incurred by the **Lender** or the **Manager** in enforcing or preserving its rights under this **Loan Agreement** or the security.

15.2. These expenses include the **Lender's** or **Bluestone Mortgages'** expenses incurred in preserving or maintaining property subject to the security, collection expenses and expenses resulting from dishonour of a cheque or payment. These expenses may be debited to your loan at any time after they are incurred. You must pay us these costs and expenses on demand.

## **SWITCHING AND SPLITTING YOUR LOAN**

#### **16. You can switch or split your loan subject to approval**

16.1. We have the power to:

- a) switch your variable interest rate loan to a fixed interest rate loan;



- b) convert your fixed interest rate loan to a variable interest rate loan;
- c) split any variable or fixed interest rate loan.

We will not exercise this power unless you request us to do so and we in our absolute discretion decide to grant your request. If we exercise this power we will send you written notice setting out the particulars of the change to the terms of the **Contract** and other information required by law.

- 16.2. If we exercise our power to switch between the type of **Interest Rate**, the new **Interest Rate** will apply to the **Contract** from the date we specify in our notice as the date that it will apply.
- 16.3. If an **Account** is split into two or more **Accounts**, or if you switch between types of **Interest Rate**, you must pay interest on the amount switched or split to the date on which the switch or split occurs. From that date, interest will be debited and repayments will be due monthly in arrears from the date of the split or switch.
- 16.4. You may also elect to consolidate one or more of your split rate **Accounts**, again subject to our approval. If you switch from a fixed rate loan to a variable interest rate loan during the fixed rate term, a Break Cost Fee and/or a Switch Fee may be payable as set out in your **Loan Agreement**.
- 16.5. Any Switch/Split request must be made:
  - a) in writing; or
  - b) by any other method we authorise from time to time.
- 16.6. Before selecting a fixed interest rate loan, remember that if the whole or any part of the fixed interest rate loan is terminated early, **substantial costs could be payable by you**.

## REDRAW FACILITY

### 17. Redraw

- 17.1. The following subclauses in this clause 17, will only apply if you have a variable interest rate **Account**.
- 17.2. If you have repaid early, you may make a **Redraw Request** to the **Lender** or **Bluestone Mortgages** using the methods set out below. We may in our absolute discretion decide to accept your **Redraw Request** and make the **Redraw Advance**. The amount of your **Redraw Request** must not be less than the minimum amount specified below.
- 17.3. Any **Redraw Request** must be made:
  - a) in writing; or
  - b) if the **Services** apply to your facility, by using the **Services** in accordance with these **Terms and Conditions**; or
  - c) by any other method we authorise from time to time.
- 17.4. The minimum amount of a **Redraw Advance** which you may request:

- a) by written request, is \$2,000.00;
  - b) by using the **Services**, is \$50.00;
- or such other amount as notified to you from time to time.
- 17.5. Any amount redrawn forms part of the money owing under your variable interest rate **Account**.
  - 17.6. If we agree to make a **Redraw Advance** we will process the **Redraw Advance** to your **Account** on the **Redraw Date**. While you have one or more split loans, any **Redraw Advance** will be made from the **Account** specified by you, or if no **Account** is specified, the **Account** determined by us. We may review or suspend the redraw facility at any time.
  - 17.7. Amounts repaid early in respect of a fixed interest rate **Account** are not available for redraw.

## GENERAL CONDITIONS

### 18. Joint and several liability

- 18.1. If there are two or more of you, each of you is individually liable, and all of you are jointly liable. This means the Lender may sue any one of you for all the outstanding amounts. This means that each one of you can be required to pay the whole amount even though you may have some other arrangement among yourselves or not all of you benefit equally.
- 18.2. Each of you can bind each other. For example, any one of you can authorise a redraw, a split into one or more sub-loans, or any other activity in respect of your loan. Each other Borrower and any Guarantor will be liable even though they did not know about or did not agree to the transaction. Despite this clause, we may require all borrowers and guarantors to authorise any activity with respect to your loan.

### 19. Government charges

- 19.1. You must pay us on demand all government charges and duties on receipts relating to your loan. We may debit your Account with these items as incurred.

### 20. Statements of Account

- 20.1. Statements will be sent to you at least once every 6 months or more frequently if required by law.

### 21. Commission

The **Lender** will pay an introduction fee and/or an ongoing commission to **Bluestone Mortgages** for introduction and/or ongoing management of the credit business. The amount of fees and/or commissions may increase if an introducer or broker introduces more loans. This could affect the impartiality of the introducer or broker.

The **Lender**, **Bluestone Mortgages**, the introducer and other persons may pay or receive other commissions, fees or benefits in connection with this loan.

## 22. You must provide financial statements

You must provide us within 14 days of our request any information we require relating to your business, assets, and financial affairs. For example, we may require a copy of your taxation return or an assets and liability statement. In relation to a company, we might require a balance sheet, a profit and loss account, or both. We may require this information to be certified or audited.

## 23. Lender's certificate

- 23.1. A certificate signed by or on behalf of the **Lender** as to an amount payable to the **Lender** is conclusive and binding on you.

## 24. How the Lender can deal with this Loan Agreement

- 24.1. The **Lender** may assign or otherwise deal with its rights and obligations under this **Loan Agreement** in any way it wishes without your consent. You must sign anything and do anything the **Lender** reasonably requires to enable any dealing with this **Loan Agreement**. Of course, any dealing with the **Lender's** rights and obligations does not change your obligations under this **Loan Agreement** in any way.

## 25. Lending to trustees

- 25.1. If you are at any time trustee of any trust, you are liable under this **Loan Agreement** in your own right and as trustee of the trust. Accordingly, we can recover against the trust assets as well as you. Default occurs if there is a change of trustee, a termination of the trust, or any change to the terms of the trust without our consent.
- 25.2. If any party is a trustee and is named in the **Loan Agreement** as a limited liability trustee then we agree that the liability of that party under the **Loan Agreement** or under any **Mortgage** or under any guarantee 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 under which that party has entered into the **Loan Agreement** unless the right of that party as a trustee to be indemnified from the assets of the trust has been lost and, as a result, the **Lender** is unable to recover from that party as a trustee the limited amount. In which case the Lender may recover the limited amount as a personal liability of that trustee.
- 25.3. If any person is named in the **Loan Agreement** as a limited liability trustee, then the **Lender** has agreed to limit the liability of the person named as a limited liability trustee on the basis that that person is acting as a trustee in an independent capacity and has no interest in the assets of the trust other than as a trustee. If this assumption is wrong then the limitation of liability will not apply and the person named as a limited liability trustee will have full personal and unlimited liability.

## 26. How notices may be given

- 26.1. We may give a notice to you by personal delivery, prepaid ordinary post, facsimile, or email sent to your address shown on this **Loan Agreement**, sent to your registered office (if you are a company), or sent to your last address known to us. We may also give a notice in any other way authorised by law.
- 26.2. The notice may be signed by any employee, solicitor, or agent on behalf of us.

26.3. If you are not resident or at any time during the term of the **Loan Agreement** you expect to be not resident in New Zealand for any period, then you must appoint an agent in New Zealand for service under section 355 of the Property Law Act 2007. We may make this a condition to be satisfied before any **Advance** is made to you.

## 27. The trustee

27.1. NZGT Custodians (Bluestone) Limited enters this **Loan Agreement** solely in its capacity as a trustee of a trust. The liability of NZGT Custodians (Bluestone) Limited is limited to the assets of that trust.

## 28. Electronic Disclosure

28.1. If you have consented in writing to receive information, disclosure or any notices in respect of the **Loan Agreement** and any **Account** from us electronically (including email, by message or notification to a mobile phone or the internet), we may from time to time provide disclosure, information and notices to you electronically to the email address, mobile phone or system that you supplied to us.

## AGREEMENT IN RELATION TO DIRECT DEBIT

### 29. Direct debit payments

29.1. The following clauses contain the terms of our agreement with you in relation to the use of the direct debit request form you will be required to sign.

29.2. You must:

- a) ensure any account nominated in your Direct Debit Request Form can accept direct debits;
- b) ensure that the account details stated in the Direct Debit Request Form are correct (eg by comparison to a recent statement from your bank);
- c) ensure there are sufficient funds in the relevant account to meet each authorised direct debit request;
- d) advise us if the account nominated on your Direct Debit Request Form is transferred or closed or the details change; and
- e) ensure that all account holders sign the Direct Debit Request Form.

29.3. You agree that we may debit amounts from the bank account specified in the Direct Debit Request Form at the rate and frequency specified in this **Loan Agreement** so as to ensure you comply with your obligations to make payments under this **Loan Agreement**. You also agree that we may debit from that account other amounts that you may authorise us to debit from time to time.

29.4. We will give you at least 14 days' notice if we propose to vary any of the terms of the debit arrangements, unless any such change is as a result of a request by you in which case we will give you notice as required by law.

29.5. If you wish to defer, alter or suspend all or any part of these direct debit arrangements, including suspending or cancelling a direct debit request, you must give **Bluestone Mortgages** at least 7 **Business Days** prior notice. You must also

ensure that suitable alternative direct debit arrangements are put in place in order for you to comply with your payment obligations under this **Loan Agreement**.

- 29.6. We have a customer claims process in place with all financial institutions in case of disputed drawings. You should contact **Bluestone Mortgages** in the first instance if you have a complaint regarding the amount or timing of any drawing under the Direct Debit Request Form. The contact details for **Bluestone Mortgages** are as set out in your Loan Proposal letter.
- 29.7. If your due date for payment falls on a day that is not a **Business Day**, we will process your drawing in accordance with the terms of this **Loan Agreement**.
- 29.8. If your drawing is dishonoured by your financial institution, your loan **Account** will be adjusted and any charges incurred by us may be debited to your **Account**.
- 29.9. We will keep details of your bank account confidential, except where required for the purpose of conducting direct debits with your nominated financial institution or we receive your permission to release information or a court order applies.

## PRIVACY ACT

### 30. Privacy

- 30.1. The following clauses contain the terms of our agreement with you in relation to the collection, retention and use of confidential information about you. You will have already given us permissions in the loan application that you signed. The following clauses confirm and are in addition to the permissions you have already given us and deal with how we may use this information during the term of the loan.
- 30.2. We may use the personal information you provide us about you for the purpose of arranging or providing credit, and for direct marketing of products and services offered by **Bluestone Mortgages** or an organisation **Bluestone Mortgages** is affiliated with or represents. **Bluestone Mortgages** may also use your personal information for the purpose of establishing a customer loyalty programme.
- 30.3. The information provided by you will be held by us and you can gain access to the information held about you by contacting us or **Bluestone Mortgages**. You have the right to correct any information that we hold. You have the right to request not to receive direct marketing material.
- 30.4. We and any mortgage broker, mortgage originator, mortgage manager or any person or company who at any time provides or has an interest in the credit can do any of the following at any time.
  - a) **Credit information:** Seek and use credit information about you to assess an application for credit.
  - b) **Collection of overdue payments:** Seek and use a credit report about you provided by a credit-reporting agency to collect overdue payments from you.
  - c) **Exchange of information between credit providers:** Seek from and use or give to another credit provider any information about your **Account**, credit

worthiness, credit standing, credit history or credit capacity. In particular, we may provide a bank opinion on you.

- d) **Exchange of information with advisers:** Seek from and use or give to any mortgage broker, mortgage originator, mortgage manager, financial consultant, accountant, lawyer, or other adviser acting in connection with any financing provided or proposed to be provided to you, any consumer or commercial credit information.
- e) **Provide information to credit reporting agencies:** Give to a credit reporting agency personal or commercial information about you. The information may include identity particulars; the fact that credit has been applied for and the amount; the fact that we are a current credit provider to you; payments which become overdue more than 60 days, and for which action is commenced; advice that payments are no longer overdue; advice that cheques drawn by you have been dishonoured more than once; in specified circumstances that in our opinion you have committed a serious credit infringement; and the credit provided to you by us has been paid or otherwise discharged.
- f) **Provide information for securitisation:** Disclose any report or personal information about you to another person in connection with funding financial accommodation by means of an arrangement involving securitisation or any other proposed transfer of or proposed dealing with your loan.
- g) **Provide information to Guarantors:** Provide information to any person who proposes to guarantee or has guaranteed repayment of any credit provided to you.
- h) **Disclose of personal information:** Disclose personal information about you as required by law, or to organisations involved in providing services associated with your loan or providing credit to you, any associate or contractor of ours, (including for example statement printing houses, card and PIN producers, mail houses, lawyers, accountants), or people considering acquiring an interest in our business or our assets or has an interest in your loan.
- i) **Incorrect personal information:** If you feel that any of the information we hold about you is incorrect, you may apply in writing to have the information corrected. In some circumstances we may require evidence from you to prove the validity of any information you provide us to correct any information we hold.

30.5. You allow us to pass on any information or documents held or provided in relation to your loan and any related security to:

- a) actual or proposed transferees of the loan or any security;
- b) any direct or indirect provider of funds for any **Advance**;
- c) any party with whom we or our agents have, or are considering entering into, a contractual agreement in relation to your loan;
- d) credit reporting agencies;

- e) any other party who it may be relevant to inform in connection with any contemplated enforcement action against a **Mortgage** or other security, any litigation against you or professionals employed in relation to any **Advance**;
- f) any subsidiary, holding, or associated company of **Bluestone Mortgages** or their professional advisers; or
- g) any other person if required or permitted by law to do so.

## TERMS AND CONDITIONS APPLYING TO THE SERVICES (LOAN SERVICE LINE AND LOAN SERVICE NET)

### 31. Loan Service Line and Loan Service Net

The following clauses apply to the operation of the **Services**.

- 31.1. We may make available to you the **Services**. These **Terms and Conditions** apply to both the **Loan Service Net** and **Loan Service Line**, and apply despite any inconsistency with any other provision of these terms and conditions. The **Services** are operated on our behalf by a third party. If you have a concern or query regarding the **Services** you should contact **Bluestone Mortgages** using the phone number provided to you in connection with the **Services**.
- 31.2. If your **Account** is in more than one name, each of you agrees that each person can use the **Services** and have access to information in relation to the **Account** without the other person's consent.
- 31.3. If you authorise anyone to use the **Services**, you will be liable for any use of the **Services** by that person including transactions on any **Account** (even if that transaction is not authorised by you) or any failure by that person to observe the provisions of clause 31. You will be responsible for all transactions as though you made them yourself. You should ensure that any person you authorise to use the **Services** has read and understood the provisions of clause 31. You agree that any person you authorise to use the **Services** can have access to information we have in relation to the **Account**, including any confidential information that we may hold about you.
- 31.4. If you do not take all reasonable precautions to ensure that your **Access Number** and/or **Password** are not obtained or misused, you will be responsible for all transactions on the **Account** whether or not they are authorised by you.
- 31.5. You must tell us as soon as possible if you suspect that an unauthorised person knows of your **Access Number** and/or **Password**. You can notify us by telephoning the number provided to you between 8.00am and 5.00pm on each **Business Day**.
- 31.6. We can cancel your **Access Number** or **Password**, at any time and without notice.
- 31.7. You must notify us immediately if your **Access Number** or **Password** is lost or stolen, or if you become aware of an unauthorised use of your **Access Number** or **Password**. We will then cancel and re-issue you with a new **Access Number** and **Password**.
- 31.8. You are not liable for loss of funds which resulted from use of the **Services** if:

- a) you have not contributed to the loss. Please note, you may contribute to the loss if your **Password** is easily identifiable as a combination of your name, and birth date, or any similar combination;
  - b) unauthorised use took place before you received your **Access Number** and/or **Password**;
  - c) unauthorised use took place after you informed us that your **Access Number** or **Password** has been lost, stolen, or used by someone without your authorisation;
  - d) fraudulent/negligent conduct of our employees/agents;
  - e) forged, faulty, expired or cancelled **Access Number** and/or **Password**; or
  - f) incorrect double debit transactions.
- 31.9. The range of services we make available through the **Services** will be determined by us in our absolute discretion from time to time. We may extend or reduce this range of **Services** at any time without notice to you. At the time you first access the **Services** you can use the **Services** to access each of your **Accounts**. We may subsequently give you access to other **Accounts** through the **Services**. We will notify you of the minimum amount of any transaction which can be processed on your **Account** using the **Services** from time to time. It is your responsibility to maintain any equipment needed by you to access the **Services**.
- 31.10. When you use the **Services**, your instructions will be carried out if they are permitted by these **Terms and Conditions**. You authorise us to act on those instructions. If it is not possible to carry out the instructions, the transaction will not be processed. We can defer processing a transaction or seek further information from you or other parties before carrying out an instruction. You authorise us to act upon all instructions in relation to the **Services** or either of them given using your **Access Number** and **Password**. We may, in our absolute discretion and without notice to you:
- a) refuse to give effect to any instructions received from you in relation to the **Services**; or
  - b) (temporarily or permanently) suspend access to the **Services**; or
  - c) determine the order of priority of payments, if we have more than one instruction from you.
- When you or anyone authorised by you gives us instructions using the **Services**, those instructions cannot be stopped. You are responsible for ensuring that the instructions you or anyone you authorise gives us are correct.
- 31.11. When you make a transaction through the **Services**, we may provide you with a transaction reference number. You should keep a record of this number, which should be quoted to us if you have any queries.
- 31.12. Subject to any warranties implied by law, we are not responsible for and do not warrant that the **Services** will be free from:



- a) errors, inaccuracies, omissions; or
- b) delays resulting from failure of the **Services** or ancillary equipment or;
- c) failure of the services to perform a function in whole or in part.

Also, we may withdraw or deny access to the **Services** without prior notice to you.

31.13. If we are instructed to do so, we will credit amounts to your **Account**, as soon as practicable after we receive them. Those amounts are then not available until they are cleared (which in some cases, **may** take up to 5 **Business Days**). We are under no obligation to process any transactions, which you make on the day you make them. However, we will endeavour to process transactions:

- a) made before 4.00pm on any **Business Day**, on that day;
- b) made after 4.00pm on any **Business Day**, on the next **Business Day**;
- c) made on any day other than a **Business Day**, on the next **Business Day**.

31.14. If you have a complaint concerning matters covered by clause 31 including any:

- a) apparent error in a transaction;
- b) unauthorised transactions; or
- c) apparent error in information received through the **Services**

you must tell us promptly.

If we are unable to resolve the matter immediately, we may require you to tell us in writing, giving all relevant information concerning each transaction you wish to query. When we receive this advice we will inform you in writing of the procedures relating to investigation of the matter.

We will tell you either the outcome of the investigation or the fact that more time is needed to complete the investigation.

When the investigation is completed, we will advise you in writing of the outcome and the reasons for the decision.

31.15. If more than one of you is entitled to use the **Services** and one of you gives us written notice to end the use of the **Services** we may but are not obliged to end your use of the **Services**. However if we do not end the use of the **Services** in relation to an **Account** we are not responsible for any transactions carried out using the **Services** after our receipt of your written notice. We can end your use of the **Services** at any time, without notice to you.

31.16. We can, at our discretion, record transactions made through the **Services** for reasons of accuracy and security.

31.17. Subject to any rights that cannot be excluded by law we are not liable for or in connection with any loss or damage suffered by you or any other person arising directly or indirectly from or in connection with your use of the **Services** or either of them. To the extent to which we are liable, then to the extent to which the law allows, our liability is restricted to re-supplying the **Services** or the cost of re-supplying the **Services**.

31.18. If you use the Loan Service Net, Loan Service Line or customer service line you may incur fees and charges on your Account. You may obtain a list of up-to-date fees from us. If we change our fees or introduce new fees you will be provided with notice as required by law.