



# Choices Home Loan

## Terms And Conditions

Westpac New Zealand Limited, having its principal place of business at 16 Takutai Square, Auckland (**Westpac NZ**) may offer to provide Choices Home Loans (each a **Loan**) to you from time to time. Each Loan provided to you will be governed by and subject to these Choices Home Loan Terms and Conditions, the Loan Summary for the Loan, the Westpac NZ General Terms and Conditions and the Transaction and Service Fees brochure.

**27 April 2023**

**Example Customer, 123 Example Street, Example City**

## 1 Accessing your money

### 1.1 Drawing your Loan

Unless otherwise agreed by Westpac NZ, you can draw your Loan in one lump sum or in instalments.

At any time your Loan is on the Annual Fixed Interest Rate you can only draw down amounts under your Loan on the first day of each Fixed Rate Period.

### 1.2 Your Loan Account

Amounts drawn on your Loan will be debited to a Choices Home Loan Account (Loan Account) opened in your name.

### 1.3 Initial Unpaid Balance

If the initial unpaid balance as disclosed in your Loan Summary is showing a debit balance, the amount and description of each advance, charge or payments accounted for in the initial unpaid balance referred to are disclosed in your bank statements. If any additional advances, charges or payments have been made since the date of your last statement these will appear in your next statement.

## 2 Payments and interest

### 2.1 Payments

You will make all payments at any Westpac NZ branch or at any other place Westpac NZ specifies, and in the manner that Westpac NZ specifies.

### 2.2 Payment dates

Scheduled loan repayments will be payable on the day they are due, including on non-business days (that is, weekends and New Zealand national public holidays). However, if a date for a payment falls on a weekend or a national public holiday in New Zealand prior to 27 May 2023, then these payments will be payable on the next business day.

If there isn't enough money in your loan repayment account to cover your Westpac loan repayments, the payment won't be processed. We'll try again over the next six days. But if the payment is still unsuccessful, we won't try again.

### 2.3 Limit

You are not to exceed the specified Limit on your Loan.

Within your Limit, you can:

- draw more than once and redraw amounts prepaid. If at any time your Loan is on the Annual Fixed Interest Rate, this can only occur on the first day of each Fixed Rate Period.
- suspend repayments to your Loan account. While you are on an Interest Only Period or flat loan structure you will not be able to suspend your interest payments, which will continue to be debited to a nominated Westpac NZ account.

### 2.4 Limit Reductions and Loan Repayments

Your Limit will reduce in the way set out in the Limit Reductions section (as varied from time to time) of your Loan Summary. Westpac NZ may also change your Limit or Limit Reduction from time to time in accordance with your Agreement (see clause 3.2). The Limit Reduction details set out in your Loan Summary are worked out as at the date of your Loan Summary.

## 2.5 **Loan payments**

You must pay all Outstanding Moneys by the end of the term of your Loan.

If your Loan has an Interest Only Period, you must pay the interest that is debited to your nominated Westpac NZ account. However, if for any reason you do not have a nominated Westpac NZ account, any interest that would have been debited to your nominated Westpac NZ account will be debited to your Loan Account instead and you must pay that interest. During your Interest Only Period, the principal amount of your Loan will not reduce as it normally would if you were making principal and interest payments. This means you will pay more interest over the term of your Loan than if you always made principal and interest payments.

At all other times that there is Outstanding Moneys you must make regular principal and interest payments, unless you have suspended your repayments as permitted by clause 2.3. Your regular payments must be at least equal to your Minimum Payment to Westpac NZ.

Westpac NZ calculates your Minimum Payment, taking into account a number of factors, including:

- the Limit (assuming you have drawn the full Limit);
- that the Loan will be repaid over the term of the Loan;
- the term of the Loan;
- the frequency of your regular payments; and
- your current annual interest rate.

Westpac NZ will calculate your Minimum Payment to ensure that your Minimum Payments, except your last payment, are all about the same (rounded up to the nearest dollar) and that all amounts payable under your Agreement will be paid by the end of the term of your Loan. In some circumstances your last payment date may fall in the month following your Loan maturity date. The rounding of your Minimum Payments to the nearest dollar means the principal repayable on your last payment will be lower than if Westpac NZ had not rounded up your Minimum Payments. On your last payment you must repay all Outstanding Moneys.

Westpac NZ will calculate the Minimum Payment at the start of your Loan and at certain times during the term of your Loan (such as when the interest rate changes (see clause 3.2)). The initial Minimum Payment is the principal and interest payment amount set out in the Limit Reductions/Repayments section of your Loan Summary. If Westpac NZ recalculates the Minimum Payment at any time and the new Minimum Payment is less than your then current regular payment amount, Westpac NZ may not change your regular payment amount.

You can change your regular payment amount at any time as long as:

- the new payment amount is not less than the Minimum Payment; and
- if you are changing the amount of your regular payment during a Fixed Rate Period, your new payment amount is not more than 20% higher than the Minimum Payment unless you and Westpac NZ agreed a higher regular payment amount before the start of your Fixed Rate Period. This does not limit your ability to make a lump sum prepayment as set out in clause 2.7 below.

You can make changes through some or all of the following channels:

- Westpac One® online banking,
- your local Westpac NZ branch, or
- calling Westpac NZ using the numbers specified on westpac.co.nz under the Contact link.

2.6 You can find your current Minimum Payment and regular payment amount on your statement for your Loan and on Westpac One® online banking.

The Minimum Payment and other details such as the Limit Reduction, interest and other payment details set out in your Loan Summary and any further payment details relative to your Agreement are worked out as at the date of your Loan Summary. They are disclosed for the purposes of the Credit Contracts and Consumer Finance Act 2003, where this is applicable.

### **Prepaying**

You may at any time prepay all or part of your Loan.

If you prepay during any Fixed Rate Period there may be a cost to you (see clause 2.7 below).

Any prepayment you make will not affect your obligation to make repayments in the way set out in the Limit Reductions/Repayments section (as varied from time to time) of your Loan Summary.

## 2.7 **Prepayment Costs**

If you change to a different interest rate type or you prepay any part of your Loan during a Fixed Rate Period (each a Prepayment) then you may need to pay an amount to Westpac NZ (a prepayment cost) and any other charges as specified in your Agreement. This applies whether the Prepayment is voluntary or required following a default pursuant to clause 3.3(b) below.

Westpac NZ will determine the prepayment cost on the basis of a formula, which is a pre-estimate of the cost to Westpac NZ. It reflects any positive present value difference as a result of the Prepayment, calculated using the difference in the hedge rates (as determined by Westpac NZ) applicable when your Loan was funded compared to those prevailing at the time of the Prepayment, for the remaining term of the Fixed Rate Period.

You will pay this prepayment cost and Westpac NZ's normal administrative charges as detailed in the Transaction and Service Fees brochure to Westpac NZ as soon as Westpac NZ requests you to do so. Westpac NZ's determination of the prepayment cost will be conclusive and binding on you.

You may ask Westpac NZ at any time to estimate the amount of the prepayment cost in relation to a Prepayment. That estimate will be indicative only and will not be binding on Westpac NZ. Westpac NZ will also provide details of the prepayment cost formula to you on request or you may also get a copy of the formula and examples of how it works at [westpac.co.nz](http://westpac.co.nz). The prepayment cost is not calculated in accordance with the formula prescribed by the Credit Contracts and Consumer Finance Regulations 2004.

## 2.8 **Security**

- Your Loan, as well as any other Outstanding Moneys you may owe to Westpac NZ now or in the future under any other existing or future Bank Document (including under any guarantee you have granted in favour of Westpac NZ), will be secured by all existing and future Security Interests, and any other Security, granted to Westpac NZ in respect of your obligations, including (if any) any Security listed in a Schedule of Securities attached to your Loan Summary;
- any further Security which Westpac NZ at any time advises you that it requires; and
- any Security transferred or assigned to any transferee, which, under the terms of the Security, continue to secure your Loan notwithstanding:
  - the transfer or assignment of the Security to such transferee; or
  - the transfer or assignment of any other moneys you may owe to Westpac NZ to such transferee.

This may constitute a change to your arrangements with Westpac NZ under another Bank Document.

## 2.9 **Fees, costs and charges**

You will pay Westpac NZ the following:

- the fees, costs and charges in the section of Westpac NZ's Transaction and Service Fees brochure that refers to personal borrowing fees; and
- any costs incurred by Westpac NZ, or any third party on its behalf, in relation to enforcing your Agreement or any Bank Document or recovering any Outstanding Moneys.

## 2.10 Interest

### a) Interest rate calculation

You will pay Westpac NZ interest on the amount of the debit balance (as at the end of each day) in your Loan Account. Interest will be calculated daily by applying to that amount the interest rate which applies at the time divided by 365. Westpac NZ may from time to time determine when a day ends for the purpose of calculating interest under your Agreement.

### b) Annual Floating Interest Rate

The Annual Floating Interest Rate will apply at all times your Loan is not on the Annual Fixed Interest Rate. The Annual Floating Interest Rate is a variable rate which is based on a Base Rate. Westpac NZ's published Base Rates are available at westpac.co.nz and are advertised from time to time in major newspapers when changes occur. In addition, Base Rates are available by contacting your Westpac NZ branch or Relationship Manager. Westpac NZ may change the Base Rate, replace it with a new Base Rate, or change the Modifier or the Margin from time to time.

### c) Annual Fixed Interest Rate

The Fixed Rate Period (if any) begins on (and includes) the Drawdown Date (or relevant Variation Date). When the Fixed Rate Period ends, or if no Fixed Rate Period applies to your Loan, the Annual Floating Interest Rate will apply unless you request, and Westpac NZ agrees, for a new Annual Fixed Interest Rate for a new Fixed Rate Period to apply to your Loan. If you want to do this you must notify Westpac NZ at least 2 business days before the end of any current Fixed Rate Period. Westpac NZ will tell you what the new interest rate will be.

The Fixed Rate Period may begin:

- i) immediately after the end of a previous Fixed Rate Period; or
- ii) if the Annual Floating Interest Rate applies to your Loan, at any time.

### d) Default interest rate

If at any time, the balance of your Loan Account exceeds the Limit for 14 consecutive days or more, then the rate of interest applying to the amount that is in excess of your Limit for each day from that 14th day will be increased by the default margin until the balance of your Loan Account is brought back within the Limit. Westpac NZ will calculate default interest using the method set out in paragraph (a) and that default interest is due on the same date interest is debited to your Loan Account under paragraph (a). Westpac NZ will debit default interest due under this paragraph (d) to your Loan Account. If the default interest is not paid when due, it will be added to the principal amount and default interest will also accrue on that amount.

## 2.11 Interest Only Period

The Interest Only Period (if any) begins on (and includes) the Drawdown Date (or relevant Variation Date).

It will be at Westpac NZ's discretion to determine if an Interest Only Period can be applied at any future date after your Loan is drawn.

## 2.12 Gross-up for Tax

You must make all payments without any deduction or withholding on account of any Tax whether imposed in New Zealand or elsewhere (except to the extent required by law). If:

- you are required by law to make any deduction or withholding from any payment: or
- Westpac NZ is required by law to make any payment on account of any Tax (other than Tax on overall net income of Westpac NZ), on or in relation to any amount received or receivable under your Agreement,

the amount payable by you shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Westpac NZ receives and retains a net amount equal to the amount which it would have received and retained had no such deduction, withholding or payment been made.

You must deliver to Westpac NZ, on request, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made.

# 3 What you agree Westpac NZ may do

## 3.1 Refusal to lend

Westpac NZ is under no obligation to provide the initial amount of your Loan, provide any further advances (if any), or allow you to postpone repayments or capitalise interest if:

- an Event of Default or Potential Event of Default has occurred (regardless of whether or not it is continuing);
- any person who has given Security in relation to your Loan withdraws that Security, or stops its obligations under it; or
- after the first advance under your Loan, you do not fulfil any new requirements set by Westpac NZ at its option for a new advance, redrawing, postponement of repayment or interest capitalisation.

### 3.2 Changing the Limit Reductions and other terms

At any time after there is a change of interest rate Westpac NZ may at its discretion vary the size of any reductions and the number of reductions. At any time Westpac NZ may also at its discretion increase or reduce the amount of credit available by varying your Limit and the Interest Payments section set out in your Loan Summary. Examples of when your Limit may change are, if:

- your financial position has changed, or is anticipated to change;
- you do not pay an amount when it is due;
- Westpac NZ is required to do so in order to comply with a court order or other legal or regulatory obligation; or
- there has been a reduction in the value of any Security which affects Westpac NZ's Security Interest.

Westpac NZ can also vary the term of your Loan (usually on the basis you will be making the same regular payments). It may also do these things if you do not draw your full Limit. In any of these cases the amount of credit available, Limit, Limit Reduction, Term and Interest Payments sections of your Loan Summary must be taken to be amended accordingly. Notwithstanding this, Westpac NZ is entitled to require repayment of all amounts outstanding under your Agreement within the term specified in your Loan Summary.

### 3.3 Default

#### a) When you will be in default

You will be in default if:

- you fail to make a payment when due and this results in you exceeding your Limit;
- you do not comply with any of your obligations under your Agreement, or you are in default under your Mortgage or any other Bank Document;
- at any time the balance of your Loan Account exceeds your Limit, including if Westpac NZ at its discretion reduces, or allows you to exceed your Limit, or continues to provide credit if your Loan has expired;
- anything you or a Guarantor have told or tell Westpac NZ, or any information you or a Guarantor have given or give Westpac NZ, is untrue, misleading or deceptive (including by omission) in a material respect;
- in Westpac NZ's opinion, you or any Guarantor have failed to disclose any material information and, within 5 business days of receiving notice from Westpac NZ of the suspected non-disclosure, you have not established, to Westpac NZ's satisfaction, that all material information was in fact disclosed;
- any Guarantor gives notice stopping its obligations or is in default under any Security or Bank Document, or a human Guarantor dies or ceases to be of full legal capacity;
- any of your or a Guarantor's other indebtedness becomes due and payable before its maturity or is not paid when due or after any applicable grace period;
- you or any Guarantor are unable, or are deemed or presumed to be unable, to pay your respective debts;
- you or any Guarantor are or become bankrupt, or any step is taken for the Bankruptcy of you or any Guarantor including being declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989 or the occurrence of a terminating event under the Limited Partnerships Act 2008;
- any Security over any of your or a Guarantor's property becomes enforceable;
- an order is made requiring you or any Guarantor, or any of your or their wholly owned subsidiaries, to pay any debts of another person (including a company);
- all or any part of your Agreement, the Security, or any Bank Document is terminated or is or becomes illegal, invalid, unenforceable or of limited force and effect;
- the entry into, or performance of obligations under, any Bank Document breaches any law or any obligation binding on you, any Guarantor, or your or their property; or
- anything has happened or happens which, in Westpac NZ's opinion, may have a Material Adverse Effect.

and if your Loan is in the name of a company or partnership:

- any execution, attachment, distress or other process is issued against any of your or a Guarantor's property; or
- in Westpac NZ's opinion, there is, or any step is taken towards, a material change in the direct or indirect ownership, management or control of you or any Guarantor including, in relation to a Limited Partnership, the removal, replacement, or addition of a General Partner or the amendment, variation, or revocation of the Partnership Agreement without Westpac NZ's consent.

#### b) What Westpac NZ can do if you are in default

If you are in default, Westpac NZ may do any one or more of the following, but it need not do so:

- require you to pay to Westpac NZ all Outstanding Moneys;
- increase the interest charged on the amounts in default in accordance with clause 2.10(d);
- terminate all Westpac NZ's obligations to you under your Agreement; or
- enforce the Mortgage or any other Security or any other Bank Document.

### 3.4 **Accessing your Loan Account**

You authorise Westpac NZ to make any drawing, payment, transfer, debiting or crediting contemplated under your Agreement. This applies whether you (or any person claiming to be you) initiate it by telephone or by electronic means (for example, Phone Banking or Westpac One® online banking, EFTPOS, A.T.M., Westpac NZ credit or debit Mastercard).

#### **a) Identity**

Westpac NZ will take reasonable care to check the identity of a person who claims to give instructions on your behalf. However, Westpac NZ will not be liable to you for acting on any instructions which were not genuine. To the maximum extent permitted by law, you indemnify Westpac NZ against any action taken by it on instructions it reasonably believes were genuine, except if the Westpac NZ losses result directly from Westpac NZ's fraud or negligence.

#### **b) Instructions**

You acknowledge that Westpac NZ may accept telephone or electronic instructions from you but is not obliged to accept them. However, to the extent permitted by law Westpac NZ will not be liable to you or any other party if the instructions are unauthorised, forged or fraudulently given and Westpac NZ could not reasonably have detected that from the instructions received. To the maximum extent permitted by law, you indemnify Westpac NZ for its losses in acting on such instructions, except if the Westpac NZ losses result directly from Westpac NZ's fraud or negligence.

#### **c) Incorrect transactions**

If Westpac NZ sends you a confirmation of a transaction, and the confirmation is wrong, you must immediately contact Westpac NZ.

### 3.5 **Debiting your Loan Account**

Westpac NZ may debit your Loan Account or any nominated account you choose with all amounts payable under your Agreement. If there are not enough funds in that nominated account, Westpac NZ may, but need not, debit your Loan Account with those amounts. Westpac NZ may also debit your Loan Account or nominated account with such other amounts which you advise Westpac NZ (orally or in writing) from time to time.

### 3.6 **Accessing money in other accounts**

If you have any money in any account with Westpac NZ, then Westpac NZ can use it to pay Outstanding Moneys but need not do so. If you are in default, Westpac NZ can use money which has not yet matured, and convert money in your account(s) in foreign currencies.

### 3.7 **No right of set-off**

To the maximum extent allowed by law, you give up any right to set-off any amounts Westpac NZ owes you against amounts you owe under your Agreement or any other Bank Document.

### 3.8 **Use of money received from you**

Westpac NZ can apply any money in any account with Westpac NZ or any other money received from you as it sees fit as between principal, interest and other amounts owing under your Agreement. This applies despite any instruction given by you to the contrary.

### 3.9 **Transferring your Agreement**

Westpac NZ can transfer or assign your Agreement, your Loan or any other Bank Document to someone else. If it does, your Agreement, your Loan and any transferred Bank Document will apply to the transferee as if it were Westpac NZ, including the transferee having the rights to replace or change the Base Rate, the Modifier or the Margin for interest calculation. Westpac NZ can give any potential transferee, or anyone associated with any potential transferee, any information Westpac NZ has concerning you. To the maximum extent allowed by law, any transfer will be free of any set-off, equity or cross claim which you would have had against Westpac NZ or transferees of your Agreement or any other Bank Document but for this clause.

You may not transfer or assign your Agreement, your Loan, or any Bank Document to someone else unless you first get Westpac NZ's written consent. Westpac NZ may give such consent at its discretion.

### 3.10 **Notification and disclosure**

Any notices, including changes under this Agreement and disclosure required to be made under the Credit Contracts and Consumer Finance Act 2003, may be made by ordinary post or electronic means in accordance with the Westpac NZ General Terms and Conditions.

### 3.11 **Disclosure to any Guarantor (if applicable)**

You authorise Westpac NZ to disclose to the Guarantor:

- the terms, and any variation, of your Agreement, any other Bank Document and the Security (if relevant); and
- other information including the unpaid balance and any outstanding interest charge, payments due or made, any further advances and when an Event of Default has occurred.

## 4 As a company, sole trader or partnership

### 4.1 Capital maintenance (only applies if you are a company)

You will not, except to the extent Westpac NZ agrees otherwise:

- acquire or redeem any of your own shares;
- make any distribution (as defined in the Companies Act 1993) other than dividends paid out of profits;
- reduce or cancel the liability of any shareholder as contemplated by section 57 of the Companies Act 1993;
- give financial assistance for the purpose of the acquisition of your shares or your holding company's shares whether directly or indirectly;
- amalgamate with any other company; or
- enter into a major transaction (as defined in section 129 of the Companies Act 1993).

### 4.2 Insurance

You will insure and keep insured all your property (including stock and trade):

- against loss or damage by fire, earthquake, theft, burglary, weather damage, marine risks and other risks as specifically required by Westpac NZ from time to time; and
- for its full replacement value and against liability on account of injury or damage suffered by the public and against other risks (including risks to the environment), as specifically required by Westpac NZ from time to time and in the absence of specific requirement, as prudent in accordance with the best commercial practice.

### 4.3 Accounts

You will provide Westpac NZ:

- as soon as practicable (in any event not later than 120 days) after the close of each of your financial years, copies of your balance sheet and profit and loss account, and if relevant, your consolidated balance sheet and profit and loss accounts for that financial year, all of which must be audited unless Westpac NZ agrees otherwise; and
- promptly (and in any event within 7 days after a request by Westpac NZ) any other information in relation to your financial condition or business which Westpac NZ may reasonably request.

## 5 Legal issues

### 5.1 The law that applies

The laws of New Zealand apply to your Agreement. You accept the non-exclusive jurisdiction of its courts.

### 5.2 Certificate of amount owing

You agree that a certificate from Westpac NZ setting out the amount that you owe under your Agreement is proof that you owe the amount stated, unless you prove to the contrary.

### 5.3 More than one borrower

If there is more than one of you (including where you are each trustees of one trust), each of you is individually liable for the full amount under your Agreement. You are still bound by your Agreement, even if anyone you thought was going to sign any document does not sign it, or any of you is not bound by it or is released from part or all of their obligations under it. You refers to each of you.

Any one of you can make a drawdown, redraw, postpone repayments, capitalise interest, or agree to an interest rate, or give any other instruction on behalf of each of you. Westpac NZ is not bound to act on instructions from one joint borrower on behalf of any other joint borrower but may do so in its discretion.

### 5.4 Anti-Money Laundering and Sanctions

Unless you have disclosed to Westpac NZ that you are acting in a trustee capacity or on behalf of another party, you warrant that you are acting solely on your own behalf in entering into your Agreement.

For each transaction conducted under your Agreement, you represent and warrant to Westpac NZ that, to the best of your knowledge, information and belief at the time the transaction takes place, the transaction will not breach any laws or regulations in New Zealand or any other country relevant to the transaction.

### 5.5 Choices account

Your Loan Account is conducted under the specific provisions of your Agreement and the Westpac NZ General Terms and Conditions and the Transaction and Services Fees brochure. A variation to the terms of these Terms and Conditions and your Loan Summary may require variation disclosure as required by the Credit Contracts and Consumer Finance Act 2003. The Terms and Conditions of the operation of your Loan Account or the Transaction and Service Fees brochure may be subject to amendment from time to time, and while such amendments do not require variation disclosure, under the Credit Contracts and Consumer Finance Act 2003, Westpac NZ will advise you of any changes.

### 5.6 Limitations on the liability of Westpac NZ and its officers and staff

To the extent permitted by law, neither Westpac NZ nor any of its officers, representatives or agents will be liable to you in respect of any conduct, omission, delay or breach of duty in the exercise or failure to exercise any of Westpac NZ's rights or powers (whether exercised by or on behalf of Westpac NZ) or for any loss (including consequential loss) which results. Westpac NZ, its officers, representatives and agents will only be liable to you for loss which arises directly from its, his or her own fraud or negligence.

## 5.7 Communications

Written, including electronic, communications can be sent to Westpac NZ at the address specified on [westpac.co.nz](http://westpac.co.nz) under the [Contact](#) link.

## 5.8 Remedies

If Westpac NZ has not exercised any one or more of its rights under your Agreement or any other Bank Document, Westpac NZ has not waived those rights. The remedies available to Westpac NZ include those mentioned in your Agreement, each other Bank Document and any provided by law.

## 5.9 Your Liability as a Trustee – applies to trustees of a trust only.

The money payable under your Agreement includes all money owed by you in your capacity as a trustee of the trust (whether or not actually within your powers or properly authorised) as well as by any former, present or future trustee of the trust (in their capacity as trustee of the trust).

You confirm:

- you are all the current trustees of the trust;
- you have the power to enter into your Agreement either under the terms of the trust or under the powers given to you by the Trusts Act 2019;
- you have properly signed your Agreement in accordance with the terms of the trust;
- you have and will retain a right of indemnity from the trust assets;
- to the best of your knowledge, you are not aware of any circumstances that may exclude or limit your trustee's right of indemnity under the terms of the trust, the Trusts Act 2019, or under any other law;
- for the purposes of section 86 of the Trusts Act 2019, Westpac NZ has given value and the trust has received a benefit from the transaction contemplated by your Agreement; and
- any person acting in accordance with the authorities set out in the account operating authority has the same power to undertake any action as the trustees would have acting jointly.

The above are warranties, which means that Westpac NZ can take legal action against you if any are incorrect.

If you are an independent trustee Westpac NZ will only be entitled to recover the money payable under your Agreement from any of your personal property if it is not able to recover any of that money from the property of the trust because the warranties you gave above were incorrect. Westpac NZ will only be entitled to recover from your personal property the amount it would have recovered from the trust property had those warranties been correct. If you are not an independent trustee, Westpac NZ may seek to recover any of the moneys payable under your Agreement from your personal property as well as from trust property.

You are an "independent trustee" for the purposes of this clause unless you have any right to, or interest in, any of the property of the trust except in your capacity as trustee of the trust. For example, if you are a beneficiary of the trust then you are not an "independent trustee"

No new trustees will be added to the trust and no existing trustees will be permitted to retire, without Westpac NZ's prior written consent. Any new trustee will be required to join as a party to your obligations under your Agreement and any Security.

## 5.10 Merger

Nothing in your Agreement or any Bank Document is adversely affected merely because of the existence of any other Bank Document, or by any judgment, right or remedy against any person that Westpac NZ, or someone claiming through Westpac NZ, may have at any time.

## 5.11 Survival of obligations

Your obligations under clauses 2.7 and 2.12 will survive termination of your Loan and payment or repayment of all Outstanding Moneys.

# 6 Exercise of Westpac NZ's discretion

When Westpac NZ exercises discretion under this Agreement it will do so in a fair and reasonable way. Westpac NZ has provided some examples in this Agreement of when it may exercise a discretion.



## 7 Reading this document

### 7.1 Explanation of terms

#### a) Agreement

means, in relation to your Loan, your Loan Summary, these Terms and Conditions, the current Westpac NZ General Terms and Conditions and the current Transaction and Service Fees brochure (as they may be amended or replaced from time to time).

#### b) Bank Document

means your Agreement, any Security including the Mortgage, or any other document or agreement between you and Westpac NZ, even if they do not relate to your Agreement. It includes any Security held by Westpac NZ from third parties in respect of your obligations.

#### c) Bankruptcy

includes liquidation, receivership, statutory management, administration, reconstruction, striking off or removal from the register under the Companies Act 1993, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors and bankruptcy.

#### d) Drawdown Date

means the day any part of your Loan is actually first drawn down.

#### e) Event of Default

means any of the events mentioned in clause 3.3(a).

#### f) Fixed Rate Period

means the period (if any) referred to as the Fixed Rate Period, or the period that ends on the Fixed Rate Expiry Date referred to, in your Loan Summary, or, as the context requires, any period for which you have requested, and Westpac NZ has agreed, for the Annual Fixed Interest Rate to apply to your Loan.

#### g) General Partner, Limited Partnership, and Partnership Agreement

each have the meanings they bear in the Limited Partnerships Act 2008.

#### h) Guarantor

means any person who has given a guarantee or Security Interest in respect of your obligations under your Agreement and where you are a Limited Partnership, includes each General Partner.

#### i) Loan

means the amount you are entitled to draw under your Agreement, as set out in your Loan Summary, or, where the context requires, the amount you have actually drawn.

#### j) Loan Summary

means the applicable Choices Home Loan Summary for your Loan, including any variations made from time to time.

#### k) Limit

is the amount stated as the Limit on the front page of your Loan Summary as reduced or increased.

#### l) Material Adverse Effect

means a material adverse effect on;

- your ability to perform your, or any Guarantor's ability to perform its, obligations under a Bank Document;
- any Security; or
- your financial condition or business or those of any Guarantor.

#### m) Minimum Payment

means the minimum regular payment of principal and interest that you must pay to Westpac NZ, as calculated by Westpac NZ as set out in clause 2.5 of these Choices Home Loan Terms and Conditions.

#### n) Mortgage

means the Security to be given to Westpac NZ over your, or anyone else's, house, flat or property.

#### o) Outstanding Moneys

means, at any time, your Loan outstanding and all other moneys payable, including contingently payable, by you under your Agreement including accrued interest (including default interest), fees, costs and other expenses whether or not those sums are then due and owing.

#### p) Potential Event of Default

means any event which, with the giving of notice, lapse of time or satisfaction of any condition or happening of any event, would constitute an Event of Default.

#### q) Security

means any Security Interest or undertaking, (including for the avoidance of doubt, any guarantee) provided by you or any Guarantor, or procured by you to be provided, to or for the benefit of Westpac NZ from time to time in respect of your obligations under your Agreement or any other existing or future agreement between you and Westpac NZ.

**r) Security Interest**

includes:

- a security interest within the meaning of the Personal Property Securities Act 1999;
- any mortgage, charge, fixed or floating charge, pledge, lien, financial lease, sale and lease-back, sale and repurchase or flawed asset arrangement;
- any security or preferential interest or arrangement of any kind; and
- any other right of, or arrangement with, any person the effect of which is to have that person's claims satisfied in priority to other unsecured and unsubordinated creditors with, or from the proceeds of, any property.

It excludes a charge or lien arising in favour of a governmental, semi-governmental or judicial entity or authority, by operation of statute, unless there is default in payment of money secured by the charge or lien.

**s) Tax**

includes any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a Governmental Agency and is required by law to be paid and any related interest, penalty, charge, fee or other amount.

**t) Variation Agreement**

means any Choices Home Loan Variation Agreement, letter of variation, or other agreement between you and Westpac NZ, that varies the terms of your Agreement.

**7.2 Terms used in Loan Summary**

Terms used in these Choices Home Loan Terms and Conditions shall have the meanings given to them, if any, in your Loan Summary (as amended or varied from time to time in accordance with your Agreement or by any Variation Agreement), unless the context requires otherwise.

**7.3 Examples**

Where an example is given, it does not limit what else may be included.

**7.4 Headings**

Headings are inserted for convenience only. They do not affect the interpretation of these Terms and Conditions.

## Acceptance and Acknowledgement

I/we confirm we have read, understood and received a copy of this document.

To be signed in accordance with the Loan Summary.

Example Customer  
CRS Number: XXXXXXXX

.....  
Signature

Dated: