

**Small Business Cashflow (Loan) Scheme
Loan Terms and Conditions
for Loans made before 21
March 2022**

1 Introduction

- 1.1 These are the terms and conditions applying to loans made under the Small Business Cashflow (Loan) Scheme before 21 March 2022 ("**these Terms**"). Additional definitions used in these Terms are set out below.
- 1.2 Your Loan Contract (which is made up of these Terms and your Application) is a "loan contract" for the purposes of section 7AA of the Act and will be binding on you and us when your Application is completed by you or on your behalf and we notify you that your Application is accepted.
- 1.3 You agree and confirm that:
- (a) by your Application being completed and submitted to us online, in other electronic form or in any other manner specified or permitted by us from time to time, you have entered into and intend to be bound by your Loan Contract; and
 - (b) any declarations, representations and statements that have been indicated as agreed or confirmed in your Application (whether by ticking a checkbox or otherwise) are to be treated as declarations, representations and statements made by you.
- 1.4 Your Loan Contract will be terminated when you have repaid all amounts owing to us under your Loan Contract.

2 Definitions and interpretation

2.1 In these Terms:

"**we**", "**us**", "**our**" and related terms means the Crown acting by and through the Commissioner of Inland Revenue.

"**you**" and "**your**" mean the borrower named in the Application. If you are a partnership, an unincorporated joint venture, the trustees of a trust or otherwise do not have separate legal personality, those terms (unless the context requires otherwise) also include each of your partners, joint venturers, trustees or members jointly and severally, and you are still bound by your Loan Contract despite any changes to your membership or formation, including by death, incapacity, or retirement of any partner, joint venture, trustee or member, the admission of any new partner, joint venture, trustee or member, or in any other way.

"**24 Month Date**" means the date falling two years (24 calendar months) after the date the Loan Amount is made available to you (subject to adjustment determined by us to fall on a working day, as notified to you).

"**Act**" means the Tax Administration Act 1994.

"Application" means an application for the Loan under the Small Business Cashflow (Loan) Scheme, completed and submitted through our myIR online service or in such other manner as we may specify or permit from time to time.

"Crown" means Her Majesty the Queen in right of New Zealand.

"Default Interest Rate" means the sum of:

- (a) 3% per annum; and
- (b) the annual rate of interest equal to our use of money interest (UOMI) rate for underpayments of tax (being the taxpayer's paying rate (as defined in the Act) and currently available as the "debit rate" at <https://www.ird.govt.nz/managing-my-tax/penalties-and-interest/interest-onoverpayments-and-underpayments>).

"Event of Default" has the meaning given in clause 9.1.

"Final Repayment Date" means the date falling five years (60 calendar months) after the Loan Amount is made available to you (subject to adjustment determined by us to fall on a working day, as notified to you).

"Independent Trustee" means, if you are the trustee(s) of a trust, any such trustee that is a solicitor, accountant, professional adviser or other person acting in an independent role that is not a beneficiary or settlor of the trust (and whose relatives, spouse or partner, direct or indirect shareholders, directors or other members are not beneficiaries or settlors of the trust).

"Loan" means the loan made or to be made to you under your Loan Contract.

"Loan Amount" means the amount advanced or to be advanced to you under your Loan Contract, as set out in your Application.

"Loan Contract" means these Terms and your Application.

"Outstanding Amount" means, at any time, the principal amount of the Loan Amount outstanding for the time being (as reduced by any repayments that you make), together with all other money payable by you under your Loan Contract.

"Repayment Period" means the period from the 24 Month Date to the Final Repayment Date.

"Small Business Cashflow (Loan) Scheme" means the Small Business Cashflow (Loan) Scheme established and administered by the Crown to provide loans to assist small-to-medium businesses in the circumstances arising from the continuing impact of COVID-19 related measures or circumstances.

"Wage Subsidy Scheme" means the wage subsidy scheme established by the Crown to support employers, including sole traders, significantly impacted by COVID-19 who face laying off staff or reducing hours.

2.2 In addition, in these Terms and unless the context requires otherwise:

- (a) headings and examples are for reference only;

- (b) the singular includes the plural and vice versa;
- (c) a reference to any document or agreement, including these Terms and your Loan Contract, includes that document or agreement as amended, assigned, novated, supplemented, restated or substituted from time to time, except to the extent prohibited by these Terms;
- (d) a reference to a time of day is a reference to New Zealand time;
- (e) a reference to any monetary amount is to New Zealand currency;
- (f) an Event of Default is continuing until it has been waived in writing by, or remedied to the satisfaction of, us;
- (g) a party to your Loan Contract or another agreement includes its successors and its permitted assignees and transferees;
- (h) any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and
- (i) a reference to "**in writing**" (or equivalent) includes provision by email or through online services operated by us (including the myIR online service).

3 **The Loan**

- 3.1 We will make the Loan available to you in the amount of the Loan Amount, on the terms and conditions set out in your Loan Contract.
- 3.2 You must use the proceeds of the Loan in accordance with the declarations, representations and statements made in your Application. In addition, if your Application was made prior to 16 December 2020, from 9 November 2020 you may use the proceeds of the Loan for capital costs that are intended to help your business adapt to the circumstances arising as a result of COVID-19 and such use will not be treated as constituting a breach of clause 8.1(g)(i) or an Event of Default under clause 9.1(c)(ii).
- 3.3 You are not entitled to the Loan unless we are satisfied that:
 - (a) no Event of Default has occurred (whether or not remedied);
 - (b) you have fully and accurately completed your Application, and provided (and not withdrawn) all declarations, representations, statements, consents and confirmations (and any other information, including evidence and other materials) requested from you in your Application;
 - (c) all declarations, representations, statements, consents and confirmations made (and any other information, including evidence and other materials, provided) by you or on your behalf in your Application are true and accurate and not misleading; and
 - (d) the amount of the Loan Amount has been accepted by you.
- 3.4 Subject to clause 3.3 above, the Loan Amount will be paid in a single lump sum advance to the bank account nominated in your Application.

4 **Interest**

- 4.1 Subject to clause 4.2 and clause 4.3, interest will accrue from day to day at the rate of 3% per annum on the outstanding principal amount of the Loan Amount and will be charged to your account. Such interest will not compound or itself bear interest (except in accordance with clause 4.4) and will be calculated on the basis of the actual number of days elapsed and a year of 365 days (or 366 days in a leap year).
- 4.2 You will not be charged any interest on your Loan for the period from when the Loan Amount was made available to you until the 24 Month Date unless clause 4.3 applies.
- 4.3 If, prior to the 24 Month Date, an Event of Default occurs and the Outstanding Amount becomes due and payable in accordance with clause 9.2, interest will be charged under clause 4.1 from the date repayment is due under clause 9.2. Interest will cease to be charged under clause 4.1 from the date that all relevant Events of Default are remedied to our satisfaction or waived by us in writing, provided that if a further Event of Default occurs (or has occurred) prior to the 24 Month Date and the Outstanding Amount becomes due and payable in accordance with clause 9.2 interest will recommence being charged under clause 4.1 from the date repayment is due under clause 9.2.
- 4.4 If any amount is not paid to us in full when due then you must, on demand by us, pay to us interest, at the Default Interest Rate, on the overdue amount from the due date for payment until the earlier of:
- (a) the actual date of payment to us (both before and after judgment); and
 - (b) any other date we notify to you.

5 **Repayment**

- 5.1 You must repay the Outstanding Amount to us on the Final Repayment Date.
- 5.2 During the Repayment Period, you must make regular instalment payments of principal and interest, as notified by us to you from time to time. Any such instalment payments will be calculated by us to spread the amount of the required repayments over the Repayment Period.
- 5.3 You may repay all or any part of the Outstanding Amount at any time before such amounts become due in accordance with your Loan Contract.
- 5.4 No amount that is repaid may be re-borrowed.

6 **Payments**

- 6.1 You must make all payments to us under your Loan Contract in New Zealand dollars in a manner notified by us to you or published on our website from time to time.
- 6.2 Any payment from you will be applied first towards payment of accrued interest (including default interest) and then towards repayment of principal amounts.
- 6.3 All payments to be made by you under your Loan Contract must be made:
- (a) without any set-off, counterclaim or condition; and

- (b) without any deduction or withholding for any tax or any other reason unless the withholding or deduction is required by law.

6.4 If we receive a payment under the Small Business Cashflow (Loan) Scheme and you do not provide us with instructions in relation to that payment, we may apply that payment towards your loans under the Small Business Cashflow (Loan) Scheme in such order as we deem fit.

7 **Your representations to us**

7.1 You represent and warrant to us that:

- (a) all information (including declarations, representations, statements, consents, confirmations, evidence and other materials) provided by you or on your behalf in connection with your Loan Contract or the Wage Subsidy Scheme is true and accurate, and there are no facts or circumstances which have not been disclosed to us which would make that information untrue, inaccurate or misleading;
- (b) any person completing your Application on your behalf has authority to do so, and no action has been taken to remove any such person acting as trustee or general partner of a limited partnership (as applicable);
- (c) (if you are not a natural person) you are duly established, registered (to the extent applicable) and existing under the laws of New Zealand, and your board or committee or equivalent has been correctly and validly appointed;
- (d) (if you are a natural person) you have full mental capacity, are not a minor and are physically located and legally working in New Zealand (allowing for temporary absences);
- (e) no action has been taken for or with a view to:
 - (i) (if you are not a natural person) your dissolution, termination, disestablishment, deregistration, winding up or other end; or
 - (ii) (if you are a limited partnership) removing your general partner;
 - (iii) the appointment of a liquidator, statutory manager, administrator, receiver, bankruptcy official or similar officer in respect of you or any of your assets;
- (f) (if you are the trustee(s) of a trust) you have not lost, limited or prejudiced your right to be reimbursed from the trust property;
- (g) you have the power to enter into and perform your obligations under your Loan Contract, have taken all necessary action, to authorise that entry and performance, and hold all necessary authorisations and consents for that entry and performance;
- (h) your obligations under your Loan Contract are legal, valid, binding and enforceable against you;

- (i) your entry into, and the performance of your obligations, under your Loan Contract, do not and will not breach any agreement or instrument binding upon you or any of your assets (including any other loan agreement); and
- (j) no Event of Default has occurred or might reasonably be expected to result from the making of the Loan to you.

7.2 The representations made above are deemed to be repeated by you on the date we make the Loan Amount available to you and on each day there is any Outstanding Amount by reference to the facts and circumstances then existing.

8 **Your undertakings to us**

8.1 You undertake to us that, for so long as there is any Outstanding Amount, you will:

- (a) (if you are not a natural person) maintain your existence and (to the extent applicable) registration in New Zealand and will not relocate outside New Zealand;
- (b) (if you are a natural person) continue to be physically located and legally working in New Zealand (allowing for temporary absences);
- (c) promptly obtain, comply with and do everything needed to maintain any authorisations required to enable you to perform your obligations under your Loan Contract;
- (d) promptly supply us with such further information (including evidence and other materials) that we may reasonably request in connection with the Loan or for the purposes of your Loan Contract, including its administration or enforcement and for audit purposes (and you acknowledge that we may, at our discretion, also or instead exercise any powers we have under the Act to require such information, evidence and other materials);
- (e) promptly notify us if:
 - (i) any Event of Default occurs; or
 - (ii) you cease to carry on the business or organisation for which the Loan Amount was provided;
- (f) comply with all of your obligations under the Wage Subsidy Scheme (if applicable); and
- (g) comply with each declaration, statement and undertaking made in your Application including in relation to (without limitation):
 - (i) use of the Loan Amount (including restrictions as to application and distribution of proceeds); and
 - (ii) keeping of evidence, materials or other records, and provision to us for audit purposes (as required).

9 **Events of Default and acceleration**

9.1 Each of the events and circumstances set out in this clause is an "**Event of Default**":

- (a) you do not pay on the due date any amount payable under your Loan Contract in the manner in which it is expressed to be payable;
- (b) you breach or otherwise do not comply with any undertaking set out in clause 8.1;
- (c) any declaration, representation, statement, consent or confirmation (or any other information, including evidence and other materials) made, deemed to be made or provided by you or on your behalf in connection with your Loan Contract (including your Application) or the Wage Subsidy Scheme:
 - (i) is untrue, inaccurate or misleading in any material respect on the date of your Loan Contract; or
 - (ii) becomes untrue, inaccurate or misleading in any material respect; or
- (d) you suspend making payments on any of your debts, or any action is taken for or with a view to:
 - (i) (if you are not a natural person) your dissolution, termination, disestablishment, deregistration, winding up or other end; or
 - (ii) the appointment of a liquidator, statutory manager, administrator, receiver, bankruptcy official or similar officer in respect of you or any of your assets;
 - (iii) a rescheduling or moratorium of your indebtedness (or of any part which you will or might otherwise be unable to pay when due); or
 - (iv) a composition or general assignment with or for the benefit of your creditors; or
- (e) you cease to carry on the business or organisation for which the Loan Amount was provided; or
- (f) you, or all or substantially all of your assets for the business or organisation for which the Loan Amount was provided, are sold or transferred.

9.2 If an Event of Default specified in clause 9.1(c)(i) occurs then the Outstanding Amount shall be immediately due and payable without requirement for notice from us or any other formality. On and at any time after the occurrence of any other Event of Default, we may, by notice to you (and without prejudice to any other rights which we may have under any other document or at law):

- (a) declare the Outstanding Amount to be immediately due and payable, and at that point it shall become immediately due and payable; and
- (b) charge interest and/or default interest (as applicable) in accordance with clause 4.

10 **General**

10.1 **Notices:**

- (a) Any communication to be made under your Loan Contract must be made in writing and shall be:
 - (i) provided through the myIR online service or any other online service as we may designate from time to time; or
 - (ii) delivered or sent to the address or email address of the relevant party, and marked for the attention of the person or office holder, set out in your Application (in the case of communications from us to you) or for that purpose on our website (in the case of communications from you to us); or
 - (iii) such other address or email address as that party may from time to time designate to the other).
- (b) Any communication to be made under or in connection with your Loan Contract shall be deemed to have been made:
 - (i) if delivered through any online service or by hand, upon delivery;
 - (ii) if sent by pre-paid post, 3 working days after posting; and
 - (iii) if sent by email, when actually received in the recipient's inbox in readable form.

10.2 **Amendment:** We may amend the terms of your Loan Contract (including by way of amending these Terms) from time to time by at least 30 days' notice to you.

10.3 **Independent trustees:** if you are the trustees of a trust, the liability of any Independent Trustee under your Loan Contract is limited to the trust property available to meet that liability. However, this limitation does not apply if the Independent Trustee loses its right to be indemnified out of the trust property, or diminishes the value of the trust property through its fraud or wilful breach of trust (in which case we can claim against the Independent Trustee personally to the extent we are unable to recover amounts due to us from the trust property).

10.4 **Privacy:**

- (a) We may collect personal information about you in order to assess, administer and enforce your Loan Contract (including to determine the maximum Loan Amount and for audit purposes). For these purposes we may obtain personal information about you from your Application, our own records, from other government departments and government agencies and (where reasonably necessary) from third party organisations.
- (b) We may share any information (including personal information) collected from your Application or otherwise obtained as described above with:
 - (i) other government departments and government agencies, including (without limitation) for statistical and audit purposes; and
 - (ii) with any debt recovery organisation or similar agency for the purposes of collection or enforcement, and with any credit reporting agency.

- (c) You agree that you consent to us taking such action and any such information (including personal information) being used for such purposes, as described in this clause 10.4. You have a right to access and correct any personal information about you under the Privacy Act 2020.

10.5 **Assignment:**

- (a) You are not permitted to assign or transfer any of your rights or obligations under your Loan Contract without our prior written consent.
- (b) We may (i) assign or transfer any of our rights, powers and obligations under your Loan Contract without your consent and (ii) disclose to any potential assignee or transferee such information (including personal information) about you and your Loan Contract as we consider appropriate. Any assignee or transferee may use such information for the purposes and the same manner as us.

10.6 **Evidence of indebtedness:** Our certificate as to any amount payable under your Loan Contract shall, except for manifest error, be conclusive.

10.7 **No waiver:** No failure on our part to exercise and no delay in exercising, any right under your Loan Contract operates as a waiver of that right, nor shall any single or partial exercise of any right under your Loan Contract prevent any other or further exercise thereof or the exercise of any other right. The remedies provided under your Loan Contract are cumulative and not exclusive of any remedies provided by law.

10.8 **Partial invalidity:** The illegality, invalidity or unenforceability of any provision of your Loan Contract shall not affect the legality, validity or enforceability of any other provision.

10.9 **Governing law:** Your Loan Contract is governed by New Zealand law. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

10.10 **Offences:** We may take action against you or prosecute you for offences under the Crimes Act 1961 or the Act. You may be liable to pay penalties, fines or subject to imprisonment as a result. Such prosecution does not stop other legal actions being taken against you.