
Crown Wholesale Funding Guarantee Facility Deed

Her Majesty the Queen in right of New Zealand

and

[Name of Principal Debtor]

Date: 2008

PARTIES

Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance (*Crown*)

[Name of Principal Debtor] (*Principal Debtor*)

BACKGROUND

- A In the interests of maintaining the stability of the New Zealand financial system, the Minister of Finance announced on 1 November 2008 a wholesale funding guarantee facility (*Guarantee Scheme*). The Guarantee Scheme is available (upon application and subject to certain eligibility criteria being met) for certain debt securities issued or guaranteed by investment grade financial institutions with substantial New Zealand borrowing and lending operations.
- B The Principal Debtor has requested a Crown guarantee under the Guarantee Scheme.
- C It appears to the Minister of Finance that it is necessary or expedient in the public interest that the Crown guarantee certain wholesale debt securities of the Principal Debtor.
- D This Deed sets out the terms and conditions upon which any guarantee by the Crown of eligible liabilities of the Principal Debtor will be given.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Application means an application for a Guarantee Eligibility Certificate made under clause 3.1.

Application Expiry Date means **[date]** (or such later date (if any) as the Crown may determine).

Beneficiary has the meaning given to it in the Deed of Guarantee.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland and Wellington and, in relation to any date for payment of:

- (a) a currency other than New Zealand dollars or euro, a day on which commercial banks and foreign exchange markets in the principal financial centre of the country of that currency are open for settlement of payments in that currency; or
- (b) euro, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer System (TARGET) (or any successor thereto) is open for the settlement of payments in euro.

Debt Security has the meaning in section 2 of the Securities Act 1978.

Debt Security Liability means the liability of the Principal Debtor to pay any amount of principal or any amount of interest (excluding any penalty interest or other amount only payable following a default) in respect of a Debt Security or tranche or tranches of Debt Securities issued or guaranteed (or to be issued or guaranteed) by the Principal Debtor.

Deed of Guarantee means the deed of guarantee executed by the Crown pursuant to clause 2.

Exchange Rate means the mid-rate of exchange for the purchase of the relevant currency with New Zealand dollars as published by the New Zealand Finance Markets Association on its website as at 2.00 p.m. on the relevant day (or, if that website is unavailable, as notified by the Reserve Bank to the Principal Debtor).

Fee Letter means, in respect of a Guarantee Eligibility Certificate, the letter issued pursuant to clause 5.2 recording the fee payable by the Principal Debtor for the issue of that Guarantee Eligibility Certificate.

Guarantee Eligibility Certificate means a certificate substantially in the form set out in Schedule 1 to the Deed of Guarantee (or in such other form as the Crown may from time to time determine and publish on the Guarantee Scheme Website) issued by the Crown confirming that a liability is a Guaranteed Liability for the purposes of the Deed of Guarantee.

Guarantee Scheme Website means the website at www.treasury.govt.nz/economy/guarantee/wholesale or such other website as may be maintained by the Crown from time to time in order to publish certain information relating to the Guarantee Scheme.

Guaranteed Liability means any liability of the Principal Debtor to pay any amount of principal or any amount of interest (excluding any penalty interest or other amount only payable following a default) in respect of which the Crown has issued a Guarantee Eligibility Certificate.

Insolvency Event means, in relation to a Person:

- (a) that Person becomes insolvent or unable to pay its debts as they become due;
- (b) that Person institutes or has instituted against it any form of proceeding (other than any proceeding which is frivolous) seeking a judgement of insolvency or bankruptcy or any similar relief in respect of that Person, provided that, if any such proceeding is, within 14 days after it is instituted, withdrawn or challenged by appropriate proceedings having a reasonable prospect of success, it shall be deemed not to have occurred for the purposes of this Deed (unless and until such challenge is unsuccessful);
- (c) that Person seeks or becomes subject to the appointment of a voluntary administrator, liquidator, provisional liquidator, receiver, receiver and manager, or similar person;
- (d) that Person has a secured party take possession of all or substantially all its assets, or has a distress, execution or attachment or other legal process instigated or enforced against all or substantially all of its assets;
- (e) that Person makes a general assignment, arrangement or compromise with, or for the benefit of, all or a material number of its creditors (including a moratorium); or
- (f) any action by the Reserve Bank or the Securities Commission to place that Person into statutory management under the Reserve Bank Act or Corporations (Investigation and Management) Act 1989, or any equivalent action being taken in any other jurisdiction in which that Person is incorporated or carries on a material part of its business.

Maximum Amount means such maximum amount as the Crown may from time to time determine and notify in writing to the Principal Debtor.

Notice of Issue Terms means a notice substantially in the form set out in Schedule 4 (or in such other form as the Crown may from time to time determine and publish on the Guarantee Scheme Website).

NZ Dollar Equivalent means at any time:

- (a) in relation to an amount denominated in New Zealand dollars, that amount; and
- (b) in relation to an amount denominated in a currency other than New Zealand dollars, that amount converted into New Zealand dollars at the Exchange Rate as at the Relevant Date.

OCR means the "Official Cash Rate" as determined and published by the Reserve Bank from time to time.

Optional Currencies means:

- (a) the lawful currencies of New Zealand, Australia, the United States of America, the United Kingdom, Switzerland, Japan, Hong Kong and Singapore;
- (b) Euros; and
- (c) any other currency that the Crown may approve in writing.

Party means the Crown or the Principal Debtor, and *Parties* means them collectively.

Person includes an individual, a body corporate, any association of persons (whether corporate or not), a trust (including the trustees of a trust acting in that capacity), and a state and any agency of a state (in each case whether or not having separate legal personality).

Relevant Date means in relation to the calculation of the NZ Dollar Equivalent of:

- (a) a proposed Debt Security Liability, the date on which the Application for that liability was received by the Crown;
- (b) a Guaranteed Liability, the date of issue of the debt security under which that Guaranteed Liability arises: and
- (c) the amount of any fee payable to the Crown under a Fee Letter, the Business Day prior to the date on which that fee is payable.

Reserve Bank Act means the Reserve Bank of New Zealand Act 1989.

1.2 Construction

In this Deed, unless the context requires otherwise:

- (a) *Headings*: headings are for convenience only, and do not affect interpretation;
- (b) *Sections, Clauses and Schedules*: a reference to a Section or a clause or Schedule is a reference to a Section or clause in, or Schedule to, this Deed;
- (c) *Singular and plural*: the singular includes the plural and the converse;
- (d) *Particular party or person*: a reference to a particular party or person includes that party's or person's executors, administrators, successors, substitutes and assigns;
- (e) *Deed or document*: a reference to a deed or a document is to the deed or document as amended, novated, supplemented or replaced from time to time; and
- (f) *Legislation*: a reference to legislation or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a statutory regulation, rule, order or instrument made under or issued pursuant to it.

2 **CROWN GUARANTEE**

Subject to the terms of this Deed, the Crown has agreed to execute a deed of guarantee substantially in the form set out in Schedule 1.

3 **ISSUE OF A GUARANTEE ELIGIBILITY CERTIFICATE**

3.1 **Applications**

The Principal Debtor may at any time and from time to time, prior to the Application Expiry Date, apply for a Guarantee Eligibility Certificate in respect of a proposed Debt Security Liability by:

- (a) completing and signing an application substantially in the form set out in Schedule 2; and
- (b) delivering such application to the Crown in accordance with clause 18.1.

3.2 **Incomplete applications**

Applications made under clause 3.1 that have not been properly signed or completed, or applications in respect of which the Crown has not acknowledged receipt by notice to the Principal Debtor, will be deemed never to have been made.

3.3 **Issue of a Guarantee Eligibility Certificate**

The decision to issue a Guarantee Eligibility Certificate in respect of any proposed Debt Security Liability is at the sole and absolute discretion of the Crown.

3.4 **Conditions to issue**

Without prejudice to clause 3.3, no Guarantee Eligibility Certificate shall be issued in respect of any proposed Debt Security Liability unless, prior to the issue, the following conditions have been fulfilled to the satisfaction of the Crown:

- (a) a duly completed and executed Application for the relevant Guarantee Eligibility Certificate has been delivered to the Crown (together with evidence of the authority of the signatory/ies of the Application);
- (b) the applicable Fee Letter has been countersigned by the Principal Debtor and has been delivered to the Crown;
- (c) a legal opinion, addressed to the Crown and in form and substance satisfactory to it, from external legal advisers to the Principal Debtor as to the enforceability of the Principal Debtor's obligations under this Deed has been delivered to the Crown;
- (d) a legal opinion, in form and substance satisfactory to the Crown, from external legal advisers to the issuer and guarantor(s) (if any) in respect of the proposed Debt Security Liability as to the enforceability of the obligations of the issuer and guarantor(s) in respect of the proposed Debt Security Liability has been delivered to the Crown (which, in the case of a proposed Debt Security Liability to be issued under a programme, may take the form of the most recent legal opinion issued to the arranger(s) of the programme in connection with the establishment of or, as the case may be, update of the programme);
- (e) any additional documents required pursuant to clause 3.5 have been delivered to the Crown;
- (f) the NZ Dollar Equivalent of the aggregate principal amount of the proposed Debt Security Liability and all outstanding Guaranteed Liabilities (as determined by the Crown) will not exceed the Maximum Amount;
- (g) no amount that is due and payable by the Principal Debtor to the Crown under this Deed is overdue for payment; and
- (h) if the Crown has given notice that the Principal Debtor is in breach under this Deed, such breach has been remedied.

3.5 **Additional documents**

The Crown may require the following additional documents prior to the issue of a Guarantee Eligibility Certificate:

- (a) an update of any legal opinion previously delivered to it pursuant to clause 3.4;
- (b) in the case of a proposed Debt Security Liability that will arise under a guarantee by the Principal Debtor of a Debt Security or tranche or tranches of Debt Securities:
 - (i) a counter-indemnity in such form as the Crown may require executed by the issuer of the applicable Debt Security or Debt Securities (such counter-indemnity to be additional to the counter-indemnity from the Principal Debtor under clause 6); and
 - (ii) a legal opinion, addressed to the Crown and in form and substance satisfactory to it, from external legal advisers to the issuer as to the enforceability of the issuer's obligations under such counter-indemnity; and
- (c) such other document, opinion or assurance as the Crown notifies the Principal Debtor as necessary or desirable in connection with the issue of the Guarantee Eligibility Certificate.

3.6 **Time limit for issue**

No Debt Security in respect of which a Guarantee Eligibility Certificate has been issued may be issued later than the time specified for issue in that Guarantee Eligibility Certificate.

3.7 **No variations to terms of issue**

The Principal Debtor must not guarantee or issue any Debt Security, in respect of which a Guarantee Eligibility Certificate has been issued, which:

- (a) is denominated in a currency other than a currency specified in that Guarantee Eligibility Certificate;
- (b) has a principal amount that, when aggregated with the principal amount of all other Debt Securities that have the benefit of that Guarantee Eligibility Certificate, is greater than the principal amount specified in that Guarantee Eligibility Certificate;
- (c) has a tenor of more than 5 years;

- (d) differs in any respect, other than the foregoing, from the particulars of the Guaranteed Liabilities specified in that Guarantee Eligibility Certificate.

3.8 **Restrictions on issue**

The Principal Debtor shall procure that no Debt Security in respect of which a Guarantee Eligibility Certificate has been issued will be offered, issued or sold by or on behalf of it or the proposed issuer of the Debt Security:

- (a) after an Insolvency Event has occurred in relation to the Principal Debtor or, as the case may be, the proposed issuer of the Debt Security, except with the prior written consent of the Crown;
- (b) if the Principal Debtor fails to make any payment when due under this Deed or there has been any default by the Principal Debtor under this Deed, which is not remedied within 14 days of the Crown giving the Principal Debtor notice of such failure to make payment or comply with this Deed; or
- (c) if the offer, sale or issue of that Debt Security would breach any applicable laws or regulations.

3.9 **Notification of issues**

The Principal Debtor will, promptly (and in any event within 3 Business Days) following the issue of a Debt Security that is the subject of a Guarantee Eligibility Certificate, deliver a duly completed Notice of Issue Terms to the Crown notifying the terms of the issue.

3.10 **Compliance with undertakings**

The Principal Debtor shall comply with any undertakings given by it to the Crown in connection with the issue of any Guarantee Eligibility Certificate.

3.11 **Publicity**

The Principal Debtor shall procure that any offering document, advertisement or announcement relating to a Debt Security issued or guaranteed or to be issued or guaranteed by the Principal Debtor after the date of the Deed of Guarantee shall:

- (a) if the Debt Security is a Guaranteed Liability, have a description of the Deed of Guarantee in such form as the Crown may approve; and
- (b) if the Debt Security is not a Guaranteed Liability, make it clear that such Debt Security does not have the benefit of the Deed of Guarantee.

3.12 **Non-guaranteed issues**

The Principal Debtor shall procure that no Debt Security that is not guaranteed under the Deed of Guarantee is issued under the same debt issuance programme

as a Debt Security that is guaranteed under the Deed of Guarantee unless the Crown is satisfied that the non-guaranteed Debt Security is clearly identified as such in a way that will put a purchaser on notice that it is not guaranteed under the Deed of Guarantee.

3.13 **Termination of right to make Applications**

The Crown may at any time and at its absolute discretion notify the Principal Debtor that no further Applications may be made under this Deed and after such notification:

- (a) the Principal Debtor may not make any further Applications; and
- (b) the Crown will not consider any further Applications.

4 **GUARANTEE SCHEME WEBSITE**

4.1 **Establishment of website**

The Crown has established, or will establish, and will maintain a website on which it will publish such information concerning the Guarantee Scheme as it considers appropriate, which may include:

- (a) a copy of this Deed and any similar agreements entered into by the Crown for the issue of a Crown guarantee under the Guarantee Scheme;
- (b) a copy of any guarantee issued by the Crown under the Guarantee Scheme and a copy of any certificate confirming the eligibility of any liability for the benefit of such guarantee;
- (c) copies of any public notices issued under or pursuant to the Guarantee Scheme;
- (d) copies of any variation, supplemental or replacement documents to the published documents;
- (e) an indicative fee schedule for the fee that will be payable to the Crown in respect of any liability guaranteed by the Crown under the Guarantee Scheme; and
- (f) any extension of the final date for applying to have liabilities guaranteed by the Crown under the Guarantee Scheme.

4.2 **Authorisation**

The Principal Debtor acknowledges that the Crown intends to include on the Guarantee Scheme Website, and/or to otherwise publish, copies of this Deed, the Deed of Guarantee, any Guarantee Eligibility Certificate and any variation,

supplemental or replacement documents, and any other documents relating to the Deed of Guarantee as the Crown considers appropriate. The Crown shall have no liability whatsoever to the Principal Debtor or to any other Person arising out of any documents being so posted on the Guarantee Scheme website or otherwise published pursuant to this clause 4.2.

4.3 **Status of website**

The Guarantee Scheme Website is for information purposes only and does not:

- (a) confer any rights on any person or impose any obligations on (or limit any rights or discretions of) the Crown;
- (b) affect the terms or status of this Deed, the Deed of Guarantee or any other document issued in connection with the Guarantee Scheme.

5 **FEE**

5.1 **Guarantee Fee**

The Principal Debtor shall pay a fee to the Crown for the issue of each Guarantee Eligibility Certificate.

5.2 **Amount of Fee**

The amount of the fee payable in respect of a Guarantee Eligibility Certificate will be:

- (a) determined by the Crown at its discretion prior to the date of issue of that Guarantee Eligibility Certificate by reference to such matters as it considers relevant, including the principal amount and tenor of the relevant Guaranteed Liability and the credit rating of the Principal Debtor; and
- (b) recorded in a fee letter substantially in the form of Schedule 3, which shall be countersigned by the Principal Debtor.

5.3 **Indicative fee schedule**

An indicative fee schedule for the fee payable to the Crown for the issue of a Guarantee Eligibility Certificate will be published on the Guarantee Scheme Website and may be updated from time to time. The fee amounts referred to in the indicative fee schedules are indicative only and do not restrict the amount that the Crown can charge as a fee for issuing a Guarantee Eligibility Certificate.

5.4 **Payment of fee**

The fee payable under a Fee Letter is non-refundable and shall be paid to the Crown:

- (a) by payment to the bank account specified in the Fee Letter; and

- (b) on the date/s specified in or determined in accordance with the Fee Letter.

6 COUNTER-INDEMNITY

6.1 Counter-Indemnity

The Principal Debtor shall:

- (a) indemnify, and keep indemnified, the Crown from and against all liabilities, losses, damages, claims, costs, expenses, demands, actions and proceedings in relation to or arising out of the Deed of Guarantee and this Deed; and
- (b) pay to the Crown on demand an amount equal to all payments (other than New Zealand taxes and duties), liabilities, losses, damages, claims, expenses, charges, taxes and duties suffered or incurred by the Crown in relation to or arising out of the Deed of Guarantee and this Deed, whether directly or indirectly.

6.2 Authority to meet demands

The Principal Debtor irrevocably and unconditionally authorises and directs the Crown to comply with any demands which may be claimed or made under the Deed of Guarantee and to make payment in respect of such demands without any investigation or reference to or further authority, confirmation or verification from the Principal Debtor or any other person. For the purposes of this Deed:

- (a) any demand claimed or made, or purported to be claimed or made, under the Deed of Guarantee shall be deemed to be a valid and effective demand, and may be treated by the Crown as such notwithstanding any defect or lack of authority on the part of the person making the demand if the demand appears on its face to be in order; and
- (b) any payment made by the Crown under any such demand shall be treated as a payment made under the Deed of Guarantee.

6.3 Payments binding

The Principal Debtor agrees that any payment that the Crown makes under the Deed of Guarantee shall be binding upon it and shall be accepted by the Principal Debtor as conclusive evidence that the Crown was liable to comply with the relevant demand and make such payment notwithstanding any dispute that may exist between the Principal Debtor and a Beneficiary as to the validity of such demand.

6.4 Continuing obligations

The Principal Debtor's obligations under this clause 6 shall be continuing obligations notwithstanding any settlement of account, intermediate payment or

anything else and will continue until the Crown has executed a written release of the Principal Debtor from its obligations under this Deed.

6.5 **No impairment**

The Principal Debtor will not be discharged nor will its obligations be affected (nor will any of the rights of the Crown be affected) by anything which, but for this clause, might operate to discharge or affect the obligations of, or otherwise provide a defence to, the Principal Debtor or affect the rights of the Crown (whether or not known to the Principal Debtor or the Crown), including:

- (a) any time, waiver or other indulgence granted to the Crown by any Beneficiary;
- (b) any amendment, variation, supplement, extension, restatement or replacement of the Deed of Guarantee or any associated document;
- (c) the insolvency, receivership, winding-up, liquidation, dissolution, administration or statutory management of the Principal Debtor or any other person or any analogous proceedings under any jurisdiction;
- (d) anything done or omitted to be done by a Beneficiary or any other person (other than a written release of the obligations of the Principal Debtor under this Deed executed by the Crown); or
- (e) the invalidity or unenforceability of any rights of a Beneficiary against the Principal Debtor or the Crown.

6.6 **No competition**

The Principal Debtor shall not, and shall procure that no guarantor of a Guaranteed Liability shall, without the Crown's prior written consent, enforce or seek to enforce in competition with the Crown, any right of contribution, subrogation or indemnity from or against any other person to which the Principal Debtor or such person may be entitled by reason of the performance of the Principal Debtor's obligations under this Deed or the guarantor's performance of its obligations, in each case, in respect of that Guaranteed Liability.

6.7 **Subrogation**

Without prejudice to any rights the Crown may at any time have against or in respect of the Principal Debtor under this Deed or otherwise (including by way of subrogation or indemnity, under statute, or otherwise), the Principal Debtor irrevocably acknowledges and agrees that any money paid by the Crown to a Beneficiary under the Deed of Guarantee shall, immediately upon such payment, constitute a debt due from the Principal Debtor to the Crown, which debt shall be payable by the Principal Debtor to the Crown over any period of time and on any

terms and conditions that the Crown (in its sole and unfettered discretion) considers appropriate.

7 REPRESENTATIONS

The Principal Debtor makes the following representations and warranties to the Crown.

- (a) It is a company, duly incorporated and validly existing under the law of its jurisdiction of incorporation and has the power to own its assets and carry on its business as it is being conducted.
- (b) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- (c) The obligations expressed to be assumed by it under this Deed are legal, valid, binding and enforceable obligations subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).
- (d) The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:
 - (i) any law or regulation applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument binding upon it or any of its assets.
- (e) All authorisations required or desirable:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed; and
 - (ii) to make this Deed admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect

8 REPORTING

8.1 Principal Debtor to Supply Information to the Crown

The Crown may at any time while the Deed of Guarantee is outstanding require from the Principal Debtor any information relating to the financial position or affairs, or the business, management or operation, of the Principal Debtor (including its capacity to raise funding in the wholesale financial markets without the benefit of the Deed of Guarantee).

8.2 Third Party Information

The Principal Debtor authorises the Crown to contact and request information from those third parties that the Crown requires, including (but not limited to):

- (a) The trustee of any Debt Security issued by the Principal Debtor;
- (b) The auditors of the Principal Debtor;
- (c) The Principal Debtor's bankers or any other providers of finance;
- (d) The Securities Commission;
- (e) The Registrar of Companies;
- (f) Any rating agencies contracted by the Principal Debtor to provide rating information; and
- (g) The Reserve Bank of New Zealand,

and shall authorise all such requested disclosure and use its best endeavours to ensure that any such person provide requested information as soon as practicable.

8.3 Sharing of Information

The Principal Debtor authorises the Crown to share information provided in accordance with clauses 8.1 and 8.2 with the Reserve Bank of New Zealand and authorises the Reserve Bank of New Zealand to share with the Crown any information relating to the Principal Debtor that the Reserve Bank has collected in connection with its functions under the Reserve Bank Act.

8.4 Notification of Non-payment

The Principal Debtor shall notify the Crown forthwith if any Guaranteed Liability is not paid on its due date.

9 COMPLIANCE WITH PRUDENTIAL SUPERVISION OR OTHER MATTERS

If the Principal Debtor fails to comply with:

- (a) any prudential supervision direction, notice or requirement under the Reserve Bank Act or otherwise; or
- (b) the terms of any trust deed for Debt Securities issued by the Principal Debtor;

then such failure shall be a breach of this Deed and the Crown may give notice to the Principal Debtor that it is in breach of this Deed.

10 ACKNOWLEDGEMENTS AND OTHER MATTERS

10.1 Actions not limited

The Parties acknowledge that neither the offering or entering into of this Deed and the Deed of Guarantee nor the issue of any Guarantee Eligibility Certificate in any respect restricts any regulatory or supervisory action by the Reserve Bank or any action the Crown may take, including but not limited to extending the term of the Deed of Guarantee or not extending the term of the Deed of Guarantee and offering a guarantee to any person whether under the same terms or different.

10.2 Good faith

- (a) The Principal Debtor acknowledges that the objectives of the Guarantee Scheme pursuant to which the Deed of Guarantee and this Deed have been executed by the Crown are:
 - (i) facilitating access to wholesale funding markets by financial institutions with substantial New Zealand borrowing and lending operations, in a global environment where international investors remain highly risk averse and where many other governments have offered guarantees on their banks' wholesale debt;
 - (ii) encouraging financial institutions to withdraw from using the Guarantee Scheme, and enabling the Crown to withdraw from offering a guarantee, on new issues as soon as international markets return to normal; and
 - (iii) avoiding the macroeconomic risks that could be associated with overly-concentrated future maturities of guaranteed debt, both for a financial institution or for the financial system as a whole.
- (b) Accordingly the Principal Debtor agrees that:

- (i) it will act in good faith in relation to the Guarantee Scheme and the Deed of Guarantee and this Deed and will not act in a manner inconsistent with the purposes of the Guarantee Scheme;
- (ii) it will not utilise (or seek to utilise) the Deed of Guarantee or the Guarantee Scheme for the benefit of any other Person other than itself, a wholly-owned subsidiary of itself or a bona fide creditor of either or both of the foregoing; and
- (iii) it will, while the Deed of Guarantee is in effect, manage the issuance of Debt Securities by it and its subsidiaries so as to achieve, to the extent reasonably possible, a suitable maturity profile spread.

10.3 **Unacceptable circumstances**

If the Crown reasonably considers that the business or affairs of the Principal Debtor and/or any of its subsidiaries and/or any other Person effectively controlled by the Principal Debtor are being, or are intended or likely to be, carried on in a manner which:

- (a) will or may extend the effective benefit of the Deed of Guarantee to Persons who are not intended to receive that benefit; or
- (b) is or would be otherwise inconsistent with clause 10.2,

in each case an "Inappropriate Activity", the Crown may give notice to the Principal Debtor that it must not (and the Principal Debtor must not) issue or guarantee any Debt Security, in respect of which a Guarantee Eligibility Certificate has been issued, except with the prior written consent of the Crown.

10.4 **Hedging**

The Principal Debtor undertakes that it will hedge and manage the currency risk in relation to any Guaranteed Liability denominated in a currency other than New Zealand dollars in accordance with established risk management practice approved by the Principal Debtor's board of directors.

10.5 **Payment of Guaranteed Liabilities**

The Principal Debtor shall procure that each Guaranteed Liability is paid on the due date for payment or within any applicable grace period.

11 **PAYMENTS**

11.1 **Payments**

All sums payable to the Crown under this Deed shall be made:

- (a) by payment to the Crown's bank account number [*number*] with [*name bank*];
- (b) free of any restriction or condition; and
- (c) in full, without any deduction or withholding whatsoever (whether in respect of set-off, counterclaim, charges, taxes or otherwise) unless such deduction or withholding is required by law.

11.2 **Gross-up**

If any deduction or withholding is required by law for or on account of any taxes (other than taxes imposed by New Zealand) in respect of a sum payable by the Principal Debtor under this Deed then the sum payable by the Principal Debtor in respect of which such deduction or withholding is required to be made will be increased to the extent necessary to ensure that, after such deduction or withholding is made, the Crown receives and retains (free from any liability in respect of such deduction, withholding or payment) a net sum equal to the sum which it would have received and retained had no such deduction or withholding been required or made.

11.3 **Currency of Account**

All sums payable to the Crown under this Deed shall be made:

- (a) Subject to paragraphs (b) to (d) below, in New Zealand dollars.
- (b) A reimbursement of a sum paid by the Crown under the Deed of Guarantee shall be made in the currency in which that sum was paid.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs or expenses shall be made in the currency in which the costs or expenses are incurred.

11.4 **Business Days**

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day.

12 **CURRENCY INDEMNITY**

If, for any reason, any sum is due from the Principal Debtor under this Deed in one currency (*first currency*) but paid, recovered or received in another currency, or is required to be converted to another currency for the purpose of making any claim, or obtaining or enforcing any judgment (*second currency*) then:

- (a) the Crown may convert the second currency to the first currency at the time and in the manner it thinks fit; and
- (b) the Principal Debtor will as an independent obligation indemnify and hold harmless the Crown on demand against any shortfall or loss resulting from any currency conversion, including the costs of conversion and any premium.

13 **INTEREST**

If the Principal Debtor fails to pay any amount payable by it under this Deed on its due date it shall pay to the Crown on demand interest on the overdue amount calculated at the rate per annum determined by the Crown to be equal to the OCR (for the time being and from time to time) plus 2% for the period from the due date for payment to the date on which the overdue amount is paid in full (both before and after judgment).

14 **COSTS AND EXPENSES**

- (a) The Principal Debtor agrees to pay to the Crown, on demand:
 - (i) the amount of all costs and expenses incurred by the Crown in connection with the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation of any rights under this Deed, or in suing for or recovering any sum due under this Deed; and
 - (ii) the amount of all expenses reasonably incurred by the Crown in connection with any release of the obligations of the Principal Debtor under this Deed.
- (b) The Principal Debtor shall, on demand, indemnify the Crown against any payments, liabilities, losses, damages, claims, expenses, charges, taxes and duties incurred or suffered by the Crown as a result of any breach by the Principal Debtor of its obligations under this Deed.

15 **SET OFF**

The Principal Debtor authorises the Crown to apply, without prior notice or demand, any amount owing or due by the Crown to the Principal Debtor in or towards satisfaction of any amount due to the Crown under this Deed and unpaid. For this purpose the Crown is authorised to convert one currency into another in the manner it thinks fit. The Crown's rights under this clause will not limit and will be in addition to any right of set-off, combination of accounts, lien or other

right to which the Crown is at any time otherwise entitled (whether by operation of law, agreement or otherwise).

16 **RELEASE AND REINSTATEMENT**

16.1 **Release**

The Crown shall not be obliged to execute a release of the Principal Debtor from its obligations under this Deed until it is satisfied that:

- (a) all obligations of the Principal Debtor under this Deed have been irrevocably satisfied in full; and
- (b) the Crown's obligations under the Deed of Guarantee have been irrevocably satisfied or discharged in full.

16.2 **Reinstatement**

Any release of the Principal Debtor from its obligations under this Deed shall be conditional upon no payment made under this Deed to the Crown being set aside or avoided for any reason whether by statute or otherwise. If any payment by or on behalf of the Principal Debtor to the Crown under this Deed is set aside or avoided for any reason whatsoever then:

- (a) the relevant payment shall be deemed not to have been made; and
- (b) the liability and obligations of the Principal Debtor shall be the same as if no payment had been made, notwithstanding that the Principal Debtor has been released from its obligations.

17 **NO ASSIGNMENT**

The Principal Debtor may not assign its rights or transfer its obligations under this Deed.

18 **NOTICES**

18.1 **Notices to the Crown**

Any notice or communication to the Crown in connection with this Deed shall be in writing and made by delivery by hand, facsimile or e-mail (provided that a notice or communication given by facsimile or e-mail will not be effective unless receipt is acknowledged by the Crown) to:

Minister of Finance
Parliament Buildings
Wellington
NEW ZEALAND

Facsimile: +64 4 495 8442

E-mail:

with a copy (made by delivery by hand, facsimile or e-mail) to:

Secretary to the Treasury

Level 5

No. 1 The Terrace

Wellington

NEW ZEALAND

Facsimile: +64 4 472 3512

E-mail:

18.2 **Notices to the Principal Debtor**

Any notice or communication to the Principal Debtor in connection with this Deed shall be in writing and may be made by post, delivery by hand, facsimile or e-mail to:

[Address]

Facsimile: []

E-mail:

Attention: []

18.3 **Public Notice**

A certificate from the Crown (i) to the effect that it is satisfied that it has given public notice for the purposes of this Deed and (ii) as to the date on which that public notice was given shall, in the absence of manifest error, be conclusive evidence of that public notice and that date.

19 **GENERAL**

19.1 **Certificates**

Any certificate by the Crown as to an amount payable by the Principal Debtor under this Deed at the date of the certificate shall be conclusive and binding on the Principal Debtor for all purposes.

19.2 **Discretions**

The Crown may act in its absolute and sole discretion when giving (or withholding) any consent, forming any opinion, making any determination, exercising (or not exercising) any right, taking (or not taking) any action or dealing with any other matter under or in relation to this Deed and (to the maximum extent permitted by law) shall not be required to act reasonably or to provide any consent or explanation for any decision it makes in relation to the foregoing.

19.3 **Accrual of interest and fees**

Any interest or fees accruing under this Deed will accrue from day to day and will be calculated on the basis of the actual number of days elapsed and a year of 365 days.

19.4 **Indemnities**

Each indemnity under this Deed is a continuing obligation, separate and independent of all other obligations under this Deed and is additional to any other indemnity that the Crown may hold.

19.5 **Entire Agreement**

This Deed constitutes the entire agreement between the Parties in relation to its subject matter. It replaces all earlier discussions, negotiations and agreements relating to that subject matter, except that any rights of the Crown and obligations of the Principal Debtor arising as a result of any misrepresentation by or on behalf of the Principal Debtor prior to execution of this Deed shall continue.

19.6 **Partial Invalidity**

The illegality, invalidity or unenforceability of a provision of this Deed under any law shall not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision of this Deed.

19.7 **Remedies and Waivers**

No failure to exercise, and no delay in exercising, a right of the Crown under this Deed will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Crown of its rights under this Deed will be effective unless it is in writing signed by the Crown. The rights and remedies of the Crown provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

19.8 **Principal Debtor Undertaking**

The Principal Debtor undertakes to the Crown that it shall not take any action to challenge or adversely affect any rights the Crown may at any time have (whether under statute, by way of subrogation or otherwise) against the Principal Debtor which arise as a result of the payment of any amounts by the Crown under the Deed of Guarantee.

20 **GOVERNING LAW AND JURISDICTION**

20.1 **Governing Law**

This Deed is governed by and is to be construed in accordance with New Zealand law.

20.2 New Zealand Courts

- (a) The courts of New Zealand have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a *Dispute*).
- (b) The Parties agree that the courts of New Zealand are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 20.2 is for the benefit of the Crown only. As a result, the Crown shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Crown may take concurrent proceedings in any number of jurisdictions.

20.3 [Service of process

Without prejudice to any other mode of service allowed under relevant law, the Principal Debtor irrevocably agrees that service of process on it in respect of any proceedings before the New Zealand courts in connection with this Deed may be made by being delivered to its principal place of business in New Zealand for the time being.]¹

EXECUTED AND DELIVERED as a deed by

Her Majesty the Queen in right of)
New Zealand acting by and through [])
 for and on behalf of the Minister of Finance) _____
 in the presence of:) []
)
)
)
)
 _____)
)

Witness' name:

Witness' occupation:

Witness' address:

¹ The service of process clause is not needed in the case of a Principal Debtor incorporated in New Zealand.

[Principal Debtor] by two [Authorised Signatories] in the presence of:

Witness' name:

Witness' occupation:

Witness' address:

) _____
) *Director/Authorised Signatory*
) Name:
) _____
) *Director/Authorised Signatory*
) Name:

SPECIMEN

SCHEDULE 1: FORM OF DEED OF GUARANTEE

[to be included]

SPECIMEN

**SCHEDULE 2: FORM OF APPLICATION FOR GUARANTEE ELIGIBILITY
CERTIFICATE**

[*letterhead of Principal Debtor*]

Date:

To: [Minister of Finance
Parliament Buildings
Wellington
NEW ZEALAND]

Cc: [Secretary to the Treasury
Level 5
No. 1 The Terrace
Wellington
NEW ZEALAND]

[Governor
Reserve Bank of New Zealand
2 The Terrace
Wellington
NEW ZEALAND]

APPLICATION FOR GUARANTEE ELIGIBILITY CERTIFICATE

We refer to the Crown Wholesale Funding Guarantee Facility Deed (*Deed*) dated [*date*] between Her Majesty the Queen in right of New Zealand (*Crown*) and us. Terms defined in the Deed have the same meaning when used in this application.

We hereby apply to have our Debt Security Liabilities under the debt securities, details of which are specified in the schedule to this application, treated upon their issue as Guaranteed Liabilities for the purposes of the Deed of Guarantee.

We represent and warrant to you that as at the date of this application:

- (a) the NZ Dollar Equivalent of the aggregate principal amount of such Debt Security Liabilities and of all outstanding Guaranteed Liabilities does not exceed the Maximum Amount;
- (b) the information contained in this application is accurate, complete and not misleading (including by omission) in any respect; and
- (c) the details of the proposed Guaranteed Liabilities have been completed in accordance with the notes to the application.

Signed as a deed.

[Name of Principal Debtor] by:

Director/Authorised Signatory

Name:

Director/Authorised Signatory

Name:

in the presence of:

Name:

Occupation:

Address:

SCHEDULE
(Details of Debt Securities the Subject of this Application)

Type:¹

Issuer:²

Guarantor(s):³

Programme:⁴

Priority Ranking:⁵

Principal amount:⁶

Currency/ies:⁷

Single/Multi Issue:⁸

Tenor:⁹

Payment Dates¹⁰:

**Indicative interest rate
or discount:**¹¹

**Source of reference
rate:**¹¹

Trustee:¹²

Paying Agent:¹³

**Proposed Issue
Date/Period:**

[Security:]¹⁴

Notes

1. Specify type of debt securities (eg certificate of deposit, commercial paper, bond or note). Debt securities must not be complex or structured instruments and, except for covered bonds, must be unsecured.

2. Include full legal name.
3. Include full legal name(s), if applicable.
4. Include details of the programme or offer documents that the debt securities will be issued under.
5. Debt securities must be senior ranking (ie not subordinated).
6. Specify the aggregate principal amount proposed to be issued. [This may be the programme limit provided that the Maximum Amount is not exceeded] To be specified in the currency of issue or, as the case may be, the base currency of the programme.
7. The debt securities must be denominated in one or more Optional Currencies.
8. Specify whether the application is for a single issue or multiple issues.
9. The debt securities must have a tenor of 5 years or less from the issue date.
10. If interest is payable on more than one date, specify the proposed payment dates (eg quarterly).
11. Include for a single issue, if applicable.
12. Include name and full contact details if applicable.
13. Include name and full contact details of the principal paying agent or registrar, as applicable, and full details of its bank account to be used for payments to be made in connection with the Guaranteed Liability.
14. In the case of covered bonds, include details of any security, if applicable.

SCHEDULE 3: FORM OF FEE LETTER

Date:

To: [*Name of Principal Debtor*]
[*Address*]

GUARANTEE SCHEME - APPLICATION FOR GUARANTEE ELIGIBILITY CERTIFICATE

We refer to the Crown Wholesale Funding Guarantee Facility Deed (*Deed*) dated [*date*] between Her Majesty the Queen in right of New Zealand (*Crown*) and you. Terms defined in the Agreement have the same meaning when used in this letter.

You have applied under the Deed for a Guarantee Eligibility Certificate for the Guaranteed Liabilities referred to in the schedule to this letter. This is the Fee Letter recording the fee applicable to the Guarantee Eligibility Certificate to be issued in respect of those proposed Guaranteed Liabilities.

In consideration of the Crown agreeing to issue such Guarantee Eligibility Certificate you shall pay to the Crown a fee as follows:

- (a) You shall pay, on the fifth Business Day of each month following a month in which any such Guaranteed Liabilities are issued (*Issue Month*), a fee in New Zealand dollars calculated in accordance with the following paragraph in respect of those Guaranteed Liabilities.
- (b) The amount of such fee shall be the aggregate of the amount determined in accordance with the following formula in respect of each such Guaranteed Liability:

$$F = P \times R \times T / 365$$

Where:

- F means the fee payable by you
- P means the NZ Dollar Equivalent of the principal amount of that Guaranteed Liability
- R means []% (being the applicable fee percentage rate)
- T means the number of days for which the Guaranteed Liability will, in accordance with its terms (and absent any default or acceleration event), remain on issue.

(c) Payment shall be made to our bank account: [*bank account details*]

Such fee shall not be refundable in any circumstances.

Kindly confirm your agreement to the above by signing and returning to us a copy of this letter.

Yours faithfully

on behalf of **Her Majesty the Queen in right of
New Zealand**

SPECIMEN

SCHEDULE

[description of the Guaranteed Liabilities]

We confirm our agreement to the above terms.

For and on behalf of *[Principal Debtor]* by:

Authorised Signatory

SPECIMEN

SCHEDULE 4: FORM OF NOTICE OF ISSUE TERMS**[date]**

Secretary to the Treasury
Level 5
No. 1 The Terrace
Wellington
NEW ZEALAND

GUARANTEE ELIGIBILITY CERTIFICATE NO. [NUMBER] (CERTIFICATE)

We refer to the Crown Wholesale Funding Guarantee Facility Deed (*Deed*) dated **[date]** between Her Majesty the Queen in right of New Zealand (*Crown*) and us. Terms defined in the Deed have the same meaning when used in this application.

Pursuant to clause 3.9 of the Deed, we hereby notify you that debt securities contemplated by the Certificate have been issued on the following terms:

ISIN:**Issue Date:****Type:****Issuer:****Guarantor(s):****Programme:****Priority Ranking:****Principal amount:****Currency:****Tenor and Maturity****Date:****Payment Dates:****Interest rate or**

discount:

**Source of reference
rate:**

[Trustee:]

Paying Agent:

[Security:]

A copy of the signed documentation for the issue that evidences the above terms [is attached/has previously been provided to you].

Details of all debt securities issued or guaranteed by us on or after the date of the Deed and outstanding as at the date of this certificate are set out in the schedule.

We hereby certify that:

- (a) the above terms do not vary from the particulars of the debt securities specified in the Certificate; and
- (b) the information contained in this certificate is accurate, complete and not misleading (including by omission) in any respect.

For and on behalf of [*Principal Debtor*] by:

Authorised Signatory

Name:

Position:

SCHEDULE**Details of Outstanding Debt Securities**

Issuer	ISIN	Issue Date	Maturity	Principal Amount	Guaranteed?*

* If the debt securities are guaranteed specify the Guarantee E