

# Heads of Agreement

**Air New Zealand Limited**

Air NZ

and

**Singapore Airlines Limited**

SIA

and

**Brierley Investments Limited**

BIL

and

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

the Crown

Date                      September 2001

This Agreement is made on 13<sup>th</sup> September 2001

- between (1) Air New Zealand Limited (Air NZ)  
and (2) Singapore Airlines Limited (SIA)  
and (3) Brierley Investments Limited (BIL)  
and (4) Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance (the Crown).

## 1. Introduction

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- A. The parties have agreed that SIA and BIL will each provide equity to Air NZ to be constituted by the issue by Air NZ of new ordinary shares (the **New Shares**) to SIA and BIL with an aggregate issue price of NZ\$300 million on the terms set out in this Agreement.
- B. The parties have agreed that the Crown will provide a standby credit facility to Air NZ in an amount of NZ\$550 million (the **Crown Facility**) on the terms set out in this Agreement.

## 2. Issue Price of New Shares

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- 2.1 The aggregate issue price of the New Shares is NZ\$300 million. The New Shares will be subscribed for by SIA and BIL severally so that SIA will subscribe for New Shares with an aggregate issue price of NZ\$150 million and BIL will subscribe for New Shares with an aggregate issue price of NZ\$150 million.
- 2.2 The issue price per share of the New Shares will be the lesser of:
- (a) NZ\$0.67 per New Share (being the volume weighted average trading price by trade of Air NZ's A ordinary shares and B ordinary shares on the New Zealand Stock Exchange on Friday 7 September 2001 less 10%); and
  - (b) a price per New Share equal to the volume weighted average trading price by trade of Air NZ's A ordinary shares and B ordinary shares on the New Zealand Stock Exchange during the 10 business days (in Wellington) on which trading of the shares was undertaken immediately prior to the date upon which the meeting of shareholders of Air NZ is held to approve the matters contemplated by clause 5.2(c).

## 3. Ranking of New Shares

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The New Shares will rank equally amongst themselves and with all other ordinary shares issued by the Company including as to dividend.

## 4. Issue of New Shares

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The New Shares will be issued to SIA and Isa Investments Limited and/or Anafi Investments Limited, for BIL, (and SIA will, and BIL will procure that Isa Investments Limited and/or Anafi Investments Limited will, pay for the New Shares in immediately available cleared funds) no later than the date 5 business days (in Auckland) after all the conditions precedent set out in clause 5.2 have been satisfied (the date of payment being the **Settlement Date**).

## 5. Conditions Precedent

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- 5.1 (a) None of SIA, BIL or Air NZ will have any obligation under this Agreement or the Crown Facility unless and until the conditions precedent in clause 5.2 have been satisfied.
- (b) The Crown will not have any obligation under this Agreement or the Crown Facility unless and until the conditions precedent in clauses 5.2 and 5.3 have been satisfied.
- 5.2 The conditions precedent referred to in clause 5.1(a) are:
- (a) SIA, BIL and the Crown are satisfied (in their respective reasonable opinions) and remain so satisfied on the Settlement Date that Air NZ has obtained appropriate waivers and agreements (which may include facilities of a term of up to 2 years) (on commercially reasonable terms) from such of its, and its New Zealand incorporated subsidiaries', existing bank lenders and aircraft lessors and mortgagees as will ensure the continuing stability of its (and those subsidiaries') overall financing arrangements and the economic viability of Air NZ (it being acknowledged that this may (i) require that unsecured lenders commit to provide facilities of a term of 24 months or more and (ii) allow those unsecured lenders to be paid down over the term of the facilities pursuant to a commercially usual amortisation profile);
- (b) by 11:59pm on 12 September 2001 Air NZ has withdrawn with immediate effect the Letter of Comfort dated 8 August 2001 to Ansett Holdings Limited, Ansett Australia Limited and Ansett International Limited (Ansett Group), notified the Ansett Group that the policy referred to in paragraph one of that letter changed immediately before sending the letter, resolutions have been passed that Air NZ cease immediately to provide support to the Ansett Group and resolutions have been passed placing the Ansett Group in voluntary administration;
- (c) all necessary shareholder approvals of Air NZ including approvals of the Kiwi Shareholder (whether under, or in relation to changes to, Air NZ's constitution, the NZSE Listing Rules, the Takeovers Code or the Companies Act) have been obtained or, if relevant and appropriate, waived by the NZSE or the subject of an exemption granted by the Takeovers Panel on terms satisfactory to SIA and BIL acting reasonably to approve the transactions contemplated by this Agreement, including the following transactions:
- (i) the issue by Air NZ of the New Shares to SIA and BIL;
- (ii) the Crown lending up to NZ\$550 million to Air NZ under the Crown Facility;
- (iii) the reclassification of Air NZ's A ordinary shares and B ordinary shares into one class of ordinary share;
- (d) the Kiwi Shareholder (as defined in Air NZ's constitution) giving prior written consent to SIA increasing its shareholding in Air NZ to up to 35% or such other amount as may be required pursuant to clause 4 and such consent to be on terms and conditions acceptable to each of Air NZ, SIA, and BIL respectively, each acting reasonably;
- (e) all necessary New Zealand regulatory approvals or consents being granted to SIA and BIL in respect of the transactions contemplated by this Agreement (including the issue of the New Shares to SIA and BIL) in each case on terms and conditions acceptable to SIA and BIL respectively acting reasonably;

- (f) none of the following shall have occurred:
- (i) an order is made, resolution passed or other step taken by a person for the liquidation, interim liquidation, receivership, removal from the New Zealand register of companies or dissolution of Air NZ; or,
  - (ii) a statutory manager is appointed in respect of Air NZ pursuant to the Corporations (Investigation and Management) Act 1989; or
  - (iii) Air NZ ceases or threatens to cease to conduct all or a substantial part of its business, or disposes of, or threatens or agrees to dispose of (either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary) all or a substantial part of its assets (other than all or any part of the Ansett Group);
- (g) the Crown Facility (in a form acceptable to BIL and SIA in accordance with clause 7) has been executed by Air NZ and the Crown;
- (h) a legal opinion satisfactory to each party, from the solicitors to Air NZ confirming that Air NZ has executed and duly authorised each of the credit documents relating to the Crown Facility and that the Crown Facility is legal, valid and binding on Air NZ, and confirming that Air NZ holds a copy of each of the credit documents relating to the Crown Facility executed by the Crown;
- (i) a certified copy of the resolutions of the Board of Directors of Air NZ approving the credit documents relating to the Crown Facility, authorising their execution and authorising specified persons to give communications and take any other action required under or in connection with them on behalf of Air NZ;
- (j) evidence that the Board of Air NZ has taken all necessary steps to issue the New Shares;
- (k) the following provisions being incorporated in alterations to the constitution:
- (i) the Board to comprise not more than 9 persons including the Managing Director (Chief Executive Officer);
  - (ii) any shareholder holding not less than 30% of the shares in Air NZ shall have the right to appoint 3 directors, at least one of whom shall be a New Zealand National (as defined in the constitution of Air NZ) appointed after consultation with the Kiwi Shareholder;
  - (iii) the Chair of the Board shall be appointed/removed by the Board with the agreement of the Kiwi Shareholder and shareholders holding 30% or more of the shares in the Company;
- (l) BIL, SIA and the Crown being satisfied (each acting reasonably) by 17 October 2001 or such later date as the parties may otherwise agree by means of a financial due diligence that Air NZ has a Board approved business plan which demonstrates its economic viability

If the conditions in this clause that relate to BIL and SIA are not satisfied in full in respect of one of SIA or BIL, they will be deemed not to be, or to cease to be, satisfied in respect of the other.

If one of SIA or BIL defaults in its obligations to subscribe for the New Shares on the Settlement Date in accordance with this Agreement, then the other of them shall be released from its obligations to subscribe for New Shares

5.3 The conditions precedent referred to in clause 5.1(b) are:

(a) evidence, satisfactory to the Crown, that:

(i) the New Shares have been duly issued by Air NZ to BIL and SIA, and

(ii) BIL and SIA have paid to Air NZ for the New Shares in cleared, immediately available funds, in full an aggregate amount of NZ\$300 million and Air NZ has received that money;

(b) the Crown Facility (in a form acceptable to BIL and SIA in accordance with clause 7) has been executed by Air NZ.

5.4 Each of SIA, BIL and Air NZ shall provide all reasonable assistance and take all steps reasonably within its control to ensure satisfaction of the conditions precedent, but the Crown will and may act as it ordinarily would.

5.5 The parties agree that the conditions precedent (other than the conditions precedent contained in clauses 5.2(b) and (k)) must be satisfied on or before 30 November 2001 or such other date as the parties agree.

## 6. BIL NZ Assets Trust Structure

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BIL and the Crown record that BIL's investment in Air NZ will continue to be held through BIL NZ Assets Limited's subsidiaries referred to below. In relation to such holding, the BIL New Zealand Charitable Trust has the entitlement to appoint 75% of the directors of BIL NZ Assets Limited ("Kiwi Control Rights") and an exemption has been granted by the Overseas Investment Commission from certain of the requirements of the Overseas Investment Regulations 1995 to BIL NZ Assets Limited such that its two wholly owned subsidiaries, Isa Investments Limited and Anafi Investments Limited, can continue to hold shares in Air NZ (collectively referred to as the "Trust Structure"). To the extent that it can be reasonably determined by the Minister of Transport that no material Operating Right (as defined in the constitution of Air NZ) of Air NZ could be expected to be terminated or materially adversely effected as a consequence of discontinuance of the Trust Structure, BIL, the Crown and Air NZ agree to consult with the objective of terminating the Trust Structure

## 7. Crown Facility

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The Crown and Air NZ are to document the Crown Facility by negotiating it in good faith to give effect to the terms of the Schedule. The Crown Facility is to be in a form reasonably acceptable to BIL and SIA. BIL and SIA must each confirm that the form of the Crown Facility is acceptable to them if it reflects the terms of the Schedule.

## 8. Crown Facility Amount

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The maximum amount of the Crown Facility is NZ\$550 million.

## 9. Other terms of Crown Facility

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A summary of the commercial terms of the Crown Facility is set out in the Schedule

## 10. Representations

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Air NZ, SIA and BIL each severally represents and warrants that:

- (a) it is a company duly incorporated and existing under the laws of its jurisdiction of incorporation;
- (b) it has the power to enter into, exercise its rights and perform and comply with its obligations under, this Agreement;
- (c) everything required to be done (including the obtaining of any necessary consents and the passing of all necessary resolutions and obtaining of all necessary approvals other than those referred to in clause 5.2) to:
  - (i) enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under, this Agreement;
  - (ii) ensure that those obligations are legal, valid, binding and enforceable; and
  - (iii) make this Agreement admissible in evidence in the courts of New Zealand,has been duly done; and
- (d) its obligations under this Agreement are legal, valid, binding and enforceable.

## 11. Public Statements

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- 11.1 Each party agrees, as when and to the extent practicable, to reasonably consult with each other party as to the form and content of, and prior to making any stock exchange or media statement in connection with any matter recorded in this Agreement (except that if a party is in default under this Agreement there shall be no such obligation to consult). Each party will procure that each of its related companies, affiliates and their directors, officers and employees of it and its related companies and affiliates also observe the requirements of this clause. The parties agree that the discussions and negotiations of the matters referred to in this Agreement have been conducted in good faith and in a collegial manner with the intention of reaching an agreement of benefit to all parties. No party to this Agreement (or its directors or officers) will make any stock exchange or media statement to the contrary.
- 11.2 The requirement to consult with other parties in relation to stock exchange statements shall not apply to any party if and to the extent that:
- (a) that party is legally obliged to make a stock exchange statement to comply with the requirements of a stock exchange which are binding on that party, and

(b) time does not permit that party to consult with the other parties before it is required to make that stock exchange statement.

11.3 Nothing in clause 11.1 shall prevent any party making a statement that party reasonably believes it is required to make to achieve the satisfaction of any of the conditions set out in this Agreement.

## 12. Assignment

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### 12.1 Benefit and burden of this Agreement

This Agreement is binding on and will enure for the benefit of the parties and their respective successors and assignees or transferees.

### 12.2 Assignment

No party may assign or transfer all or part of its rights or obligations under this Agreement.

## 13. Miscellaneous

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### 13.1 Amendments

No amendment to this Agreement will be effective unless it is in writing signed by all the parties.

### 13.2 Partial Invalidity

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

### 13.3 Counterparts

This Agreement may be signed in any number of counterparts (including facsimile copies) all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart.

### 13.4 Further Assurances

The parties agree to take all further steps reasonably necessary to give effect to the transactions contemplated by this Agreement.

## 14. Governing law and jurisdiction

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### 14.1 Governing Law

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

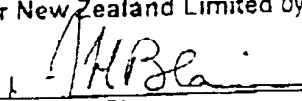
## 14.2 Jurisdiction

Air NZ, SIA and BIL irrevocably and unconditionally agree that the courts of New Zealand shall have jurisdiction to hear and determine each suit, action or proceeding (proceedings), and to settle disputes, which may arise out of or in connection with this Agreement and for these purposes irrevocably submits to the jurisdiction of those courts.

## Execution

Signed by the parties

Air New Zealand Limited by

  
\_\_\_\_\_  
Authorised Signatory

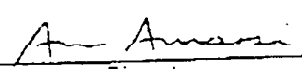
  
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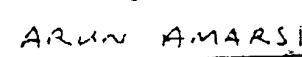
Singapore Airlines Limited by

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Authorised Signatory

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Brierley Investments Limited by

  
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Authorised Signatory

  
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Print Name

Her Majesty the Queen in right of  
New Zealand acting by and  
through the Minister of Finance

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Minister of Finance



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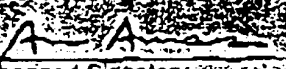
J.H. Blair  
Print Name

Singapore Airlines Limited by

  
Authorized Signatory

CHEONG CHEK  
Print Name

Brierley Investments Limited by

  
Authorized Signatory

AARON MARSDEN  
Print Name

Her Majesty the Queen in right of  
New Zealand acting by and  
through the Minister of Finance

Minister of Finance

## Schedule: Summary of Commercial Terms of Crown Facility

Schedule

SUMMARY OF TERMS AND CONDITIONS

FACILITIES

**Company:** Air New Zealand Limited.

**Lender:** The Crown.

**Facility:** The Crown will provide a committed facility in a maximum amount of NZ\$550,000,000.

The Crown will never be required to pay more than NZ\$550,000,000 for Notes or on account of advances or to purchase notes with a face value of greater than NZ\$550,000,000.

The Facilities are:

- (i) A revolving credit facility; and
- (ii) A standby note facility.

**Effective Date** The effective date is the date on which the Heads of Agreement becomes unconditional in accordance with its terms.

NOTE ISSUE FACILITY:

**Purpose** The note issue facility will only be used for such purposes as are agreed.

**Facility Amount** The maximum amount of the note issuance facility is NZ\$550,000,000.

The Crown will never be required to pay more than NZ\$550,000,000 for Notes or on account of advances or to purchase notes with a face value of greater than NZ\$550,000,000.

**Available Facility** The available facility is the Facility Amount less the aggregate amount of all outstanding revolving facility advances

**Conditions Precedent** The Company will not request that the Crown subscribe for Notes and the Crown will have no obligation to subscribe for Notes unless and until the conditions precedent set out below are satisfied.

**Form Of Notes** The Note(s) will incorporate the terms set out in this Terms Sheet and will be consistent with market practice. The constitution of the Notes is to be agreed.

**Issue of Notes** The Company will from time to time issue to the Crown, and the Crown will purchase, Notes on the terms set out in this Term Sheet.

**Issue:** Subject to the Facility becoming available, satisfaction of the Conditions Precedent and two Wellington business days notice, the Company may issue Notes to the Crown during the Availability Period

Notes will be in a minimum amount of NZ\$5,000,000 and in integral multiples thereof. The Crown can specify how the Notes should be divided and a smaller minimum amount.

**Availability Period:** Requests for Notes may be made from the Effective Date until the date agreed in writing between the Company and the Crown (the Availability Period).

Any amounts not drawn will be cancelled at the end of the Availability Period or earlier if requested by the Company.

**Fixing of Interest Rate:** The interest rate for a Note is to be fixed on the date of issue of that Note.

**Interest Rate:** Interest will be paid on issued Notes at the relevant Government Stock Rate plus the Margin. The relevant Government Stock Rate will be determined by the Crown on the issue date of a Note.

Interest on a Note is payable six monthly in arrears from the date of issue of that Note until its maturity.

**Ranking** The Notes and interest thereon will be subordinated in point of priority and right of payment to all other unsecured creditors of the Company but shall rank in point of priority and right of payment to all other subordinated indebtedness of the Company from time to time.

**Maturity of Notes** Any Notes issued following a request by the Company will be in two tranches:

- (i) Tranche A – will be for 50% of the amount advanced and will have a maturity of 7 years from the date of issue.
- (ii) Tranche B – will be for 50% of the amount advanced and will have a maturity of 10 years from the date of issue.

unless agreed to the contrary.

**Events of Default** Following the occurrence of an event of default and while it continues the Crown may:

- (i) cancel the Note issue facility; and
- (ii) declare the face value of the Notes (and all other amounts in respect thereto) to be immediately due and payable and the Company will on demand indemnify the Crown for all such outstanding amounts

**Repayment of Notes** The Notes will be repaid in full on maturity, together with all amounts of interest then outstanding

**REVOLVING CREDIT FACILITY**

<b>Amount</b>	The Crown will make available a revolving credit facility in a maximum amount of NZ\$200,000,000.00 on the terms set out in this Terms Sheet.
<b>Availability Period</b>	The revolving credit facility will be available for a period commencing on the Effective Date and ending on the Termination Date of the revolving credit facility. No Interest Period can extend beyond the Termination Date.
<b>Conditions Precedent</b>	The Company will not request that the Crown make available an advance and the Crown will have no obligation to make an advance available unless and until the conditions precedent set out below are satisfied.
<b>Termination Date</b>	The revolving credit facility will terminate on the second anniversary of the Effective Date.
<b>Repayment</b>	The Company will repay each advance together with all interest on that advance on the last day of its Interest Period. To the extent outstanding the Company will repay each revolving credit advance on the Termination Date together with all interest then outstanding.
<b>Interest Rate</b>	The interest rate payable on any revolving credit advance will be the aggregate of the Base Rate calculated on the drawing day of that advance and the Margin.
<b>Base Rate</b>	The base rate for an advance will be the bank bill bid rate for bills of exchange of a tenor of 90 days on the date of drawdown of that advance.
<b>Purpose</b>	Each revolving credit advance will be used to fund the following: <ul style="list-style-type: none"> <li>(a) a transaction or payment in the ordinary course of the Company's business, other than a payment to a bank or financial institution to which the Company is indebted unless (c) applies;</li> <li>(b) a transaction or payment which is not of a kind referred to in (a) if previously approved in writing by the Crown, in accordance with that approval;</li> <li>(c) a payment to a bank or financial institution which is part of any refinancing arrangement in accordance with the terms of those arrangements as contemplated by clause 5.2(a) of the Heads of Agreement.</li> </ul>
<b>Ranking</b>	Advances shall rank equally with all other unsecured creditors of the Company.
<b>Drawings</b>	Any amount advanced under the revolving credit facility is available for redrawing within the Availability Period.



directors, the Company is, and will be, solvent when it gives the drawing notice, immediately before it makes the drawdown and immediately after it makes the drawdown and that the directors believe on reasonable grounds that the Company will be able to perform its obligations in respect to the relevant advance or Note when due;

- (v) the relevant Margin applicable to an issue of Notes or an advance has been agreed or determined.

**A) Information Covenants**

The Company will provide to the Crown:

- (i) on the 20<sup>th</sup> day of each month with a report (in the form required by the Crown) on the Company's business and financial performance in the previous month, including performance against milestones presented by the Company and agreed with the Crown subject to the Company having three months from the Effective Date to bring the accounts up to a sufficient standard;
- (ii) all other information concerning the Company, its financial affairs and business as the Crown may request, promptly after such request; and
- (iii) all information sent to the Company's shareholders at the same time.

**B) Other Undertakings**

The Company will:

- (i) notify the Crown immediately upon the occurrence of an event of default;
- (ii) promptly, and at its own expense, execute and deliver to the Crown all such documents and do all such acts and things as the Crown considers necessary to secure the full benefit of its rights under the credit documents.

**Events of Default:**

Events of Default will be limited to:

- (i) non-payment when due of principal or interest under the Notes or the revolving credit facility;
- (ii) breach of a covenant where such breach could reasonably be considered material in the context of the Facility (and, where capable of remedy, is not remedied within a cure period to be agreed);
- (iii) cross default where that default could reasonably be considered material to the financial condition, business or economic viability of the Company;
- (iv) any person takes or purports to take any action in relation to any assets of the Company where such action, or those assets, could reasonably be considered material to the financial condition, business or viability of the Company.

- (v) an order is made, resolution passed or other step taken by a person for the liquidation, interim liquidation, receivership, removal from the New Zealand register of companies or dissolution of the Company;
- (vi) a statutory manager is appointed to the Company pursuant to the Corporations (Investigation and Management) Act 1989;
- (vii) Air NZ ceases or threatens to cease to conduct all or a substantial part of its business, or disposes of, or threatens or agrees to dispose of (either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary) all or a substantial part of its assets (other than all or part of the Ansett Group);
- (viii) any circumstance where the Crown acting reasonably believes that one of the events in (i) to (vii) above will occur notwithstanding the issue of the notes or the making of an advance.

**Representations and Warranties:**

Representations and warranties as per the refinancing facility agreement and where, in such a representation there is a reference to material adversity, that change could be considered material to the financial condition, business or economic viability of the Company.

**Assignment/Sale:**

The Company may not assign its rights or obligations without the prior written consent of the Crown.

The Crown shall be entitled to transfer, novate, sub-participate, assign or otherwise deal with or dispose of any and all of its rights in relation to any advance or any Note without the prior consent of the Company.

The Company shall provide all assistance and information that the Crown may reasonably require in connection with any dealing or disposition of Notes or advances including a secondary offer (but subject to the obligations of the Company under the Listing Rules and the Securities Act).

**General:**

The Facility shall be governed by other provisions usual for a facility of this size and nature (e.g. increased costs, etc.).

**Governing Law:**

New Zealand.

**Costs and Expenses:**

All reasonable costs and expenses, including but not limited to reasonable legal fees for the external legal and other advisors acting for the Crown incurred in the negotiation, preparation and execution of the necessary documentation and the monitoring and administration of the facilities, and any other reasonable costs associated with the provision of the finance are for the account of the Company.

**Taxes**

Tax clauses as per the Telecom Subordinated Note documentation



**Increased Costs**

The usual provisions for a facility of this nature including but not limited to indemnity relating to change of law.

**Indemnity**

The Company shall indemnify the Crown against any loss, cost or expense (including loss of profit or margin) the Crown may suffer or incur as a result of any part of the Facility not being drawdown on the date requested, any event of default occurring, any prepayment of a drawing other than on the last day of an Interest Period or any amount payable by the Company under the Facility not being paid as and when due (subject to a credit for any default interest actually paid).

**Assessment of Margin**

The Company and the Crown will promptly appoint an independent appraiser to determine the Margin to be payable by the Company on all accommodation. The appraiser is to have regard to the risks created by the commercial and financial circumstances of the Company and the terms in this Terms Sheet and on the basis that the Crown is to be treated as a lender who has to be induced to provide this credit facility on these terms and Margins (and taking account of the nature of each facility offered in this document).

If the parties (and SIA and BIL) determine in good faith that at the date of appraisal the Company is unable to meet that cost and remain economically viable the parties (and SIA and BIL) will enter into discussions to see whether an agreement can be reached to restructure the facility to deliver the Crown the same rate of return as the margin determined by the appraiser. In the event no agreement can be reached the facility shall be cancelled.