



Amended and Restated Crown Deed of Indemnity

in relation to the Business Finance Guarantee Scheme

—

The Sovereign in right of New Zealand acting by and through the Minister of
Finance (the **Crown**)
[Bank] (the **Bank**)

—

Crown Deed of Indemnity

Business Finance Guarantee Scheme

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Details

Date

Parties

Name **The Sovereign in right of New Zealand acting by and through the Minister of Finance**
Short form name **The Crown**
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Attention: Treasury Solicitor

Name **[Bank]**
Short form name **The Bank**
Notice details Address:
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Attention:

Background

- A The Minister of Finance considers it necessary or expedient in the public interest to establish the Business Finance Guarantee Scheme to help Approved Banks to support New Zealand businesses facing hardship as a consequence of COVID-19 to do one or more of the following:
- (i) to respond to the impacts of COVID-19;
 - (ii) to position themselves for recovery from the impacts of COVID-19; or
 - (iii) to recover from the impacts of COVID-19.
- B This document sets out the terms on which the Minister of Finance, on behalf of the Crown, grants an indemnity pursuant to section 65ZD of the *Public Finance Act 1989* to the Bank to give effect to the Business Finance Guarantee Scheme.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Agreed Upon Procedure Engagement has the meaning set out in clause 7.2(a)(i).

ANZSIC means Australian and New Zealand Standard Industrial Classification 2006 or such other classification of credit exposures used by the Bank for regulatory capital purposes and provided to the Crown on or before the Commencement Date.

Approved Bank means each registered bank which has been approved by the Crown as a participant in the Business Finance Guarantee Scheme, and **Approved Banks** means all of them.

Availability Period means the period from (and including) the Commencement Date to (and including) 31 December 2020 (or such later date as notified by the Crown under a Scheme Notice).

BFGS Claim Report Data Specifications means the data specifications document relating to the BFGS Claim Report Template provided by the Crown to the Bank on or about the Effective Date, as amended from time to time by the Crown pursuant to clause 9.5.

BFGS Claim Report Template means the claims template consisting of two tabs with the titles "Claim Detail" and "Claim Commentary" within an Excel workbook, as provided by the Crown to the Bank on or about the Effective Date, as amended from time to time by the Crown pursuant to clause 9.5.

BFGS Crown Deed of Indemnity means a Crown Deed of Indemnity in relation to the Business Finance Guarantee Scheme between the Crown and another Approved Bank.

BFGS Data Specifications means the data specifications document provided by the Crown to the Bank on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(c).

BFGS Reporting Template means [the BS2B reporting template consisting of two tabs with the titles "Expected Credit Loss" and "Lending Summary" within an Excel workbook, as provided by the Crown to the Bank on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(c).] **OR** [the BS2A reporting template consisting of two tabs with the titles "Expected Credit Loss" and "Lending Summary" within an Excel workbook, as provided by the Crown to the Bank on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(c).] [~~delete whichever does not apply.~~]

Borrower means a person:

- (a) that, at the time the Supported Loan is entered into, carries on a business which:
 - (i) is a New Zealand Based Business;
 - (ii) had in its most recently completed financial year (or, if the business has been operating for less than one full financial year, expects to have in its first full financial year), revenue of up to \$200,000,000 (determined on a consolidated basis if the Borrower is a member of a Guaranteeing Group); and
 - (iii) does not involve any Excluded Activity;
- (b) that is not, at the time the Supported Loan is entered into, a "Borrower" under a "Supported Loan" entered into with another Approved Bank under a BFGS Crown Deed of Indemnity;
- (c) that is not, at the time the Supported Loan is entered into, classified by the Bank for regulatory capital purposes under any of the following ANZSIC classifications (or an equivalent description):
 - (i) residential property investor or developer; and
 - (ii) commercial property investor or developer;

- (d) **OPTION FOR BS2B BANKS** [that:
- (i) if a Retail Customer, was not, as at 31 January 2020, on the Bank's Watchlist; or
 - (ii) if not a Retail Customer, was not, as at 30 September 2019, on the Bank's Watchlist; and]

OPTION FOR BS2A BANKS [that:

- (iii) if not a Relationship Customer, was not, as at 31 January 2020, on the Bank's Watchlist; or
- (iv) if a Relationship Customer, was not, as at 30 September 2019, on the Bank's Watchlist; and

DELETE WHICHEVER OPTION DOES NOT APPLY.

- (e) that is not a local authority, a council-controlled organisation or a council organisation for the purposes of the *Local Government Act 2002*,

unless otherwise agreed in writing by the Crown and the Bank.

Business Finance Guarantee Scheme means the scheme established by the Crown to help Approved Banks to support New Zealand businesses facing hardship as a consequence of COVID-19 to do one or more of the following:

- (a) to respond to the impacts of COVID-19;
- (b) to position themselves for recovery from the impacts of COVID-19; or
- (c) to recover from the impacts of COVID-19.

Certificate has the meaning set out in clause 7.1(a)(ii).

Claim Report has the meaning set out in clause 9.1(a).

Commencement Date means [*to insert the date that each Bank's Original Deed of Indemnity took effect*].

Creditor Process means, in respect of a Supported Loan, a settlement, compromise or other arrangement under which all or any part of the amount owing by the Borrower (or any guarantor) under or in connection with the Supported Loan is written off, cancelled or not recovered.

Defaulted Supported Loan means a Supported Loan under which an event of default, termination event or similar event (however described or defined) has occurred and the Bank has declared all outstanding moneys due and payable or taken any other action to recover amounts owing.

Effective Date means the date of the deed of amendment and restatement to which this document is attached as a schedule.

Event of Review means an event or circumstance specified in clause 8.5(b).

Excluded Activity means any of the following:

- (a) the manufacture of cluster munitions;
- (b) the manufacture or testing of nuclear explosive devices;
- (c) the manufacture of anti-personnel mines;
- (d) the manufacture of tobacco;
- (e) the processing of whale meat;
- (f) the manufacture or distribution of recreational cannabis;
- (g) the manufacture of civilian automatic and semi-automatic firearms, magazines or parts; and
- (h) any activity which is illegal in New Zealand.

Facility Limit means the maximum aggregate principal amount that may be drawn under a loan agreement in accordance with its terms (excluding, for the avoidance of doubt, any interest that may be capitalised to form part of the loan balance).

Guaranteeing Group means the Borrower and each person (if any) which has guaranteed the Borrower's obligations to the Bank (excluding, for the avoidance of doubt, the Crown in respect of its obligations under this document).

Information Deficiency has the meaning set out in clause 7.1(c).

Insolvency Event means:

- (a) the Bank is declared or becomes bankrupt or insolvent or is otherwise unable to pay its debts when they fall due;
- (b) the Bank enters into dealings with or for the benefit of any of its creditors with a view to avoiding, or in expectation of, insolvency;
- (c) the Bank takes any corporate action or any other procedure or step is taken to make a general assignment or an arrangement, compromise or composition with or for the benefit of any of its creditors;
- (d) the Bank stops or threatens to stop payments generally;
- (e) a security interest is enforced in respect of, or a receiver is appointed to, any material part of the assets of the Bank;
- (f) an order is made, or a resolution is passed, for the appointment of a liquidator to the Bank;
- (g) a statutory manager is appointed or a step taken with a view to any such appointment in respect of the Bank under the *Reserve Bank of New Zealand Act 1989*; or
- (h) any analogous or equivalent event to any listed above (in any jurisdiction).

New Zealand Based Business means a business in respect of which, if carried on by:

- (a) an individual or a company, the individual or the company is resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
- (b) a company or partnership (including a limited partnership) or trustees of a trust (in each case whether or not formed or incorporated in New Zealand), the relevant entity or body of persons:
 - (i) is or are resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
 - (ii) carry or carries on business in New Zealand through a fixed or permanent place of business in New Zealand and will file a New Zealand income tax return in respect of that business.

Portfolio Information has the meaning set out in clause 7.1(a)(i).

Relationship Customer means a person whose relationship with the Bank is monitored, and, if applicable, would be managed, by the Bank on an individual/relationship basis with reference to a risk grade in accordance with the Bank's usual credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes. **[NOTE – DEFINITION ONLY RELEVANT FOR BS2A BANKS.]**

Relevant Officer means the Chief Financial Officer, the Chief Risk Officer or any equivalent, or any executive who reports directly to the Chief Executive Officer of the Bank.

Report has the meaning set out in clause 7.1(a).

Reserve Bank means the Reserve Bank of New Zealand.

Retail Customer means a person classified by the Bank as a retail exposure for regulatory capital purposes. **[NOTE – DEFINITION ONLY RELEVANT FOR BS2B BANKS.]**

Scheme Notice has the meaning set out in clause 21.1.

Shortfall means, in respect of a Defaulted Supported Loan, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan after the Bank:

- (a) has:
 - (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and

- (ii) determined that it does not reasonably expect to make any further recoveries; and
- (b) has applied all recoveries available to be retained by it in accordance with the following order of application:
 - (i) first, to pay reasonable costs and expenses incurred by the Bank in applying its arrears management and enforcement policies and processes;
 - (ii) secondly, to reduce all indebtedness of the Borrower (as principal or surety) to the Bank which is not owed under the Defaulted Supported Loan and which is, at the time any such recoveries are applied, due and payable by the Borrower; and
 - (iii) thirdly, to reduce all indebtedness under the Defaulted Supported Loan owed by the Borrower to the Bank,
 (the **Shortfall Waterfall**).

For the purpose of this definition, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan will include, if applicable, without double counting:

- (a) any such amount that has been cancelled, written off or not recovered as a result of a Creditor Process; and/or
- (b) any such amount that either has not been recovered by the Bank as a result of the Defaulted Supported Loan being set aside (in whole or part) or which the Bank has been required to pay to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws.

Shortfall Waterfall has the meaning set out in the definition of the term Shortfall.

Supported Loan has the meaning given in clause 3.1.

Supported Loan Policies, Practices and Processes means the Bank's credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes applicable to Supported Loans from time to time, such policies, practices and processes to be:

- (a) determined commercially by the Bank; and
- (b) applied to a particular Supported Loan in such manner and to the extent as the Bank in its discretion determines.

Supported Loans Cap has the meaning set out in clause 4(a).

[OPTION FOR BS2A BANKS] [Watchlist means, unless otherwise agreed in writing by the Crown, the list of the Bank's:

- (a) Relationship Customers that are rated grade [#] or below by the Bank in accordance with its internal risk framework; and
- (b) other customers that are 60 days or more in arrears.] **OR**

[OPTION FOR BS2B BANKS] [Watchlist means, unless otherwise agreed in writing by the Crown, the list of the Bank's:

- (a) Retail Customers that are 60 days or more in arrears; and
- (b) other customers that are rated grade [#] or below by the Bank in accordance with its internal risk framework.]

Within Limits Indebtedness means, in respect of a Borrower, the Borrower's aggregate indebtedness to the Bank, as calculated at the date on which a Supported Loan is first made to the Borrower, but not including indebtedness in excess of the Borrower's aggregate agreed limits with the Bank.

Working Day means a week day on which registered banks are (or would be but for any COVID-19 alert level restrictions) open for general banking business in Wellington and Auckland.

1.2 Interpretation

- (a) In this document:

- (i) headings are for reference only and do not affect interpretation;
 - (ii) the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
 - (iii) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
 - (iv) examples and use of the word **including** and similar expressions do not limit what else may be included.
- (b) Unless the context requires otherwise, a reference in this document to:
- (i) a party to any document includes that person's successors and permitted substitutes and assigns;
 - (ii) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
 - (iii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
 - (iv) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
 - (v) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
 - (vi) a person includes an individual, company, corporation, partnership (including a limited partnership), trustees of a trust, unincorporated body or other entity;
 - (vii) time is to New Zealand time unless stated otherwise;
 - (viii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
 - (ix) an accounting term is to be interpreted according to generally accepted accounting practice in New Zealand, as defined in section 8 of the *Financial Reporting Act 2013*;
 - (x) **indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) to pay or repay money;
 - (xi) **property** or an **asset** includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset; and
 - (xii) **rights** includes authorities, consents, discretions, remedies, powers and causes of action.

2. Indemnity

2.1 Scope of indemnity

- (a) The Crown undertakes to indemnify the Bank against any Shortfall which arises in relation to a Defaulted Supported Loan.
- (b) The Crown's liability under paragraph (a) above in respect of each Defaulted Supported Loan:
 - (i) is limited to an amount equal to 80 per cent. of the Shortfall; and
 - (ii) is otherwise subject to the provisions of this document.

2.2 Payment process

The Crown's obligation to make payment under clause 2.1 above arises following the Bank providing the Crown with a Claim Report in accordance with clause 9.

2.3 Liability cap

The Crown's total liability under this document is limited to \$[#]. *[Drafting note: there is no intention to change each Bank's allocation under the Indemnity as part of these changes.]*

3. Supported Loan Criteria

3.1 Supported Loan – qualification

A loan agreement entered into by the Bank will be a **Supported Loan** for the purposes of this document if it:

- (a) is entered into by the Bank on or following the Commencement Date with a person who, at the time of entering into the Supported Loan, is a Borrower; and
- (b) satisfies the criteria set out in clauses 3.2 to 3.8.

3.2 Purpose

- (a) Prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Bank that it is requesting the Supported Loan for the purpose of one or more of responding to, positioning itself to recover from, or recovering from, the impacts of COVID-19.
- (b) Other than as agreed in writing by the Crown, prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Bank that it will not apply the proceeds of the Supported Loan for any of the following purposes:
 - (i) to fund dividends to be distributed outside the Borrower's Guaranteeing Group; or
 - (ii) to fund on-lending outside the Borrower's Guaranteeing Group; or
 - (iii) to fund one or more Excluded Activities; or
 - (iv) to fund residential or commercial property development or investment; or
 - (v) to repay or refinance the Borrower's existing indebtedness to the Bank if that repayment or refinancing would result in more than 20 per cent. of the Borrower's Within Limits Indebtedness (the **Refinance Limit**) having been repaid or refinanced by loans made under the Business Finance Guarantee Scheme (subject to clause 3.3).

3.3 Refinancing

The application by the Borrower of all or any part of a Supported Loan towards any of the following purposes will not be included in the calculation of the Refinance Limit:

- (a) the repayment or refinancing of an existing loan provided that:
 - (i) prior to or at the time of entering into the relevant Supported Loan, the Borrower confirms to the Bank that it did not apply the proceeds of its existing loan to fund any of the activities listed in paragraphs (i) to (iv) of clause 3.2(b);
 - (ii) the existing loan had a term of no more than 180 days;
 - (iii) the existing loan was advanced on or after 16 March 2020;
 - (iv) the Facility Limit of the existing loan does not exceed \$5,000,000;
 - (v) the existing loan and any related security or guarantee is documented on terms and conditions that were agreed between the Bank and the Borrower in accordance the Bank's credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes in effect at the time the existing loan was approved;
 - (vi) the Bank's decision to enter into the existing loan was made in accordance with the Bank's credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes in effect at the time the existing loan was approved; and
 - (vii) the Borrower was not on the Bank's Watchlist as at the Commencement Date;

- (b) the repayment or refinancing of any term loans or facilities which mature during the Availability Period;
- (c) the disbursement of all or part of a Supported Loan into the Borrower's overdraft account (except to the extent that, the relevant overdraft limit is cancelled or permanently reduced by the Bank upon or as a result of such disbursement); and/or
- (d) the refinancing of an existing Supported Loan that occurs as part of an amendment to the loan to reflect amendments agreed by the Crown to the criteria set out in clauses 3.1(a) and 3.2 to 3.8.

3.4 Supported Loan limit

- (a) Other than as agreed in writing by the Crown, the Facility Limit for each Supported Loan must not exceed \$5,000,000.
- (b) Other than as agreed in writing by the Crown, the aggregate of the Facility Limits of all Supported Loans between the Bank and a Guaranteeing Group at any one time must not exceed \$5,000,000.

3.5 Term

- (a) Each Supported Loan must be entered into during the Availability Period.
- (b) Each Supported Loan must require that all amounts outstanding under the Supported Loan must be repaid in full by not later than the fifth anniversary of the date of the Supported Loan.
- (c) Subject to paragraph (b) above, the Bank may agree to extend the term of a Supported Loan from time to time, including after the Availability Period.

3.6 Interest and interest rate

- (a) The interest rate for each Supported Loan will be set by the Bank and must reflect:
 - (i) the Bank's cost of funding for the Supported Loan as determined by the Bank acting reasonably and in good faith, taking into account the Term Lending Facility to support the Business Finance Guarantee Scheme announced by the Reserve Bank on 2 April 2020; and
 - (ii) the effect of the risk accepted by the Crown under this document on the Bank's regulatory capital requirements.
- (b) Interest on a Supported Loan will only be payable by a Borrower on drawn amounts.
- (c) Establishment fees, commitment fees and line fees in respect of a Supported Loan may be charged at the Bank's discretion in accordance with its Supported Loan Policies, Practices and Processes.

3.7 Documentation

- (a) Each Supported Loan must include a negative undertaking by the Borrower that the proceeds of the Supported Loan will not be used for any Excluded Activity, and a corresponding event of default for breach of that undertaking.
- (b) Each:
 - (i) Supported Loan; and
 - (ii) security or guarantee (if any) required by the Bank in relation to the Supported Loan,

will otherwise be documented on terms and conditions agreed between the Bank and the Borrower in accordance with the Bank's Supported Loan Policies, Practices and Processes.

3.8 Loan approval process

The Bank's decision to enter into a Supported Loan will be made in accordance with the Bank's Supported Loan Policies, Practices and Processes.

3.9 Personal guarantees

For the avoidance of doubt:

- (a) the Bank is not required to take a guarantee from any person in respect of a Supported Loan; and
- (b) a loan that otherwise satisfies the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) above will be a Supported Loan even if the Bank has not taken a guarantee from any person in respect of that loan.

3.10 The Bank may rely on certification by a Borrower

For the purposes of determining whether a loan is a Supported Loan:

- (a) the Bank may rely on any certification or confirmation made by a Borrower:
 - (i) that the Borrower meets the requirements set out in paragraphs (a), (b) and (e) of the definition of Borrower; and
 - (ii) as contemplated by each of clause 3.2(a), clause 3.2(b) and clause 3.3(a)(i); and
- (b) the loan will not cease to be a Supported Loan merely as a result of that Borrower's certification or confirmation being untrue or incorrect,

unless, at the time of certification or confirmation, the Bank had actual knowledge to the contrary of the matters referred to in any of paragraphs (a)(i) or (a)(ii) above.

3.11 No obligation to monitor

The Bank has no obligation to monitor or verify the manner in which a Borrower applies the proceeds of any Supported Loan and a loan will not cease to be a Supported Loan merely as a result of the Borrower applying the proceeds towards a purpose that is not permitted by this document.

4. Limit on Supported Loans

- (a) Without in any way derogating from the limitation of liability under clause 2.3, the Bank agrees that it will not make Supported Loans or loans which it represents to customers are Supported Loans with aggregate Facility Limits at any time exceeding the liability cap amount set out in clause 2.3 multiplied by 1.25 (the **Supported Loans Cap**).
- (b) For the avoidance of doubt, if any Supported Loan is repaid in full, or the Bank's commitment in respect of a Supported Loan is permanently reduced during the Availability Period, the amount of the repayment or reduction in commitment will not count towards the Supported Loans Cap.

5. Application of repayments

5.1 Repayments prior to acceleration or enforcement

For so long as a Supported Loan is not a Defaulted Supported Loan, the Bank will apply scheduled payments made by the relevant Borrower to the facility to which they relate (including the relevant Supported Loan).

5.2 Repayments after enforcement

If a Supported Loan becomes a Defaulted Supported Loan, the Bank will apply any proceeds that it recovers and is entitled to retain under any facility, security or guarantee which relates to the Supported Loan in accordance with the Shortfall Waterfall.

6. Supported Loans

6.1 Compliance with Supported Loan Criteria

The Bank will have systems and controls in place designed to ensure that any loan it represents is a Supported Loan meets the definition of Supported Loan, including the criteria set out in clause 3.

6.2 Administration

The Bank will administer and service each Supported Loan in all material respects in accordance with the Bank's Supported Loan Policies, Practices and Processes.

6.3 Default and workout

- (a) If a Supported Loan becomes a Defaulted Supported Loan, the Bank:
 - (i) must take such action (including enforcement of any security and any guarantees) as it considers commercially reasonable to recover amounts owing under the Supported Loan in accordance with the arrears management and enforcement aspects of its Supported Loan Policies, Practices and Processes; and
 - (ii) may, but is not required to, take action to recover any other indebtedness of the Borrower in accordance with its policies, practices and processes that apply to that indebtedness.
- (b) For the avoidance of doubt, the Bank may agree to a Creditor Process with the Borrower or a guarantor in respect of a Supported Loan and/or other indebtedness, rather than:
 - (i) appointing a receiver or administrator to the Borrower or a guarantor or the assets of the Borrower or a guarantor; or
 - (ii) taking action under a guarantee of the Borrower's Supported Loan and/or other indebtedness; or
 - (iii) taking mortgagee or similar action; or
 - (iv) making an application for the liquidation or bankruptcy of the Borrower or a guarantor.
- (c) Provided that the Bank is complying with its arrears management and enforcement procedures in accordance with this clause 6.3, there will be no limit on the time in which it must complete those procedures.

7. Reporting

7.1 Periodic reporting and certification

- (a) No more than 15 Working Days after the end of each calendar month, the Bank will provide the Crown with:
 - (i) a report setting out portfolio level information as required by the BFGS Reporting Template and the BFGS Data Specifications (the **Portfolio Information**) in respect of the Bank's Supported Loans (the **Report**); and
 - (ii) a certificate from the Bank signed by the Bank's Relevant Officer (the **Certificate**) confirming that, to his or her knowledge having made due enquiry, as at the date of the certificate:
 - (A) the Bank has systems and controls in place designed to ensure that it meets its obligations under this document;
 - (B) the underlying systems and controls that are used to produce the information in each Report are the same as the Bank uses in the ordinary course of its business, subject to any modifications which the Bank considers are required for the purposes of its involvement with the Business Finance Guarantee Scheme;
 - (C) save as described in the Certificate, the systems and controls referred to in paragraph (A) above have worked effectively in all material respects from the date of the previous Certificate (or, in the case of the first Certificate, from the Commencement Date); and
 - (D) the information set out in the Report to which the Certificate relates is complete and accurate in all material respects.
- (b) If the Bank provides a Certificate which includes a description of the systems and controls referred to in paragraph (a)(ii)(A) above not working effectively in all material respects, the Bank must provide, with that Certificate, an explanation of the steps it intends to take to

remedy the issues with its systems and controls and a timeframe for that remedy to be implemented.

- (c) If, at any time following the Commencement Date, the Crown reasonably determines that the Portfolio Information is insufficient to enable the Crown to adequately assess the potential exposure assumed by it under the Business Finance Guarantee Scheme (**Information Deficiency**), the Crown may, by written notice to the Bank (and each other Approved Bank), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the Portfolio Information to remedy the Information Deficiency. If, after 20 Working Days from the date of that written notice, the Crown and the Bank have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Bank, amend the Portfolio Information as is reasonably necessary to remedy the Information Deficiency and is reasonably capable of being reported on by the Bank.

7.2 Agreed upon procedures engagement

- (a) To enable the Crown to prepare its annual financial statements in accordance with generally accepted accounting practice (including the requirement for the Crown's financial statements to be audited by an independent external auditor), the Bank agrees that it will:
- (i) for every financial year except the financial year ending 30 June 2020 engage its independent external auditors to perform an agreed upon procedures engagement in accordance with the New Zealand Institute of Chartered Accountants Engagement Standard APS-1 (revised) *Agreed-Upon Procedures Engagements to Report Factual Findings* (or any equivalent replacement standard) to prepare a factual findings report (the **Agreed Upon Procedures Engagement**);
 - (ii) for every financial year except the financial year ending 30 June 2020 provide the factual findings report prepared pursuant to paragraph (a) above to the Crown and its independent external auditor no later than 25 Working Days after the end of the Crown's financial year; and
 - (iii) in relation to the financial year ending 30 June 2020, provide the Crown's independent auditors with such information relating to the Bank's participation in the Scheme as the Crown's independent auditors may request, if during the course of the audit such information is reasonably required for the Crown's independent auditors to gain adequate assurance over the Crown's annual financial statements.
- (b) The Crown and the Bank (each acting in good faith), together with their respective independent external auditors, will agree by no later than 31 May 2021:
- (i) the details of the agreed upon procedures to be undertaken by the Bank's external auditors as part of the Agreed Upon Procedures Engagement; and
 - (ii) the matters to be covered by the factual findings report.
- (c) If the Crown, the Bank, and their respective auditors cannot reach agreement in accordance with paragraph (b) above by 31 May 2021, the Crown will determine the matters set out in paragraphs (b)(i) and (b)(ii) above, such determination to be that as is reasonably necessary to enable the Crown to comply with the requirements of the Office of the Auditor General.
- (d) The agreed costs of the Bank's independent external auditor in respect of each Agreed Upon Procedures Engagement and factual findings report will be shared equally by the Bank and Crown.

8. Investigation

8.1 Crown rights of investigation

- (a) Subject to clauses 8.2 and 8.3, the Crown is entitled to investigate:
- (i) the Bank's compliance with clause 6.3; and
 - (ii) in relation to each loan that the Bank claims is a Supported Loan:

- (A) whether the loan agreement was entered into during the Availability Period;
 - (B) whether the borrower met the criteria to be a Borrower when the loan agreement was entered into; and
 - (C) whether the loan otherwise met the criteria in clauses 3.2 to 3.7(a) when the loan agreement was entered into.
- (b) The Crown may issue a notice in writing to the Bank requiring it to produce to the Crown or its agent such copies of its books, records and accounts relevant to the Bank's Supported Loan Policies, Practices and Processes or any Supported Loan, including any Supported Loan where a claim is being considered by, or has been paid by, the Crown as are reasonably necessary to facilitate an investigation pursuant to paragraph (a) above.
 - (c) The Bank must comply with a notice issued pursuant to paragraph (b) above and otherwise take all reasonable steps to facilitate the Crown (or its agent)'s investigation.
 - (d) Nothing in paragraph (c) above requires the Bank to disclose to the Crown or its agent any privileged document or personal information pertaining to a Borrower or any other person where such disclosure would breach the *Privacy Act 1993*.

8.2 Procedural matters regarding investigation

- (a) A notice issued under clause 8.1(b) must allow a reasonable time for a Bank to produce copies of the relevant documents. This reasonable time must be at least 15 Working Days.
- (b) The Crown:
 - (i) will appoint an agent to conduct an investigation who is, in the Crown's opinion, by reason of training or experience suitably qualified to conduct such an investigation; and
 - (ii) will not appoint any existing financial services regulator as agent.
- (c) Notwithstanding any other clause in this document, documents supplied pursuant to a notice issued under clause 8.1(b) may not be disclosed by the Crown or its agent to any third party including the Reserve Bank or Financial Markets Authority (except where required by law), and may not be used for any purpose other than as set out in this clause 8.

8.3 Frequency

- (a) The Crown will not conduct an investigation under clause 8.1 during the Availability Period.
- (b) After the Availability Period, the Crown will conduct an investigation under clause 8.1 no more than once annually.

8.4 Cost of investigation

The cost of each investigation (which must be properly documented and out-of-pocket) under clause 8.1 will be borne by the Bank unless the investigation has identified that, in the reasonable opinion of the Crown there have been no material deficiencies in the Bank's application of the Supported Loan criteria set out in in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that applied at the time the Supported Loan was entered into) which have resulted in loans being incorrectly classified as Supported Loans, in which case, the Crown will bear the cost.

8.5 Consequences

- (a) If an investigation under clause 8.1 reveals that:
 - (i) a loan in respect of which the Crown has made payment to the Bank under this document does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that applied at the time the Supported Loan was entered into), the Bank must refund the Crown in accordance with clause 10; and
 - (ii) any other loan which the Bank had classified as a Supported Loan does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that

applied at the time the Supported Loan was entered into), the Bank will not be entitled to any payment from the Crown in respect of that loan under this document.

- (b) It will be an **Event of Review** if an investigation under clause 8.1 reveals that:
 - (i) a material number of loans which the Bank has claimed for or classified as Supported Loans do not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that applied at the time the Supported Loan was entered into); or
 - (ii) the Bank is not complying with its obligations under clause 6.3 in a way that will or is likely to materially increase the amount payable by the Crown to the Bank under this document.
- (c) If an Event of Review subsists, and the Crown requests, the Bank must promptly meet and consult in good faith with the Crown concerning the Event of Review with a view to agreeing the terms, if any, on which the Crown is willing to continue to allow the Bank to participate in the Business Finance Guarantee Scheme. If, after 10 Working Days from the date of that written notice, the Crown and the Bank have not agreed (and amended this document to record) such acceptable amendments or the Crown has otherwise determined that the Bank shall not continue in Business Finance Guarantee Scheme, the Crown may, at any time, terminate this document in accordance with clause 13.2.

9. Claims process

9.1 Timing of claims

- (a) Once in each calendar month, the Bank may provide the Crown with a report setting out claim information as required by the BFGS Claim Report Template and the BFGS Claim Report Data Specifications in respect of any Defaulted Supported Loans which have not previously been the subject of a claim and in respect of which the Bank has:
 - (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and
 - (ii) determined that it does not reasonably expect to make any further recoveries, (each such report being a **Claim Report**).
- (b) A claim in respect of a Defaulted Supported Loan must be received by the Crown no later than three months after the Bank has completed its arrears management and enforcement processes in respect of that Defaulted Supported Loan in accordance with clause 6.3 and has determined that it does not reasonably expect to make any further recoveries.
- (c) The Bank is not required to take any legal action against the Crown or any other person before it provides a Claim Report to the Crown.

9.2 Additional information

Each Claim Report must be accompanied by information about how the Shortfall was calculated for each Defaulted Supported Loan (which may include a provisioning paper or loan loss review paper, where prepared by the Bank).

9.3 Claim Certificate

Each Claim Report must be accompanied by a statement from the Bank (the **Claim Certificate**) signed by the Bank's Relevant Officer certifying that, to his or her knowledge having made due enquiry, as at the date of the certificate:

- (a) all Defaulted Supported Loans listed in the Claim Report:
 - (i) have not been included in a previous Claim Report;
 - (ii) qualified as Supported Loans at the time they were made; and
 - (iii) have been subject to the Bank's arrears management and enforcement processes in accordance with clause 6.3 in all material respects;
- (b) the Bank does not reasonably expect to make any further recoveries in respect of the Defaulted Supported Loans listed in the Claim Report;

- (c) the Bank's arrears management and enforcement processes in relation to the Defaulted Supported Loans listed in the Claim Report were completed no more than three months prior; and
- (d) the information in the Claim Report to which the Claim Certificate relates is complete and accurate in all material respects.

9.4 Payment

The Crown will pay the Bank any amount payable by it under this document no more than 20 Working Days after receiving a duly completed Claim Report.

9.5 Change to BFGS Claim Report Template

If at any time following the Effective Date, the Crown reasonably determines that the information required by the BFGS Claim Report Template and the BFGS Claim Report Data Specifications:

- (a) is insufficient to enable the Crown to adequately assess and pay claims by the Bank under this document; and/or
- (b) is provided in a form that materially increases the time required for the Crown to adequately assess and pay claims by the Bank under this document,

(the **Claim Information Deficiency**), the Crown may, by written notice to the Bank (and each other Approved Bank), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the BFGS Claim Report Template and/or the BFGS Claim Report Data Specifications to remedy the Claim Information Deficiency. If, after 20 Working Days from the date of that written notice, the Crown and the Bank have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Bank, amend the BFGS Claim Report Template and/or BFGS Claim Report Data Specifications as is reasonably necessary to remedy the Claim Information Deficiency and as is reasonably capable of being reported on by the Bank.

9.6 Exclusions

- (a) The Crown will have no obligation to pay the Bank for a claim made under this document for an amount under a Supported Loan:
 - (i) to the extent that under any relevant law:
 - (A) the Supported Loan is (wholly or partly) unenforceable, invalid, or not binding on the Borrower;
 - (B) the Borrower's obligation to pay money owing under the Supported Loan is (wholly or partly) unenforceable against the Borrower; or
 - (C) the Borrower is entitled to a reduction in respect of its payment obligations to the Bank including where the Borrower's payment obligations are held to be a penalty, and as a consequence that amount is not payable by the Borrower;
 - (ii) to the extent that non-payment by the Borrower of that amount under the Supported Loan is due to any breach of contract, negligence in relation to the Bank's application of its Supported Loan Policies, Practices and Processes, or fraud by the Bank;
 - (iii) to the extent that the Bank is in breach of any of its obligations under this document and such breach has caused non-payment by the Borrower of that amount under the Supported Loan; or
 - (iv) where the loan subject to the claim is not a Supported Loan.
- (b) The exclusion in clause 9.6(a)(i) will not apply where the relevant circumstance is caused solely as a result of any or a combination of the following:
 - (i) a Creditor Process; or
 - (ii) the winding up of the Borrower; or

- (iii) the Supported Loan (or any related security) being set aside (in whole or in part) or the Bank being required to pay an amount to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws; or
- (iv) despite the Bank having made due enquiry prior to the Supported Loan being entered into, the fraud of the Borrower.

10. Refund by Bank

- (a) If the Crown has paid a claim under this document and it is subsequently established, including following any investigation, that the payment or a part of the payment of that claim was greater than the amount required to be paid by the Crown (such surplus amount being the **Amount**) under the terms of this document (including as a result of the exclusions set out in clause 9.5 above), the Bank must repay the Amount together with interest on the Amount calculated daily at the three-month "BKBM-FRA" rate as published by The New Zealand Financial Markets Association from time to time (provided that if that rate is a negative number, then it will be deemed to be zero) from the date the Crown made the payment until the Bank repays the Amount to the Crown in full.
- (b) No more than 10 Working Days after the end of each calendar month, the Bank will make payment to the Crown of all Amounts (and interest) that the Bank has become aware of during the preceding calendar month in accordance with paragraph (a) above.

11. Transfer of Supported Loans

- (a) If the Bank transfers a loan that is a Supported Loan to any other person, that loan will cease to be a Supported Loan for the purposes of this document, unless:
 - (i) the Crown has given its prior written consent to the transfer; or
 - (ii) the transfer is to another Approved Bank, in which case the loan will be a Supported Loan for the purposes of that other Approved Bank's BFGS Crown Deed of Indemnity provided that the other Approved Bank complies with the provisions of its BFGS Crown Deed of Indemnity in relation to the loan.
- (b) If the Bank is the transferee of a loan that is a Supported Loan for the purposes of another Approved Bank's BFGS Crown Deed of Indemnity, that loan will be a Supported Loan for the purposes of this document, provided that the Bank complies with clauses 3.4, 3.5, and 3.6 in relation to the loan.

12. Same terms for all Approved Banks

- (a) The Crown has entered into, or will enter into, a BFGS Crown Deed of Indemnity with each Approved Bank, on identical terms as this document except as to:
 - (i) the definitions of Commencement Date and BFGS Reporting Template;
 - (ii) the definition of Watchlist, and the inclusion of the definition "Retail Customer" or "Relationship Customer", as applicable;
 - (iii) the liability cap in clause 2.3; and
 - (iv) the limit on Supported Loans in clause 4(a).
- (b) The Crown will not amend the terms of this document or any other Approved Bank's BFGS Crown Deed of Indemnity in such a way as to make another Approved Bank's BFGS Crown Deed of Indemnity more favourable to that Approved Bank, except:
 - (i) if the Crown terminates this document in accordance with clause 13; or
 - (ii) in response to an Event of Review, in accordance with clause 8.5(c).
- (c) The Crown will exercise its discretions under this document and each BFGS Crown Deed of Indemnity in a reasonable and consistent manner.

13. Termination

13.1 Termination by notice

Each of the Bank and, following the Availability Period, the Crown, may, by notice in writing to the other, terminate this document. Any such notice will take effect from the date 10 Working Days after the date of the notice, or any subsequent date specified in the notice.

13.2 Termination for cause

The Crown may, by notice in writing to the Bank, terminate this document with effect from the date of the notice or any subsequent date specified in the notice if:

- (a) it is entitled to do so pursuant to clause 8.5(c) following an Event of Review; or
- (b) the Bank has not provided a Report or Certificate under clause 7 by its due date and has not remedied that failure within 30 days; or
- (c) an Insolvency Event has occurred in respect of the Bank.

13.3 Effect of termination

- (a) Subject to paragraph (b) below, termination of this document under clause 13.1 or clause 13.2 will not affect the parties' rights and obligations under this document (including clause 2.1) in relation to each Supported Loan that was entered into prior to the date on which the termination of this document takes effect, including if any amount owing under the Supported Loan is repaid (in part or full) and redrawn from time to time.
- (b) The Bank may elect, in its notice of termination provided to the Crown under clause 13.1, to cease to have the benefit of the indemnity under clause 2.1 in relation to all of its outstanding Supported Loans entered into on or before the date of the notice of termination. If the Bank so elects, then, without affecting any obligations under this document which have accrued or are due but yet to be performed, the parties' rights and obligations under this document (including under clause 2.1) will terminate.
- (c) The following provisions will survive termination:
 - (i) clause 18.2 (Official Information Act requests); and
 - (ii) clause 19 (Confidentiality).

14. No counter indemnity or rights of subrogation

- (a) Except as specifically provided in this document, the Crown acknowledges and agrees that the Bank has no liability to repay, reimburse or counter-indemnify the Crown for any payment the Crown may make under this document.
- (b) The Crown will not seek to:
 - (i) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank under a Supported Loan or of any other guarantee or security taken pursuant to, or in connection with, the Supported Loan; or
 - (ii) enforce any right of counter-indemnity against a Borrower arising from any payment by the Crown under this document.
- (c) The Bank has no duty to marshal in favour of the Crown or any other person.

15. Obligations not prejudiced

Except as specifically provided in this document, the obligations of the Crown under this document will not be affected by any act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this document, including:

- (a) any time, waiver or other concession or consent granted to, or composition with, any Borrower or other person; or
- (b) any composition or arrangement with any creditor of any Borrower or other person; or

- (c) any amendment to any Supported Loan or any other document or security including any extension of or any increase in any facility amount (provided that the Supported Loan as amended would have satisfied the criteria in clause 3 where it originally entered into on such terms).

16. Assignment

The Bank may not assign, transfer or otherwise deal with its rights, interests or obligations under this document without the prior written consent of the Crown.

17. Information to be provided to the Crown

17.1 Supported Loan Policies, Practices and Processes

- (a) The Bank acknowledges that it provided a summary of its Supported Loan Policies, Practices and Processes to the Crown as a condition precedent to the Crown entering into this document.
- (b) The Bank may amend its Supported Loan Policies, Practices and Processes at any time as it considered necessary or desirable. The Bank will retain a copy of each version of its Supported Loan Policies, Practices and Processes until 31 December 2027.

17.2 Other information

- (a) The Bank will provide the Crown, no more than 15 Working Days following request by the Crown (acting reasonably), any other relevant information that is available to, or that can reasonably be obtained by, the Bank in relation to a Supported Loan or a Borrower.
- (b) The Bank will, at or prior to the time each Supported Loan is entered into, obtain the consent of the relevant Borrower and any applicable new guarantor to provide information requested by the Crown under paragraph (a) above to the Crown.
- (c) The Crown will use information provided by the Bank under paragraph (a) above solely for the purposes of the management and administration of the Business Finance Guarantee Scheme.
- (d) Without limiting the Bank's obligation under paragraph (b) above, nothing in paragraph (a) above requires the Bank to disclose to the Crown any privileged document or personal information pertaining to any person where such disclosure would breach the *Privacy Act 1993*.

18. Information sharing

18.1 Information sharing with the Reserve Bank

- (a) The Bank authorises the Crown to contact and request information from the Reserve Bank which the Crown requires solely for the purposes of the management and administration of the Business Finance Guarantee Scheme.
- (b) The Bank authorises the Reserve Bank to share with the Crown any information requested by the Crown under paragraph (a) above that the Reserve Bank has collected in connection with its functions under the *Reserve Bank of New Zealand Act 1989*.
- (c) Subject to paragraph (d) below, the Bank authorises the Crown to share information provided to it in connection with this document with the Reserve Bank for the sole purpose of the management and administration of the Business Finance Guarantee Scheme.
- (d) The Crown will not share with the Reserve Bank without the Bank's prior written consent, any specific information pertaining to a Borrower, guarantor or any other customer of the Bank

18.2 Official Information Act requests

- (a) The Bank acknowledges that the Crown is subject to the *Official Information Act 1982* (the **OIA**) and that the Crown is obliged to disclose information under the OIA if so requested and if there are no grounds pursuant to the terms of the OIA to withhold that information.
- (b) The Bank acknowledges that the Crown intends to proactively release this document, subject only to any redactions necessary on the grounds set out in the OIA.

- (c) The Crown acknowledges that, in connection with this document, the Bank will provide to the Crown information that is, if publicly released, likely unreasonably to prejudice the commercial position of the Bank.
- (d) The Crown will advise the Bank if it receives a request under the OIA that relates to information provided by the Bank in connection with this document, and will consider any views that the Bank provides to the Crown before responding to any such request under the OIA, provided that:
 - (i) nothing in this paragraph (d) will require the Crown to delay its response to any such request under the OIA; and
 - (ii) all of the Crown's decisions in relation to requests received under the OIA are final.

19. Confidentiality

19.1 Confidentiality

Subject to clause 19.2, the Bank must keep confidential:

- (a) any terms of this document which are not proactively released by the Crown as contemplated in clause 18.2(b); and
- (b) any information provided to the Bank under this document or as part of the Bank's participation in the Business Finance Guarantee Scheme.

19.2 Permitted disclosure

- (a) Nothing in clause 19.1 will limit:
 - (i) any disclosures required to be made by law or required by any stock exchange or regulatory authority; or
 - (ii) disclosures to professional advisers and affiliates or to any liquidator, statutory manager, receiver or administrator appointed to, or in respect of, the Bank or any of its assets or any of their respective advisers; or
 - (iii) disclosures to any credit rating agency that has assigned a credit rating to the Bank or any of its securities; or
 - (iv) disclosure by the Bank that it is a participant bank in the Business Finance Guarantee Scheme; or
 - (v) disclosures in defence of legal proceedings brought against any person; or
 - (vi) disclosures in the context of any legal proceedings in respect of this document; or
 - (vii) disclosure of information that is publicly available; or
 - (viii) disclosure of information to any permitted transferee of any Supported Loan; or
 - (ix) any disclosure agreed to in writing by the Crown.
- (b) Prior to any disclosure under paragraph (a)(i), (a)(v) and (a)(vi) above, to the extent permitted by law, the Bank must first notify the Crown in writing of the intended disclosure and exercise its reasonable efforts to obtain assurances, including confidentiality orders in any legal proceeding, that the terms disclosed will be treated confidentially.

20. Notices and communications

20.1 Form of Notice

Each notice, demand, consent, approval or other communication (a **Notice**) under this document:

- (a) must be in writing, in English and signed by an authorised representative of the party; and
- (b) must be hand delivered or sent by email or post to the recipient's address for notices specified in the "Details" section of this document (as varied by any Notice given by the recipient to the party).

20.2 Effective on receipt

A Notice given in accordance with this clause 20 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or
 - (b) if sent by post, on the fifth Working Day after the date of posting (or on the seventh Working Day after the date of posting if posted to or from a place outside New Zealand); or
 - (c) if sent by email, when transmitted to the correct email address of the recipient,
- but if the delivery, receipt or transmission is not on a Working Day or is after 5:00 p.m. (addressee's time) on a Working Day, the Notice is taken to be received at 9:00 a.m. (addressee's time) on the next Working Day.

21. Amendment

21.1 Crown amendments

The Crown may, by no less than 10 Working Days' written notice to all Approved Banks (unless the amendment related to item (d) below, in which case the written notice will be to the Bank alone) (a **Scheme Notice**), amend:

- (a) the date on which the Availability Period ends;
- (b) the definition of Borrower;
- (c) the definition of Excluded Activity;
- (d) the liability cap amount set out in clause 2.3; and
- (e) the Supported Loan criteria set out in clauses 3.2 to 3.8.

Any amendment made by the Crown in accordance with this clause 21.1 will not apply in respect of any Supported Loan entered into prior to the date on which such amendment takes effect.

21.2 Amendments in response to COVID-19 changes to legislation

If requested by either party, the other party will consider amendments to this document which may be necessary or desirable in light of changes to relevant legislation as a response to COVID-19.

21.3 Other amendments

No amendment to this document other than an amendment pursuant to a Scheme Notice is effective unless it is in writing and signed by or on behalf of each party to it.

22. Representations and warranties

The Bank represents and warrants to the Crown that, to the best of its knowledge and belief having made due enquiry:

- (a) any factual written information that the Bank provided to the Crown as part of its application to participate in the Business Finance Guarantee Scheme was true and accurate in all material respects and not misleading in any material respect at the time at which it was provided; and
- (b) any factual written information the Bank provides to the Crown under this document is true and accurate in all material respects and not misleading in any material respect at the time at which it is provided (excluding any information provided to the Bank by a Borrower).

23. Incapacity of key people

It will not be a breach of this document if the Bank does not comply with its obligations under clause 7.1 by the relevant due date where:

- (a) one or more key people are unable to perform their duties due to illness or other unexpected circumstances; and

- (b) the Bank notifies the Crown prior to the relevant due date, giving full particulars of the reasons why it is unable to comply with its obligations under clause 7.1 and providing an alternative due date for complying with its obligations under clause 7.1,

provided that the Bank must, regardless of paragraph (a) or (b) above, comply with its obligations under clause 7.1 within five Working Days of the relevant due date.

24. General

24.1 Third parties

This document is not intended to create any benefit for, or give rise to an obligation enforceable at the suit of, any person (other than a liquidator, statutory manager, receiver or administrator appointed to, or in respect of any of the assets of, the Bank) who is not party to this document.

24.2 Entire agreement

This document 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. The Bank acknowledges that in entering into this document, the Crown relied on information the Bank provided to it as part of its application to participate in the Business Finance Guarantee Scheme.

24.3 Currency

Any reference in this document to an amount will, to the extent that the amount is not already denominated in New Zealand dollars, mean the amount determined by the Crown to be the New Zealand dollar equivalent of that amount as at the time relevant to its calculation or determination.

24.4 Partial invalidity

If at any time a provision of this document is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision will be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of this document in any jurisdiction.

24.5 Counterparts

- (a) This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.
- (b) A party who has executed a counterpart of this document, may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.
- (c) Where a party executes this document, by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email transmission.

24.6 Electronic signatures permitted

The parties agree that this document may be executed by way of electronic signature.

24.7 Delivery

For the purposes of section 9 of the *Property Law Act 2007*, and without limiting any other mode of delivery, this document will be delivered by:

- (a) the Bank immediately on the earlier of:
 - (i) physical delivery of an original of this document, executed by the Bank, into the custody of the Crown or the Crown's solicitors; or
 - (ii) transmission by the Bank or its solicitors (or any other person authorised in writing by the Bank) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by the Bank, to the Crown or the Crown's solicitors; and
- (b) the Crown, immediately on the earlier of:

- (i) physical delivery of an original of this document, executed by the Crown, into the custody of the Bank or the Bank's solicitors; or
- (ii) transmission by the Crown or its solicitors (or any other person authorised in writing by the Crown) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by the Crown, to the Bank or the Bank's solicitors.

24.8 Governing law and jurisdiction

This document will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any legal action or proceedings arising out of or in connection with this document.