
Crown Deed of Guarantee (Registered Bank)

Her Majesty the Queen in right of New Zealand

and

The Hongkong and Shanghai Banking Corporation Limited
(New Zealand Branch)

Date: 16 December 2009

PARTIES

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

The Hongkong and Shanghai Banking Corporation Limited (New Zealand Branch) (*Principal Debtor*)

BACKGROUND

- A Given turmoil in world financial markets and the need to maintain public confidence in New Zealand's financial system and in order to maintain the confidence of general public depositors in New Zealand financial institutions such as the Principal Debtor it appeared to the Minister of Finance that it was necessary and expedient in the public interest that the Crown guarantees certain obligations of the Principal Debtor, the Minister of Finance and the Principal Debtor entered into a deed of guarantee dated 7 November 2008 (the *Initial Deed*).
- B Under clause 9.3(b) of the Initial Deed, the Crown may withdraw the Initial Crown Guarantee by written notice to the Principal Debtor if the Crown considers it appropriate to do so (the *Notice of Withdrawal*), so long as before the Notice of Withdrawal is given to the Principal Debtor, the Crown has made an offer to the Principal Debtor to enter into a new deed of guarantee with the Principal Debtor, with effect from the Notice of Withdrawal taking effect, on terms which the Crown, taking into account clause 9.3(b) of the Initial Deed, reasonably considers to be not materially adverse to "Creditors" generally (as that term is defined in the Initial Deed) as compared to the terms of the Initial Deed.
- C The Crown has made an offer to the Principal Debtor, under clause 9.3(b) of the Initial Deed, to enter into a new deed of guarantee with the Principal Debtor on the terms set out in this Deed, which terms the Crown reasonably considers to be not materially adverse to "Creditors" generally as compared to the terms of the Initial Deed.
- D The Principal Debtor has accepted the Crown's offer to enter into a new deed of guarantee on the terms set out in this Deed.
- E The Deed is conditional upon a Notice of Withdrawal being given to the Principal Debtor by the Crown and comes into effect from the date specified by the Crown in (or from the date of, if no date is specified in) the Notice of Withdrawal.

THE PARTIES AGREE as follows:

1 **INTERPRETATION**

1.1 **Definitions**

In this Deed, unless the context requires otherwise:

Announcement Date means 12 October 2008.

Creditor has the meaning given in clause 1.3.

Crown Guarantee means the Crown guarantee in clause 2.2 of this Deed.

Debt Security:

- (a) has the meaning given to that term in section 2 of the Securities Act 1978, but as if the phrase "deposited with, lent to or otherwise owing by any person" in that definition read "deposited with or lent to any person"; and
- (b) in relation to the Principal Debtor, means a debt security (as defined in paragraph (a) of this definition) issued or to be issued by the Principal Debtor.

Default Event means:

- (a) failure of the Principal Debtor to make payment to a Creditor in the amount and at the date lawfully due and payable in accordance with the terms of any Indebtedness, other than:
 - (i) any such failure due solely to a bona fide dispute, or
 - (ii) any such failure in respect of Indebtedness in respect of which the Crown, in accordance with clause 2.2(b), is not required to make payment under clause 2.2;
- (b) the Principal Debtor institutes or has instituted against it any form of proceeding seeking:
 - (i) the appointment of a liquidator, provisional liquidator, voluntary administrator, receiver, receiver and manager, or similar person; or
 - (ii) a judgement of insolvency or bankruptcy;

or any similar relief in respect of the Principal Debtor, provided that, if any such proceeding is, within 14 days after it is instituted, withdrawn or challenged by proceedings which the Principal Debtor is advised by its legal advisors have a reasonable prospect of success, it shall be deemed not to have occurred for the purposes of this Deed (unless and until such challenge is unsuccessful);

- (c) the Principal Debtor becomes subject to the appointment of a voluntary administrator, liquidator, provisional liquidator, receiver, receiver and manager, or similar person;
- (d) the Principal Debtor has a secured party take possession of all or substantially all its assets, or has a distress, execution or attachment or other legal process instigated or enforced against all or substantially all of its assets;
- (e) the Principal Debtor makes a general assignment, arrangement or compromise with, or for the benefit of, all or a material number of its creditors (including a moratorium); or
- (f) a statutory manager is appointed to the Principal Debtor under the Reserve Bank Act or the Corporations (Investigation and Management) Act 1989, or any equivalent action is taken in any other jurisdiction in which the Principal Debtor is incorporated or carries on a material part of its business.

Excluded Debt Security means:

- (a) a Debt Security which is issued during the Guarantee Period pursuant to the terms of a registered prospectus or an investment statement under the Securities Act 1978 which states that the Debt Security is an "Excluded Security" for the purposes of this Deed and that accordingly none of the obligations of the Principal Debtor in respect of that Excluded Security have the benefit of the Crown Guarantee; and
- (b) any other Debt Security which the Crown, in its sole discretion (and on such conditions, if any, as it may specify) agrees with the Principal Debtor, prior to that Debt Security being offered to any Person by or on behalf of the Principal Debtor, will be an Excluded Security for the purposes of this Deed and that accordingly none of the obligations of the Principal Debtor in respect of that Excluded Security have the benefit of the Crown Guarantee.

Execution Date means the date of this Deed.

Financial Institution means a “financial institution” as that term is defined in section 2 of the Reserve Bank Act and, without prejudice to the generality of the foregoing, includes:

- (a) a “collective investment scheme” as that term is defined in section 157B of the Reserve Bank Act (as if that term also included any “superannuation fund” or “superannuation scheme” as those terms are defined in section YA1 of the Income Tax Act 2007) or an issuer, trustee or manager of any such scheme acting in that capacity;
- (b) an “insurer” as that term is defined in section 2 of the Insurance Companies (Ratings and Inspections) Act 1994 or any other Person carrying on the business of providing insurance cover (of whatever nature);
- (c) a Person carrying on business as a sharebroker, an investment adviser or a fund manager (to the extent that Person is acting in that capacity); or
- (d) a Person who is controlled by a financial institution as defined above.

GAAP means “generally accepted accounting practice” within the meaning of that term under the Financial Reporting Act 1993.

Guarantee Period means the period commencing at 12:01am on the Announcement Date and expiring at 12:01am on 12 October 2010.

Guaranteed Amount means, in respect of any date, the maximum amount for which the Crown would be liable on that date under the Crown Guarantee, in accordance with the terms of this Deed, if all Indebtedness existing on that date was (and had been, for 15 days) due and payable and was not paid by the Principal Debtor.

Indebtedness means any obligation of the Principal Debtor to pay money (whether present or future) to a Creditor under Debt Securities, but excluding:

- (a) any obligation which in terms of priority of payment and otherwise on a winding up, dissolution or liquidation of the Principal Debtor would rank behind the unsecured unsubordinated obligations of the Principal Debtor;
- (b) any obligation under a Debt Security in respect of which the Crown has provided a guarantee (by issue of a “guarantee eligibility certificate”) under the Crown’s Wholesale Funding Guarantee Facility (as defined in the Act);
- (c) any obligation which constitutes “Indebtedness” for the purposes of the Initial Deed and is guaranteed by the Initial Crown Guarantee;

- (d) any obligation under an Excluded Debt Security;
- (e) any obligation excluded by clause 2.4, clause 9.5(b) or clause 9.6; and
- (f) where the Principal Debtor is a Person incorporated or established overseas, any obligation under a Debt Security which is not issued by the Principal Debtor from or in respect of its New Zealand Branch.

Initial Crown Guarantee means the "Crown Guarantee" as defined in the Initial Deed.

Initial Deed has the meaning given in Background A above.

Initial Guaranteed Amount means the "Guaranteed Amount" under the Initial Deed.

New Zealand Branch means, where the Principal Debtor is a Person incorporated or established overseas, the New Zealand business of that Person, including the property, rights, assets and liabilities relating to the New Zealand business of that Person as referred to in section 117(3) of the Reserve Bank Act.

New Zealand Citizen has the meaning given under the Citizenship Act 1977.

New Zealand Resident means a Person defined as resident in New Zealand pursuant to the Income Tax Act 2007.

Nomination means a deed or agreement between the Crown and a Person (or a written notice from the Crown to a Person or to the public) under which the Crown designates that Person (whether specifically or by reference to a class of Persons) as a "Nominated Beneficiary" for the purposes of this Deed (whether that deed, agreement or notice identifies this Deed specifically or by reference to a class).

Nominated Beneficiary means, at any time, a Person who has been designated as a "Nominated Beneficiary" under, and at that time remains a "Nominated Beneficiary" in accordance with, a Nomination.

Notice of Claim means a notice, deed or agreement duly executed by or on behalf of a Creditor in a form to be determined by the Crown under which the Creditor requires the Crown to make payment to that Creditor under this Deed.

Notice of Withdrawal has the meaning given in Background B above.

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

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

Registered Bank means a Person registered as a bank under the Reserve Bank Act.

Related Party of the Principal Debtor means a Person who is, or at any date after the Announcement Date was, a Person who would be a "related party" as that term is defined in section 157B of the Reserve Bank Act 1989, as if:

- (a) the Principal Debtor was a "deposit taker"; and
- (b) "related party" included any Person who controls the Principal Debtor and any Person who is controlled by any such Person or by the Principal Debtor.

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

Specified Creditors means, in relation to a Principal Debtor which is a Person incorporated or established overseas, creditors of the New Zealand Branch of that Principal Debtor who are neither New Zealand Citizens nor New Zealand Residents who would be Creditors under this Deed if they were New Zealand Residents or New Zealand Citizens.

1.2 **Construction**

In this Deed, unless the context requires otherwise:

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

- (f) *Control*: a Person ("A") is "controlled" by another Person ("B") if:
- (i) A is a subsidiary of B under the law of incorporation of A or for the purposes of GAAP; or
 - (ii) B is able to exercise real or effective control, directly or indirectly, over A or over a material part of A's business or affairs (whether pursuant to a contract, an arrangement or an understanding, as a result of the ownership or control of securities or other interests in or issued by A, or otherwise) except where A is a natural person and B's control arises solely under an enduring power of attorney granted by A in favour of B.

1.3 **Creditor**

- (a) Subject to clauses 1.3(b), (c) and (d), in this Deed a "Creditor" is a Person to whom the Principal Debtor has an obligation to pay money (whether present or future) under a Debt Security. For the avoidance of doubt, the Principal Debtor shall be regarded as having such an obligation to a Person if, under the terms of a Debt Security, that obligation is owed:
- (i) directly to that Person; or
 - (ii) to the trustee under the trust deed under which that Debt Security is constituted, if that Person holds that Debt Security.
- (b) Subject to clauses 1.3(c) and (d), a Person to whom the Principal Debtor has an obligation to pay money (whether present or future) under a Debt Security is not a Creditor:
- (i) if that Person is:
 - (A) a Related Party of the Principal Debtor;
 - (B) controlled by a Related Party of the Principal Debtor;
 - (C) a Financial Institution;
 - (D) where the Principal Debtor is a Person incorporated or established overseas, neither a New Zealand Citizen nor a New Zealand Resident; or
 - (E) a Person acting (directly or indirectly) as a nominee of or trustee for a Person referred to in (i)(A), (B), (C) or (D) above;
 - (ii) if:

- (A) that Person consists of two or more Persons who jointly hold that Debt Security; and
 - (B) one or more of those Persons would not be a Creditor if the Principal Debtor had a direct obligation to pay money (whether present or future) to that Person individually under that Debt Security.
- (c) A Person to whom the Principal Debtor has an obligation to pay money (whether present or future) under a Debt Security is not excluded by clause 1.3(b) from being a Creditor to the extent that that Person is:
- (i) a Nominated Beneficiary that is deemed to be a Creditor under clause 2.7;
 - (ii) a bare trustee for another Person if that other Person would be a "Creditor" if the Principal Debtor had a direct obligation to pay money (whether present or future) to that Person under a Debt Security;
 - (iii) acting as trustee/s or nominee/s for any one or more Persons (each a "Beneficiary") if that Person (i.e. the Person acting as trustee/s or nominee/s) is not excluded by clause 1.3(b)(i)(A), (B) or (C) from being a Creditor and the Crown (in its sole and unfettered discretion), having regard to (among other things):
 - (A) the identity and nature of the Beneficiaries (where known);
 - (B) how many of the Beneficiaries (where known) would be Creditors if the Principal Debtor had a direct obligation to pay money (whether present or future) to each of them under that Debt Security,

gives notice in writing to that Person (i.e. that Person acting as trustee/s or nominee/s) (which may be by way of public notice and may or may not be subject to such conditions (if any) as the Crown may specify) that that Person (acting in that capacity of trustee/s or nominee/s) is a Creditor;
 - (iv) a Specified Creditor deemed to be a Creditor under clause 2.5.
- (d) A Person ("Joint Holder") consisting of two or more Persons who jointly hold a Debt Security under which the Principal Debtor has an obligation to pay money (whether present or future) to that Joint Holder is not excluded by clause 1.3(b) from being a Creditor if:
- (i) none of those Persons are excluded by clause 1.3(b)(i)(A), (B), (C) or (E) from being a Creditor;

- (ii) at least one of those Persons would be a Creditor if the Principal Debtor had a direct obligation to pay money (whether present or future) to that Person individually (rather than jointly) under that Debt Security;
- (iii) the Joint Holder would not be excluded by clause 1.3(b)(i)(A), (B), (C) or (E) from being a Creditor; and
- (iv) the Joint Holder does not hold that Debt Security in its capacity as trustee or nominee for one or more other Persons.

2 **GUARANTEE**

2.1 **Conditions**

- (a) This Deed is conditional upon a Notice of Withdrawal being given to the Principal Debtor by the Crown.
- (b) It is a condition precedent to the Crown's obligations under this Deed that, except to any extent otherwise agreed by the Crown in writing (in its sole and unfettered discretion), at the Execution Date no Default Event with respect to the Principal Debtor has occurred and either is continuing unremedied or has not been validly and effectually waived.

2.2 **Crown Guarantee**

On and subject to the terms of this Deed the Crown:

- (a) absolutely and irrevocably guarantees to each Creditor from time to time the due and punctual payment by the Principal Debtor of:
 - (i) all Indebtedness that becomes due and payable during the Guarantee Period; and
 - (ii) if a Default Event of any of the types specified in paragraphs (b) to (f) (inclusive) of the definition of "Default Event" in clause 1.1 occurs during the Guarantee Period, all Indebtedness arising under Debt Securities that exist on the date of that Default Event (whether or not that Indebtedness is due and payable during the Guarantee Period); and
- (b) undertakes to each Creditor from time to time that if the Principal Debtor does not pay to any Creditor any Indebtedness guaranteed under clause 2.2(a) when due and payable, the Crown will pay the amount of that Indebtedness to the Creditor no later than the day which is 14 days after the due date of that Indebtedness (or such earlier day as the Crown may specify) if that Indebtedness is not otherwise paid on or before that day.

To avoid doubt, the Crown shall have no liability at any point in time under the Crown Guarantee to a Person who is not, at that time, a Creditor (whether or not that Person was previously a Creditor).

2.3 **Notice and Quantification**

The Crown shall not be obliged to make a payment to a Creditor under clause 2.2 unless and until the Crown:

- (a) receives a Notice of Claim from the Creditor in respect of the relevant Indebtedness; and
- (b) has satisfied itself as to the amount of that Indebtedness and as to such other matters as the Crown reasonably considers appropriate in order to ascertain the extent of its liability under the Crown Guarantee in respect of that Indebtedness.

Despite clause 2.3(a), the Crown may (in its sole and unfettered discretion) waive in writing (generally or in any specific case) the requirement for it to receive a Notice of Claim.

2.4 **Indebtedness Incurred or Acquired after Default Event not Covered**

An obligation of the Principal Debtor to pay money (whether present or future) to a Creditor under a Debt Security shall not constitute "Indebtedness" (and accordingly shall not be covered by the Crown Guarantee) to the extent that that Debt Security:

- (a) is issued after a Default Event; or
- (b) is acquired (whether by contract, statute, operation of law or otherwise) by that Creditor after the occurrence of a Default Event except:
 - (i) to the extent otherwise agreed by the Crown in writing (in its sole and unfettered discretion); or
 - (ii) where:
 - (A) the Creditor is a trustee, executor or administrator of a deceased person's will or estate and acquired that Debt Security in that capacity from the deceased person; and
 - (B) the obligation would have constituted "Indebtedness" if that person had not died and had continued to hold that Debt Security.

For the avoidance of doubt clause 2.4(b)(ii) is to be read subject to clauses 1.3(b) and 1.3(c).

2.5 **Indebtedness to Specified Creditors capped**

The Crown shall have no liability to any Specified Creditors except where the Principal Debtor is a Person incorporated or established overseas, in which case Specified Creditors shall be deemed to be Creditors except that the aggregate amount for which the Crown is liable under the Crown Guarantee and the Initial Crown Guarantee in respect of Indebtedness to Specified Creditors shall be limited to an amount equal to the Principal Debtor's aggregate Indebtedness to Specified Creditors as at the Announcement Date, plus an amount equal to that aggregate multiplied by "X", where "X" means:

- (a) in respect of any time prior to the first anniversary of the Announcement Date, 0.1;
- (b) in respect of any time after the first anniversary of the Announcement Date, 0.2; and
- (c) in respect of any time on or after the second anniversary of the Announcement Date, 0.3,

less the aggregate of all amounts paid by the Crown to Specified Creditors under the Crown Guarantee and the Initial Crown Guarantee.

2.6 **Amount payable to a Specified Creditor**

The Crown will not be required to make any payment to a Specified Creditor in respect of Indebtedness until, in addition to the requirements of clause 2.3, it has received notice in writing from the Principal Debtor as to whether the amount that the Crown should pay to the Specified Creditor is:

- (a) the amount of that Indebtedness; or
- (b) such lesser amount as the Principal Debtor considers appropriate, having regard to the provisions of this Deed (and, in particular, clause 2.5);

and the Crown's liability to that Specified Creditor in respect of that Indebtedness shall be limited to the amount specified in that notice (or any lesser amount determined in accordance with clause 2.8).

2.7 **Nominated Beneficiaries**

Nominated Beneficiaries shall be deemed to be Creditors for the purposes of this Deed, provided that the Crown's liability to a Nominated Beneficiary shall be limited to the amount (if any) specified in or determined in accordance with the relevant Nomination.

2.8 **Liability cap**

- (a) The Maximum Aggregate Liability of the Crown to each Creditor is:
- (i) in respect of a Nominated Beneficiary, such amount as may be specified in or determined in accordance with the relevant Nomination; and
 - (ii) in all other cases, one million New Zealand dollars (\$1,000,000).
- (b) For the purposes of clause 2.8(a), "Maximum Aggregate Liability" means the maximum aggregate liability of the Crown to a Creditor under the Initial Guarantee and the Crown Guarantee and any Replacement Guarantee/s, for which purpose "Replacement Guarantee" means any guarantee provided by the Crown as a result of the acceptance by the Principal Debtor of an offer made by the Crown under clause 9.4 (in connection with the withdrawal of the Crown Guarantee pursuant to that clause), any fourth guarantee provided by the Crown in connection with the withdrawal of that third guarantee under any similar provision, any fifth guarantee provided by the Crown in connection with the withdrawal of that fourth guarantee under any similar provision, and so on.

2.9 **Interest cap**

Notwithstanding any other provision of this Deed, the Crown may (in its sole and unfettered discretion) decline to accept liability for any amount of Interest on or in respect of any Indebtedness to the extent that that Interest accrues after the date by which the Crown reasonably considers adequate time has elapsed following the date on which that Indebtedness became due and payable in order for the relevant Creditor to submit a Notice of Claim in respect of, and for the Crown to thereafter satisfy itself as to the extent (if any) of its liability under the Crown Guarantee in respect of, the relevant Indebtedness (taking into account the date on which the Crown sent a form of Notice of Claim to the relevant Creditor or waived the requirement for it to receive a Notice of Claim), and to the extent that the Crown does so decline to accept liability for any such amount of interest it shall not be liable under the Crown Guarantee for that amount of interest. For the purposes of this clause 2.9, "Interest" means any amount of interest and any amount/s in the nature of interest, or having a similar purpose or effect to interest, or which the Crown reasonably considers to be economically equivalent to interest (including any fee or other amount incurred on a regular or recurring basis).

2.10 **Moratorium**

- (a) Notwithstanding any other provision of this Deed (but, for the avoidance of doubt, without limiting clause 2.8), if:
- (i) the terms of any Debt Security are varied or supplemented (whether by agreement between the Principal Debtor and a Creditor, by agreement between the Principal Debtor and the trustee for that Debt Security, by Court order, or otherwise); or

- (ii) any other arrangement is entered into by the Principal Debtor which in substance is equivalent to a variation or supplement to the terms of a Debt Security issued by the Principal Debtor,

in each case under the terms of, or in contemplation of entry by the Principal Debtor into, a compromise or arrangement with any creditors of the Principal Debtor (including (without limitation) any moratorium or debt rescheduling) (any such variation, supplement or arrangement being a "Variation"), the Crown may (in its sole and unfettered discretion) elect to limit its liability under the Crown Guarantee to any Creditor in respect of any Indebtedness (to avoid doubt, including interest) arising under that Debt Security on any date to the amount which the Crown reasonably determines (a *Determination*) is equivalent in value to the amount for which the Crown would have been liable under the Crown Guarantee to that Creditor in respect of that Indebtedness on that date had the Variation not been made (and, upon such an election being made, the Crown's liability under the Crown Guarantee to that Creditor in respect of that Indebtedness (to avoid doubt, including interest) shall be so limited).

- (b) For the purposes of any Determination, the Crown shall be entitled to assume that:
 - (i) default in payment by the Principal Debtor (had the Variation not been made) would have occurred on the earlier of the actual date of a default in payment following the Variation and the originally scheduled date for repayment of the Debt Security;
 - (ii) a Notice of Claim requiring payment in full would have been submitted by the relevant Creditor no later than 180 days following that default; and
 - (iii) the "value" of the amount for which the Crown would have been liable under the Crown Guarantee to that Creditor in respect of that Indebtedness on that date had the Variation not been made is equal to that amount, except where:
 - (y) the date on which the Principal Debtor's payment default occurs is materially later than the originally scheduled date for repayment of the Debt Security, and
 - (z) the Crown (which must act reasonably) considers that Creditors generally would have been unlikely to be able to prevent the Variation being made (for example, because no resolution of creditors to approve the Variation was required, or such a resolution was obtained but the votes able to be cast on that resolution by Creditors were unlikely to have been sufficient to prevent the resolution being passed),

in which case the "value" of the amount for which the Crown would have been liable under the Crown Guarantee to that Creditor in respect of that Indebtedness on that date had the Variation not been made shall be that amount plus such additional amount as the Crown reasonably considers

appropriate to reflect (and compensate the Creditor for) the later date of payment.

2.11 Excluded Securities

The Principal Debtor shall ensure that:

- (a) the prospectus (if any) and investment statement (if any), or, if applicable, other offering document, pursuant to which an Excluded Debt Security is offered, and each application form for subscription for any Excluded Debt Security, contains a prominent warning statement in bold font at least as large as the font predominantly used elsewhere in that document to the effect that none of the Principal Debtor's obligations under or in respect of that Excluded Debt Security will have the benefit of the Crown Guarantee;
- (b) each advertisement (as that term is defined in the Securities Act 1978) relating to that Excluded Debt Security contains a prominent statement to the same effect; and
- (c) in respect of any Debt Security which the Crown has agreed shall be an Excluded Debt Security (for the purposes of paragraph (b) of the definition of that term in clause 1.1), the Principal Debtor complies with any conditions specified by the Crown in or for the purposes of that consent.

3 FEE

- 3.1 If on the first 12 month anniversary of the Announcement Date the Guaranteed Amount exceeds five billion (5,000,000,000) New Zealand Dollars, the Principal Debtor shall pay the Crown a non-refundable fee equivalent to 0.1% (ten basis points) of the amount by which the Guaranteed Amount exceeds five billion (5,000,000,000) New Zealand Dollars.
- 3.2 If, on the last day of any calendar month during the Guarantee Period (each a Relevant Month), the Guaranteed Amount does not exceed five billion (5,000,000,000) New Zealand Dollars, the Principal Debtor will pay to the Crown a non-refundable fee calculated as follows:

$$F = \text{GA multiplied by Percentage divided by 12}$$

where:

"F" means the fee payable by the Principal Debtor in respect of that Relevant Month;

"GA" means the amount (if any) by which:

(i) the Guaranteed Amount on the last day of that Relevant Month

exceeds

(ii) the Initial Guaranteed Amount on the Announcement Date multiplied by "X", where "X" means:

(A) in respect of any time prior to the first anniversary of the Announcement Date, 1.1; and

(B) in respect of any time after the first anniversary of the Announcement Date, 1.2.

"Percentage" means the relevant percentage figure specified in the Ratings Table below by reference to the organisation credit rating of the Principal Debtor on the last date of that Relevant Month from Standard & Poors Ratings Services, for which purpose the ratings in that table shall be deemed to refer also to the equivalent ratings from Moody's Investors Service Inc, Fitch Inc and any other rating agency approved by the Crown in writing - provided that, if the Principal Debtor has two or more such credit ratings, the Principal Debtor's credit rating for the purposes of this definition shall be deemed to be the lowest of them.

Ratings Table

<i>Rating on last day of Relevant Month</i>	<i>Percentage</i>
AA minus or higher	0.1%
A minus or higher (but lower than AA minus)	0.2%
BBB minus or higher (but lower than A minus)	0.5%
BB or higher (but lower than BBB minus)	1.0%

3.3 The following provisions shall apply in respect of all payments by the Principal Debtor required under clauses 3.1 and 3.2:

- (a) The Principal Debtor will prepare an estimate of the amount payable by it under the relevant clause and provide that estimate (together with details of its calculation), and make payment of the estimated amount, to the Crown within 14 days after:
 - (i) the first 12 month anniversary of the Announcement Date (in the case of clause 3.1); and
 - (ii) the end of the Relevant Month (in the case of clause 3.2).

Each such estimate must constitute the best estimate the Principal Debtor is reasonably able to make of the relevant amount in the time available.

- (b) In respect of each such payment, the Principal Debtor must provide to the Crown a final calculation of the amount which should have been paid by it under clause 3.1 or 3.2 (as the case may be), together with sufficient details of that calculation (and the information on which it relies) to enable the Crown to assess its accuracy. Such final calculations must be provided:
 - (i) within five months after the last date on which payment of the estimated amount under clause 3.3(a)(i) was required to be made; and
 - (ii) no later than the end of each calendar quarter, in respect of each payment of an estimated amount under clause 3.3(a)(ii) required to have been paid during the immediately preceding calendar quarter.
- (c) The Crown shall review each final calculation and, after considering any additional information provided to it by the Principal Debtor at its request, will notify the Principal Debtor either that:
 - (i) it agrees with the amount calculated by the Principal Debtor (and that amount shall then be the "Final Amount"); or
 - (ii) it disagrees with the amount calculated by the Principal Debtor, in which case the Crown shall also notify the Principal Debtor of the amount which (acting reasonably) it considers the Principal Debtor should have calculated (and that amount shall then be the "Final Amount").
- (d) Within 7 days of notice from the Crown under clause 3.3(c):

- (i) if the Final Amount is less than the relevant estimated amount paid to the Crown, the Crown will refund the difference to the Principal Debtor; and
- (ii) if the Final Amount is greater than the relevant estimated amount paid to the Crown, the Principal Debtor will pay the difference to the Crown.

- 3.4 As soon as practicable after becoming aware that a Person has become a Nominated Beneficiary, the Principal Debtor shall pay to the Crown such additional amount/s (if any) as would have been payable by it under this clause 3 had that Person been a Nominated Beneficiary on the terms of the relevant Nomination (and this Deed been in effect) on the Announcement Date.
- 3.5 To avoid doubt, the agreement of the Crown to (and any notice from the Crown concerning) any amount or amounts payable under this clause 3 (including any Final Amount) shall be solely for the purposes of this clause 3, and shall not constitute evidence of, or the agreement of the Crown as to the extent of, its liability under this Deed (or in any other way limit or prejudice the rights of the Crown in relation to such liability).
- 3.6 Provided the Principal Debtor pays all amounts owing to the Crown under the foregoing provisions of this clause 3 in accordance with those provisions, the Principal Debtor shall not be required to pay any additional amounts under clause 3 of the Initial Deed in respect of any period commencing after the Execution Date.
- 3.7 The part month ending on 12 October 2010 shall be deemed to be a month (and accordingly a Relevant Month) for the purposes of this clause 3, but the fee payable by the Principal Debtor in respect of that part month shall be the amount calculated in accordance with clause 3.1 multiplied by 0.4.

4 **REPORTING**

4.1 **Reporting**

The Principal Debtor shall prepare and provide to the Crown, as soon as practicable after requested, any reports concerning the business, management, operations, or financial position or affairs of the Principal Debtor and/or its subsidiaries, and shall ensure that all such reports are accurate, complete and not misleading.

4.2 **Principal Debtor to Supply Information to the Crown**

The Crown may at any time require from the Principal Debtor any information in the possession or under the control of the Principal Debtor or any of its wholly-owned subsidiaries relating to the financial position or affairs, or the business,

management, or operation, of the Principal Debtor and/or any of its wholly-owned subsidiaries (including, without limitation, previous or proposed transactions involving the Principal Debtor and/or any of its wholly-owned subsidiaries).

4.3 **Third Party Information**

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

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

and hereby authorises (and shall take any other step requested by the Crown to authorise) all such requested disclosure, and will use its best endeavours to ensure that any such person provide the requested information as soon as practicable.

4.4 **Sharing of Information**

The Principal Debtor authorises the Crown to share information provided in accordance with clauses 4.1, 4.2 and 4.3 with the Reserve Bank of New Zealand and the Securities Commission.

4.5 **Failure to Comply with Information Request**

- (a) If the Crown reasonably considers that the Principal Debtor has failed to comply with clause 4.1, clause 4.2, clause 4.3 or clause 4.6 or has supplied information or data that is false or misleading in a material particular, the Crown may give the Principal Debtor notice (which may be by way of public notice) that:
 - (i) it considers that the Principal Debtor has failed to comply with the relevant provision or has supplied information or data that is false or misleading in a material particular; and

- (ii) the Principal Debtor has 14 days to rectify that failure or supply, for which purpose "rectify" means:
 - (A) complying with that provision to the reasonable satisfaction of the Crown or supplying such additional information or data as (in the reasonable opinion of the Crown) is required to ensure that the information or data previously supplied is not false or misleading in a material particular (as the case may be); or
 - (B) satisfying the Crown (acting reasonably) that it has already complied with that provision or that the relevant information or data is not false or misleading in a material particular (as the case may be).
- (b) If the Principal Debtor fails to so rectify that failure or supply within the 14 day period referred to in clause 4.5(a)(ii) the Crown may give public notice that the Crown Guarantee is withdrawn on the date of that notice (or will be withdrawn at such later date as may be specified in that notice).
- (c) On the day of (or, as the case may be, the date specified in) that notice the Crown Guarantee is withdrawn in respect of all obligations which arise under any Debt Security issued following the date of withdrawal and such obligations shall not be covered by the Crown Guarantee, and the provisions of clause 9.6 shall apply in respect of all such obligations.

4.6 **Default Events**

The Principal Debtor shall immediately give notice to the Crown of any Default Event or any circumstance or event which, with the passage of time, the giving of notice or the taking of any other action would, or would be likely to, constitute or give rise to a Default Event.

5 **COMPLIANCE WITH PRUDENTIAL SUPERVISION OR OTHER MATTERS**

- 5.1 If the Crown reasonably considers that the Principal Debtor has failed to comply with:
 - (a) any applicable provision of the Reserve Bank Act, or any prudential supervision direction, notice or requirement under the Reserve Bank Act or otherwise; or
 - (b) the terms of any Debt Securities or of any trust deed for Debt Securities issued by the Principal Debtor to a Creditor or otherwise relating to the Principal Debtor,

then the Crown may give the Principal Debtor notice (which may be by way of public notice) that:

- (c) it considers that the Principal Debtor has failed to comply with that provision, direction, notice or requirement or those terms (as the case may be); and
- (d) the Principal Debtor has 14 days to rectify that failure, for which purpose "rectify" means:
 - (i) complying with that provision, direction, notice or requirement or those terms to the Crown's reasonable satisfaction; or
 - (ii) satisfying the Crown (acting reasonably) that it has not failed to comply with it.

5.2 If the Principal Debtor fails to so rectify that failure within the 14 day period referred to in clause 5.1(d) the Crown may give public notice that the Crown Guarantee is withdrawn on the date of that notice (or will be withdrawn at such later date as may be specified in that notice).

5.3 On the day of (or, as the case may be, the date specified in) that notice the Crown Guarantee is withdrawn in respect of all obligations which arise under any Debt Security issued following the date of withdrawal and such obligations shall not be covered by the Crown Guarantee, and the provisions of clause 9.6 shall apply in respect of all such obligations.

6 **ACKNOWLEDGEMENT**

The Parties acknowledge that the offering or entering into of this Deed does not in any respect restrict any regulatory or supervisory action by the Reserve Bank of New Zealand or any action the Crown may take, including but not limited to extending the term of the Crown Guarantee or not extending the term of the Crown Guarantee and offering a guarantee to any person whether under the same terms or different.

7 **NO ASSIGNMENT**

Neither Party may assign or transfer any of its rights under this Deed.

8 **GOVERNING LAW AND JURISDICTION**

8.1 **Governing Law**

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

8.2 **New Zealand Courts**

Each of the Parties irrevocably and unconditionally agrees that the Courts of New Zealand shall have non-exclusive jurisdiction to hear and determine each suit, action or proceeding (proceedings) and to settle disputes that may arise out of or in connection with this Deed and for these purposes irrevocably submits to the non-exclusive jurisdiction of those courts.

9 **GENERAL**

9.1 **Contracts (Privity) Act 1982**

The promises and obligations of the Crown under this Deed are intended to confer a benefit on, and accordingly are enforceable against the Crown under the Contracts (Privity) Act 1982 by, each Creditor, provided that the parties to this Deed may, on request of the Crown, by deed vary or discharge any of the provisions of this Deed, without the consent or agreement of any Creditor.

9.2 **Entire Agreement**

- (a) Subject to clause 9.2(b), this Deed constitutes the entire agreement between the Parties in relation to its subject matter. It replaces all earlier discussions, negotiations and agreements relating to that subject matter, except that any rights of the Crown and obligations of the Principal Debtor arising as a result of any misrepresentation by or on behalf of the Principal Debtor prior to execution of this Deed shall continue.
- (b) This Deed does not replace the Initial Deed in relation to the period prior to the withdrawal of the Initial Crown Guarantee under the Initial Deed or in relation to the continuing rights and obligations of the Crown and the Principal Debtor under the Initial Deed subsequent to that withdrawal.

9.3 **Withdrawal as a result of Inappropriate Activity**

If the Crown reasonably considers that the business or affairs of the Principal Debtor and/or any of its subsidiaries and/or any other Person controlled by the Principal Debtor have been (since the entry into this Deed), are being, or are intended or likely to be, carried on in a manner which:

- (a) will or may extend the effective benefit of the Crown Guarantee to Persons who are not intended to receive that benefit; or
- (b) is or would be otherwise inconsistent with the intentions of the Crown in entering into the Initial Deed and this Deed,

in each case an "Inappropriate Activity", the Crown may withdraw the Crown Guarantee by written notice to the Principal Debtor.

9.4 Withdrawal for other reasons

If the Crown for any other reason considers it appropriate to do so, it may withdraw the Crown Guarantee by written notice to the Principal Debtor. However, the Crown may not give a notice under this clause 9.4 (and no such purported notice shall be effective) unless the Crown offers, before such notice is given, to enter into a new deed of guarantee with the Principal Debtor with effect from such notice taking effect on terms which the Crown, taking into account clause 9.5(a), reasonably considers to be not materially adverse to Creditors generally as compared to the terms of the Initial Deed (and which is otherwise on such terms and conditions as the Crown (in its sole and unfettered discretion) considers appropriate).

9.5 Operation and effect of withdrawal

(a) Any notice given under clause 9.3 or clause 9.4 may be expressed to take effect immediately on delivery or at any time thereafter, and shall take effect accordingly. On the day of (or, as the case may be, the date specified in) a notice given by the Crown under clause 9.3 or clause 9.4, the Crown Guarantee is withdrawn in respect of all obligations which arise under any Debt Security issued following the date of withdrawal and such obligations shall not be covered by the Crown Guarantee, and the provisions of clause 9.6 shall apply in respect of all such obligations.

(b) Without limiting clause 9.5(a) and clause 9.6, on the taking effect of a notice given under clause 9.3, the Crown Guarantee will be withdrawn in respect of all obligations of the Principal Debtor under Debt Securities (whether existing at that time or subsequently arising) owed to any Creditor who is concerned in, and has or ought to have knowledge of, any Inappropriate Activity and no such obligations shall constitute "Indebtedness" (and accordingly no such obligations shall be covered by the Crown Guarantee).

9.6 Indebtedness incurred or acquired after withdrawal

An obligation of the Principal Debtor to pay money (whether present or future) to a Creditor under a Debt Security shall not constitute "Indebtedness" (and accordingly shall not be covered by the Crown Guarantee) to the extent that that Debt Security:

- (a) is issued after the taking effect of a notice given under clause 4.5(b), 5.2, 9.3 or 9.4 ("Effective Time"); or
- (b) is acquired (whether by contract, statute, operation of law or otherwise) by that Creditor after the Effective Time, except:
 - (i) to the extent (if any) otherwise agreed by the Crown in writing (in its sole and unfettered discretion); or

(ii) where:

- (A) the Creditor is a trustee, executor or administrator of a deceased person's will or estate and acquired that Debt Security in that capacity from the deceased person; and
- (B) that obligation would have constituted "Indebtedness" if that person had not died and had continued to hold that Debt Security.

(c) For the avoidance of doubt clause 9.6(b)(ii) is to be read subject to clauses 1.3(b) and 1.3(c).

9.7 **Principal Debtor Undertaking**

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

9.8 **Currency amounts**

Any reference in this Deed to an amount shall, to the extent that that 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.

9.9 **Public Notice**

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

9.10 **Other guarantor/s**

If any Indebtedness is or becomes the subject of any guarantee, indemnity or other arrangement under which it is effectively guaranteed, or the relevant Creditor is effectively indemnified in respect of any non-payment of that Indebtedness by, any other person ("Other Guarantee"), whether or not that Other Guarantee extends to all Indebtedness owed to the relevant Creditor:

- (a) the Principal Debtor must notify the Crown of the material particulars of that Other Guarantee and use all reasonable endeavours to ensure that Creditors who have the benefit of that Other Guarantee claim under it before claiming against the Crown under the Crown Guarantee and/or that

the Crown has the benefit of that Other Guarantee in respect of any amounts paid to relevant Creditors under the Crown Guarantee; and

- (b) notwithstanding any other provision of this Deed, except to the extent (if any) otherwise agreed by the Crown in its absolute and unfettered discretion, the Crown shall not be obliged to make any payment under this Deed in respect of any Indebtedness to any Creditor who has the benefit of, and is entitled to claim under, that Other Guarantee in respect of that Indebtedness except to the extent that that Creditor has made a claim under that Other Guarantee in respect of that Indebtedness and has not, within 14 days of the date of that claim, received payment in respect of that Indebtedness under that Other Guarantee.

9.11 **Warranty**

The Principal Debtor represents and warrants to the Crown that it is duly authorised to execute and deliver this Deed, and that upon execution of this Deed by it and the Crown it will constitute the legal, valid and binding obligations of the Principal Debtor enforceable against the Principal Debtor in accordance with its terms.

9.12 **Subrogation**

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

9.13 **Effect**

Notwithstanding any other provision of this Deed, this Deed takes effect from the date specified by the Crown in (or from the date of, if no date is specified in) the Notice of Withdrawal.

9.14 **Counterparts**

This Deed may be executed in any number of counterparts. Once a party has executed a counterpart, and the other party has received a copy of the signed counterpart, that counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by both parties.

9.15 **Waiver**

- (a) A waiver of any provision of this Deed shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

- (b) A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

9.16 Severability

If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed, but the Principal Debtor and the Crown shall, if requested by either of them, negotiate in good faith in an endeavour to agree on such alternative provisions and/or amendments as shall achieve as nearly as possible the original intent of this Deed (including the severed part).

9.17 Working days

Any payment required to be made, or other action required to be taken, by this Deed on or by a date which is not a working day (as defined in the Companies Act 1993) shall be validly done if made or taken on or by (as the case may be) the next working day (as so defined) following that date.

EXECUTED AND DELIVERED as a Deed by

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

John Whitehead

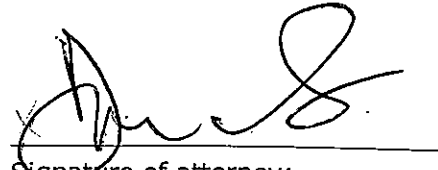
 John Whitehead

Witness' signature: *LDL*)

Witness' occupation: *Administrator*)

Witness' address: *Wellington*)

The Hongkong and Shanghai Banking Corporation Limited (New Zealand Branch) by its duly authorised attorney in the presence of:



) Signature of attorney:

Witness' signature: *Ang M*

) DAVID GRIFFITHS

) Name of attorney:

Witness' occupation:

**Henry Firmstone
Head of Legal & Compliance
HSBC New Zealand**

Witness' address:

Auckland.