
Crown Deed of Guarantee (Non-Bank Deposit Taker)

Her Majesty the Queen in right of New Zealand

and

Prometheus Finance Limited

Date: 22nd December 2008

PARTIES

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

Prometheus Finance Limited (*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 appears to the Minister of Finance that it is necessary and expedient in the public interest that the Crown guarantees certain obligations of the Principal Debtor.
- B This guarantee shall be in force for 2 years from the Announcement Date which the Minister considers to be sufficient time for confidence to return to the financial system.

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 means any Person to whom the Principal Debtor has an obligation to pay money (whether present or future) under a Debt Security, excluding:

- (a) a "Related Party" of the Principal Debtor, as that term is defined in section 157B of the Reserve Bank Act, as if:
- (i) the Principal Debtor was a "deposit taker"; and
 - (ii) "related party" included a Person who is a subsidiary of, or who is (or whose business or affairs are substantially) controlled by, any Person of whom the Principal Debtor is a subsidiary or by whom the Principal Debtor is (or its business or affairs are substantially) controlled - for which purpose "control" means real or effective

control, whether direct or indirect, and whether pursuant to a contract, an arrangement, an understanding or otherwise;

- (b) a Financial Institution; or
- (c) Persons who are neither New Zealand Citizens nor NZ Residents; and
- (d) subject to (f) below, any Person acting (directly or indirectly) as a nominee of or trustee for a Person referred to in (a), (b) or (c) above,

but including:

- (e) any Nominated Beneficiary deemed to be a Creditor under clause 2.5; and
- (f) if a Person ("A") would be a "Creditor" if directly owed Indebtedness by the Principal Debtor, any Person ("B") who is bare trustee for A (to the extent that B is acting in that capacity).

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

Debt Security has the meaning 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".

Default Event means:

- (a) failure of the Principal Debtor to make a payment to a Creditor in the amount and at the date lawfully due in accordance with the terms of any Indebtedness, other than failure due solely to (i) a bona fide dispute or (ii) administrative error or technical errors provided such amounts are subsequently paid within 7 days of the due date;
- (b) the Principal Debtor becomes insolvent or unable to pay its debts as they become due;
- (c) the Principal Debtor institutes or has instituted against it any form of proceeding (other than any proceeding which is frivolous) seeking a judgement of insolvency or bankruptcy or any similar relief in respect of the Principal Debtor, provided that, if any such proceeding is, within 14 days after it is instituted, withdrawn or challenged by appropriate proceedings having a reasonable prospect of success, it shall be deemed not to have occurred for the purposes of this Deed (unless and until such challenge is unsuccessful);

- (d) the Principal Debtor seeks or becomes subject to the appointment of a voluntary administrator, liquidator, provisional liquidator, receiver, receiver and manager, or similar person;
- (e) 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;
- (f) 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
- (g) any action by the Reserve Bank or the Securities Commission to place the entity into statutory management under the Reserve Bank Act or Corporations (Investigation and Management) Act 1989, or any equivalent action being taken in any other jurisdiction in which the Principal Debtor is incorporated or carries on a material part of its business.

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 limiting 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 a subsidiary of, or who is (or whose business or affairs are substantially) controlled by, a financial institution within (a), (b) or (c) above - for which purpose "control" means real or effective control, whether direct or indirect, and whether pursuant to a contract, an arrangement, an understanding or otherwise.

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:

- (a) in respect of any date prior to the Execution Date, the maximum amount for which the Crown would have been liable on that date under the Crown Guarantee, in accordance with the terms of this Deed, if:
 - (i) this Deed had been in effect on that date;
 - (ii) all Indebtedness existing on that date was due and payable on that date and was not paid by the Principal Debtor for reasons other than administrative error or technical error; and
 - (iii) all Nominated Beneficiaries were Nominated Beneficiaries on that date, in accordance with their relevant Nominations;

and
- (b) in respect of any other date, the maximum amount for which the Crown would have been or would be (as the case may 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 due and payable on that date and was not paid by the Principal Debtor for reasons other than administrative error or technical error.

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

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.

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

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.

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

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.

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

1.2 **Construction**

In this Deed, unless the context requires otherwise:

- (a) *Headings*: headings are for convenience only, and do not affect interpretation;
- (b) *Sections, Clauses and Schedules*: a reference to a Section or a clause or Schedule is a reference to a Section or clause in, or Schedule to, this Deed;
- (c) *Singular and plural*: the singular includes the plural and the converse;
- (d) *Particular party or person*: a reference to a particular party or person includes that party's or person's executors, administrators, successors, substitutes and assigns;
- (e) *Deed or document*: a reference to a deed or a document is to the deed or document as amended, novated, supplemented or replaced from time to time; and

- (f) *Legislation*: a reference to legislation or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a statutory regulation, rule, order or instrument made under or issued pursuant to it.

2 **GUARANTEE**

2.1 **Eligibility**

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 is continuing unremedied.

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 (g) (inclusive) of the definition of "Default Event" in clause 1.1 occurs during the Guarantee Period, all Indebtedness that exists on the date of that Default Event (whether or not that Indebtedness is due and payable during the Guarantee Period) and all interest accruing thereon in accordance with the terms of that Indebtedness; and
- (b) undertakes to each Creditor from time to time that if the Principal Debtor does not pay to any Creditor any Indebtedness or interest guaranteed under clause 2.2(a) when due and payable, the Crown will pay the amount of that Indebtedness or interest to the Creditor when due and payable (except to the extent that that Indebtedness or interest is not paid solely as a result of administrative error or technical error and is subsequently paid within 7 days of its due date).

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:

- (i) receives a Notice of Claim from the Creditor in respect of the relevant Indebtedness; and

- (ii) 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.

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

Any Indebtedness which arises following a Default Event, other than interest accruing on Indebtedness existing at the Default Event, shall, except to any extent otherwise agreed by the Crown in writing (in its sole and unfettered discretion), not be covered by the Crown Guarantee.

2.5 **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.

2.6 **Liability cap**

The maximum liability of the Crown to each Creditor under the Crown Guarantee is one million New Zealand dollars (\$1,000,000), or such other amount as may, in respect of a Nominated Beneficiary, be specified in or determined in accordance with the relevant Nomination.

3 **FEE**

- 3.1 If on the Announcement Date the Guaranteed Amount exceeded five billion (5,000,000,000) New Zealand Dollars, the Principal Debtor shall pay the Crown (in addition to any fees paid or payable under clause 3.4) a non-refundable fee equivalent to 0.1% (ten basis points) of the amount by which the Guaranteed Amount on the Announcement Date exceeded five billion (5,000,000,000) New Zealand Dollars.
- 3.2 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 (in addition to any fees paid or payable under clause 3.4) a non-refundable fee equivalent to 0.1% (ten basis points) of the amount by which the Guaranteed Amount on the first 12 month anniversary of the Announcement Date exceeds five billion (5,000,000,000) New Zealand Dollars.
- 3.3 If, on the last day of any month during the Guarantee Period, 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:

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

where:

"F" means the fee payable by the Principal Debtor;

"Growth Amount" means the amount (if any) by which:

(i) the Guaranteed Amount on the last day of that month

exceeds

(ii) the 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 (if any) on the last date of that 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 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%

- 3.4 If, on the last day of any month during the Guarantee Period, the Principal Debtor does not have an organisation credit rating from Standard & Poors Ratings Services of BB or higher (or an equivalent credit rating from Moody's Investors Services Inc, Fitch Inc or any other rating agency approved by the Crown in writing) ("Minimum Rating"), the Principal Debtor will pay to the Crown a fee equivalent to one twelfth of 3.0% (three hundred basis points) of the amount (if any) by which the Guaranteed Amount on the last day of that month exceeds the Guaranteed Amount on the Announcement Date (and, subject to clause 3.5, that fee shall be non-refundable).
- 3.5 If the Principal Debtor obtains an organisation credit rating of or higher than the Minimum Rating during the Guarantee Period, the Crown will (unless the Principal Debtor also has an organisation credit rating of less than the Minimum Rating) rebate to the Principal Debtor the amount by which:
- (a) the aggregate amount (if any) paid by the Principal Debtor under clause 3.4 in respect of the period during which it did not have a credit rating of or higher than the Minimum Rating,
exceeds
 - (b) the aggregate amount that would have been paid by the Principal Debtor under clause 3.3 in respect of that period if it had had a credit rating of the Minimum Rating.

The Crown shall not be required to make any such rebate until the relevant "Final Amounts" have been determined in accordance with clause 3.6.

- 3.6 The following provisions shall apply in respect of all payments by the Principal Debtor required under clauses 3.1, 3.2, 3.3 and 3.4:
- (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 Execution Date (in the case of clause 3.1);
 - (ii) the first 12 month anniversary of the Announcement Date (in the case of clause 3.2); and
 - (iii) the end of the relevant month (in the case of clauses 3.3 and 3.4).

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, 3.2, 3.3 or 3.4 (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 an estimated amount under clause 3.6(a)(i) or (ii) was required to be made (in respect of each such payment); and
 - (ii) no later than the end of each calendar quarter, in respect of each payment of an estimated amount under clause 3.6(a) (iii) 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 3.6(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.
- 3.7 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.

4 REPORTING

4.1 Principal Debtor to Supply Information to the Crown

The Crown may at any time during the Guarantee Period require from the Principal Debtor any information relating to the financial position or affairs, or the business, management or operation, of the Principal Debtor.

4.2 Third Party Information

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

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

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

4.3 Sharing of Information

The Principal Debtor authorises the Crown to share information provided in accordance with clauses 4.1 and 4.2 with the Reserve Bank of New Zealand and authorises the Reserve Bank of New Zealand to share with the Crown any information relating to the Principal Debtor that the Reserve Bank has collected in connection with its functions under the Reserve Bank Act.

4.4 Failure to Comply with Information Request

- (a) If the Principal Debtor fails to comply with clause 4.1 or clause 4.2, or supplies information or data that is false or misleading in a material particular, the Crown may give public notice that the Principal Debtor has failed to comply with the relevant provision and that the Principal Debtor has 14 days to comply with it.

- (b) If the Principal Debtor fails to comply within the 14 day period in clause 4.4(a) the Crown may give public notice that the Crown Guarantee will be withdrawn in 14 days.
- (c) Following the expiry of the second 14 day period the Crown Guarantee will be withdrawn in respect of all Indebtedness which arises following the date of withdrawal (other than interest accruing on Indebtedness existing at the date of withdrawal), and such Indebtedness shall not be covered by the Crown Guarantee.

5 COMPLIANCE WITH PRUDENTIAL SUPERVISION OR OTHER MATTERS

5.1 If the Principal Debtor fails to comply with:

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

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

- 5.2 If the breach is not remedied to the Crown's satisfaction within 14 days of the public notice the Crown may give public notice that the Guarantee will be withdrawn in 14 days.
- 5.3 Following the expiry of the 14 day period the Crown Guarantee will be withdrawn in respect of all Indebtedness which arises following the date of withdrawal (other than interest accruing on Indebtedness existing at the date of withdrawal), and such Indebtedness shall not be covered by the Crown Guarantee.

6 ONGOING OBLIGATIONS

6.1 No distributions

During the Guarantee Period the Principal Debtor shall not (and shall ensure that its subsidiaries shall not), without the prior written consent of the Crown, make any distribution (as defined in the Companies Act 1993) other than:

- (a) by way of the redemption of any shares which is required to be made under the terms of those shares (as they existed at 12 October 2008), other than any shares which are redeemable at the option of the holder and which are held by any person who controls or is under common control with the Principal Debtor; or

- (b) the payment of fixed dividends on shares which are required to be made under the terms of those shares (as they existed at 12 October 2008); or
- (c) the payment of dividends if the aggregate amount of such dividends in any financial year does not exceed the profit for the previous financial year of the Principal Debtor (as shown in the annual financial statements of the Principal Debtor for the immediately preceding financial year which comply with the Financial Reporting Act 1993); or
- (d) the making of any distribution by a subsidiary of the Principal Debtor to the Principal Debtor or to any wholly-owned subsidiary of the Principal Debtor.

6.2 **Arms' length transactions**

During the Guarantee Period the Principal Debtor shall not (and shall ensure that its subsidiaries shall not), without the prior written consent of the Crown:

- (a) enter into any transaction (or series of linked or related transactions) having a value exceeding one percent (1%) of the value of the assets of the Principal Debtor otherwise than on arms' length terms;
- (b) enter into any transaction (or series of linked or related transactions) having a value exceeding one percent (1%) of the value of the assets of the Principal Debtor with any person who controls or is under common control with the Principal Debtor (other than a wholly-owned subsidiary of the Principal Debtor) unless:
 - (i) that transaction is on arms length terms; and
 - (ii) an independent expert approved by the Crown in writing first certifies to the Crown in writing that the transaction is, in the opinion of that expert, on arms' length terms.

6.3 **Conduct of business**

During the Guarantee Period the Principal Debtor shall ensure its business and operations (and the business and operations of its subsidiaries) are conducted in a proper, businesslike, efficient and prudent manner.

6.4 **Reporting**

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

6.5 Inspection

The Crown may, at any time during the Guarantee Period:

- (a) appoint an inspector to report to the Crown on such matters as the Crown may specify; or
- (b) require the Principal Debtor to immediately appoint any person nominated by the Crown to report to the Crown on such matters as the Crown may specify.

The Principal Debtor shall provide access at all reasonable times to all its books and records, and to such of its directors and senior officers as may be specified, to any such inspector, and otherwise take all reasonable steps to facilitate that inspector's inspection and review and report.

6.6 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.

6.7 Directors' undertakings

The Crown may require the Principal Debtor to ensure that each director of the Principal Debtor provides an undertaking to the Crown, in such form as the Crown requires, to:

- (a) use his or her best endeavours to ensure that the Principal Debtor complies with its obligations under this Deed; and
- (b) notify the Crown immediately he or she becomes aware that the Principal Debtor has not complied with any of its obligations under this Deed.

6.8 Meaning of control

For the purposes of this clause 6 a Person is controlled by another Person if that other Person is able to exercise real or effective control, directly or indirectly, over the first Person or over a material part of the business or operations of that first Person, whether pursuant to a contract, an arrangement, an understanding or otherwise.

6.9 Crown can give public notice of failure to comply

If the Principal Debtor fails to comply with any of its obligations under this clause 6, the Crown may give public notice that the Principal Debtor has failed to comply with the relevant provision and that the Principal Debtor has 14 days to comply with it.

6.10 Crown may give public notice of withdrawal of guarantee

If the Principal Debtor fails to comply within the 14 day period in clause 6.9 the Crown may give public notice that the Crown Guarantee will be withdrawn in 14 days.

6.11 Withdrawal of guarantee

Following the expiry of the second 14 day period the Crown Guarantee will be withdrawn and Indebtedness created following the date of withdrawal, other than interest accruing on Indebtedness existing at the date of withdrawal, shall not be covered by the Crown Guarantee.

7 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 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.

8 NO ASSIGNMENT

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

9 GOVERNING LAW AND JURISDICTION

9.1 Governing Law

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

9.2 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.

10 GENERAL

10.1 **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.

10.2 **Entire Agreement**

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

10.3 **Withdrawal**

(a) 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 are being, or are intended or likely to be, carried on in a manner which:

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

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

- (b) 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 10.3(b) (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 10.3(d), reasonably considers to be not materially adverse to Creditors generally as compared to the terms of this Deed.
- (c) Any notice given under clause 10.3(a) or clause 10.3(b) may be expressed to take effect immediately on delivery or at any time thereafter, and shall take effect accordingly.

- (d) Subject to clauses 10.3(e) and the second sentence of clause 10.3(b), on the taking effect of a notice given under clause 10.3(a) or clause 10.3(b), the Crown Guarantee will be withdrawn in respect of all Indebtedness which arises following that date (other than interest accruing on Indebtedness existing at the date of withdrawal), and such Indebtedness shall not be covered by the Crown Guarantee.
- (e) On the taking effect of a notice given under clause 10.3(a), the Crown Guarantee will be withdrawn in respect of all Indebtedness (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.

10.4 Principal Debtor Undertaking

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

10.5 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.

10.6 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.

10.7 Other guarantor/s

If any Indebtedness of the Principal Debtor 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, the Principal Debtor must notify the Crown of the material particulars of that arrangement and use all reasonable endeavours to ensure that Creditors claim under that other arrangement before claiming against the Crown under the Crown Guarantee and/or that the Crown has the benefit of that other arrangement in respect of any amounts paid to Creditors under the Crown Guarantee.

10.8 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.

10.9 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.

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: *Jeremy Salmon*)

John Whitehead

John Whitehead

Witness' signature: *[Signature]*)

Witness' occupation: *Solicitor*)

Witness' address: *Wellington*)

Prometheus Finance Limited by:

[Signature]

Signature of Director

ANTONY VANDER MEER

Name of Director

[Signature]

Signature of Director

ROY BOONEN

Name of Director