

**Dated** 22 November 2001 (and amended on 16  
November 2006 and 3 November 2010)

## **DEED POLL GUARANTEE**

Guarantor  
**NEW ZEALAND POST LIMITED**

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## DEED POLL GUARANTEE

DATED 22 November 2001 (and amended on 16 November 2006 and 3 November 2010)

### GUARANTOR

1. **NEW ZEALAND POST LIMITED** having its registered office at Wellington (the "**Guarantor**")

### BACKGROUND

- A. The shares in Kiwibank are held by the Guarantor.
- B. The Guarantor has agreed to give this Guarantee to the Creditors as an unconditional guarantee for the benefit of the Creditors of all the present and future Obligations of the Subsidiaries.

### COVENANTS AND CONDITIONS

#### 1. INTERPRETATION

- 1.1 **Definitions:** In this Guarantee, unless the context requires otherwise:

**"Authorised Person"** means in relation to any person:

- (a) who is not a natural person, an individual who is a director thereof or another officer who has been expressly authorised to carry out tasks in connection with the Obligations; or
- (b) who is a natural person, that person or his/her duly authorised representative.

**"Creditor"** means each person, firm, company or other entity to whom Obligations are now or hereafter may be or become due, owing or payable or who otherwise has the benefit of an Obligation.

**"Effective Date"** means 29 November 2001.

**"Guarantee"** means the guarantee by the Guarantor pursuant to clause 2.

**"Guaranteed Amount"** means, in relation to a claim made by any Creditor, the amount certified due and payable in accordance with the procedure set out under clause 7.

**"Kiwibank"** means Kiwibank Limited, having its registered office at Wellington (or any successor organisation or permitted assign).

**"Obligations"** means all payment obligations of any nature to or for the benefit of Creditors of the Subsidiaries, whether actual or contingent, present or future, secured or unsecured and whether incurred alone, severally or jointly and severally, as principal, surety or otherwise.

**“Rating Agency”** means, at the date of this Guarantee, Standard and Poor’s Rating Services, a division of the McGraw-Hill Companies Inc, and any successor thereto and includes from time to time, such other reputable internationally recognised securities rating agency as Kiwibank may wish to designate.

**“Repayment Obligation”** means an Obligation incurred by reason of a Subsidiary:

- (a) accepting deposits of any kind from any person; or
- (b) at the request of a customer of that Subsidiary, issuing a guarantee, indemnity, letter of credit, performance bond or like instrument in favour of a third party Creditor; or
- (c) raising money by whatever means but on terms that (and only to the extent that) the recourse comprises a direct and unconditional payment obligation of that Subsidiary; or
- (d) issuing any redeemable preference shares; or
- (e) entering into any swap, foreign exchange contract, hedging or other derivative or risk management transaction or product, to the extent of the net settlement amount if such transaction or product is or was to be terminated or such a settlement amount is or was otherwise to become payable at the relevant time.

**“Subsidiary”** means each of Kiwibank and any subsidiary of Kiwibank within the meaning given to that term in section 5 of the Companies Act 1993 and in addition a company shall be deemed to be a subsidiary in terms of this definition if it is an in substance subsidiary of Kiwibank in accordance with NZGAAP, and **“Subsidiaries”** shall mean all of them.

1.2 **Miscellaneous:** In this Guarantee, unless the context requires otherwise:

a reference to any **document** or **agreement** (including this Guarantee) includes a reference to that document or agreement as amended, novated or replaced from time to time;

the **headings** to clauses shall be ignored in construing this Guarantee;

the word **including** and other similar words do not imply any limitation;

any **party** to this Guarantee or any other agreement or any person taking the benefit of any provision of this Guarantee or any other agreement (whether express or implied) includes, in each case, its successors and permitted assignees and transferees;

the **plural** includes the **singular** and vice versa;

a **statute** includes that statute as amended from time to time and any regulations, orders in council and other instruments issued or made under that statute from time to time; and

a reference to a **time of the day** is to New Zealand time.

## 2. **GUARANTEE**

2.1 **Guarantee:** With effect from the Effective Date, the Guarantor hereby irrevocably and unconditionally guarantees to and for the benefit of the Creditors the due performance and

observance by the Subsidiaries of all the Obligations of the Subsidiaries so that if any Subsidiary shall default in the due and punctual payment of any Obligation to any Creditor, the Guarantor shall pay the Guaranteed Amount claimed by that Creditor in accordance with clause 7. This Guarantee is a payment guarantee and is not to be construed as a guarantee of other obligations of the Subsidiaries.

- 2.2 **Ranking:** The Guarantor's obligations under this Guarantee shall rank at all times at least *pari passu* with all its other present and future unsecured creditors, except indebtedness preferred solely by operation of law.
- 2.3 **Effective Date:** This Guarantee shall not apply to any Obligations incurred by any Subsidiary prior to the Effective Date unless the Guarantor has agreed in writing that, in relation to any relevant Creditor, any one or more of those Obligations will have the benefit of this Guarantee.
- 2.4 **Exclusion:** This Guarantee shall not apply to an Obligation, if the terms of the Obligation expressly provide in writing that the Obligation will not have the benefit of this Guarantee.

### 3. GRANTING OF CONCESSION

- 3.1 **No Prejudice:** The liability of the Guarantor will not be affected by the granting of time, credit or any indulgence or other concession to any Subsidiary or by any other dealing, matter or thing whatsoever which but for this provision might operate to abrogate, prejudice or affect this Guarantee.

### 4. PRINCIPAL DEBTOR

- 4.1 **Obligations:** In the event that the obligation to make payment in respect of any Guaranteed Amount may not be enforceable by any Creditor against the Guarantor on the footing of this Guarantee, the obligation to make payment in respect of any such Guaranteed Amount will be enforceable against the Guarantor as a principal debtor and the Guarantor as a separate and additional liability indemnifies each Creditor in respect of such Guaranteed Amounts to the same extent as if it was itself liable to make payment of those Guaranteed Amounts as principal debtor and shall make payment to each Creditor in respect of them upon demand being made in accordance with clause 7.

### 5. CONTINUING GUARANTEE

- 5.1 **Continuing:** This Guarantee is a continuing guarantee and may only be terminated by the Guarantor in accordance with clause 9.
- 5.2 **Waiver:** The Guarantor waives in favour of each Creditor all rights whatsoever against the Subsidiaries and each other person (including rights of subrogation, contribution and marshalling) so far as is necessary to give effect to anything in this Guarantee.

## 6. INFLUENCE AND CONTROL

- 6.1 **No Influence:** The Guarantor covenants that it will not exercise influence or control over the Subsidiaries in order to either effect the amendment of this Guarantee, or to take such other actions, that might cause the undermining, waiver or delay in enforcing of this Guarantee.

## 7. CLAIMS AND PAYMENTS

- 7.1 **Claim Procedure:** A claim for a Guaranteed Amount may be made by a Creditor under this Guarantee by delivering to the address set out in clause 10 below a certificate from a Creditor signed by an Authorised Person certifying:

- (a) **Particulars:** particulars of the Obligation in respect of which demand is being made by the Creditor;
- (b) **Non-Payment:** that the relevant Subsidiary has defaulted in payment and that there is a debt immediately due and payable remaining unpaid (having taken into account any relevant grace periods) and that there are no pre-conditions to payment which remain unsatisfied;
- (c) **No Dispute:** in relation to any Obligation that is not a Repayment Obligation, that the Subsidiary has had the opportunity to dispute the existence of the Obligation and if, after such opportunity, the Subsidiary disputed the existence of the Obligation, that dispute has been finally resolved and the Obligation has become indisputably payable;
- (d) **Currency:** the currency in which the Obligation was payable; and
- (e) **Demand:** that where the agreement, instrument or terms of any account require demand to be made in a particular manner, demand has been made in accordance with the relevant agreement, instrument or terms of the account in respect of which the Obligation is due and payable,

accompanied by a copy, certified to be true and correct by an Authorised Person, of any agreement, instrument or statement of account or other document which is evidence of the Obligation that is due and payable, and a copy of the written demand from the Creditor which was duly delivered to the relevant Subsidiary. The Creditor shall also notify the account to which the amount of the claim is to be paid.

- 7.2 **Payment:** Upon receipt of any claim made under clause 7.1 (accompanied by the relevant requirements set out in that clause and in the case of 7.1(c), the Guarantor shall be entitled to first verify the matters certified within a reasonable timeframe), the Guarantor hereby covenants for the benefit of each Creditor to pay to the bank account nominated by the Creditor, within three New Zealand business days' of receipt of all such requirements (and in the case of clause 7.1(c), following any verification process as mentioned above), the amount claimed by the Creditor in the relevant certificate (being the Guaranteed Amount) in the currency in which the relevant Obligation would have been payable.
- 7.3 **Free and Clear:** All payments made under subclause 7.2 above shall be made to the Creditor free and clear of and without deduction for or on account of any set-off or counterclaim or, except to the extent required by law, any present or future taxes, levies, impost, duties, charges, fees,

deductions or withholdings of any nature and whatever called (excluding taxes on overall net income) imposed, levied, collected, withheld or assessed by or on behalf of New Zealand or any political subdivision or any authority thereof or therein having power to tax ("**Taxes**").

- 7.4 **Tax Gross-Up:** If any withholding or deduction for or on account of any Tax (a "**Tax Deduction**") is required by law to be made by the Guarantor from a payment to a Creditor under this Guarantee, the Guarantor shall pay such additional amounts in order that (after making any Tax Deduction) the Creditor receives an amount equal to the payment which would have been due if no Tax Deduction had been required. No increased payment will be required under this clause in respect of a payment of any Guaranteed Amount if, had that Guaranteed Amount been paid by the relevant Subsidiary, no increased payment would have been payable by the relevant Subsidiary in respect of any deduction or withholding for or on account of any Tax.
- 7.5 **Unconditional Payment:** Any certificate delivered under clause 7.1 shall, as between the Guarantor and the Creditor, be conclusive evidence of the Guaranteed Amount and the obligations of the Guarantor under this clause are absolute and unconditional and shall not be prejudiced or affected by:
- (a) **Defeat:** any falsity, inaccuracy, insufficiency or forgery of or in any certificate which on its face purports to be given or authorised under clause 7.1;
  - (b) **Irregularity:** any illegality, informality or other irregularity relating to the transaction in respect of which the Obligation was incurred;
  - (c) **Validity:** any defect, invalidity, unenforceability, impossibility or illegality of performance of this Guarantee or any agreement or transaction in respect of which the Obligation was incurred; and/or
  - (d) **Solvency:** any insolvency, bankruptcy, liquidation or cessation of existence of any entity or person.

Nothing in this clause shall prevent or prejudice the rights of any Subsidiary (or the Guarantor pursuant to its rights of subrogation), following payment in full under this clause, to seek any remedies in relation to a wrongful or inaccurate claim made by any Creditor.

## 8. ASSIGNMENT/AMENDMENT

- 8.1 **Guarantor May Not Assign:** The Guarantor may not assign nor transfer all or any of its rights and obligations under or in relation to this Guarantee, without first obtaining the prior written consent of the Subsidiaries, together with a prior written confirmation from each Rating Agency (which may be given at their absolute discretion) that such assignment will not cause a rating downgrade of any Subsidiary. No consent from the Creditors shall be required to any such assignment.
- 8.2 **Creditor May Assign:** Any Creditor may at any time assign all or any of its rights under this Guarantee to any person and no consent shall be required from the Guarantor or any Rating Agency to any such assignment.
- 8.3 **Amendments, Waivers and Consents:** Any provision of this Guarantee may be amended or supplemented only by agreement in writing between the Guarantor and the Subsidiaries after first

having given 10 New Zealand business days' prior notice to each Rating Agency and having received written confirmation that such amendment would not cause a rating downgrade of any Subsidiary. No further consent from the Creditors shall be required to any such amendment or supplement. Any waiver may be given at any time but only if each Rating Agency first agrees in writing that the waiver would not cause a rating downgrade. Any consent under any provision of this Guarantee must also be in writing. Any such waiver or consent may be given subject to any conditions thought fit by the person giving it and shall only be effective in the instance and for the purpose for which it was given.

- 8.4 **Effective Date:** Any amendment or supplement made pursuant to clause 8.3 shall become effective on the date the relevant documentation is signed. Any waiver or consent shall become effective on the date that waiver or consent is given in writing or, in the case of a waiver, on such later date as the Rating Agency gives its agreement in writing as contemplated by clause 8.3. In each case, the Guarantor shall cause a duly executed original of the document evidencing the relevant amendment, supplement, waiver or consent to be deposited with the original of this Guarantee.

## 9. TERMINATION

- 9.1 **Termination:** The Guarantor may terminate this Guarantee in whole or in respect of one or more of the Subsidiaries by notice in writing to Kiwibank and such termination shall take effect on the date described in clause 9.2, but subject to clause 9.3.

- 9.2 **Notification to Creditors:** On receipt of a notice of termination under clause 9.1, Kiwibank (at the expense of the Guarantor) shall give notice to the Creditors of:

- (a) **Termination:** either:
- (i) the termination of this Guarantee; or
  - (ii) where the Guarantee is not being terminated in whole, those Subsidiaries in respect of which this Guarantee is being terminated; and
- (b) **Termination Date:** the date of termination which shall be not less than three months after giving notice to the Creditors as described below (the "**termination date**").

Notice will be validly given only if published in all major New Zealand metropolitan newspapers. Any such notice shall be deemed to have been given on the date of publication or, if published more than once, on the date of first publication.

- 9.3 **Termination Subject to Existing Obligations:** Any termination of this Guarantee as contemplated by this clause 9 must be on terms that:

- (a) **Existing Obligations:** this Guarantee shall remain in place for the benefit of each Creditor that is owed Obligations at the termination date, but only in relation to and to the extent of those Obligations; and
- (b) **Satisfaction of Existing Obligations:** this Guarantee shall terminate, in relation to each Creditor referred to in sub-clause (a) above, at such time as those Obligations existing at the

termination date in favour of the relevant Creditor have been satisfied in full (whether by action taken by the Guarantor, any Subsidiary, the relevant Creditor or by operation of law).

## 10. NOTICES

- 10.1 **Method:** Each notice, agreement and other communication (each a “**communication**”) to be given, delivered or made under this Guarantee is to be in writing but may be sent by personal delivery, post (by airmail if to another country) or facsimile.
- 10.2 **Addresses:** Each communication under this Guarantee is to be sent to the address of the person set out below, to the then current registered office address of that person, or to any other address notified in writing by that person to the sender for that purpose. The initial address details are:

**The Guarantor:**                    **New Zealand Post Limited**  
Level 12  
New Zealand Post House  
7 Waterloo Quay  
Wellington

Facsimile No:                    0-4-496 4479  
Attention:                        General Counsel

**Kiwibank and the**                **Kiwibank Limited**  
**Other Subsidiaries:**        Level 12  
New Zealand Post House  
7 Waterloo Quay  
Wellington

Facsimile No:                    0-4-462 7996  
Attention:                        Chief Executive Officer

- 10.3 **Receipt:** A communication under this Guarantee will only be effective:

- (a) **Delivery:** in the case of personal delivery, when delivered;
- (b) **By Post:** if posted or delivered to a document exchange, five New Zealand business days’, in the place of receipt, after posting (by airmail if to another country) or delivery to the document exchange;
- (c) **By Facsimile:** if made by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile number of the recipient designated for the purpose of this Guarantee,

provided that any communication received or deemed received after 5 pm or on a day which is not a New Zealand business day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next New Zealand business day in that place.

## 11. GOVERNING LAW

- 11.1 **New Zealand Law:** This Guarantee will be governed by and construed in accordance with the laws of New Zealand.

11.2 **Jurisdiction:** Any legal action or proceedings arising out of or in connection with this Guarantee may be brought in the courts of New Zealand or any other jurisdiction where any assets of any relevant Subsidiary may be situated. By its execution of this Guarantee, the Guarantor:

- (a) **Non-exclusive Jurisdiction:** accepts, for itself and in respect of its assets, generally and unconditionally, the non-exclusive jurisdiction of such courts;
- (b) **No Immunity:** irrevocably waives any rights of immunity which it or its assets may have at any time;
- (c) **No Objection:** irrevocably waives any objection it may have at any time to any action or proceedings in any such court on the grounds of venue or inconvenient form; and
- (d) **Service of Process:** consent to service of process in any manner permitted by law.

## **EXECUTION**

[Deed of Amendment and Restatement executed by the Guarantor on 3 November 2010]