

PROVISIONAL TAX FINANCE LIMITED

[Name of Depositor]

PERPETUAL TRUST LIMITED

TAX DEPOSIT AGREEMENT

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PARTIES

PROVISIONAL TAX FINANCE LIMITED ("Intermediary")

[Name of Depositor] ("Taxpayer")

PERPETUAL TRUST LIMITED ("Perpetual")

INTRODUCTION

- A. The Intermediary is a tax pooling intermediary for the purposes of the Income Tax Act.
- B. The Taxpayer intends to make one or more payments to be deposited in the Intermediary's tax pooling account with the Commissioner.
- C. Perpetual has agreed to receive Taxpayer Deposits, deposit the same into the Tax Pooling Account and to give and receive instructions in relation to Taxpayer Deposits and the Tax Pooling Account in accordance with this agreement.

AGREEMENT

1. INTERPRETATION

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

"cleared funds" means funds in the Taxpayer Deposit Trust Account which Perpetual determines in its sole discretion are freely available to it for its use as contemplated by this agreement.

"Commissioner" means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994.

"Event of Default" means any of the following events, whether or not within the control of Perpetual:

- (a) Perpetual defaults in the observance or performance of any obligation or undertaking contained or implied in this agreement, and, in respect of any breach or default which, in the opinion of the Taxpayer, is capable of being remedied, that breach or default is not remedied within 10 days of its occurrence;
- (b) any representation, warranty or statement made or deemed to be repeated by Perpetual in this agreement or in any notice, certificate, statement or other document contemplated by, or made or delivered pursuant to, this agreement, is or was untrue or incorrect in any material respect when made, deemed repeated or delivered; or
- (c) Perpetual ceases to be a "trustee company" as defined in the Trustee Companies Act 1967.

"Income Tax Act" means the Income Tax Act 2004.

"Parties" means the parties to this agreement. **"Party"** has a corresponding meaning.

"Taxpayer Deposit" means a payment received from the Taxpayer into the Taxpayer Deposit Trust Account for the purpose of being paid into the Tax Pooling Account.

"Taxpayer Deposit Trust Account" means a trust account with ANZNB in the name of Perpetual established for the purpose of receiving Taxpayer Deposits. Unless the context otherwise requires, references to the Taxpayer Deposit Trust Account also include any account into which any Taxpayer Deposit is refunded by the Commissioner pursuant to sections MBA 7 or MBA 8(4) of the Income Tax Act and any account into which interest on a Taxpayer Deposit is paid.

"Tax Pooling Account" means a tax pooling account established by the Intermediary with the Commissioner's written approval pursuant to section MBA 3(2) of the Income Tax Act.

1.2 In this agreement:

- (a) Headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement.
- (b) Unless the context otherwise requires the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (c) A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, or re-enactment or replacement of, that legislation.
- (d) A reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time.
- (e) A reference to any party to any document includes its successors and permitted assigns.
- (f) A reference to a time of day is a reference to New Zealand time unless otherwise stated.
- (g) Except where inconsistent with the context, the expression "at any time" also means from time to time.

2. TAXPAYER DEPOSITS

2.1 The Taxpayer may make payments to Perpetual for it to deposit on the Taxpayer's behalf into the Tax Pooling Account under clause 2.4.

2.2 Perpetual will hold in the Taxpayer Deposit Trust Account all amounts received by it under clause 2.1 and all interest accruing thereon (net of any applicable withholding tax) on trust for the Taxpayer until the deposit amount is paid into the Tax Pooling Account in accordance with clause 2.4.

2.3 The Taxpayer shall, at or before the time the Taxpayer makes a payment under clause 2.1, provide the Intermediary and Perpetual with the following information:

- (a) the Taxpayer's tax file number; and
- (b) the amount of the Taxpayer Deposit.

- 2.4 Perpetual shall, on confirming that it has received Taxpayer Deposits in cleared funds into the Taxpayer Deposit Trust Account, deposit that Taxpayer Deposit into the Tax Pooling Account.
- 2.5 The Intermediary acknowledges and agrees, in accordance with section MBA 5(4) of the Income Tax Act, that each Taxpayer Deposit in the Tax Pooling Account shall be held by the Intermediary in trust for the Taxpayer until it is:
- (a) credited to an account with the Commissioner of the Taxpayer;
 - (b) credited to an account with the Commissioner of another taxpayer who is a client of the Intermediary; or
 - (c) refunded to the Taxpayer.
- 2.6 For the avoidance of doubt, the amounts held in trust by the Intermediary pursuant to section MBA 5(4) shall be reduced to the extent of any amounts that are credited to an account with the Commissioner or refunded to the Taxpayer.

3. TAX DEPOSIT TRANSFER

- 3.1 Perpetual shall on written request by the Taxpayer or the Taxpayer's agent (but not otherwise) direct the Commissioner to transfer amounts in the Tax Pooling Account to the accounts with the Commissioner of other taxpayers who are clients of the Intermediary.
- 3.2 Perpetual shall request that amounts transferred under clause 3.1 are treated by the Commissioner as producing a credit in the relevant taxpayer's account on a date that is on or after the date on which the transferred amount was deposited in the Tax Pooling Account in accordance with instructions given by the Taxpayer or the Taxpayer's agent (but not otherwise).
- 3.3 The Intermediary authorises Perpetual to give directions and make requests on its behalf for the purposes of clauses 3.1 and 3.2. Perpetual agrees to act on any directions and make such requests in accordance with this agreement.
- 3.4 The Parties acknowledge that, for the purposes of clause 2.6, the Taxpayer Deposits held in trust by the Intermediary pursuant to clause 2.5 and section MBA 5(4) of the Income Tax Act shall be reduced by any amounts credited under clause 3.1.

4. TAX DEPOSIT REFUND

- 4.1 If instructed by the Taxpayer or the Taxpayer's agent (but not otherwise) Perpetual shall promptly request the Commissioner to refund all or part of the Taxpayer Deposits in the Tax Pooling Account into the Taxpayer Deposit Trust Account. The Taxpayer or the Taxpayer's agent may not instruct that Taxpayer Deposits be paid on refund into any other account.
- 4.2 Perpetual shall, on confirming that it has received the same in cleared funds, pay to the Taxpayer or the Taxpayer's agent at its direction any amount refunded to it under clause 4.1.
- 4.3 The Intermediary authorises Perpetual to make requests on its behalf for the purposes of clause 4.1. Perpetual agrees to act on any such requests in accordance with this agreement.

5. INTEREST HELD IN TRUST AND PAYABLE TO THE CLIENT

- 5.1 The Intermediary shall account to the Taxpayer for all amounts of interest derived from any Taxpayer Deposits in the Tax Pooling Account pursuant to section MBA 5(5) of the Income Tax Act. The Taxpayer acknowledges that where it instructs Perpetual to transfer any amounts under clause 3.1, no interest will be payable to it in respect of those transferred amounts.
- 5.2 Perpetual shall account to the Taxpayer for all amounts of interest (net of any applicable withholding tax) derived from any Taxpayer Deposit amount in the Taxpayer Deposit Trust Account.
- 5.3 The Intermediary or Perpetual, as the context requires, shall promptly pay any such amounts of interest to the Taxpayer (in the case of the Intermediary, by credit to the Taxpayer Deposit Trust Account) upon receipt, and shall hold any such amounts of interest in trust (under, as the context requires, clause 2.2 (in the case of Perpetual) and section MBA 5(4) (in the case of the Intermediary)) for the Taxpayer pending payment.

6. COMMUNICATION AGENT

- 6.1 The Intermediary appoints Perpetual to act on its behalf to make the requests and directions required to be made under clauses 3, 4 and 14. Perpetual accepts this appointment. The Intermediary acknowledges that for the purposes of clauses 3, 4 and 14, Perpetual will only act on the directions of the Taxpayer.
- 6.2 Perpetual agrees to ensure that:
- (a) it has the sole signing and operational authority on the Taxpayer Deposit Trust Account;
 - (b) it has the sole right to make any request or give instructions to the Commissioner regarding the Tax Pooling Account, in each case having regard to the directions of the Taxpayer; and
 - (c) the Taxpayer Deposit Trust Account is maintained at all times with a registered bank.
- 6.3 The Intermediary shall refrain from making any communication that it has, under clauses 3, 4 and 14, authorised Perpetual to make on its behalf.
- 6.4 The Intermediary shall promptly give to Perpetual any information it receives pertaining to any Taxpayer Deposits the operation and maintenance of the Tax Pooling Account, or any other matter that may be relevant to Perpetual's role as described in clause 6.1.
- 6.5 Perpetual may terminate its appointment under this agreement at any time by giving not less than three calendar months' written notice to the Intermediary or may have its role terminated by a direction of the Intermediary by not less than one month's prior written notice.
- 6.6 On notice of the resignation of, or a direction to terminate under clause 6.5, a replacement trustee company must be appointed by the Intermediary to undertake the matters referred to in this agreement.
- 6.7 If no replacement for Perpetual is appointed under clause 6.6 within 15 business days after the notice of the resignation or direction to terminate is given, Perpetual may appoint a replacement.

6.8 On the acceptance of any appointment, by a replacement for Perpetual, the replacement shall become vested with all the rights, powers and obligations of Perpetual under this agreement, and Perpetual shall be divested of them. Perpetual, the replacement agent and the other parties to this agreement, must execute an accession deed in a form reasonably acceptable to the Intermediary and Perpetual, and execute all documents and do all things (including the transfer of the Taxpayer Deposit Trust Account to the replacement) as are in the replacement's opinion necessary to give effect to this clause. This clause shall have no effect on the responsibilities and obligations of Perpetual prior to its removal or the termination of its role.

6.9 The provisions of this agreement:

- (a) shall continue in effect in relation to Perpetual in respect of any actions taken or omitted to be taken while Perpetual was acting under this agreement; and
- (b) shall apply to any replacement as if references to Perpetual were to the replacement agent, and so on and so forth in relation to any subsequent replacement agent.

7. PERPETUAL ACKNOWLEDGEMENTS

7.1 Perpetual acknowledges that:

- (a) the Taxpayer is the beneficial owner of any Taxpayer Deposits in the Taxpayer Deposit Trust Account and, pursuant to section MBA 5(4) of the Income Tax Act, the Tax Pooling Account at any time; and
- (b) pursuant to clauses 5.1 and 5.3, any interest derived from any amounts in the Taxpayer Deposit Trust Account and/or any Taxpayer Deposits in the Tax Pooling Account is required to be accounted for to the Taxpayer.

7.2 Perpetual may not delegate any of its rights or obligations under this agreement to any person unless:

- (a) it first obtains the written consent of the Intermediary, the Taxpayer and ANZNB;
- (b) it remains liable for the performance of the relevant obligations; and
- (c) it gives not less than 30 days' prior written notice of that delegation to the Intermediary and the Taxpayer.

8. TAXPAYER INFORMED

8.1 The Taxpayer acknowledges that, for the purposes of section MBA 3(1)(e) of the Income Tax Act:

- (a) A payment by the Taxpayer to the Intermediary or by the making of a Taxpayer Deposit into the Taxpayer Deposit Tax Account does not satisfy any obligation of the Taxpayer to make a payment to the Commissioner.
- (b) It has been informed of the contents of the Intermediary's representations in clauses 10.1(d) to 10.1(f), and the Intermediary's undertaking in clause 11.1.
- (c) The Commissioner is not required to oversee or audit the operation of the Tax Pooling Account.

- (d) The Commissioner is not liable for any loss that a person suffers because of the way in which the Intermediary operates the Tax Pooling Account.

9. AGREEMENT BINDING/ASSIGNMENT

- 9.1 This agreement shall be binding upon and shall enure for the benefit of the Parties and their respective successors, permitted assignees and transferees.
- 9.2 The Intermediary shall not assign or transfer any of its rights or obligations, under this agreement to any person or persons.
- 9.3 The Taxpayer may only deal with its rights under this agreement in such a way as will not cause the Intermediary or Perpetual to breach any requirement of the Income Tax Act in relation to the Tax Pooling Account.

10. REPRESENTATIONS AND WARRANTIES BY PERPETUAL AND THE INTERMEDIARY

- 10.1 The Intermediary represents and warrants that:
- (a) it has validly established the Tax Pooling Account, with the Commissioner's approval, pursuant to sections MBA 3(2) and MBA 4(1) of the Income Tax Act and on the basis that Perpetual has the sole right to make any request or to give instructions to the Commissioner in respect thereof;
 - (b) it is not aware of any matter which may cause the Commissioner to wind up the Tax Pooling Account under section MBA 8(2) of the Income Tax Act;
 - (c) it is a company duly incorporated and validly existing under the laws of New Zealand;
 - (d) it has administration and information technology systems that satisfy section MBA 4(4) of the Income Tax Act;
 - (e) none of its directors are discharged or undischarged bankrupts, nor have they been convicted of any offences involving dishonesty; and
 - (f) all of its directors are otherwise eligible to be company directors.
- 10.2 Perpetual represents and warrants that no Event of Default has occurred and remains unremedied or will result from its entry into this agreement.
- 10.3 Perpetual and the Intermediary each, respectively, represents and warrants in relation to itself that:
- (a) it has:
 - (i) the power to enter into, and exercise its rights and perform and comply with its obligations under, this agreement; and
 - (ii) taken all necessary action to authorise the entry into this agreement and the performance of all its obligations thereunder;
 - (b) this agreement constitutes its legal, valid, binding and enforceable obligations;

- (c) neither its entry into this agreement, nor the exercise of any right or the performance or observance of any obligation under this agreement, nor any transaction contemplated hereby, will:
 - (i) violate or contravene any law to which it is subject; or
 - (ii) conflict with, or result in a breach of, any agreement, document, arrangement, obligation or duty to which it is a party, or by which it or any of its assets may be bound; or
 - (iii) violate any of the documents constituting it or cause any limitation on any of its powers, or on the right or ability of its directors to exercise those powers, to be exceeded;
- (d) all consents and other authorisations required by it, or otherwise appropriate for it to obtain, in connection with this agreement, and the transactions contemplated by this agreement, have been obtained or effected and are in full force and effect, and there are no qualifications or limitations affecting such consents or other authorisations which have not been notified to the Taxpayer;
- (e) the information provided by it to the Taxpayer at any time in connection with the this agreement was true and accurate in all material respects and not misleading as at the date on which it was provided (whether by the omission of facts known to it or otherwise);

10.4 The representations and warranties contained in this clause 10 will be deemed to be repeated on the date of each Taxpayer Deposit by reference to the facts and circumstances then existing.

11. UNDERTAKINGS

11.1 The Intermediary shall maintain and operate administration and information technology systems at all times as required by section MBA 4(4) of the Income Tax Act.

11.2 Perpetual shall promptly:

- (a) comply with and observe all laws and all requirements and orders of any government, governmental agency or authority, non-compliance or non-observance with which could have a material adverse effect on the Intermediary or the performance of Perpetual's obligations under this agreement; and
- (b) notify the Taxpayer upon becoming aware of the occurrence of an Event of Default.

12. NOTICES

12.1 Each notice, instruction, direction or other communication to be given or made to any Party shall:

- (a) be given or made in writing by facsimile, letter or email;
- (b) be given or made to that Party at the address or facsimile number, and marked for the attention of the person (if any), from time to time designated by that Party for the purposes of this Agreement;

- (c) not be effective until received by that Party, and any such notice or communication shall be deemed to be received by that Party:
- (i) (if given or made by letter) when left at the address of that party or five Business Days after being put in the post, postage prepaid, and addressed to that Party at that address; or
 - (ii) (if given or made by facsimile) upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient designated for the purposes of this Agreement; or
 - (iii) (if given by email) on production of a read receipt or equivalent confirmation,

provided that any notice or communication received or deemed received after 5 pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, shall be deemed not to have been received until the next Business Day in that place.

- 12.2 The initial address and designated person of each Party is set out in the signature pages of this agreement.

13. PROTECTION OF PERPETUAL

- 13.1 Perpetual may for the purposes of this agreement act without liability (save where it is in wilful default or grossly negligent) on any request or instructions received by it under or for the purposes of clause 3, 4 or 14 which Perpetual acting in good faith believes to have been duly issued, even if it is subsequently found that there was some defect in the issue of the instruction or that for any other reason the instruction or request was not valid or binding on the person making it.

14. TERMINATION

- 14.1 This agreement may be terminated at any time on such terms as the Parties may agree.
- 14.2 If this agreement is terminated for any reason and a replacement for Perpetual has not been appointed under clause 6, the Taxpayer may at its absolute discretion request Perpetual, on one or more occasions, to do any one or more of the following things:
- (a) request the Commissioner to refund any Taxpayer Deposits from the Tax Pooling Account, and upon receipt promptly pay such amounts to the Taxpayer;
 - (b) request the Commissioner to transfer any amount in the Tax Pooling Account to one or more other accounts with the Commissioner; or
 - (c) pay to the Taxpayer any amounts of interest derived from any Taxpayer Deposits in the Taxpayer Deposit Trust Account or the Tax Pooling Account, whether received by the Intermediary before or after the termination of this agreements.
- 14.3 The Intermediary authorises Perpetual to make requests and payments on its behalf for the purposes of clause 14.2. Perpetual agrees to so act in accordance with this agreement.

14.4 Perpetual shall promptly comply with any Taxpayer's request received by it under clause 14.2.

15. CONFIDENTIALITY

15.1 Unless otherwise specified by the Intermediary, all information obtained by or provided to Perpetual in relation to this agreement, including records, reports, accounts and other documents, intellectual property, databases, know-how and the terms of this agreement, shall:

- (a) be kept confidential by Perpetual;
- (b) not be used otherwise than for the purposes of this agreement (except as otherwise specifically provided in this agreement);
- (c) not be disclosed by Perpetual otherwise than to the other Parties or:
 - (i) if, and to the extent, required by law, **provided that** the disclosing Party will immediately notify the other Parties that a requirement to disclose has arisen by law, Perpetual will, where permitted by law, allow the other Parties a reasonable opportunity to take any lawful action intended to restrict or prevent the disclosure of confidential information;
 - (ii) to independent consultants, advisers and contractors of Perpetual whose duties in relation to this agreement reasonably require such disclosure;
 - (iii) to the extent that the information has become generally available to the public other than as a result of disclosure by Perpetual in violation of this agreement.

15.2 If this agreement is terminated for any reason Perpetual shall promptly provide to the Intermediary all copies of written or recorded information relating to the Intermediary's business as a tax pooling intermediary.

15.3 The provisions of this clause 15 shall:

- (a) continue to bind Perpetual notwithstanding that this agreement may be terminated or that Perpetual may cease to be a party to this agreement; and
- (b) not affect the provisions of any other confidentiality agreement between any of the Parties.

16. MISCELLANEOUS

16.1 If at any time any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability shall not affect the enforceability of the provisions, or (as the case may be) the remaining provisions, of this agreement, nor shall the legality, validity or enforceability of any of those provisions under the law of any other jurisdiction be in any way affected or impaired thereby.

16.2 Time shall be of the essence in respect of performance by the Intermediary and Perpetual of their obligations under this agreement but no failure on the part of the Taxpayer to exercise, and no delay on its part in exercising, any right, power or remedy

under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

- 16.3 The rights, powers and remedies provided in this agreement are in addition to, and not exclusive of, any rights, powers or remedies provided by law.
- 16.4 The Taxpayer and the Intermediary may each give or withhold any approval or consent in their absolute discretion, and either conditionally or unconditionally. Any such approval or consent shall not be valid unless it is given in writing.
- 16.5 This agreement shall be governed by, and construed in accordance with, the laws of New Zealand, and the Parties hereby submit to the jurisdiction of the courts of New Zealand.
- 16.6 This agreement may be signed in any number of counterparts, all of which will together constitute one and the same instrument, and any of the Parties may execute this agreement by signing any such counterpart.

SIGNATURES

PROVISIONAL TAX FINANCE LIMITED

by:

Name of director

Signature of director

In the presence of:

Name of witness

Signature of witness

Occupation

City/town of residence

Address: Level 5
128 Broadway
Newmarket
AUCKLAND

Facsimile No.: (09) 523 9763

Email: contact@taxfinance.co.nz

Attention: Jeff Greenslade

[NAME OF DEPOSITOR]

by:

Name of director

Signature of director

In the presence of:

Name of witness

Signature of witness

Occupation

City/town of residence

Address:

Facsimile No.:

Email:

Attention:

PERPETUAL TRUST LIMITED

by:

Name of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Signature of authorised signatory

In the presence of:

Name of witness

Signature of witness

Occupation

City/town of residence

Address: PO Box 112
CHRISTCHURCH

Facsimile No.: (03) 379 8608

Email: Ben.OGrady@perpetual.co.nz

Attention: Ben O'Grady