

INFRASTRUCTURE & UTILITIES NZ LIMITED

**THE TRUSTEES EXECUTORS AND AGENCY COMPANY
OF NEW ZEALAND LIMITED
(trading as TOWER Trust)**

**PROGRAMME TRUST DEED
(relating to the constitution and terms of
convertible infrastructure bonds)**

RUSSELL McVEAGH McKENZIE BARTLEET & CO

BARRISTERS, SOLICITORS & NOTARIES PUBLIC
AUCKLAND & WELLINGTON, NEW ZEALAND

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DEED dated 11 November 1999

PARTIES

INFRASTRUCTURE & UTILITIES NZ LIMITED (“**Issuer**”)

THE TRUSTEES EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED (trading as **TOWER Trust**) (“**Trustee**”)

INTRODUCTION

- A. The Issuer has resolved to establish a bond programme (“**Programme**”) pursuant to which it may issue Bonds from time to time.
- B. Bonds will be issued under the Programme on a series by series basis, with the Issuer determining for each Series:
- (a) the rate of interest payable on the Bonds;
 - (b) the Maturity Date, Interest Payment Dates, Conversion Rate and, if applicable, Holder’s Conversion Rate for the Bonds;
 - (c) whether the Holders will have the benefit of the Holder’s Conversion Option; and
 - (d) any other conditions relevant to a particular Series.
- C. The Trustee will act as trustee for the Holders subject to the terms and conditions of this deed.

COVENANTS

1. DEFINITIONS AND INTERPRETATION

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

“**Approved Issuer Levy**” has the meaning given to that term in clause 10.7.

“**Assessed Value**” means, in relation to an asset, the value of that asset determined by an Independent Adviser.

“**Auditors**” means the auditors for the time being of the Issuer.

“**Bond**” means, at any time, a convertible bond created, constituted and issued pursuant to this deed, and remaining outstanding and not Converted or deemed Converted, or redeemed or deemed redeemed, at that time.

“**Borrowed Money Indebtedness**” of the Issuer Group means the aggregate financial indebtedness of each member of the Issuer Group (excluding any guarantee, indemnity or similar obligation of one member in respect of the financial indebtedness of any other member) and including the Bonds:

“Business Day” means a day on which the NZSE is open for trading.

“Companies Act” means the Companies Act 1993.

“Constitution” means the constitution of the Issuer, as amended from time to time.

“Conversion” means, in relation to a Bond, the redemption of that Bond by the issue of the number of Ordinary Shares derived by application of the relevant Conversion Rate or Holder’s Conversion Rate (as applicable subject to clause 6.1(c)), and **“Convert”**, **“Convertible”** and **“Converted”** shall be construed accordingly.

“Conversion Rate” means, in relation to a Bond which is to be Converted (other than pursuant to clause 6.1(c)(iii)), the number of Ordinary Shares to be issued on conversion of that Bond calculated in accordance with the following formula:

$$OS = FV \div (OSMV \times CP)$$

provided that, unless the Holder makes full and timely payment to the Issuer in respect of any withholding tax or other withholding or deduction required to be paid or made on or before Conversion (whether pursuant to section 10 (including, for the avoidance of doubt, any Approved Issuer Levy to be deducted pursuant to clause 10.2) or otherwise), the number of Ordinary Shares to be issued on Conversion shall be adjusted in accordance with the following formula:

$$AOS = OS - \frac{WT}{OSMV}$$

In the above formulae:

OS = the number of Ordinary Shares to be issued on Conversion of the Bond

FV = the Face Value of the Bond

OSMV = the Ordinary Share Market Value on the date of Conversion

CP = the Conversion Percentage for that Series of Bonds as specified in the Series Supplement for that Series

AOS = the adjusted number of Ordinary Shares

WT = the amount of the withholding tax, Approved Issuer Levy, or other withholding or deduction required to be paid or made by the Issuer on or before Conversion.

“Date of Acceleration” means the date on which the Trustee makes a declaration pursuant to clause 8.2.

“Director” means, at any time, a director (or alternate director) of the Issuer at that time and **“Directors”** means, at any time, the directors (including alternates) acting in accordance with the Constitution.

“Dollars” and **“\$”** means New Zealand dollars.

“Extraordinary Resolution” has the meaning set out in clause 1.1 of schedule 3.

“Face Value” means the face value of each Bond being \$1.00.

“Holder” means, at any time, each person whose name is entered in the Register as a holder of Bonds at that time.

“Holder’s Conversion Option” means the option described in clause 6.1(b) pursuant to which a Holder may, if the Issuer elects to redeem any Bonds of a Series for cash, require the Issuer to Convert that Holder’s Bonds of that Series in the manner described in clause 6.1(b).

“Holder’s Conversion Rate” means, in relation to a Bond of a Series which is specified as having the benefit of the “Holder’s Conversion Option” in the relevant Series Supplement and is to be Converted under clause 6.1(c)(iii), the number of Ordinary Shares to be issued on Conversion of that Bond calculated in accordance with the following formula:

$$OS = FV \div (OSMV \times HCP)$$

provided that, unless the Holder makes full and timely payment to the Issuer in respect of any withholding tax or other withholding or deduction required to be paid or made on or before Conversion (whether pursuant to section 10 (including, for the avoidance of doubt, any Approved Issuer Levy to be deducted pursuant to clause 10.2) or otherwise), the number of Ordinary Shares to be issued on Conversion shall be adjusted in accordance with the following formula:

$$AOS = OS - \frac{WT}{OSMV}$$

In the above formulae:

OS = the number of Ordinary Shares to be issued on Conversion of the Bond

FV = the Face Value of the Bond

HCP = the Holder’s Conversion Percentage for that Series of Bonds as specified in the Series Supplement for that Series

OSMV = the Ordinary Share Market Value on the date of Conversion

AOS = the adjusted number of Ordinary Shares

WT = the amount of the withholding tax, Approved Issuer Levy, or other withholding or deduction required to be paid or made by the Issuer on or before Conversion.

“Independent Adviser” means an adviser appointed pursuant to clause 1.5.

“Interest Group” means, in relation to any action or proposal affecting rights attached to any Bonds, a group of Holders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise Holders of one or more classes, except where action is taken in relation to some Holders in a class and not others, or a proposal expressly distinguishes between some Holders in a class and other Holders in that class, in which case the Holders in that class may fall into two or more interest groups.

“Interest Rate” means, in relation to a Bond, the rate of interest payable in respect of that Bond as specified in the relevant Series Supplement.

“Interest Payment Date” means, in relation to a Bond, each date for payment of interest on that Bond as specified in the relevant Series Supplement.

“Investment Statement” means the investment statement relating to Bonds issued under the Programme, as amended, supplemented or replaced from time to time.

“Issue Date” means, in relation to a Bond, the date specified in the relevant Issue Flyer.

“Issue Flyer” means each document stated to be an “Issue Flyer” in relation to a Series. There may be more than one Issue Flyer for a Series.

“Issuer” means Infrastructure & Utilities NZ Limited.

“Issuer Group” means the Issuer and those of its Subsidiaries that, as at the date of this deed or from time to time, guarantee any financial indebtedness of the Issuer or any of its Subsidiaries that in turn guarantee any financial indebtedness of the Issuer.

“Listing Rules” means the listing rules of the NZSE in force from time to time.

“Market Value” of an asset on any date means:

- (a) in relation to an investment in securities listed on the NZSE or any Recognised Stock Exchange the value determined by reference to the closing price of the relevant securities on that date; and
- (b) in relation to any other asset, its cost or, if an Assessed Value has been obtained, the most recent Assessed Value.

“Maturity Date” means, in relation to a Bond, the maturity date specified in the relevant Series Supplement.

“Minimum Number” means 500 Bonds or such other number of Bonds as may constitute a “Minimum Holding” of Bonds (as that term is defined in the Listing Rules).

“**NZ GAAP**” means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993.

“**NZSE**” means the New Zealand Stock Exchange, and includes any body or authority which may in the future assume and perform the functions of the New Zealand Stock Exchange.

“**Ordinary Shares**” means fully paid ordinary voting shares in the capital of the Issuer of the same one class.

“**Ordinary Share Market Value**” means, in relation to an Ordinary Share, on any Business Day (“**Measurement Date**”):

- (a) if the Ordinary Shares of the Issuer are listed on the NZSE on that Business Day:
 - (i) the volume weighted average of the prices at which Ordinary Shares were sold through the order matching system of the NZSE during the period of 10 consecutive Business Days immediately preceding the fifth Business Day prior to the Measurement Date; or
 - (ii) if no such sale occurred during such 10 Business Day period, the market value of the Ordinary Shares of the Issuer determined on the basis set out in paragraph (b) of this definition; or
- (b) in the circumstances described in paragraph (a)(ii) of this definition, or if the Ordinary Shares of the Issuer are not listed on the NZSE on the Measurement Date, the market value of the Ordinary Shares of the Issuer as determined by an Independent Adviser.

“**Prospectus**” means the registered prospectus relating to Bonds issued under the Programme, as amended, supplemented or replaced from time to time.

“**Record Date**” means, in relation to a payment due on a Bond, the tenth day before the due date for that payment or, if that day is not a Business Day, the Business Day immediately preceding such day.

“**Register**” means the register kept by the Registrar in which is entered the name and address of each person who is the Holder of a Bond.

“**Registered Address**” means, in relation to a Holder at any time, the address of that Holder recorded in the Register at that time.

“**Registrar**” means BK Registries Limited or such other registrar as the Issuer and the Trustee may determine from time to time.

“**Ruling**” means a decision, determination, ruling, waiver or dispensation given pursuant to the Listing Rules by the NZSE or the Market Surveillance Panel constituted by the NZSE under the Listing Rules, including any division or duly authorised delegate of the Market Surveillance Panel.

“**Series**” means Bonds that are issued under the same Series Supplement.

“Series Supplement” means a written notice from the Issuer to the Trustee substantially in the form of schedule 1 specifying the characteristics applicable to a series of Bonds.

“Series Reference” means the unique number identifying all Bonds within a Series, as specified in the Series Supplement for that Series.

“Securities Act” means the Securities Act 1978 (and includes the Securities Regulations 1983).

“Senior Creditor” means a creditor of any member or members of the Issuer Group in respect of Borrowed Money Indebtedness.

“Statement” means:

- (a) in relation to a Bond and a Holder, the statement issued, or to be issued, by the Issuer to that Holder as required by the Listing Rules; and
- (b) in relation to an Ordinary Share arising from Conversion of any Bond, the statement to be issued by the Issuer to the holder of that share, as required by the Listing Rules.

“Subsidiary” means a subsidiary, as defined in section 5 of the Companies Act, or an “in-substance” subsidiary, in accordance with any approved financial reporting standard, of the Issuer.

“Suspension Notice” means a notice given by the Issuer to the Trustee pursuant to clause 5.4.

“Tangible Assets” means, at any date, the aggregate on a consolidated basis of the Market Value of all tangible assets (determined in accordance with NZ GAAP) of the Issuer and its Subsidiaries as at that date.

“Trustee” means The Trustees Executors and Agency Company of New Zealand Limited (trading as TOWER Trust) or such other trustee as may hold office under this deed from time to time.

- 1.2 **Listing Rules:** When used in this deed, the following words and phrases (and any other word or phrase beginning with a capitalised letter which is not defined in clause 1.1 but which is a defined term in the Listing Rules) shall, unless the context requires otherwise, bear the same meaning as it has under the Listing Rules:

“Affected Group”

“Associated Persons”

“Equity Securities”

“Listed” and “Listing”

“Quoted”

“Quotation”

“Recognised Stock Exchange”

“Relevant Group”

1.3 **References:** Except to the extent that the context requires otherwise, any reference in this deed to:

a **“charge”** includes a mortgage, charge, encumbrance, lien, or pledge and any other security interest or arrangement of any nature the practical effect of which is to secure a creditor but does not include any of the foregoing:

- (a) which arises by operation of law; or
- (b) which consists of rights or obligations of, or in the nature of, set-off, netting, combination, consolidation or retention of accounts, banker’s lien or similar rights or obligations in relation to or affecting any credit balances or other financial obligations (but not where there is a flawed asset or arrangement having a similar purpose or effect).

a **“clause”**, **“section”** or **“schedule”** is a reference to a clause or section of, or a schedule to, this deed.

a **“company”** means any company or body corporate wherever incorporated or domiciled and, where the context so admits, includes an individual.

“financial indebtedness” means indebtedness for or in respect of money borrowed or raised (whether or not for cash consideration), by whatever means (including the drawing, acceptance, endorsement or discounting of bills of exchange).

“financial statements” includes statements of financial position, financial performance, movements in equity and cash flows, and the bonds relating thereto, and **“consolidated financial statements”** has a corresponding meaning.

“person” includes an individual, firm, company, corporation or unincorporated body of persons, organisation or trust, and any state, government or governmental agency, in each case whether or not having a separate legal personality.

“written” and **“in writing”** includes all means of reproducing words in a tangible and permanently visible form.

1.4 **Interpretation:**

- (a) Words importing the singular number include the plural and vice versa, and the masculine gender includes the feminine or neuter genders and vice versa.
- (b) Reference to a statute or regulation includes all amendments to that statute or regulation whether by subsequent statute or otherwise, and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
- (c) Headings have been inserted in this deed for guidance only and shall not be deemed to form any part of the context.

- (d) Where under or pursuant to this deed or anything done under this deed the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day.
- (e) If it shall be necessary for any of the purposes of this deed to determine the equivalent at any date in Dollars of any amount denominated in any other currency, that equivalent shall be determined on the basis of such rate of exchange prevailing as at that date as the Issuer, with the prior approval of the Auditor, may select.

1.5 **Independent Adviser:** If an Independent Adviser is required for any of the purposes of this deed the Trustee shall select an investment banker, chartered accountant, or other financial adviser (in each case appropriately qualified having regard to the purpose of the appointment) and shall notify the Issuer of the name of that adviser. The Issuer shall within 5 Business Days thereafter advise the Trustee whether or not it approves that adviser. The Issuer shall not unreasonably withhold its approval of any such adviser. If the Issuer does not approve an adviser, the Trustee shall select another until a suitable adviser is approved.

2. COMPLIANCE WITH LISTING RULES

- 2.1 For so long as the Bonds are listed on the NZSE, the Issuer shall comply with the Listing Rules (subject to the requirements of the Securities Act and any other applicable legislation or regulatory requirements and to the terms of any Ruling given from time to time). If, and for so long as no Bonds are listed on the NZSE, then, to the greatest extent possible, the Issuer shall continue to so comply with the Listing Rules (subject as aforesaid) as if the Bonds were actually so listed, except where the relevant Holders have passed an Extraordinary Resolution requiring the Issuer not to so comply.
- 2.2 For the purposes of clause 2.1, there shall be deemed to be made to the Listing Rules such modifications as may be necessary to enable their spirit and intent to be achieved in their application to the Bonds.
- 2.3 If the NZSE has given a Ruling that applies to the Issuer authorising any act or omission which, in the absence of that Ruling, would be in contravention of the Listing Rules, this deed or the Constitution, that act or omission is deemed to be authorised by the Listing Rules, this deed and the Constitution notwithstanding such contravention or inconsistency.
- 2.4 Failure to comply with any of the Listing Rules, or with the proviso to clause 9.1 of schedule 3, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Issuer provided that:
 - (a) a party to a transaction or contract who knew of the failure to comply with the Listing Rules or those provisions, as the case may be, is not entitled to enforce that transaction or contract; and
 - (b) this provision shall not affect the rights of any Holder or any holder of other securities of the Issuer against the Issuer or the Directors arising

from failure to comply with the Listing Rules or any of the provisions of this deed or the Constitution.

- 2.5 A reference in this deed to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.
- 2.6 The Trustee shall not be required to monitor compliance by the Issuer or any other party with the Listing Rules and, in the absence of notice to the contrary from the Issuer or the NZSE, shall be entitled to assume that the Issuer is so complying. In the event of non-compliance with any Listing Rule the Trustee, in determining the action to be taken or not taken by it, shall be entitled to have regard to the actions of the NZSE in relation to that non-compliance by the Issuer.

3. APPOINTMENT OF TRUSTEE

- 3.1 **Appointment:** The Issuer appoints the Trustee, and the Trustee accepts appointment, as trustee for the Holders on the terms and conditions contained in this deed or implied by law and with the rights, powers and obligations conferred by this deed or by applicable law.
- 3.2 **General Covenant:** The Issuer covenants with the Trustee that it will duly and punctually observe, fulfil and perform all the provisions binding upon it under or pursuant to this deed.

4. ISSUE AND CONSTITUTION OF BONDS

- 4.1 **Series of Bonds:** The Issuer may issue Bonds pursuant to this deed from time to time in such Series (including any existing Series), at such prices and to such persons as determined by the Issuer. A Series of Bonds shall be issued by:
- (a) the Issuer delivering a completed and signed Series Supplement to the Trustee and to the Registrar;
 - (b) the Trustee signing and returning the Series Supplement to the Issuer; and
 - (c) the Registrar entering the particulars of that Series into the Register in accordance with clause 4.7(b).

A Series Supplement for a Series may expressly amend (either by modifying or deleting existing terms or adding further terms) this deed in relation to the relevant Series. If a term of a Series Supplement is inconsistent with any provision of this deed, the Series Supplement shall prevail in respect of the relevant Series only.

- 4.2 **Ranking of Bonds:** Unless and until Converted, the Face Value of, and interest on the Bonds, and any other amount owing in respect thereof, shall in a liquidation of the Issuer rank pari passu with unsecured and unsubordinated creditors of the Issuer other than creditors preferred solely by operation of law. Prior to a liquidation of the Issuer interest on a Series of Bonds may be suspended in accordance with clause 5.3.

- 4.3 **Face Value:** Each Bond shall have a Face Value of \$1.00 whether or not it is issued at a greater or lesser amount.
- 4.4 **Benefit of deed:** Each Holder will have the benefit of, and be bound by and will be deemed to have notice of all of the provisions of, this deed and each Series Supplement relating to Bonds held by that Holder and all those provisions shall be binding on the Issuer, each Holder, and all persons claiming through them respectively.
- 4.5 **Validity:** No Holder shall be concerned or obliged to enquire whether any Bond has been issued in contravention of this deed, any Series Supplement, the Listing Rules or the Constitution. Each Bond shall be deemed to be validly issued and constituted under this deed, the Listing Rules and the Constitution and to be entitled to the benefit of the provisions of this deed, notwithstanding that it may subsequently be determined that the issue of such Bond was in breach of any provision of this deed, any Series Supplement, the Listing Rules or the Constitution, but without prejudice to the Trustee's rights pursuant to this deed against the Issuer in relation to such breach.
- 4.6 **Statements:** The Issuer shall issue, or shall cause to be issued, to each Holder a Statement, relating to that Holder's Bonds, in accordance with, and in the time required by, the Listing Rules.
- 4.7 **Register:**
- (a) The Issuer shall establish and maintain, or cause to be established and maintained, a register of Bonds. The Register shall be kept by the Registrar at such place in New Zealand as the Issuer may from time to time determine and notify the Trustee of in writing.
 - (b) The following provisions shall apply in respect of the Register:
 - (i) There shall be entered therein the name and address of each Holder together with particulars of the Bonds held by such Holder (including the Series Reference for each Bond) and of all transfers of such Bonds and such other particulars in respect of the Bonds as may from time to time be required by law or by the Trustee.
 - (ii) The Trustee and its agents and, except when the Register is duly closed, any Holder, may, at all reasonable times, inspect the Register and take copies of and extracts from the same without payment of any fee.
 - (iii) The Issuer may, from time to time, close the Register for any period or periods not exceeding 10 days in total in any year, provided such closure is required for administrative purposes.
 - (iv) The Register shall be audited, at the cost of the Issuer, by the Auditors annually and at such other times as the Trustee may request in writing.
 - (c) In respect of joint Holders of a Bond, only the person whose name stands first in the Register shall be entitled to delivery of any Statement, notice or other communication from the Issuer or the Trustee.

- (d) Any change of name or address of any Holder shall be notified by such Holder in writing to the Registrar, who shall alter the Register accordingly.
- (e) Each of the Issuer and the Trustee shall be entitled:
 - (i) to rely absolutely on the Register as being correct;
 - (ii) for all purposes to treat a person whom it believes to be the person entered on the Register as the Holder of any Bonds as the legal and beneficial owner of those Bonds.
- (f) Except as may be required by law, neither the Issuer nor the Trustee shall be bound to recognise or see to the performance of any trust (express, implied or constructive) or any charge, pledge, or equity to which any Bond or interest therein is or may be subject, or to recognise any person as having any interest in any Bond, except for the person recorded in the Register as the Holder, and accordingly no notice of any trust, charge or equity shall be entered upon the Register.

5. INTEREST AND SUSPENSION OF INTEREST

5.1 **Interest:** Interest shall, subject to clause 5.3, be payable on the Face Value of each Bond at the applicable Interest Rate. That interest shall:

- (a) be paid by instalments in arrears on each Interest Payment Date;
- (b) be calculated from the relevant Issue Date;
- (c) accrue from day to day; and
- (d) cease to accrue from the earlier of the date of Conversion or redemption in cash of that Bond.

5.2 **Payment of interest:**

- (a) The Issuer covenants with the Trustee that it will pay to the Trustee, at such place as the Trustee shall by notice in writing direct, interest on the Bonds in accordance with clause 5.1.
- (b) Notwithstanding the provisions of clause 5.2(a) and subject to clause 5.2(c), the Issuer shall unless and until otherwise requested by the Trustee or prevented by law, pay all interest on the Bonds to the Holders, and each such payment shall operate as a payment to the Trustee in satisfaction, to the extent of the payment, of the obligation to pay interest to the Trustee.
- (c) If specified in the relevant Issue Flyer for a Bond, on the first Interest Payment Date for a Bond, an additional amount may be paid to the initial subscriber for that Bond.

5.3 **Suspension of interest:** If:

- (a) the Directors, on reasonable grounds, believe that the payment would, or would be likely to, result in the Issuer breaching the solvency test contained in section 4 of the Companies Act 1993; or
- (b) the payment would, or would be likely to, result in any member of the Issuer Group being in breach of any covenant, warranty or undertaking given by it to any of its Senior Creditors under the terms or conditions on which any Borrowed Money Indebtedness was advanced to or otherwise provided to it; or
- (c) the payment would, or would be likely to, result in any member of the Issuer Group being in breach of any other legal obligation,

the Issuer may, to the extent necessary, suspend the payment of interest on any Series until such time as the circumstances provided for in paragraphs (a), (b) or (c) above no longer apply. Such suspension shall take effect from the date specified in the relevant Suspension Notice, which may be before the delivery to the Trustee of that Suspension Notice, but shall not be more than 14 days before the delivery to the Trustee of that Suspension Notice.

- 5.4 **Suspension Notice:** If the Issuer determines to suspend the payment of interest in relation to any Series in accordance with clause 5.3, the Issuer shall give to the Trustee notice to that effect. That notice shall incorporate a certificate signed by not less than two Directors on behalf of the Directors stating that one or more of the circumstances specified in clause 5.3 exists, provided that if the Company is in receivership, liquidation or statutory management, or otherwise under the control of a person other than the Directors, then the certificate incorporated in the Suspension Notice may be given to the Trustee by the receiver, liquidator or statutory manager or by that other person. The Company shall, forthwith after giving the Suspension Notice to the Trustee, give notice to Holders of Bonds of the relevant Series of the suspension of interest in accordance with that Suspension Notice.
- 5.5 **Validity of Suspension Notice:** The Trustee may without enquiry accept and rely on any Suspension Notice as conclusive evidence of the existence of the circumstances specified in that Suspension Notice, and the Trustee shall not be obliged to enquire further.
- 5.6 **Effect of Suspension Notice:** If payment of interest in relation to any Series is suspended pursuant to clause 5.3, the obligation to pay that interest shall not be extinguished, and interest shall continue to accrue on the Bonds of that Series. The interest accrued (whether before or after the date of suspension) shall be paid by the Company when and if none of the circumstances specified in clause 5.3(a), (b) or (c) exists, and the payment will not cause any such circumstance to exist.
- 5.7 **Further certificate or report:** At any time while payment of interest in relation to any Series is suspended pursuant to clause 5.3, the Trustee may require the Company to produce a certificate signed by not less than two Directors on behalf of the Directors (or by a person referred to in the proviso to clause 5.4), as to whether the circumstances specified in the Suspension Notice pursuant to which payment of interest in relation to that Series was suspended, still exist. The Company shall procure that certificate or report to be produced within 14 days after request by the Trustee.

6. CONVERSION, REDEMPTION, NEW ISSUES OF SECURITIES ETC, AND TRANSFER

6.1 Conversion and redemption:

- (a) **Issuer's election:** If in relation to a Series of Bonds a Date of Acceleration has not occurred, the Issuer shall elect, by giving notice to each Holder of Bonds of that Series at least 25 Business Days prior to the Maturity Date for that Series, to either:
- (i) Convert all Bonds at the relevant Conversion Rate on the Maturity Date for that Series; or
 - (ii) redeem all Bonds for cash on the Maturity Date for that Series.
- If the Issuer fails to give notice as required by this clause, it shall be deemed to have given notice under clause 6.1(a)(i).
- (b) **Holder's Election:** If a Series is specified as having the benefit of the Holder's Conversion Option in the relevant Series Supplement and the Issuer has elected to redeem that Series for cash as provided in clause 6.1(a)(ii), then any Holder of Bonds of that Series may prior to the date falling 15 Business Days before the Maturity Date for that Series, give written notice (which shall be irrevocable unless the Issuer consents otherwise) to the Issuer requiring the Issuer to Convert that Holder's Bonds of that Series at the Holder's Conversion Rate for that Series ("**Holder's Election Notice**");
- (c) **Conversion:** If the Date of Acceleration has not occurred prior to the Maturity Date for a Series, then on the Maturity Date for that Series, the Issuer shall:
- (i) if clause 6.1(a)(i) applies, Convert all Bonds of the relevant Series at the Conversion Rate for that Series; or
 - (ii) if clause 6.1(a)(ii) applies, redeem each Bond (other than a Bond in respect of which the Holder has given a valid Holder's Election Notice under clause 6.1(b)) for cash at its Face Value; or
 - (iii) if clause 6.1(b) applies, Convert, at the Holder's Conversion Rate for that Series, each Bond in respect of which the Holder has given a Holder's Election Notice.
- (d) **Rounding:** If application of the Conversion Rate or the Holder's Conversion Rate (as applicable) to all the Bonds of a Series held by a Holder would result in a fraction of an Ordinary Share being issued, the number of Ordinary Shares to be issued to that Holder shall be rounded down to the nearest whole number of Ordinary Shares.
- (e) **All redemptions for cash at Face Value less withholdings:** Each Bond which is to be redeemed for cash, whether under clause 6.1(a)(ii) or otherwise, shall be redeemed at an amount equal to its Face Value less all withholding tax and other withholdings or deductions required to be made (whether pursuant to section 10 or otherwise).

- (f) **Ranking of Ordinary Shares:** Ordinary Shares resulting from each Conversion shall rank pari passu in all respects with all other Ordinary Shares then on issue.
- (g) **Issue of Statement after Conversion:** If required by the Listing Rules, the Issuer shall issue, or shall cause to be issued, to a Holder whose Bonds have Converted in accordance with this clause 6.1, a Statement relating to the Ordinary Shares into which the Bonds have converted, in accordance with, and in the time required by, the Listing Rules.
- (h) **Date of Conversion:** A Bond shall be deemed Converted on the date on which the Issuer issues and allots the relevant Ordinary Shares to the Holder.
- (i) **Cancellation of Bonds on Conversion:** Each Bond shall be automatically cancelled on Conversion.
- (j) **Interest on Conversion:** If the date of Conversion of a Bond is not an Interest Payment Date, the Issuer shall, subject to clause 5.3, pay to the Holder accrued interest on that Bond to the date of Conversion.

6.2 **Compulsory Acquisitions:** If the Issuer receives notice, whether written or not, that a person or a group of Associated Persons has acquired that number of Ordinary Shares, or any interest therein, which:

- (a) permits that person, or group of Associated Persons, to require the remaining holders of Ordinary Shares to sell their Ordinary Shares to that person, or group of Associated Persons, and that person, or group of Associated Persons, has elected to so require those holders to so sell their Ordinary Shares; or
- (b) requires that person, or group of Associated Persons, to offer to purchase the Ordinary Shares of the remaining holders of Ordinary Shares,

(in each case whether under the Constitution, the Companies Act, the Listing Rules, or otherwise) the Issuer shall notify all Holders:

- (c) as soon as practicable, having regard to its obligations at law and under the Listing Rules, in writing with a copy to the Trustee, of that circumstance; and
- (d) that, in terms of this clause 6.2(d), each Holder may elect and require, by notice in writing to the Issuer as follows:
 - (i) within 5 Business Days after the dispatch of the notice to the Holder to have all of that Holder's Bonds Converted, in which case the Issuer shall Convert that Holder's Bonds at the Conversion Rate for the relevant Series on a date determined by it, being not later than the date on which consideration payable in respect of any sale and purchase under (a) or (b) above is payable (or, if there is more than one such date, the earlier or earliest of them to occur); or

- (ii) if a Holder has not made an election to have all of that Holder's Bonds converted under (i) above, that Holder may elect and require, by notice in writing to the Issuer within 15 Business Days after the dispatch of the notice, to have all of that Holder's Bonds redeemed for cash at their Face Value plus accrued interest on the earlier of the first Interest Payment Date after elapse of such 15 Business Day period or the 30th Business Day after dispatch of the notice.

6.3 **New issues of securities:** Subject to compliance by the Issuer with the Constitution, the Listing Rules and the provisions of this deed, and any relevant Series Supplement, the Issuer shall be entitled from time to time to issue further securities (including Ordinary Shares and convertible securities (whether or not such convertible securities rank in right of repayment prior to or equally with the Bonds)).

6.4 **Purchase of Bonds by Issuer or Subsidiary:** The Issuer may, subject to compliance with its Constitution and the Listing Rules, purchase, or cause any Subsidiary to purchase, any Bond from any Holder. Any Bond purchased by the Issuer or any Subsidiary may, at the option of the Issuer, be cancelled forthwith upon registration of the transfer in favour of the Issuer or the Subsidiary. Any such Bond which is not cancelled may be subsequently transferred in accordance with this deed.

6.5 **Financial assistance:** The Issuer may, subject to compliance with its Constitution, the Listing Rules and the Companies Act, give financial assistance for the purpose of, or in connection with, the acquisition of Bonds.

6.6 **Transfer and transmission of Bonds:**

- (a) Subject to such of the restrictions of this deed as may be applicable, any Holder may transfer all or any Bonds in accordance with subclause (b).
- (b)
 - (i) Any Bonds disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of the Securities Transfer Act 1991 may be transferred in accordance with the provisions of that Act.
 - (ii) Every transfer not falling within the provisions of sub-clause (i) shall be effected by written transfer in such form as the Issuer may approve and such transfer shall be signed by the transferor and, if the Issuer so requires, the transferee.
- (c) The Issuer may require reasonable evidence proving the title of the transferor or the transferor's right to transfer the Bonds. Subject to clause 4.7(c), and on being satisfied that the provisions of this section (and clauses 6.7, 6.8 and 6.9 if applicable) and all statutory provisions have been complied with, the transfer shall be registered in the Register.
- (d) The transferor of a Bond shall be deemed to remain the Holder until the name of the transferee is entered in the Register in respect thereof.
- (e) The Issuer or the Registrar may decline to register any transfer of Bonds where:

- (i) the Issuer has a lien on the relevant Bonds or any of them;
 - (ii) the transferor does not provide such evidence (if any) as may reasonably be required by the Issuer to show the right of the transferor to make the transfer;
 - (iii) registration of the transfer (together with registration of any further transfer or transfers held and awaiting registration) would result in less than the Minimum Number standing in the name of the transferee. This power shall not be exercised before due enquiry has been made as to whether any further transfers to the same transferee are pending and whether such transfers would increase the holding to the Minimum Number; or
 - (iv) the transfer takes place in a period during which the Register is closed in accordance with clause 4.7(b)(iii).
- (f) The Issuer may at any time give notice to any Holder holding less than the Minimum Number that such Holder's holding is less than the Minimum Number and that, unless the Holder notifies the Issuer in writing within such reasonable period as is specified in the notice (being not less than three months) of such Holder's objection, the provisions of subclause (g) shall apply.
- (g) A Holder upon whom notice has been served under subclause (f) shall ensure that within one month (or such longer period as the Issuer may determine) after receiving the notice, the relevant Bonds are disposed of or further Bonds are acquired to bring the relevant holding to the Minimum Number. If, after such period, the Issuer is not satisfied that suitable arrangements have been made for the disposal, or acquisition of further Bonds, the Issuer may arrange for the sale of the relevant Bonds on behalf of the Holder, through the NZSE, at the best price reasonably obtainable at the relevant time. For this purpose, the Holder shall be deemed to have authorised the Issuer to act on behalf of such Holder in relation to the sale of the relevant Bonds, and to sign all documents and give all instructions relating to such sale and transfer as may be required to give effect to it. The net proceeds of sale shall be held on trust by the Issuer for, and paid to, the Holder.
- (h) Any instruments of transfer which have been registered may be retained by the Issuer or the Registrar. If the Issuer or the Registrar, pursuant to the powers contained in this deed, refuse to register a transfer, it shall promptly send to the transferor and proposed transferee notice of the refusal and shall return any written transfer to the transferee together with such documents which may have been left with the transfer.
- (i) The executors or administrators of a deceased Holder (not being one of several joint Holders) and, in the case of the death of one or more of several joint Holders, the survivor or survivors, shall be the only persons recognised as having any title or interest in the Bonds held by such Holder or Holders. Nothing contained in this subclause shall release the estate of a deceased joint Holder from any liability in respect of any Bond which had been jointly held by that Holder with another person.

- (j) Any manager of a mentally disordered person or any person becoming entitled to a Bond in consequence of the death or bankruptcy of a Holder shall, upon such evidence being produced as may from time to time be properly required by the Issuer, have the right either to be registered as a Holder in respect of the Bond or, instead of being so registered, to make such transfer of the Bond as the mentally disordered, deceased or bankrupt person could have made. The Issuer shall in either case have the same right to decline or suspend registration as it would have had in the case of a transfer of the Bond by the mentally disordered, deceased or bankrupt person before such person became mentally disordered, or before the death or bankruptcy of such person, as the case may be.
- (k) If the person so becoming entitled elects to be registered personally, the person shall deliver or send to the Issuer a notice in writing signed by the person stating that the person so elects. If the person elects to have another person registered, the person shall transfer the relevant Bond to such other person. All the limitations, restrictions and provisions of this deed relating to the right to transfer and the registration of transfers of Bonds shall be applicable to any such notice or transfer as if the mental disorder, death or bankruptcy of the Holder had not occurred and the notice or transfer were a transfer signed by that Holder.
- (l) Where any Holder becomes mentally disordered, dies or becomes bankrupt, the manager or personal representatives or the assignee of the Holder's estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the Issuer, be entitled to the same distributions and other advantages, and to the same rights (whether in relation to meetings of the Holders or to voting or otherwise) as the Holder would have been entitled to if the Holder had not become mentally disordered, died or become bankrupt. Where two or more persons are jointly entitled to any Bond in consequence of the death of the Holder they shall, for the purposes of this deed, be deemed to be joint holders of the Bond.
- (m) The Issuer:
- (i) may, in its discretion, if so requested by a Holder or a transferee of Bonds; and
 - (ii) shall, if so requested by a Holder who produces satisfactory evidence that Bonds held by that Holder are held as bare trustee or nominee and two or more other persons are separate beneficial owners of parcels of those Bonds or have other separate relevant interests in parcels of those Bonds,

cause the Bonds held or acquired by that Holder or transferee to be registered in two or more separately identifiable parcels. Thereafter, communications with that Holder, and distributions to those Holders shall (in the case of paragraph (i) so far as the Issuer considers it convenient or appropriate) be made, as if the separate registered parcels were each held by different Holders.

6.7 **Restrictions on acquisitions:**

- (a) In this clause 6.7, and in clauses 6.8 and 6.9, unless the context otherwise requires:

"Affected Group", **"Insider"**, **"Notice"**, **"Relevant Interest"**, **"Restricted Transfer"**, **"Transfer"**, **"Transferee"** and **"Transferor"** have the respective meanings given to them by Listing Rule 4.1.1.

"Board" means Directors who number not less than the required quorum acting together as the board of directors of the Issuer, in accordance with the Constitution.

"Default" means non-compliance with the requirements of this clause 6.7.

"Defaulter" means a person who has a Relevant Interest in Bonds which have been acquired in breach of the requirements of this clause 6.7 (other than a breach committed by the Issuer).

"Defaulter's Bonds" means, in relation to a Defaulter, Bonds in which the Defaulter has a Relevant Interest.

- (b) If the NZSE gives any Ruling in respect of the matters dealt with by clauses 6.7, 6.8 and 6.9 that Ruling is binding on the Issuer, and the Trustee and all Holders of Bonds, and shall take effect as if that Ruling were itself incorporated in this deed.

- (c) No Restricted Transfer of Bonds may take place unless:

- (i) a Notice is given, not later than the time specified in subclause (d), containing the particulars specified in Listing Rule 4.5.2(a); and
- (ii) a Notice of any change in, or addition to, the particulars notified under subclause (i) is given not later than the time specified in subclause (e).

- (d) A Notice under subclause (c)(i) shall be given:

- (i) if any Transferee under the Transfer in question is an Insider, at least 15 Business Days before the Transfer;
- (ii) if no Transferee is an Insider, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the Transfer.

- (e) A Notice under subclause (c)(ii) shall be given:

- (i) if any Transferee under the Transfer in question is an Insider, at least two Business Days before the change takes effect, in the case of a change to price or other consideration, and at least 15 Business Days before the change takes effect, in the case of a change to any other particulars; or
- (ii) if no Transferee is an Insider:

- (aa) in the case of a change to price or other consideration, at least two hours during which the NZSE is open for business if the Restricted Transfer complies with Listing Rule 4.5.5, and at least one Business Day in any other case, before the change takes effect; and
 - (bb) in the case of a change to any other particulars, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the change takes effect.
- (f) If a Notice is given under subclause (c)(i), the Board shall:
- (i) give a Notice, as soon as can be achieved, and before the expiry of the relevant Notice period referred to in subclause (d), containing the particulars required by Listing Rule 4.5.6; and
 - (ii) comply (so far as is applicable) with Listing Rule 4.5.7.
- (g) If any Transferee under a Restricted Transfer is an Insider, the Board shall (unless the requirements of Listing Rule 4.5.9 are met) forthwith upon a Notice being given under subclause (c)(i) in respect of that Restricted Transfer, commission an appraisal report which complies with Listing Rule 4.5.8, and deal with that appraisal report in accordance with the requirements of that Listing Rule.
- (h) The Issuer shall comply with the provisions of Listing Rules 4.4.5 and 4.4.6, and shall do and facilitate all things necessary such that its Board acts in conformity with the requirements of clauses 6.7 and 6.8.

6.8 Enforcement of acquisition restrictions

- (a) In the event of a Default:
- (i) no vote may be cast in respect of the Defaulter's Bonds on a poll (and any vote cast shall be disregarded) while the Default is unremedied; and
 - (ii) the Defaulter's Bonds may be sold by the Issuer in accordance with subclause (b) but this power may not be exercised:
 - (aa) until one month after the Issuer has given notice to the Defaulter (and if the Defaulter is not the registered holder of the Defaulter's Bonds, to the registered holder) of its intention to exercise this power; and
 - (bb) if, during that month, the Defaulter has remedied the Default (if capable of being remedied), or has transferred the Defaulter's Relevant Interest in the Defaulter's Bonds to a person who is not a Defaulter.
- (b) If the power of sale specified in subclause (a)(ii) becomes exercisable:

- (i) the Issuer shall arrange for the sale of the Defaulter's Bonds through the NZSE or in some other manner approved by the NZSE;
 - (ii) each holder of Defaulter's Bonds is deemed to have authorised the Issuer to act on behalf of that holder in relation to the sale of the relevant Bonds, and to sign all documents relating to such sale which may be required to give effect thereto;
 - (iii) the net proceeds of sale shall be held on trust by the Issuer for, and paid (after deduction of amounts referred to in subclause (iv)) to, holders of the relevant Bonds; and
 - (iv) the Issuer may deduct from the proceeds of sale any costs of sale and any costs to the Issuer of determining whether a person is a Defaulter and exercising powers permitted by this clause 6.8, and any amounts which the Issuer may choose to pay to members of any Affected Group acting pursuant to subclause (d), in reimbursement of expenses incurred by those members.
- (c) No purchaser or other person dealing with the Issuer shall be concerned to enquire whether the power of sale specified in subclause (a) has become properly exercisable, or as to the propriety or regularity of a sale made in purported exercise of that power, or as to the application of the proceeds of sale received by the Issuer. The receipt of the Issuer is a good discharge to the purchaser for the purchase price, and no question may be raised as to the title of the purchaser to Bonds sold in purported exercise of the power of sale specified in subclause (a).
- (d) The Board shall, if so directed by a resolution of an Affected Group (passed by a simple majority of votes), cause the Issuer to exercise the power referred to in subclause (a), if that power has become exercisable. The Holders of 5% or more of the Bonds of that Affected Group may by notice to the Board require the Board to convene a meeting of that Affected Group for the purpose of considering such a resolution.
- (e) Neither the Issuer nor any Director nor the Trustee shall be under any liability whatsoever to any Defaulter, any holder of Defaulter's Bonds, or any person whom the Board believes to be a Defaulter or holder of Defaulter's Bonds, for or in connection with the exercise or purported exercise of the powers specified in this clause 6.8.
- (f) The sole remedy of the Issuer, a Holder or any other person, in respect of a breach or alleged breach of clause 6.7, shall be to exercise, or require the Issuer or the Board to exercise, the powers referred to in this clause 6.8. Without limiting the preceding sentence, no person is entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of clause 6.7. Nothing in this clause affects the remedies of a Holder against any Director in respect of a breach of clause 6.7 by that Director.
- (g) The Issuer shall use reasonable endeavours to ascertain for the purposes of subclause (a)(i) whether any Bonds are Defaulter's Bonds.

If any Holder, or the NZSE, alleges that any Bonds are Defaulter's Bonds, the Board shall properly consider and investigate that allegation. The ruling of the chairperson of any meeting as to whether any person is or is not entitled to vote at that meeting pursuant to subclause (a)(i) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of subclause (a)(i), but this provision shall not prejudice any action which any person may have against any Holder by reason of that Holder having cast a vote at any meeting in breach of subclause (a)(i).

- (h) Where Bonds held by a Holder ("**nominee**") have been registered in separate parcels in accordance with clause 6.6(m), then for the purposes of clause 6.7 and this clause 6.8:
 - (i) the nominee shall not, solely by reason of its position as bare trustee or nominee of the Bonds in any such parcel, have a Relevant Interest in those Bonds; and
 - (ii) a person who has a Relevant Interest in one such parcel shall not be deemed to have a Relevant Interest in any other such parcel solely by reason of the fact that the nominee is the holder of all such parcels.
- (i) In the event of a Default, if any Bonds held by a nominee on behalf of different beneficial owners include any Defaulter's Bonds:
 - (i) the nominee shall, on request by the Issuer or the NZSE, provide to the Issuer and the NZSE details of the beneficial owners of those Defaulter's Bonds; and
 - (ii) the Issuer may at any time, and shall upon request by the nominee or any beneficial owner, take appropriate steps to register those Bonds as a separately identifiable parcel in accordance with clause 6.6(m).

6.9 **Compulsory acquisition provisions:**

- (a) In this clause 6.9, unless the context otherwise requires:
 - "Acquisition Notice"**, **"Affected Securities"**, and **"Remaining Holders"** have the respective meanings given to them by Listing Rule 4.8.1;
 - "Expert"** means an independent, appropriately qualified person, who has been approved by the NZSE for the purposes of subclauses (d)(i) or (d)(ii), as the case may be; and
 - "Majority Holder"** means a person or group of Associated Persons who hold, or have beneficial ownership of, 90% or more of the Bonds of all outstanding Series.
- (b) Unless a waiver from the NZSE is obtained, a Majority Holder must, within 20 Business Days after becoming a Majority Holder, give an Acquisition Notice to the Remaining Holders and to the Issuer and the NZSE, specifying:

- (i) that the Majority Holder holds 90% or more of the Affected Securities;
 - (ii) either:
 - (aa) that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
 - (bb) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
 - (iii) the consideration which the Majority Holder is prepared to provide for Affected Securities.
- (c) Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:
- (i) if the Acquisition Notice contains the statement in subclause (b)(ii)(aa), to acquire all Affected Securities held by the Remaining Holders; or
 - (ii) if the Acquisition Notice contains the statement in subclause (b)(ii)(bb), to acquire all Affected Securities held by Remaining Holders in respect of which the Holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.
- (d) The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows:
- (i) The Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Issuer and the NZSE a report from an Expert confirming that, in the opinion of the Expert for the purposes of this clause 6.9, the consideration is fair to the Remaining Holders.
 - (ii) If, within 10 Business Days after the date of the Acquisition Notice, the Issuer receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, then the Issuer shall forthwith notify the Majority Holders and the NZSE of that fact and the consideration shall be determined in accordance with subclauses (iii) and (iv). If such objections are not received, the consideration shall be as specified in the Acquisition Notice.
 - (iii) If objections of the nature referred to in subclause (ii) are received by the Issuer, the consideration shall be fixed by an Expert (acting as an expert and not as an arbitrator) and shall

in the opinion of such Expert be fair to the Remaining Holders. The Expert shall:

- (aa) be appointed by the Disinterested Directors (as defined in Listing Rule 4.5.9) of the Issuer (if any) and otherwise by the Board;
 - (bb) be a different Expert from the one referred to in subclause (i); and
 - (cc) be directed to provide a decision within 20 Business Days after being appointed.
- (iv) If the consideration determined by the Expert appointed in accordance with sub-clause (iii):
- (aa) is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of the Expert shall be borne by the Remaining Holders who made the objections referred to in subclause (ii) and the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash);
 - (bb) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that person shall be borne by the Majority Holder.
- (v) In arriving at an opinion for the purposes of sub-clause (i) or (iii), an Expert shall not include or allow any strategic or "hold out" value to reflect the Majority Holder's desire or obligation to acquire the relevant Affected Securities in accordance with this clause 6.9 and shall give such opinion using the criteria in Listing Rule 4.8.4(c)(iv).
- (e) The Majority Holder shall pay or provide to each Holder of Affected Securities which are to be acquired the consideration for those Affected Securities as follows:
- (i) if the relevant Acquisition Notice contains the statement in subclause (b)(ii)(aa), within 12 Business Days after the date of the Acquisition Notice;
 - (ii) if the Acquisition Notice contains the statement in subclause (b)(ii)(bb), by the date 12 Business Days after receipt by the Majority Holder from the Holder of the notice referred to in subclause (c)(ii),

provided that if the consideration is required to be determined in terms of subclause (d)(ii), it shall be paid or provided two Business Days after it has been determined. If any holder of Affected Securities which are to be acquired cannot be located by the Majority Holder, the Majority Holder shall pay or provide the consideration due to that Holder to the

Issuer. The Issuer shall hold that consideration upon trust for that Holder for a period of five years from the date of its receipt by the Issuer. If that consideration is not claimed by that Holder within that period, the Issuer shall return it to the Majority Holder.

- (f) Upon payment or provision by the Majority Holder of the consideration for Affected Securities in accordance with subclause (e), the Issuer shall forthwith execute on behalf of all the holders of those Affected Securities transfers of those Affected Securities in favour of the Majority Holder or its nominee, and shall cause the name of the Majority Holder or its nominee to be entered in the relevant register in respect of those Affected Securities. If the Issuer fails to execute any such transfer, the Majority Holder may do so.
- (g) If a Majority Holder fails to give an Acquisition Notice when required to do so by this clause 6.9, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this clause 6.9, fails to do so, then the provisions of clause 6.8(a) to (e), and (g), shall apply with the following modifications:
 - (i) the Affected Securities held by the Majority Holder shall be deemed to be Defaulter's Bonds;
 - (ii) the failure to comply with this clause 6.9 shall be deemed to be a Default; and
 - (iii) the Remaining Holders shall be deemed to be an Affected Group.

6.10 **Takeovers code:** If a takeovers code comes into force under the Takeovers Act 1993 then, subject to:

- (a) any applicable provisions of that code; and
- (b) the Issuer obtaining the approval of the NZSE and complying with any condition of that approval; and
- (c) such conditions as the NZSE may from time to time impose;

the whole of clauses 6.7, 6.8 and 6.9 shall cease to apply and shall be deemed to be cancelled with effect from the date upon which that Code comes into force, provided that the provisions of clauses 6.7 and 6.8 shall nevertheless continue to apply in respect of any non-compliance with the provisions of clause 6.8 which has occurred prior to that date.

7. COVENANTS

- 7.1 **Financial covenant:** The Issuer covenants that, on the last day of each financial year and half-year of the Issuer (and, if at any time the Issuer has covenanted with any bank to comply with a balance sheet financial covenant on a day other than the last day of each financial year and half-year, then during the currency of that covenant such additional day or days) during the currency of any Bonds, Borrowed Money Indebtedness of the Issuer Group shall not exceed 50% of Tangible Assets as at that date.
- 7.2 **Issuer covenants:** The Issuer covenants that:
- (a) it will file a copy of each Series Supplement in the Companies Office;
 - (b) it will, until all Bonds are Converted or redeemed in full or otherwise no longer qualify for Listing (including as a result of purchases under clause 6.4), use its reasonable endeavours to ensure that the Ordinary Shares and the Bonds remain Quoted;
 - (c) it will not issue the Prospectus or the Investment Statement without providing a copy in draft form to the Trustee prior to the issue and in sufficient time for the Trustee to consider in terms of its obligations under the Securities Act;
 - (d) it will, in offering a Series of Bonds to the public, at all times comply with the Securities Act and the Listing Rules;
 - (e) it will, at all times, comply with the provisions of, and its obligations under, the Companies Act and the Securities Act (and regulations thereunder and exemption notices issued pursuant thereto);
 - (f) it will forthwith send to the Trustee a copy of each notice that it sends to any of the NZSE, the Holders, holders of Ordinary Shares, and the Companies Office;
 - (g) it will pass all resolutions and take all other action necessary to ensure that the required number of Ordinary Shares are issued to each Holder on Conversion of that Holder's Bonds in accordance with the terms of issue (including the Series Supplement) of any relevant Series of Bonds;
 - (h) it will not create or permit to subsist any charge over its assets in favour of or for the benefit of any person or persons unless at the same time the benefit of such charge is extended equally and rateably to the Holders in respect of all Series of Bonds outstanding at the time. This restriction applies only to assets directly owned by the Issuer and not to assets owned by any Subsidiary; and
 - (i) if and for so long as the payment of any interest on any Series of Bonds is suspended pursuant to clause 5.3, it will not pay or make any Distribution (as defined in section 2 of the Companies Act) to its shareholders or provide any financial assistance for the acquisition of its Ordinary Shares.

8. ACCELERATION

8.1 **Events of Default:** Subject to clause 10.4 the Trustee may make the declaration referred to in clause 8.2 if:

- (a) **Non-payment of interest:** Default is made for a period of 14 days in the payment of any interest (other than interest payment of which is suspended in accordance with clause 5.3) on any Bond;
- (b) **Non-payment of other moneys:** Default is made for a period of 14 days after demand in writing in the payment of any other moneys payable pursuant to this deed;
- (c) **Dissolution:** An order is made, or an effective resolution is passed, for dissolution of the Issuer other than for the purposes of a reconstruction or amalgamation the terms of which have been approved by the Trustee;
- (d) **Receiver:** A receiver is appointed of, or an encumbrancer takes possession of, or exercises its power of sale in respect of, the whole or any material part of the assets of the Issuer;
- (e) **Corporations Act:** Any step is taken to appoint, or with a view to appointing, a statutory manager (including the making of any recommendation in such regard by the Securities Commission) under the Corporations (Investigation and Management) Act 1989 in respect of the Issuer, or the Issuer or any associated person (as that term is defined in such Act) is declared at risk pursuant to the provisions of such Act;
- (f) **Arrangement with creditors:** The Issuer, without the prior consent in writing of the Trustee, enters into any arrangement or composition with its creditors generally; or
- (g) **Other default:** Default is made by the Issuer in the performance or observance of any provision binding upon it under this deed (other than a default specifically referred to in any other paragraph of this clause) or in any undertaking given by it to the Trustee in respect of any matter relating to the provisions of this deed (whether or not the Trustee shall have waived any prior default), and such default continues for more than 30 days after receipt by the Issuer of a notice in writing from the Trustee specifying the default and requiring the same to be remedied.

8.2 **Declaration by Trustee:** At any time after the occurrence of an event specified in clause 8.1, and while that event is continuing, the Trustee may in its discretion and shall forthwith upon being directed to do so by an Extraordinary Resolution, by notice to the Issuer declare the Face Value of all Bonds together with accrued interest thereon (including any interest the payment of which has been suspended pursuant to clause 5.3) to be immediately due and payable. Upon the Trustee making that declaration, each Holder may, by written notice to the Issuer, require the Bonds held by that Holder to be:

- (a) redeemed in cash; or
- (b) converted at the Conversion Rate on the date specified in the notice,

whereupon the Issuer shall immediately:

- (c) pay to the Holders the Face Value of the Bonds; or
- (d) cause the Bonds to be Converted at the Conversion Rate,

(in either case in accordance with the respective elections of the Holders) and in all cases pay to the Holders accrued interest at the applicable Interest Rate(s) on the Bonds to the date of redemption or Conversion (as the case may be).

9. PAYMENTS

- 9.1 **Payments to Holders:** Payment of interest on, and, if redeemed in cash the Face Value of, a Bond (less any amount required to be deducted pursuant to section 10) will be made to the person whose name appears in the Register as the Holder on the Record Date in respect of the relevant payment. If more than one person is named in the Register, payment will be made to the first person so named.
- 9.2 **Business Day:** If any Interest Payment Date or the Maturity Date of a Bond is not a Business Day, the due date for the payment to be made on that date will be the immediately preceding Business Day and all other provisions of this deed will be read and construed accordingly.

10. TAXES

- 10.1 **Deductions or withholdings:** All amounts payable under a Bond must be paid:
- (a) free of any restriction or condition;
 - (b) free and clear of and (except to the extent required by law or as provided for in this section 10) without any deduction or withholding on account of any taxes; and
 - (c) without deduction or withholding on account of any other amount whether by way of set-off or otherwise (except as provided in this section 10).
- 10.2 **NRWT:** New Zealand non-resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to Holders who are not resident in New Zealand for taxation purposes and who are not engaged in business in New Zealand through a fixed establishment in New Zealand. If the Issuer is lawfully able to pay Approved Issuer Levy in respect of any payment of interest (or deemed interest) to a non-resident Holder, the Issuer, or the person making payment on its behalf, shall if requested in writing by the Holder pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the interest (or deemed interest) payable to that Holder in lieu of deducting New Zealand non-resident withholding tax at the rate otherwise applicable from that payment.
- 10.3 **RWT:** New Zealand resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to Holders who are resident in New Zealand or who are engaged in business through a fixed establishment

in New Zealand unless an appropriate exemption certificate is produced to the Issuer on or before the Record Date for the relevant payment.

- 10.4 **Indemnity:** If, in respect of any Bond, the Issuer becomes liable to make any payment of, or on account of, tax payable by any Holder, then the Issuer shall be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Issuer and may be withheld from any further payments (if any) to that Holder. Nothing in this clause 10.4 will prejudice or affect any other right or remedy of the Issuer.
- 10.5 **No gross-up:** The Issuer shall not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds pursuant to clause 10.2 or 10.3.
- 10.6 **Maximum rate:** Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder provides evidence to the Issuer that a lesser rate is applicable.
- 10.7 **Approved Issuer Levy:** For the purposes of this section 10 and the definitions of “Conversion Rate” and “Holder’s Conversion Rate”, “Approved Issuer Levy” means, in relation to any payment of interest (as defined in section 86F of the Stamp Cheque Duties Act 1971) under any Bond, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971 to enable the payment of such interest to be made to any person not resident in New Zealand for tax purposes with a deduction for New Zealand non-resident withholding tax at the rate of zero percent pursuant to section NG 2(1) of the Income Tax Act 1994.

11. REPORTS AND INFORMATION FOR TRUSTEE

11.1 The Issuer shall:

- (a) **Annual financial statements:** Provide to the Trustee and each Holder by the earlier of (1) 90 days after the end of each financial year of the Issuer (2) the date upon which they are provided to holders of Ordinary Shares and (3) the date on which they are provided to NZSE, copies of:
- (i) the financial statements of the Issuer; and
 - (ii) the consolidated financial statements of the Issuer and its Subsidiaries;
- for that financial year, each duly audited and signed;
- (b) **Half-yearly financial statements:** Provide to the Trustee and each Holder by the earlier of (1) 60 days after the end of the first half of each financial year of the Issuer (2) the date upon which they are provided to holders of Ordinary Shares and (3) the date on which they are provided to NZSE, copies of:
- (i) the financial statements of the Issuer; and

- (ii) the consolidated financial statements of the Issuer and its Subsidiaries;

for that half-yearly period, unaudited, together with a statement containing a description of the activities of the Issuer and its Subsidiaries.

- (c) **Auditors' report:** Provide to the Trustee at the same time as it provides the financial statements referred to in clause 11.1(a) a separate report by the Auditors stating:
 - (i) whether or not in the performance of their duties as Auditors they have become aware of any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Trustee by this deed or the Securities Act or by law or regulation, and if so giving particulars thereof;
 - (ii) whether or not their audit has disclosed any matter, and if so giving particulars thereof, calling in their opinion for further investigation by the Trustee in the interests of the Holders;
 - (iii) that they have perused each certificate provided by the Directors under clause 11.1(d) since the last report by the Auditors and that, so far as matters which they have observed in the performance of their duties are concerned, the statements made in each such certificates are correct; and
 - (iv) that they have performed an audit of the Register and stating whether or not the Register has been duly maintained.
- (d) **Directors' reporting Certificates:** Within one month after the end of each financial year and half-year of the Issuer, or within such further time in either case as the Trustee may in writing permit, and if so requested by the Trustee, within one month after receipt by the Issuer of the request (which request shall only be made if the Trustee considers that special circumstances warrant such request, and so certifies in writing to the Issuer), provide to the Trustee a certificate signed on behalf of the Directors, by two Directors, in or to the effect of the form set out in schedule 2 with such qualifications (if any) as the Trustee may in its discretion approve.
- (e) **Additional Directors' reporting Certificates:** At the request of the Trustee (which request shall only be made if the Trustee considers that special circumstances warrant such request, and so certifies in writing to the Issuer) provide to the Trustee such other information, reports, confirmations or financial statements as the Trustee reasonably requires.

12. PROVISIONS RELATING TO TRUSTEE

12.1 Remuneration:

- (a) The Issuer shall pay to the Trustee for its services as Trustee such remuneration as shall from time to time be agreed between the Issuer

and the Trustee provided that if the Issuer and the Trustee fail to agree on any amount payable under this sub-clause the dispute shall be referred to a single arbitrator if the parties can agree on one and otherwise to arbitration, in accordance with the Arbitration Act 1996.

- (b) The Issuer shall also pay:
- (i) all expenses reasonably incurred by or on behalf of the Trustee (including, for the avoidance of doubt, all legal expenses) in connection with:
 - (aa) the preparation, execution and registration of this deed;
 - (bb) the exercise by the Trustee of any right, power, duty or privilege conferred by this deed on the Trustee or upon any Holder, including the taking of any expert advice deemed necessary or expedient by the Trustee;
 - (cc) the convening, and holding and carrying out of any directions or resolutions, of any meeting of Holders;
 - (dd) any application under the trusts and provisions of this deed for its consent to, or approval of, any act or matter; and
 - (ii) all expenses (including, for the avoidance of doubt, all legal expenses) reasonably incurred by or on behalf of the Trustee in connection with any breach or default in the observance or performance by the Issuer of any provision of this deed.
- (c) The remuneration and other payments payable pursuant to this clause shall continue to be payable until the trusts of this deed shall be finally wound up and whether or not the trusts hereof shall be in the course of administration by or under the direction of the court.
- (d) All expenses incurred and payments made by the Trustee in the lawful exercise of the powers conferred by this deed, and all remuneration payable to the Trustee, shall be payable by the Issuer on demand.

12.2 **Powers of investment:** Any money held by the Trustee which are subject to the trusts of this deed may, at the discretion of the Trustee, be invested in the name of the Trustee or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments.

12.3 **Applications to court:** The Trustee may, on or at any time after the Date of Acceleration, apply to the court for an order that the powers and trusts contained in this deed be exercised under the direction of the court and, whether before or after the Date of Acceleration, for any other order or direction in relation to the execution and administration of the powers and trusts contained in this deed as the Trustee may deem expedient and it may assent to, approve of or oppose any application to the court made by or at the instance of any Holder and shall be indemnified by the Issuer against all costs, charges and expenses incurred by and in relation to any such application or proceedings.

- 12.4 **Waiver:** Subject to the Listing Rules and to any direction or request given by the Holders, the Trustee may at any time by notice in writing to the Issuer waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Issuer of any provision expressed or implied in this deed provided the Trustee is satisfied that the interests of the Holders will not be materially prejudiced thereby but such waiver shall not prejudice the rights of the Trustee or the Holders in respect of any other breach.
- 12.5 **Supplemental powers:** In addition to the provisions of the law relating to trustees and to facilitate the discharge of its duties hereunder, but subject always to the provisions of the Securities Act:
- (a) **Third party advice:** The Trustee may, without liability for loss, obtain and act on, or decline and elect not to act on:
 - (i) the opinion or advice of or any information obtained from any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert whether obtained by the Issuer or any Holder or by the Trustee or otherwise and although the same may subsequently be found to contain some error or not be authentic;
 - (ii) a certificate signed by any two Directors on behalf of the directors of the Issuer concerned as to any fact or matter prima facie within the knowledge of the Issuer or that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Holders; and
 - (iii) the statements contained in any certificate or report given pursuant to this deed as conclusive evidence of the facts stated therein.
 - (b) **Holdings' resolution:** The Trustee shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Holders which the Trustee believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings thereat or for any other reason.
 - (c) **Subscribers' money:** The Trustee shall not be responsible for the money subscribed for the Bonds, or be bound to see to the application thereof.
 - (d) **Breach:** Notwithstanding any other provision of this deed, the Trustee shall exercise reasonable diligence to ascertain whether or not the Issuer has committed any breach of the provisions of this deed or the terms or conditions of issue of any Series of Bonds.
 - (e) **Discretion:** Except as otherwise expressly provided in this deed, the Trustee:
 - (i) shall as regards all trusts, powers, authorities and discretions vested in it by this deed have absolute discretion as to the exercise thereof and as to the conduct of any action,

proceeding or claim and provided it shall have acted with reasonable care and diligence it shall not be responsible for any loss or cost that may result from the exercise or non-exercise thereof; and

- (ii) may refrain from exercising any discretion, power or authority vested in it by this deed until it has a direction to act from the Holders given by Extraordinary Resolution and the Trustee shall not be responsible for any loss or cost that may result from the non-exercise of the relevant discretion.

(f) **Determinations conclusive:**

- (i) As between itself and the Holders the Trustee may determine all questions and doubts arising in relation to any of the provisions of this deed and every such determination, whether made upon such a question actually raised, or implied in the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and the Holders.
- (ii) The powers, rights and remedies conferred on the Trustee by this deed are exercisable by the Trustee only, and no Holder is entitled to exercise the same or any of them except with the written consent of the Trustee or if the Trustee has failed to exercise any such power, right or remedy having been directed by an Extraordinary Resolution of Holders to do so.

(g) **Delegation:** The Trustee, whenever it thinks it expedient in the interests of the Holders to do so, may:

- (i) delegate at any time to any person any of the trusts, powers, authorities or discretions vested in the Trustee by this deed which cannot conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Trustee may think fit, and (subject to section 62 of the Securities Act) the Trustee shall not be responsible for any loss incurred by any misconduct or default on the part of any such delegate or sub-delegate; and
- (ii) authorise such person as it thinks fit to act as its representative at any meeting.

(h) **Interests of foreign Holders:** In the exercise of any trust, duty, power, authority or discretion under this deed the Trustee shall have regard to the interests of the Holders as a whole and shall not have regard to the consequences of such exercise for individual Holders resulting from their being, for any purpose, domiciled or resident in, or otherwise connected with or subject to the jurisdiction of, any particular country or place other than New Zealand.

12.6 **Fiduciary relationship:**

- (a) For the purposes of this clause 12.6:

“Unrelated Trustee Personnel” shall mean any directors, officers, employees, contractors or other persons not involved in any manner whether directly or indirectly in carrying out or enforcing the Trustee’s rights and obligations in terms of this deed.

“Related Trustee Personnel” shall mean any directors, officers, employees, contractors or other persons involved in any manner whether directly or indirectly in carrying out or enforcing the Trustee’s rights and obligations in terms of this deed.

- (b) Nothing expressed in this deed or implied by law shall prohibit any Unrelated Trustee Personnel from being a shareholder or stockholder of the Issuer or any of its Subsidiaries provided that the Trustee establishes and enforces appropriate “Chinese Wall” procedures to separate any such arrangements from all Related Trustee Personnel. In particular without limiting the generality of the foregoing no Unrelated Trustee Personnel shall receive or have access to any information or be involved in any manner such that they could be influenced in the conduct of any of their actions by any Related Trustee Personnel. For the avoidance of doubt, it shall not be a breach of the fiduciary duties of the Trustee hereunder arising from, and nothing expressed in this Deed or implied by law shall prohibit, any Unrelated Trustee Personnel or Related Trustee Personnel where such persons are acting purely in their personal capacities, from being a shareholder or stock holder of the Issuer or any of its Subsidiaries or dealing in the same in each case to the extent permitted by law.
- (c) Nothing expressed in this deed or implied by law shall prohibit the Trustee or any of its related companies (all hereinafter in this clause where the context permits being included in the expression “the Trustee” including, for these purposes, any of its directors, officers, employees or contractors of the Trustee acting in their professional and not personal capacities in the course of their directorship, employment or contract) from being a creditor of the Issuer or any related company of the Issuer or from acting in any representative capacity for a Holder or otherwise entering into contracts and dealing with a Holder in the ordinary course of its business. The Trustee may enter into any transactions with the Issuer or any related party of the Issuer and shall not be accountable to the Issuer or its related parties or the Holder for any profits arising from any such transactions or otherwise entering into any contracts and arrangements with the Issuer or any related parties in the ordinary course of business of the Trustee.

12.7 **Represent Holders:** The Trustee may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Holders, represent the Holders in any matter concerning them generally.

12.8 **Confidentiality:** The Trustee shall not disclose to any Holder any confidential financial or other information made available to the Trustee by the Issuer unless required to do so in order to comply with any law or regulation or other rule binding upon it or any provision of this deed or unless ordered to do so by

a court of competent jurisdiction or unless the Issuer otherwise consents in writing.

12.9 Retirement and Removal: The Trustee may:

- (a) retire at any time, without assigning any reason therefor, upon giving at least 30 days' notice in writing to the Issuer;
- (b) be removed at any time by Extraordinary Resolution,

subject in either case to the contemporaneous due appointment of a new Trustee and the transfer to such new Trustee of the securities (if any) collateral to this deed and the money and investments held by the Trustee hereunder.

12.10 Appointment of new Trustee:

- (a) Subject to paragraph (b) of this clause 12.10, the power of appointing a new Trustee or Trustees hereof shall be vested in the Issuer but no Trustee shall be appointed unless such appointment is first approved by an Extraordinary Resolution. Only a body corporate or other person authorised in accordance with the provisions of the Securities Act shall be appointed as a Trustee in this deed.
- (b) In the event that any new Trustee proposed by the Issuer is not approved by an Extraordinary Resolution, then any Holder shall be entitled to nominate an alternative party to be a Trustee (provided such Trustee is authorised in accordance with the provisions of the Securities Act) and such party shall be appointed as the new Trustee if first approved by an Extraordinary Resolution. In the event that more than one person is nominated by the Holders then the Holders shall vote on the various nominees and that nominee that receives the most number of votes shall be deemed to be proposed by the Issuer and the appointment of that nominee shall be proposed to the Holders and shall be appointed as the Trustee if first approved by an Extraordinary Resolution.
- (c) If within 30 days after receiving notice of the Trustee's intention to retire the Issuer fails to call a meeting of Holders in accordance with this clause 12.10, or to exercise the power vested in it by this clause of appointing a new Trustee or new Trustees, the Holders may by Extraordinary Resolution exercise such power to the exclusion of the Issuer.

12.11 Additional powers etc.: The powers, authorities and discretions conferred upon the Trustee by this deed shall be in addition to any powers, authorities and discretions which are from time to time vested in trustees by law, or in the Trustee as holder of any Bonds.

12.12 Indemnity by the Issuer: Without prejudice to the right of indemnity by law given to trustees, the Trustee and every attorney, manager, agent or other similar person appointed by the Trustee pursuant to this deed shall be indemnified by the Issuer in respect of all liabilities and expenses incurred in the execution of or purported execution of the powers or trusts hereof and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to the provisions of this deed, other than a claim arising out of the Trustee's failure to comply with the

standard of care imposed on it by clause 12.5(e), and the Trustee may retain and pay out of any moneys in its hands arising from the trusts of this deed all sums necessary to give effect to this such indemnity and also the remuneration and disbursements of the Trustee provided for in this deed.

12.13 **Securities Regulations:** The Trustee has entered into this deed on the basis that the duties of the Trustee as prescribed in clause 1 of the Fifth Schedule to the Securities Regulations 1983 shall be construed and interpreted to recognise and take into account the following characteristics of the Bonds:

- (a) The Bonds are debt securities in respect of which payments of interest can, in accordance with the terms of issue, be suspended and to this extent payment cannot be compelled.
- (b) The remedy for a default under the deed is redemption in cash or Conversion into Ordinary Shares at the option of the Holder.
- (c) The Bonds have certain characteristics analogous to shareholders' equity rather than debt securities.
- (d) Certain provisions of this deed derive from the Listing Rules and in the absence of notice to the contrary from the Issuer or the NZSE the Trustee is entitled to assume that the Issuer is complying with the applicable provisions of the Listing Rules and the provisions of this deed reflecting substantially the Listing Rules and the Trustee is entitled to act accordingly and in acting have regard to the actions of the NZSE in relation to non compliance, as referred to in clause 2.6,

and shall to the maximum extent possible be limited accordingly.

The Trustee substantially monitors the Issuer on the basis of the reporting provisions set out in this deed.

All Holders shall be deemed to have knowledge of and to have accepted that the duties and obligations of the Trustee pursuant to clause 1 of the Fifth Schedule of the Securities Regulations 1983 shall be construed, interpreted and limited as described provided.

12.14 **No indemnity by Holders:** Notwithstanding anything contained in this deed or any rule of law, no Holder shall in any circumstances be or become personally liable in respect of, or be liable to indemnify the Trustee for, any liability incurred by the Trustee in acting as trustee pursuant to this deed.

13. ALTERATIONS TO TRUST DEED

13.1 **Trustee may concur in certain alterations:** The provisions of this deed may be added to, or varied, by deed executed by the Issuer and the Trustee:

- (a) without the consent of the Holders, if:
 - (i) it is necessary or desirable to correct a manifest error, or to comply with the requirements of any statute or statutory regulations, or the Listing Rules;
 - (ii) it is of a formal or technical nature;

- (iii) in the opinion of the Trustee it is not, or is not likely to become, prejudicial to the general interests of the Holders; or
 - (iv) the law in New Zealand relating to securities is modified and, in the opinion of the Trustee, it is in the interests of the Holders to amend this deed to take cognisance of such modification; or
- (b) with the consent of the Holders given by an Extraordinary Resolution (or if the addition or variation relates to one or more Series only, the Holders of the relevant Series voting as one class unless the addition or variation affects Holders of different Series in different ways in which case an Extraordinary Resolution of each Interest Group).

14. NOTICES

- 14.1 Any notice to be given to any Holder shall be in writing and may be given either personally or by sending it by post to the Registered Address of the Holder. Subject to clause 14.2, where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected on the day following the day of posting.
- 14.2 If any Holder has no registered address within New Zealand and has not supplied an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then any notice to be given to such Holder shall be dispatched by airmail post to the country in which such Holder lives where a nominated agent shall be required to dispatch such notice by regular mail within that country and such matters shall be deemed to have been received by the Holder 24 hours after the time of posting by the nominated agent.
- 14.3 A notice may be given to the manager of a mentally disordered person, or the persons entitled to Bonds in consequence of the death or bankruptcy of a Holder, by sending it through the post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.
- 14.4 If any Holder has no Registered Address and has not supplied an address for the giving of notices, or if any two notices posted to a Holder are returned on consecutive occasions, then, notwithstanding anything contained elsewhere in this deed, until the Holder shall give notice in writing of some other address, the address of the Holder for all purposes of this deed shall be deemed to be the registered office of the Issuer.
- 14.5 Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.

- 14.6 Any notice, communication or information required by this deed to be given to the Trustee by the Issuer, or to the Issuer by the Trustee or any Holder, shall be in writing and be signed by a duly authorised officer of the party giving the notice and shall not be effective until received by the recipient.

15. UNCLAIMED MONEYS

- 15.1 Any payment made to a Holder which is returned unclaimed and any amount due to a Holder whose address is unknown, shall be retained by the Issuer for the Holder until claimed, without liability to invest the same or pay interest thereon. Subject to the Unclaimed Money Act 1971, any such payment unclaimed for three years or longer may be forfeited by the Holder. After forfeiture of any such payment the person who would have otherwise been entitled thereto shall be entitled to payment upon adducing, to the satisfaction of the Issuer, sufficient evidence that he would have been entitled thereto had the same not been forfeited.

16. RIGHTS OF HOLDERS

- 16.1 Neither the Trustee nor the Issuer may take action that affects the rights attached to any Bonds unless that action has been approved by an Extraordinary Resolution of each Interest Group.

- 16.2 For the purposes of clause 16.1, the rights attached to any Bonds include:

- (a) the rights, privileges, limitations, and conditions attached to those Bonds by this deed or the Constitution, including voting rights;
- (b) the right to have the procedure set out in this section, and any further procedure required by this deed for the amendment or alteration of rights, observed by the Issuer and the Trustee; and
- (c) the right that a procedure required by this deed for the amendment or alteration of rights not be amended or altered.

- 16.3 For the purposes of clause 16.1:

- (a) the issue of further bonds, shares or other securities which rank equally with, or in priority to, any existing Bonds, whether as to voting rights, distributions or otherwise; and
- (b) any amendment made to this deed pursuant to section 13,

are deemed not to be actions affecting the rights attached to those existing Bonds.

- 16.4 Holders are entitled to attend meetings of Shareholders of the Issuer and to receive copies of all notices, reports and financial statements issued generally to shareholders but are not entitled to vote at any such meeting provided that, where this deed, the Listing Rules or the Constitution expressly require that any matter relating to the Issuer be submitted to Holders (or any class of Holders) for approval or authorisation, Holders shall, to the maximum extent permitted by the Listing Rules, the Constitution and this deed, vote together as

one class with shareholders and holders of other securities (including Bonds of other Series) in the Issuer.

17. MISCELLANEOUS

17.1 **Registration of deed:** The Issuer shall forthwith at its own cost register this deed as required by law and shall pay all costs and expenses incidental hereto.

18. GOVERNING LAW

18.1 **Governing Law:** This deed shall be construed and take effect as a contract and declaration of trust made in New Zealand and shall be governed by New Zealand law.

19. COUNTERPARTS

19.1 This deed may be executed in any number of counterparts, all of which shall together constitute one and the same instrument, and any of the parties hereto may execute this deed by signing any such counterpart.

20. FACSIMILE SIGNATURE

20.1 The parties may sign a counterpart copy of this deed by photocopying a facsimile of this deed and signing that photocopy. The transmission by facsimile by a party to the other of a signed counterpart copy of this deed shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original.

SIGNED AS A DEED

**INFRASTRUCTURE &
UTILITIES NZ LIMITED**

by:

Signature of director

Signature of director

Name of director

Name of director

**SIGNED by the Local Board of THE
TRUSTEES EXECUTORS AND
AGENCY COMPANY OF NEW
ZEALAND LIMITED by:**

Director

Authorised signatory

in the presence of:

Name of witness

Occupation

City/town of residence

SCHEDULE 1
Form of Series Supplement

1. **Maturity Date:** [Specify] **OR** [the date specified as such in the Issue Flyer applicable to the Bond.]
2. **Interest Rate:** [Specify]% per annum **OR** [the coupon rate per annum specified in the Issue Flyer applicable to the Bond.]
3. **Interest Payment Dates:** [Specify all dates] **OR** [the dates specified as such in the Issue Flyer applicable to the Bond.]
4. **Holder's Conversion Option:** [Specify Applicable or Not Applicable]
5. **CP or Conversion Percentage:** [Specify]
6. **HCP or Holder's Conversion Percentage:** [Specify if Holder's Conversion Option is applicable]
7. **Series Reference:** [Specify unique identification code]
8. [Specify any other terms and conditions that apply to the relevant Series]
9. Infrastructure & Utilities NZ Limited ("**Infratil**") confirms that as at the date this Series Supplement is signed by Infratil, Infratil has, to the best of its knowledge and belief, complied with all material terms of the Trust Deed between Infratil and The Trustees Executors and Agency Company of New Zealand Limited (trading as TOWER Trust) dated [].

SIGNED by **INFRASTRUCTURE & UTILITIES NZ LIMITED** by:

Director

Director

Name of director

Name of director

Date:

ACCEPTED by the Local Board of **THE TRUSTEES EXECUTORS AND AGENCY COMPANY OF NEW ZEALAND LIMITED (trading as TOWER Trust)** by:

Director/Authorised Signatory

Name of Director/Authorised Signatory

Date:

SCHEDULE 2
Form of Directors' half yearly reporting certificate

To: The Trustees Executors and Agency Company of New Zealand Limited

This certificate is given to you in your capacity as Trustee under the deed ("Deed") dated [] 1999 between Infrastructure & Utilities NZ Limited ("Issuer") and you as Trustee, pursuant to clause 11.1(d) thereof. Terms defined in the Deed have the same meanings in this certificate.

The Directors of the Issuer certify to you, as at the close of business on [] ("reporting date") that, to the best of their knowledge and belief after having made due enquiry in all things:

- (a) Since [] (being the last reporting date as at which the last Directors' Reporting Certificate was given to you):
- (i) no matters have in the opinion of the Directors occurred which affect or may adversely affect the interests of Holders in respect of Bonds held by them;
 - (ii) the Register has been duly and properly maintained;
 - (iii) none of the events contained in clause 8.1 of the Deed has occurred and remains unremedied;
 - (iv) [no payment of interest has been suspended pursuant to clause 5.3] [payment of interest has been suspended pursuant to clause 5.3 on the following grounds:];
 - (v) there has been no material change in any existing accounting method or method of valuation of any assets or liability other than as permitted or contemplated by this deed, and no circumstance has arisen which render adherence to any such method misleading or inappropriate;
 - (vi) no financial or capital loss, or reduction in profitability, has been sustained by the Issuer which is material to the Issuer [other than - **give full particulars**];
 - (vii) [no][the following] subsidiaries have been formed or acquired.
- (b) The Issuer complied with the financial covenant contained in clause 7.1 of the Deed as at the reporting date.
- (c) The Issuer has complied in all material respects with all the other provisions expressed to be binding on it under the Deed.
- (d) The amount of the Bonds which have been Converted is \$[].
- (e) The amount of the Bonds which has been purchased by the Issuer or any of its Subsidiaries is \$[].

[If any of these statements cannot be made, give full supporting particulars]

Signed on behalf of the Directors

 Director

 Director

Date []

SCHEDULE 3

Meetings of Holders

1. DEFINITIONS

1.1 In this schedule:

"Extraordinary Resolution" means a resolution passed at a duly convened meeting of the Holders by a majority consisting of not less than 75% of the persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than 75% of the votes given on such poll.

"representative" means:

- (a) in the case of a Holder being an individual, a person appointed by an instrument by way of proxy or by a power of attorney;
- (b) in the case of a Holder being a company, a person appointed by an instrument of proxy or power of attorney, or a person authorised pursuant to the Companies Act or pursuant to its constitution or any other empowering provision.

2. CONVENING OF MEETINGS

2.1 **By Trustee or Issuer:** The Trustee or the Issuer may at any time of its own volition convene a meeting of the Holders.

2.2 **Meeting required by law:** The Issuer shall whenever required to do so by law convene a meeting of the Holders.

2.3 **Meeting required by Holders:**

- (a) The Trustee shall at the request in writing of Holders holding not less than 10% of the total Face Value of all Bonds then outstanding convene a meeting of the Holders.
- (b) Any such request shall state the nature of the business proposed to be dealt with at the meeting.

2.4 **Access to Register:** For the purpose of enabling the Trustee to satisfy itself as to the validity of any request by Holders pursuant to clause 2.3 of this schedule the Issuer shall allow the Trustee and/or its agents full access to the Register, whether the Register is for the time being closed or not.

3. PLACE OF MEETINGS

3.1 Each meeting shall be held in the city or town in which the registered office of the Issuer is situated or at such other place as the Trustee determines or approves.

4. NOTICE OF MEETINGS

- 4.1 **Prior notification to Trustee:** At least 10 days before the Issuer gives notice of a meeting it shall advise the Trustee in writing of the intended place, day and hour thereof and the precise nature of the business to be transacted thereat and shall obtain the prior approval in writing of the Trustee to the documents it proposes to send to Holders. If the Trustee so requires the documents shall include any statement which the Trustee wishes to make in relation to the meeting and the matters to be considered thereat.
- 4.2 **Persons to be notified:** At least 14 days' notice of every meeting (exclusive of the day of despatch of the notice, the following day and the day of the meeting) shall be given in the manner provided in clause 11 of the deed to the following persons:
- (a) in the case of a meeting of all Holders, to every Holder;
 - (b) to every person upon whom the ownership of any Bond devolves by reason of that person being a legal personal representative or an assignee in bankruptcy of a Holder where the Holder but for death or bankruptcy would in accordance with sub-clause (a) be entitled to receive notice of the meeting;
 - (c) to the Trustee if the meeting is convened by the Issuer, and to the Issuer if the meeting is convened by the Trustee; and
 - (d) to the NZSE.
- 4.3 **Contents of notice:** The notice shall specify the place, day and hour of the meeting and the general nature of the business to be transacted thereat but it shall not be necessary to specify in the notice the terms of any resolution to be proposed at the meeting except in the case of a resolution proposed to be passed as an Extraordinary Resolution in which case the text of the proposed resolution shall be set out. The Issuer shall send a form of proxy to every Holder entitled to attend and vote at the meeting, with the notice convening the meeting.
- 4.4 **Short or informal notice:** Notwithstanding any other provision in this section 4, a meeting may be called by shorter notice than that specified in clause 4.2 of this schedule, or without any formal notice, and without compliance with clauses 4.1, 4.2 and 4.3 of this schedule, and shall be deemed to have been duly called, if it is so agreed by all Holders entitled to vote at the meeting, prior to, at, or subsequent to that meeting.
- 4.5 **Accidental omission:** The accidental omission to give notice to, or the non-receipt of notice by, any person entitled thereto shall not invalidate the proceedings at any meeting.
- 4.6 **Form of resolutions:** So far as reasonably practicable, the resolutions proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

5. QUORUM

- 5.1 **Quorum required:** No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 5.2 **Quorum for Extraordinary Resolution:** The quorum for passing an Extraordinary Resolution shall be holders present in person or by representative of a majority of the Bonds.
- 5.3 **Quorum for other business:** The quorum for the transaction of any business (other than the passing of an Extraordinary Resolution) at a meeting of all Holders shall be holders present in person or by representative of at least 10% of the Bonds.
- 5.4 **Quorum not present:** If, within fifteen minutes after the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned to such day and time, not being less than 14 days thereafter, and to such place, as may be appointed by the chairman, and at such adjourned meeting the Holders present in person or by representative shall be a quorum for the transaction of business including the passing of Extraordinary Resolutions.
- 5.5 **Notice of adjourned meeting:** Notice of any such adjourned meeting at which an Extraordinary Resolution is to be submitted shall be given in the same manner (except in respect of the period of notice) as for an original meeting and such notice shall state that the Holders present in person or by representative at the adjourned meeting, whatever their number shall form a quorum.

6. RIGHT TO SPEAK

- 6.1 Any director, officer of or solicitor for, the Trustee or any other person authorised in that behalf by the Trustee and any Director or the secretary of, or solicitor for, the Issuer or any other person authorised in that behalf by the Issuer, may attend any meeting and all such persons shall have the right to speak at the meeting.

7. CHAIRMAN

- 7.1 A person nominated in writing by the Trustee shall preside at every meeting and if no such person is nominated, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders present shall appoint a person to be chairman.

8. ADJOURNMENT

- 8.1 **Chairman may adjourn:** The chairman may adjourn the meeting from time to time and from place to place.
- 8.2 **Business at adjourned meeting:** No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

9. AUTHORITY TO VOTE

- 9.1 **Voting:** A Holder who is an individual may vote personally or by his or her proxy and a Holder which is a company may vote by its representative provided that, for so long as any Bonds are listed on the NZSE, no Holder shall be entitled to vote on any matter in respect of which such Person is prohibited from voting by the Listing Rules.
- 9.2 **No consequence:** Without prejudice to any remedy (other than those which take legal effect against the Issuer or the Trustee) which any Holder may have against any disqualified person who casts a vote at a meeting in breach of clause 9.1), no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of clause 9.1. Any objection by a Holder to the accuracy or completeness of any list of Holders who are disqualified from voting on a resolution pursuant to clause 9.1, which has been supplied by the Issuer to the NZSE or to any Holder on request pursuant to the Listing Rules, shall be disregarded by the Issuer and the chairperson of the relevant meeting if it is notified to the Issuer later than one full Business Day before the time fixed for commencement of the meeting.
- 9.3 **Bonds:** The following persons shall be exclusively entitled to vote in person or by proxy or representative in respect of the Bonds mentioned:
- (a) The persons registered as Holders on the Register in respect of the Bonds recorded as owned by them respectively.
 - (b) The persons who are entitled to receive notice of the meeting pursuant to clause 4.2(b) of this schedule in respect of the Bonds devolving upon them respectively.

10. PROXIES

- 10.1 **In writing:** The instrument appointing a proxy shall be in writing signed by the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a company, signed by an officer or attorney so authorised or by any director, secretary, general manager, investment manager or other person who appears to the Trustee to have authority to appoint a proxy on behalf of such company.
- 10.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder.
- 10.3 **Deposit of proxy:** The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a solicitor or Notary Public or in such other manner as the Trustee shall approve, shall be deposited at such place as the Trustee, or the Issuer with the approval of the Trustee, may in the notice convening the meeting appoint or (if no such place is appointed) then at the registered office of the Issuer not less than 48 hours (or such shorter period as the Issuer may nominate in the notice convening the meeting) before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid provided that the Trustee may in its sole discretion at any time:

- (a) waive any of the foregoing requirements in relation to any power of attorney or other authority;
 - (b) approve and elect to treat as valid any instrument of proxy notwithstanding that it is received or produced at a place other than that specified in the notice or out of time.
- 10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form which the Trustee may approve and shall, to the extent the subject matter and form of the resolutions reasonably permit, provide for two way voting on all resolutions, enabling the Holder to instruct the proxy as to the casting of the vote on each resolution.
- 10.5 **Proxy form must not name proxy:** The Issuer shall not issue any form of instrument of proxy with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Issuer may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Holder desires to appoint them or any of them.
- 10.6 **Proxy valid for meeting:** A proxy, whether in a usual or common form or not, shall, unless the contrary is stated thereon, be valid for the meeting to which it relates and for any adjournment thereof and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy shall be valid after the expiration of 12 months from the date of its execution but this provision shall not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.
- 10.7 **Proxy in favour of chairman:** An instrument of proxy which is expressed to be in favour of:
- (a) the chairman; or
 - (b) the chairman of the meeting,

shall be valid and effectual as though it were in favour of a named person and shall in the case of paragraph (a) constitute the person holding the office of the chairman of the Issuer and in the case of paragraph (b) constitute the person who chairs the meeting for which the proxy is used, whether on adjournment or not, the lawful proxy of the appointor.

11. APPOINTMENT OF ATTORNEY

- 11.1 Any Holder may by power of attorney appoint an attorney (who need not be a Holder) to vote and act on behalf of the Holder at any meeting. An attorney shall be entitled to produce evidence of appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting or for the taking of a poll at which the attorney proposes to vote or act. An attorney, if so empowered, may appoint a proxy for the Holder granting the power of attorney.

12. CORPORATE REPRESENTATIVE

- 12.1 A person authorised pursuant to section 143 of the Companies Act, or pursuant to any other enactment or applicable empowering provision, by a Holder that is a company, to act for it at any meeting shall in accordance with such authority (until it is revoked by the company concerned) be entitled to exercise the same powers on behalf of the company as that company could exercise if it were an individual Holder and shall be entitled to produce evidence of the authority to act at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting or for the taking of a poll at which the person proposes to vote.

13. RIGHTS OF REPRESENTATIVES

- 13.1 **Rights:** A representative shall have the right to speak at the meeting and to demand or join in demanding a poll and shall (except when and to the extent to which the representative is specially directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.
- 13.2 **Trustee may be representative:** The Trustee and any officer of the Trustee may be appointed a representative.
- 13.3 **Vote to remain valid:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form of appointment shall be valid notwithstanding the previous death, insanity or (in the case of a company) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or of the authority under which the proxy was executed or the transfer of the Bond in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Trustee, or the Issuer at its registered office, before the commencement of the meeting or adjourned meeting at which the proxy or power of attorney or other form of appointment is used.

14. VOTING PROCEDURE

- 14.1 **Show of hands unless poll demanded:** A resolution put to the vote at a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or by the Trustee or any person acting on behalf of the Trustee or by Holders holding or representing not less than 5% of all Bonds. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 14.2 **Poll:** If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll is demanded.
- 14.3 **Election of chairman:** A poll demanded on the election of a chairman other than the nominee of the Trustee, or on a question of adjournment, shall be taken either immediately or at such time (not being more than 30 days after the date of the meeting) and place as the chairman may direct. The result of such

poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

- 14.4 **No disturbance:** The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 14.5 **Casting of votes:** On a poll votes may be given either personally or by representative. On a poll a person entitled to more than one vote need not use all that person's votes, or cast all the votes used in the same way.
- 14.6 **Number of votes:** Every Holder who is present at a meeting (whether personally, by representative or by proxy) and entitled to vote shall, on a show of hands, be entitled to one vote only and on a poll, be entitled to one vote for every Bond of which that Holder is the holder.
- 14.7 **Joint Holders:** In the case of joint Holders the vote of the senior who tenders a vote, whether in person or by representative, shall be accepted to the exclusion of the votes of the other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

15. DISQUALIFICATION

- 15.1 No Holder shall be entitled to be present or to vote on any question, either personally or by proxy or representative, and no person shall be entitled to be present or to vote as proxy, attorney or representative for any Holder at any meeting or upon a poll or be reckoned in a quorum, in respect of any Bond held by a Holder, whether alone or jointly, whilst any sum is due and payable to the Issuer in respect of any such Bond.

16. POWERS EXERCISABLE BY EXTRAORDINARY RESOLUTION

- 16.1 Where a particular majority is not required by this deed or by law, any matter arising at any meeting of Holders duly convened and held shall be determined by a simple majority of the persons voting thereon on a show of hands or, if a poll is duly demanded, by a majority consisting of not less than 50% plus one of the votes given on such poll.
- 16.2 Without limiting the rights, powers and discretions conferred on the Trustee by the deed, a meeting of the Holders shall, in addition to all other powers which by the deed are specified as exercisable by Extraordinary Resolution, but subject to section 14 of this deed, have the following powers exercisable by Extraordinary Resolution, namely power to:
- (a) sanction either unconditionally or upon any conditions:
 - (i) the release of the Issuer from any of its obligations under the deed;
 - (ii) the release of the deed in whole or in part;
 - (b) sanction any variation, release, waiver or compromise or any arrangement in respect of the rights of the Holders against the Issuer

or against its undertakings and assets howsoever such rights shall arise;

- (c) assent to any variation or addition to the provisions contained in the deed or any deed or other instrument collateral or supplemental thereto, or the conditions attaching to the Bonds, proposed or agreed to by the Issuer;
- (d) subject to the Securities Act, discharge, release or exonerate the Trustee from all liability in respect of any act or omission for which the Trustee has or may become responsible under the deed;
- (e) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other company where such sanction is necessary;
- (f) subject to the provisions of the deed, remove any Trustee and approve the appointment of, or appoint, a new Trustee;
- (g) authorise or direct the Trustee to concur in and execute any supplemental deed or other document embodying any sanction, authority, approval, assent, variation, release, waiver, compromise, direction or request;
- (h) direct the Trustee to take, or to refrain from taking, any other action under or pursuant to, or in connection with, any of the provisions of the deed; and
- (i) sanction the exchange of Bonds for, or the conversion of Bonds into, shares, stock, debentures, debenture stock or other obligations of the Issuer or any other company formed or to be formed.

17. EXTRAORDINARY RESOLUTION

- 17.1 **Extraordinary Resolution binds Holders:** An Extraordinary Resolution passed in accordance with this schedule shall be binding upon all the Holders and each of the Holders and the Trustee (subject to the provisions of its indemnity contained in the deed) shall be bound to give effect thereto accordingly and the passing of any such resolution shall, as between the Trustee and the Holders, be conclusive evidence that the circumstances justify the passing thereof.

18. MINUTES OF MEETINGS

- 18.1 Minutes of all resolutions and proceedings at every meeting of Holders shall be made by the Trustee, or if the Trustee shall not be present at such meeting by some person appointed by the chairman of such meeting, and duly entered in books from time to time provided for that purpose by the Trustee at the expense of the Issuer and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting of Holders shall be prima facie evidence of the matters stated therein and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and

convened and all resolutions passed or proceedings had thereat to be duly passed and had. Copies of such minutes shall be furnished by the Trustee to the Issuer as early as possible after the holding of the meeting to which they refer.

19. FURTHER REGULATIONS

- 19.1 Subject to all other provisions contained in this schedule and the deed the Trustee may without the consent of the Holders prescribe such further regulations in respect of the convening and holding of meetings of Holders, attendance and voting thereat, and other matters incidental thereto, as the Trustee may in its sole discretion determine.

20. GROUP MEETINGS

- 20.1 A meeting of the Holders in an Interest Group, or an Affected Group, or a Relevant Group may be called by the Trustee or the Issuer at any time, and shall be called on the written request of holders of Bonds carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this deed including the definition of Extraordinary Resolution relating to meetings of Holders apply, with all necessary modifications, to a meeting of an Interest Group, an Affected Group or a Relevant Group, except that:
- (a) the necessary quorum is two or more Holders in the group present in person or by proxy or representative, or, if there is only one Holder in the Group, that Holder present in person or by proxy or representative;
 - (b) if the Issuer so elects, one meeting may be held of Holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
 - (c) any Holder in the group, present in person or by proxy or representative, may demand a poll.