

# Amendment Deed

RELATING TO A TRUST DEED DATED 11  
NOVEMBER 1999

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**PARTIES**

INFRATIL LIMITED

**Issuer**

TRUSTEES EXECUTORS LIMITED

**Supervisor**

DEED dated 17 May 2017

## PARTIES

### INFRATIL LIMITED

("Issuer")

### TRUSTEES EXECUTORS LIMITED

("Supervisor")

## INTRODUCTION

- A. The Issuer and the Supervisor have executed a programme trust deed relating to the constitution and terms of convertible infrastructure bonds dated 11 November 1999 (as amended on 14 August 2003, 15 November 2006 and 27 September 2012 and as amended and restated on 12 August 2015) ("**Original Deed**").
- B. The Issuer and the Supervisor wish to amend the Original Deed on the terms set out in this deed.
- C. For the purposes of clauses 13.1 and 13.2 of the Original Deed, the Issuer and the Supervisor are satisfied that the amendments contained in this deed do not have a material adverse effect on the Holders.

## COVENANTS

### 1. INTERPRETATION

#### 1.1 Definitions:

- (a) Words and expressions that are defined in the Original Deed have the same meanings when used in this deed, unless the context otherwise requires.
- (b) In this deed, "**Effective Date**" means the date of this deed.

#### 1.2 Interpretation:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this deed.
- (b) Unless the context otherwise requires the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (c) A reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time.
- (d) A reference to any party to a document includes its successors and permitted assigns.

### 2. AMENDMENT OF THE ORIGINAL DEED

- 2.1 **Amendment and restatement:** With effect from the Effective Date, the Original Deed is amended as follows:

(a) Clause 10.2 is deleted and replaced by the following clause:

10.2 **NRWT:** Where New Zealand's non-resident withholding tax regime applies to a payment of interest (or a payment deemed by law to be interest) to a Holder, non-resident withholding tax will be deducted from the payment at the applicable rate. If the Issuer is lawfully able to apply the Approved Issuer Levy regime to a payment of interest (or deemed interest) to a Holder, and elects to do so in respect of any Series, then:

- (a) if the relevant Bonds meet the requirements of section 861B of the Stamp and Cheque Duties Act 1971, the Issuer, or the Registrar for the relevant Series on its behalf, shall make the payment of interest (or deemed interest) without deduction or payment of non-resident withholding tax or Approved Issuer Levy; or
- (b) if the relevant Bonds do not meet the requirements of section 861B of the Stamp and Cheque Duties Act 1971, 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.

(b) Clause 10.3 is deleted and replaced by the following clause:

10.3 **RWT:** Where New Zealand's resident withholding tax regime applies to a payment of interest (or a payment deemed by law to be interest) to a Holder, resident withholding tax will be deducted unless an appropriate exemption certificate is produced to the Issuer on or before the Record Date for the relevant payment.

2.2 **Confirmation:** Except to the extent amended by this deed, the Original Deed continues in full force and effect.

### 3. COUNTERPARTS

3.1 This deed may be signed in counterpart copies, both of which will together constitute one and the same instrument, and either of the parties may execute this deed by signing any such counterpart.

### 4. GOVERNING LAW

4.1 This deed shall be governed by, and construed in accordance with, the laws of New Zealand.

**SIGNED AS A DEED**

**SIGNED** on behalf of **INFRATIL LIMITED**  
by its attorney:

and witnessed by:

Cameron  
Signature of attorney

FIONA CAMERON  
Name of attorney

N.W.  
Signature of witness

Nicholas William Louah  
Name of witness

SOLICITOR  
Occupation

WELLINGTON  
City/town of residence

**TRUSTEES EXECUTORS LIMITED** by:

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

and witnessed by:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

**SIGNED AS A DEED**

**SIGNED** on behalf of **INFRATIL LIMITED**  
by its attorney:

and witnessed by:

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of attorney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

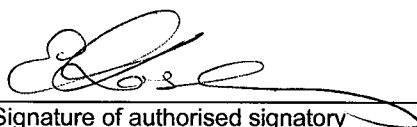
**TRUSTEES EXECUTORS LIMITED** by:



\_\_\_\_\_  
Signature of authorised signatory

**Stuart McLaren**

\_\_\_\_\_  
Name of authorised signatory

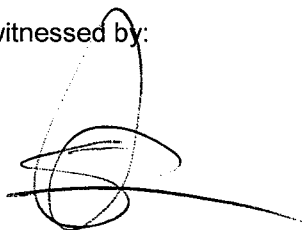


\_\_\_\_\_  
Signature of authorised signatory

**Elaine Lois Mosley**

\_\_\_\_\_  
Name of authorised signatory

and witnessed by:

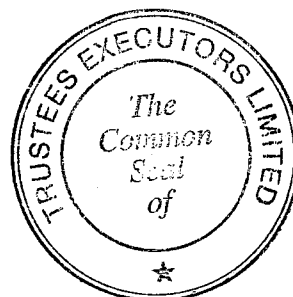


\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness **Sean Roberts**  
**Client Services Manager**  
**Wellington**

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence



6102017-26 (2/2)



**INFRATIL LIMITED**

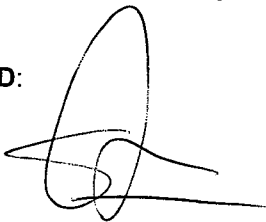
**CERTIFICATE OF COMPLIANCE**

*(Section 108(2)(b) of the Financial Markets Conduct Act 2013)*

1. We refer to:
  - (a) the programme trust deed dated 11 November 1999 (as amended on 14 August 2003, 15 November 2006 and 27 September 2012 and as amended and restated on 12 August 2015) ("**Trust Deed**") between Infratil Limited ("**Infratil**") and Trustees Executors Limited ("**Supervisor**"); and
  - (b) the deed dated 17 May 2017 ("**Amending Deed**") between Infratil and the Supervisor, amending the Trust Deed.
2. In this certificate, "**Amended Trust Deed**" means the Trust Deed as amended by the Amending Deed.
3. This is a certificate for the purposes of section 108(2)(b) of the Financial Markets Conduct Act 2013 ("**FMCA**").
4. We certify that:
  - (a) we are satisfied that the amendments contemplated by the Amending Deed do not have a material adverse effect on the Holders (as defined in the Trust Deed); and
  - (b) the Amended Trust Deed complies with sections 104 to 106 of the FMCA on the basis that:
    - (i) the Amended Trust Deed contains the provisions required by sections 104 and 105 of the FMCA; and
    - (ii) we have obtained a legal opinion from the legal advisors of Infratil which provides that the Amended Trust Deed complies with sections 104 to 106 of the FMCA.

**DATED:** 17 May 2017

**SIGNED:**



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For and on behalf of **Trustees  
Executors Limited**

Sean Roberts  
Client Services Manager  
Wellington

**INFRATIL LIMITED**

**TRUSTEES EXECUTORS LIMITED**

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**DEED AMENDING AND RESTATING A TRUST  
DEED DATED 11 NOVEMBER 1999**

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**RUSSELL McVEAGH**

DEED dated 12 August 2015

## PARTIES

INFRATIL LIMITED ("Issuer")

TRUSTEES EXECUTORS LIMITED ("Supervisor")

## INTRODUCTION

- A. The Issuer and the Supervisor have executed a programme trust deed relating to the constitution and terms of convertible infrastructure bonds dated 11 November 1999, as amended on 14 August 2003, 15 November 2006 and 27 September 2012 ("**Original Deed**").
- B. The Issuer and the Supervisor wish to amend and restate the Original Deed on the terms set out in this deed.
- C. For the purposes of clause 13.1 of the Original Deed, the Issuer and the Supervisor are of the opinion that the amendments contained in this deed are:
- (i) necessary or desirable to comply with the requirements of the Financial Markets Conduct Act 2013 ("**FMC Act**");
  - (ii) of a formal or technical nature;
  - (iii) not, and are not likely to become, prejudicial to the general interests of Holders; or
  - (iv) to reflect the coming into force of the FMC Act and it is in the interests of the Holders to make the amendments to take cognisance of the requirements of that Act.

## COVENANTS

### 1. INTERPRETATION

#### 1.1 Definitions:

- (a) Words and expressions that are defined in the Original Deed have the same meanings when used in this deed, unless the context otherwise requires.
- (b) In this deed, "**Effective Date**" means the date the Issuer elects in accordance with clause 19(1)(a) of schedule 4 of the FMC Act and notifies to the Supervisor, having given the Supervisor notice of this date at the same time as the Financial Markets Authority and the Registrar of Financial Service Providers were notified in accordance with clause 19(2) of schedule 4 of the FMC Act.

#### 1.2 Interpretation:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this deed.

- (b) Unless the context otherwise requires the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (c) A reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time.
- (d) A reference to any party to a document includes its successors and permitted assigns.

## **2. AMENDMENT AND RESTATEMENT OF THE ORIGINAL DEED**

- 2.1 **Amendment and restatement:** With effect from the Effective Date, the Original Deed shall be amended and restated in the form set out in the schedule.
- 2.2 **Confirmation:** Except to the extent amended and restated by this deed, the Original Deed continues in full force and effect.

## **3. COUNTERPARTS**

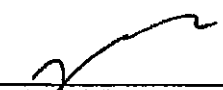
- 3.1 This deed may be signed in counterpart copies, both of which will together constitute one and the same instrument, and either of the parties may execute this deed by signing any such counterpart.

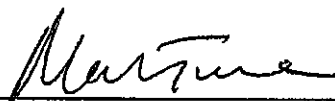
## **4. GOVERNING LAW**

- 4.1 This deed shall be governed by, and construed in accordance with, the laws of New Zealand.

**SIGNED AS A DEED**

**INFRATIL LIMITED by:**

  
\_\_\_\_\_  
Signature of director  
Marko Bogoevski  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director  
MARK TUME  
\_\_\_\_\_  
Name of director

**TRUSTEES EXECUTORS LIMITED by:**

\_\_\_\_\_  
Signature of authorised signatory  
  
\_\_\_\_\_  
Name of authorised signatory

\_\_\_\_\_  
Signature of authorised signatory  
  
\_\_\_\_\_  
Name of authorised signatory

and witnessed by:

\_\_\_\_\_  
Signature of witness  
  
\_\_\_\_\_  
Name of witness  
  
\_\_\_\_\_  
Occupation  
  
\_\_\_\_\_  
City/town of residence

**SIGNED AS A DEED**

**INFRATIL LIMITED** by:

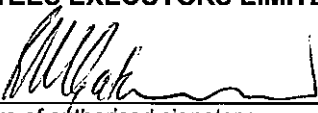
\_\_\_\_\_  
Signature of director

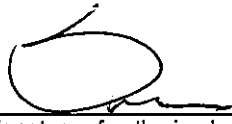
\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

**TRUSTEES EXECUTORS LIMITED** by:

  
\_\_\_\_\_  
Signature of authorised signatory

  
\_\_\_\_\_  
Signature of authorised signatory

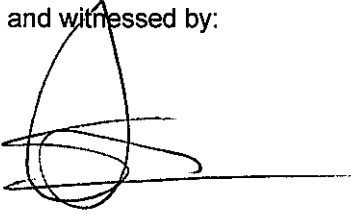
Robert Gatward

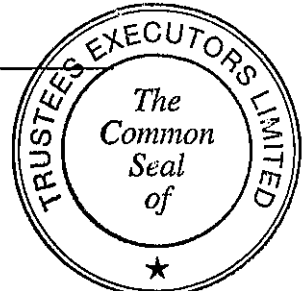
**Stuart McLaren**

\_\_\_\_\_  
Name of authorised signatory

\_\_\_\_\_  
Name of authorised signatory

and witnessed by:

  
\_\_\_\_\_  
Signature of witness



CTS2015-116 (1/2)

Sean Roberts  
Corporate Business Manager  
Wellington

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

**SCHEDULE**

**Amended and Restated Trust Deed**

**INFRATIL LIMITED**

**TRUSTEES EXECUTORS LIMITED**

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

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**RUSSELL McVEAGH**

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**DEED** dated 11 November 1999 as amended on 14 August 2003, 15 November 2006 and 27 September 2012 and as amended, restated and consolidated by the supplemental deed dated 12 August 2015 to which this deed is attached as a schedule.

## **PARTIES**

**INFRATIL LIMITED ("Issuer")**

**TRUSTEES EXECUTORS LIMITED ("Supervisor")**

## **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 the Series.
- C. The Supervisor will act as supervisor 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.

"**Auditor**" means the auditor for the time being of the Issuer.

"**Bond**" means, at any time, a bond created, constituted and issued pursuant to this deed, and remaining outstanding and, if applicable, 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 NZX 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 Supervisor makes a declaration pursuant to clause 8.2 or clause 8.3.

"**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.

"**Face Value**" means the face value of each Bond being \$1.00.

**"FMC Act"** means the Financial Markets Conduct Act 2013 (and includes the Financial Markets Conduct Regulations 2014).

**"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.

**"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 Infratil 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.

**"Issuer Obligations"** has the meaning given to it in the FMC Act.

**"Listing Rules"** means the listing rules of NZX 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 a security market operated by NZX 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 (if any) specified in the relevant Series Supplement.

**"Minimum Number"** means 5,000 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 8 of the Financial Reporting Act 2013.

**"NZX"** means NZX Limited, or any securities market operated by it, as the context requires, and includes any body or authority which may in the future assume and perform the functions of NZX Limited.

**"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 NZX on that Business Day:
  - (i) the volume weighted average of the prices at which Ordinary Shares were sold through the order matching system of NZX 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 NZX on the Measurement Date, the market value of the Ordinary Shares of the Issuer as determined by an Independent Adviser.

**"Product Disclosure Statement"** means the product disclosure statement, or other disclosure document required by the FMC Act, 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 Link Market Services Limited or such other registrar as the Issuer and the Supervisor may determine from time to time.

**"Ruling"** means a decision, determination, ruling, waiver or dispensation given pursuant to the Listing Rules by NZX.

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

**"Series Supplement"** means a written notice from the Issuer to the Supervisor 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.

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

**"Special Resolution"** has the meaning set out in clause 1.1 of schedule 3.

**"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.

**"Supervisor"** means Trustees Executors Limited or such other supervisor as may hold office under this deed from time to time.

**"Suspension Notice"** means a notice given by the Issuer to the Supervisor 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.

- 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:

**"Associated Persons"**  
**"Equity Securities"**  
**"Listed" and "Listing"**  
**"Quotation" and "Quoted"**  
**"Recognised Stock Exchange"**

- 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 Supervisor 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 Supervisor 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 Supervisor 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 NZX, the Issuer shall comply with the Listing Rules (subject to the requirements of the FMC 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 NZX, 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 a Special 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 NZX 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 or

the Constitution, that act or omission shall, unless a contrary intention appears in the Constitution, be deemed to be authorised by the Listing Rules, and the Constitution.

- 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 Supervisor 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 NZX, shall be entitled to assume that the Issuer is so complying. In the event of non-compliance with any Listing Rule the Supervisor, in determining the action to be taken or not taken by it, shall be entitled to have regard to the actions of NZX in relation to that non-compliance by the Issuer.
- 2.7 If any provision in this deed or the Constitution is inconsistent with the Listing Rules, the Listing Rules shall prevail.

### 3. APPOINTMENT OF SUPERVISOR

- 3.1 **Appointment:** The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as trustee and supervisor 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. The Supervisor shall hold in trust for the benefit of the Holders:
- (a) the right to enforce the Issuer's duty to repay, or to pay interest, under the terms of the Bonds;
  - (b) any charge or security for repayment; and
  - (c) the right to enforce any other duties or obligations that the Issuer and any other person have under:
    - (i) the terms of the Bonds; or
    - (ii) the provisions of this deed or the FMC Act in relation to the Bonds.
- 3.2 **General Covenant:** The Issuer covenants with the Supervisor 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 Supervisor and to the Registrar;
- (b) the Supervisor 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 (subject to clause 13 (if applicable)) 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 Supervisor's rights pursuant to this deed against the Issuer in relation to such breach.

4.6 **Confirmations and Statements:**

- (a) If, and to the extent, required by the FMC Act or any other applicable law, the Issuer shall procure the Registrar of the relevant Bonds to issue a confirmation which complies with the FMC Act and any other applicable law and is in the form agreed between the Issuer and the Registrar of the relevant Bonds.
- (b) 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.
- (c) A confirmation or Statement issued in respect of a Bond will not constitute a document of title.

#### 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 Supervisor 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 Supervisor.
  - (ii) The Supervisor and its agents and any Holder, may, in accordance with the FMC Act, at all reasonable times, inspect the Register and take copies of and extracts from the same without payment of any fee.
  - (iii) The Register shall be audited in accordance with applicable auditing and assurance standards, at the cost of the Issuer, by the Auditor annually within four months of the Issuer's balance date and at such other times as the Supervisor 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 Supervisor.
- (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 Supervisor shall for the purposes of this deed 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 Supervisor 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 Supervisor that it will pay to the Supervisor, at such place as the Supervisor 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 Supervisor or prevented by law, pay all interest on the Bonds to the Holders, and each such payment shall operate as a payment to the Supervisor in satisfaction, to the extent of the payment, of the obligation to pay interest to the Supervisor.
- (c) If specified in the relevant Issue Flyer or Product Disclosure Statement 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 Supervisor of that Suspension Notice, but shall not be more than 14 days before the delivery to the Supervisor 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 Supervisor 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 Issuer 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 Supervisor by the receiver, liquidator or statutory manager or by that other person. The Issuer shall, forthwith after giving the Suspension Notice to the Supervisor, 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 Supervisor 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 Supervisor 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 without compounding. The interest accrued (whether before or after the date of suspension) shall be paid by the Issuer 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 Supervisor may require the Issuer 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 Issuer shall procure that certificate or report to be produced within 14 days after request by the Supervisor.

## 6. CONVERSION, REDEMPTION, NEW ISSUES OF FINANCIAL PRODUCTS 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.
- (k) **Early redemption notice for Bonds issued after 1 November 2006:** If, in relation to a Series of Bonds issued after 1 November 2006, a Date of Acceleration has not occurred prior to the Maturity Date for the Series of Bonds, the Issuer may, at any time prior to the day falling 25 Business Days before the Maturity Date for the Series of Bonds, elect to redeem for cash all or some of the Bonds in the Series by giving no less than five Business Days' notice ("**early redemption notice**") to the Holders of the Series of Bonds.
- (l) **Early redemption for Bonds issued after 1 November 2006:** If an early redemption notice is given under sub-clause (k) then, on the date specified in the early redemption notice on which redemption is to occur ("**early redemption date**"), the Issuer shall redeem for cash each Bond which the Issuer has elected to redeem in the early redemption notice for an amount which is equal to the greater of:
  - (i) the Face Value of the Bonds plus accrued but unpaid interest on each such Bond as at, but excluding, the early redemption date; and
  - (ii) the volume weighted average of the prices at which Bonds were sold through the order matching system of NZX during the period of 10 consecutive Business Days immediately preceding the fifth Business

Day prior to the early redemption date, provided that if the Bonds have not been sold through the order matching system of NZX on at least 5 of those 10 consecutive Business Days, the average price of the Bonds for the purposes of this sub-clause 6.1(l)(ii) will be determined by an Independent Adviser,

in each case less all withholdings or deductions required to be made (whether pursuant to section 10 of this deed or otherwise).

- (m) **Part early redemption for Bonds issued after 1 November 2006:** If the Issuer gives an early redemption notice under sub-clause (k) electing to redeem only some of a Series of Bonds, that election must be made to all Holders of that Series of Bonds electing to redeem an equal proportion of that Series of Bonds held by each such Holder.

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 Supervisor, 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 30<sup>th</sup> 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 "licensed market transaction" within the meaning of the FMC Act may be transferred in accordance with subpart 9 of part 5 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 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; or
    - (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.
  - (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 NZX, 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.

## 7. COVENANTS

7.1 **Financial covenant:** The Issuer covenants for the benefit only of Holders of Bonds issued prior to 1 November 2006 and, until such time as all of those Bonds have been either redeemed or Converted in accordance with this deed, the Supervisor 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 issued prior to 1 November 2006, 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 with the Registrar of Financial Service Providers;
- (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 a Product Disclosure Statement without providing a copy in draft form to the Supervisor prior to the issue and in sufficient time for the Supervisor to consider in terms of its obligations under the FMC Act;
- (d) it will, in offering a Series of Bonds, at all times comply with the FMC 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 FMC Act (and exemption notices issued pursuant thereto);
- (f) it will forthwith send to the Supervisor a copy of each notice that it sends to any of NZX, the Holders, holders of Ordinary Shares, the Registrar of Financial Service Providers and the Registrar of Companies;
- (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;
- (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; and
- (j) if, at any time it has reasonable grounds to believe that it has breached, or may have breached or is likely to breach, any of its Issuer Obligations in a material respect, it will, as soon as practicable, notify the Supervisor in writing of the breach or possible breach and the steps (if any) that it has taken or intends to take in light of the breach or possible breach, and the date by which the steps were taken or are to be taken.

## 8. ACCELERATION

8.1 **Events of Default:** Subject to clause 12.4, the Supervisor 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 Supervisor;
- (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 Financial Markets Authority) 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 Supervisor, 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 Supervisor in respect of any matter relating to the provisions of this deed (whether or not the Supervisor 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 Supervisor specifying the default and requiring the same to be remedied.

8.2 **Declaration by Supervisor (other than following a breach of clause 7.1):** At any time after the occurrence of an event specified in clause 8.1 (other than an event specified in clause 8.1(g) which is a breach of the covenant in clause 7.1), and while that event is continuing, the Supervisor may in its discretion and shall forthwith upon being directed to do so by a Special 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 Supervisor 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).

8.3 **Declaration by Supervisor (following a breach of clause 7.1):** At any time after the occurrence of an event specified in clause 8.1(g) which is a breach of the covenant in clause 7.1 and which occurs prior to the time that all Bonds issued prior to 1 November 2006 ("**relevant Bonds**") have been either redeemed or Converted in accordance with this deed, and while that event is continuing, the Supervisor may in its discretion and shall forthwith upon being directed to do so by a Special Resolution of Holders of relevant Bonds, by notice to the Issuer declare the Face Value of all relevant 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 Supervisor making that declaration, each Holder of relevant Bonds may, by written notice to the Issuer, require the relevant 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 relevant Bonds; or
- (d) cause the relevant 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 relevant 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 apply the Approved Issuer Levy regime to a payment of interest (or deemed interest) to non-tax resident Holders, and elects to do so in respect of any Series, then:

- (a) if the relevant Bonds meet the requirements of section 86IB of the Stamp and Cheque Duties Act 1971, the Issuer, or the Registrar for the relevant Series on its behalf, shall make the payment of interest (or deemed interest) without deduction or payment of non-resident withholding tax or Approved Issuer Levy; or
- (b) if the relevant Bonds do not meet the requirements of section 86IB of the Stamp and Cheque Duties Act 1971, 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, the levy referred to in section 86J of the Stamp and Cheque Duties Act 1971.

## 11. REPORTS AND INFORMATION FOR SUPERVISOR

- 11.1 The Issuer shall:
- (a) **Annual financial statements:** Provide to the Supervisor 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 NZX, 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 Supervisor 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 NZX, 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) **Auditor's report:** Provide to the Supervisor at the same time as it provides the financial statements referred to in clause 11.1(a) a separate report by the Auditor stating:
- (i) whether or not in the performance of their duties as Auditor 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 Supervisor by this deed or the FMC 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 Supervisor 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 Auditor 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 Supervisor may in writing permit, and if so requested by the Supervisor, within one month after receipt by the Issuer of the request (which request shall only be made if the Supervisor considers that special circumstances warrant such request, and so certifies in writing to the Issuer), provide to the Supervisor 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 Supervisor may in its discretion approve;
- (e) **Requested information and reports:** If requested by the Supervisor (or a person authorised by the Supervisor to exercise its powers), within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor:
- (i) make available to the Supervisor (or other authorised person) all documents and records relating to the Issuer; and
  - (ii) provide the Supervisor (or other authorised person) with any other reports (which have been, if requested by the Supervisor, signed by at least two Directors), information, confirmations or financial statements required by the Supervisor (or other authorised person).
- The reports or information may be about any matter relevant to the performance of the Supervisor's functions and include forward-looking reports; and
- (f) **Serious financial problems:** if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, Insolvent (as defined in the FMC Act), as soon as practicable:
- (i) disclose to the Supervisor all information relevant to that matter that is in the possession or under the control of the Issuer and that was

obtained in the course of, or in connection with, the performance of its functions as Issuer; and

- (ii) advise the Supervisor of the steps (if any) that the Issuer intends to take in respect of that matter and the date by which the steps are to be taken.

## 11.2 **Appointment of Auditor:**

### (a) **Consultation with Supervisor:** The Issuer must:

- (i) before recommending the appointment or reappointment of a person as an Auditor:
  - (aa) consult with the Supervisor on the appointment or reappointment; and
  - (bb) ensure that any comments of the Supervisor concerning the proposed Auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
- (ii) notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
- (iii) not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

### (b) **Specified Engagement:** The Issuer must, before recommending the appointment or reappointment of a person as the Auditor:

- (i) give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to the Issuer's compliance with this deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
- (ii) consult with the Supervisor on the nature and scope of any such engagement.

## 11.3 **Terms of Appointment:** The Issuer must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:

- (a) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
- (b) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer

any questions the Supervisor may have concerning the audit, review, or engagement.

## 12. PROVISIONS RELATING TO SUPERVISOR

### 12.1 Remuneration:

- (a) The Issuer shall pay to the Supervisor for its services as Supervisor such remuneration as shall from time to time be agreed between the Issuer and the Supervisor provided that if the Issuer and the Supervisor 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 Supervisor (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 Supervisor of any right, power, duty or privilege conferred by this deed on the Supervisor or upon any Holder, including the taking of any expert advice deemed necessary or expedient by the Supervisor;
    - (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 Supervisor 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 Supervisor in the lawful exercise of the powers conferred by this deed, and all remuneration payable to the Supervisor, shall be payable by the Issuer on demand.

12.2 **Powers of investment:** Any money held by the Supervisor which are subject to the trusts of this deed may, at the discretion of the Supervisor, be invested in the name of the Supervisor 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 Supervisor may, on or at any time after the Date of Acceleration, apply pursuant to section 207 of the FMC Act to the court for an order:

- (a) under section 208 of the FMC Act, if the Supervisor is satisfied that:

- (i) the Issuer is unlikely to be able to pay all money owing in respect of the Bonds as and when due;
  - (ii) the Issuer is insolvent (as defined in the FMC Act) or the financial position or management of the Issuer is otherwise inadequate;
  - (iii) there is a significant risk that the interests of Holders will be materially prejudiced for any other reason; or
  - (iv) the provisions of this deed are no longer adequate to give proper protection to the interests of the Holders; or
- (b) under section 210 of the FMC Act and within 20 working days (or, with leave of the court, within any longer period) after the passing of a Special Resolution of Holders, directing it not to comply with a Special Resolution of Holders,

and it may assent to, approve of or oppose any application to the court under those sections made by or at the instance of the FMA or any Holder (where applicable) and shall, subject to clause 12.15, 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 clause 13 (if applicable) and the Listing Rules and to any direction or request given by the Holders, the Supervisor 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 Supervisor is satisfied that the interests of the Holders will not be materially prejudiced thereby but such waiver shall not prejudice the rights of the Supervisor or the Holders in respect of any other breach.

12.5 **Supplemental powers:** In addition to the provisions of the law relating to supervisors or trustees and to facilitate the discharge of its duties hereunder, but subject always to the provisions of the FMC Act:

- (a) **Third party advice:** The Supervisor 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 Supervisor 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 Supervisor shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Holders which the Supervisor 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 Supervisor 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 if the Issuer breaches any Issuer Obligation, the Supervisor shall, unless it is satisfied that such breach will not have a material adverse effect on the Holders, do all the things it has the power to do to cause the breach to be remedied.
- (e) **Discretion:** Except as otherwise expressly provided in this deed, the Supervisor:
  - (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 Special Resolution and the Supervisor 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 Supervisor 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 Supervisor, shall be conclusive and shall bind the Supervisor and the Holders.
  - (ii) The powers, rights and remedies conferred on the Supervisor by this deed are exercisable by the Supervisor only, and no Holder is entitled to exercise the same or any of them except with the written consent of the Supervisor or if the Supervisor has failed to exercise any such power, right or remedy having been directed by a Special Resolution of Holders to do so.
- (g) **Delegation:** Where permitted to do so by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011, the Supervisor, 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 Supervisor 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 Supervisor may think fit, and the Supervisor 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 Supervisor 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.
- (i) **Power to engage expert:** The Supervisor may engage an expert (for example, an auditor, investigating accountant, valuer or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to assist the Supervisor to:
  - (i) determine the financial position of the Issuer; or
  - (ii) review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 12.5(i), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance and (without limiting clause 12.1(b)) the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

#### 12.6 **Fiduciary relationship:**

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

**"Unrelated Supervisor 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 Supervisor's rights and obligations in terms of this deed.

**"Related Supervisor 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 Supervisor's rights and obligations in terms of this deed.
- (b) Nothing expressed in this deed or implied by law shall prohibit any Unrelated Supervisor Personnel from being a shareholder or stockholder of the Issuer or any of its Subsidiaries provided that the Supervisor establishes and enforces appropriate "Chinese Wall" procedures to separate any such arrangements from all Related Supervisor Personnel. In particular without limiting the generality of the foregoing no Unrelated Supervisor 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 Supervisor Personnel. For the avoidance of doubt, it shall not be a breach of the fiduciary duties of the Supervisor hereunder arising from, and nothing expressed in this deed or implied by law shall prohibit, any Unrelated Supervisor Personnel or Related Supervisor 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 Supervisor or any of its related companies (all hereinafter in this clause where the context permits being included in the expression "the Supervisor" including, for these purposes, any of its directors, officers, employees or contractors of the Supervisor 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 Supervisor 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 Supervisor.

12.7 **Represent Holders:** The Supervisor 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 including in relation to:

- (a) the Issuer;
- (b) any matter connected with this deed or the terms of offer of a Series; and
- (c) any contravention or alleged contravention of the Issuer Obligations.

12.8 **Supervision of Performance:** The Supervisor is responsible for supervising the Issuer's performance:

- (a) of its Issuer Obligations;
- (b) in order to ascertain whether the assets of the Issuer that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the debt securities as they become due.

12.9 **Confidentiality:** The Supervisor shall not disclose to any Holder any confidential financial or other information made available to the Supervisor 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.

12.10 **Retirement and Removal:** The Supervisor 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 by the Financial Markets Authority or the Issuer under Part 2 of the Financial Markets Supervisors Act 2011; or
- (c) be removed at any time by Special Resolution,

subject in the case of removal or retirement under paragraphs (a) or (c), to clause 12.11.

12.11 **Requirements for Retirement and Removal:** The Supervisor may not be removed or resign under subsection 12.10(a) or (c) unless:

- (a) all functions and duties of the position have been performed;
- (b) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
- (c) the court consents.

12.12 **Appointment of new Supervisor:**

- (a) Subject to paragraph (b) of this clause 12.12, the power of appointing a new Supervisor or Supervisors hereof shall be vested in the Issuer but no Supervisor shall be appointed unless such appointment is first approved by a Special Resolution. Only a person authorised to act as a supervisor under the Financial Markets Supervisors Act 2011 shall be appointed as a Supervisor in this deed.
- (b) In the event that any new Supervisor proposed by the Issuer is not approved by a Special Resolution, then any Holder shall be entitled to nominate an alternative party to be a Supervisor (provided such Supervisor is a person authorised to act as a supervisor under the Financial Markets Supervisors Act 2011 and such party shall be appointed as the new Supervisor if first approved by a Special 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 Supervisor if first approved by a Special Resolution.
- (c) If within 30 days after:
  - (i) receiving notice of the Supervisor's intention to retire; or
  - (ii) the Supervisor is removed under clause 12.10(b),
 the Issuer fails to call a meeting of Holders in accordance with this clause 12.12, or to exercise the power vested in it by this clause of appointing a new Supervisor, the Holders may by Special Resolution exercise such power to the exclusion of the Issuer.

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

12.14 **Indemnity by the Issuer:** Subject to clause 12.15, without prejudice to the right of indemnity by law given to trustees or supervisors, the Supervisor and every attorney, manager, agent or other similar person appointed by the Supervisor 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. The Supervisor 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 indemnity and also the remuneration and disbursements of the Supervisor provided for in this deed.

- 12.15 **Supervisor not indemnified:** No provision of this deed shall have the effect of indemnifying the Supervisor against liability where the Supervisor fails to:
- (a) act honestly in acting as a supervisor;
  - (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Holders;
  - (c) exercise reasonable diligence in carrying out its functions as a supervisor; or
  - (d) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.
- 12.16 **Statutory Duties:** For as long as required under the FMC Act, the Supervisor must, in performing its duties and functions as a supervisor (as defined under the FMC Act):
- (a) exercise the care, diligence and skill that a prudent person engaged in the business of acting as a supervisor licensed under the FMC Act would exercise in the same circumstances;
  - (b) act honestly;
  - (c) act in the best interests of the Holders;
  - (d) exercise reasonable diligence; and
  - (e) do all the things it has the power to do to cause any contravention by the Issuer of the Issuer Obligations to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Holders).
- 12.17 **Interpretation of Duties:** The Supervisor has entered into this deed on the basis that the duties of the Supervisor as prescribed in the FMC Act 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; and
  - (c) the Bonds have certain characteristics analogous to shareholders' equity rather than debt securities,

and shall, to the maximum extent possible, be limited accordingly.

Certain provisions of this deed derive from the Listing Rules and, in the absence of notice to the contrary from the Issuer or NZX, the Supervisor 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 Supervisor is entitled to act accordingly and in acting have regard to the actions of the NZX in relation to non compliance, as referred to in clause 2.6.

The Supervisor 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 Supervisor, pursuant to the FMC Act, shall be construed, interpreted and limited as described above.

- 12.18 **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 Supervisor for, any liability incurred by the Supervisor in acting as supervisor pursuant to this deed.

### 13. ALTERATIONS TO TRUST DEED

- 13.1 **Limited right to amend:** Any amendment to, or replacement of, this deed must be in writing signed by the Issuer and the Supervisor. The provisions of this deed may not be amended or replaced unless the amendment or replacement is made:

- (a) with the consent of the Supervisor; or
- (b) under section 109 of the FMC Act, section 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace this deed under an enactment.

- 13.2 **Supervisor consent:** The Supervisor must not consent to an amendment to, or replacement of, this deed unless:

- (a) either:
  - (i) the amendment or replacement is approved by, or is contingent on approval by, the Holders; or
  - (ii) the Issuer and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Holders; and
- (b) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.

- 13.3 **Holder consent:** The approval of the Holders for the purposes of clause 13.2(a)(i) must be the approval of a Special Resolution of:

- (a) the Holders; or
- (b) each class of Holders of the Bonds that is or may be adversely affected by the amendment or replacement.

### 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 Supervisor by the Issuer, or to the Issuer by the Supervisor 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 Supervisor nor the Issuer may take action that affects the rights attached to any Bonds unless that action has been approved by a Special 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 Supervisor; 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.

16.5 **Meetings:** Meetings of Holders are to be convened and held in accordance with the provisions of schedule 3.

16.6 **Resolutions of Holders:** Regulation 78 of the Financial Markets Conduct Regulations 2014 does not apply to this deed.

## 17. MISCELLANEOUS

17.1 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 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.

**SIGNED AS A DEED**

**INFRATIL LIMITED**

by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

**SIGNED by  
TRUSTEES EXECUTORS  
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. Infratil 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 Trustees Executors Limited dated [●].

**SIGNED** by **INFRATIL LIMITED** by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

Date:

**ACCEPTED by TRUSTEES EXECUTORS LIMITED by:**

\_\_\_\_\_  
Signature of Director/Authorised Signatory

\_\_\_\_\_  
Signature of Director/Authorised Signatory

\_\_\_\_\_  
Name of Director/Authorised Signatory

\_\_\_\_\_  
Name of Director/Authorised Signatory

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

Date:



Signed on behalf of the Directors

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

Date [●]

### SCHEDULE 3 Meetings of Holders

#### 1. DEFINITIONS

##### 1.1 In this schedule:

**"Special Resolution"** means a resolution passed at a duly convened meeting of the Holders approved by Holders holding Bonds with a combined Face Value of no less than 75% of the Face Value of the Bonds held by those persons who are entitled to vote and who vote on the question.

**"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 Issuer:** 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 Issuer shall at the request in writing of Holders holding not less than 5% 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 Supervisor 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 Supervisor and/or its agents full access to the Register, whether the Register is for the time being closed or not.

2.5 **Meeting required by Supervisors:** The Issuer shall at the request in writing of the Supervisor convene a meeting of the Holders.

#### 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 Supervisor determines or approves.

#### 4. NOTICE OF MEETINGS

4.1 **Notice:** The Issuer must ensure that written notice of the time and place of a meeting of Holders is sent to the following at least 15 Business Days before the meeting:

- (a) every Holder entitled to receive notice of the meeting;
- (b) the Supervisor;
- (c) every Director and an Auditor of the Issuer;
- (d) 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; and
- (e) NZX.

4.2 **Contents of notice:** The notice must state:

- (a) the place, day and hour of the meeting;
- (b) the nature of the business to be transacted at the meeting in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;
- (c) the text of any Special Resolution to be submitted to the meeting; and
- (d) the right of a Holder to appoint a representative.

4.3 **Special Resolution at meeting:** If a Special Resolution is to be submitted to the meeting:

- (a) a draft of the proposed notice of the meeting (including any explanatory memorandum under clause 4.3(b)) must be given to the Supervisor at least 10 Business Days before the notice is given under subclause 4.1 (or any lesser period approved by the Supervisor); and
- (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Issuer at least 5 Business Days before the notice is given under subclause 4.1).

4.4 **Irregularity:** An irregularity in a notice of a meeting is waived if:

- (a) all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver; or
- (b) the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Holders.

4.5 **Accidental omission:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Holder does not invalidate the proceedings at that meeting.

- 4.6 **Adjourned meeting:** If a meeting of Holders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

## 5. QUORUM

- 5.1 **Quorum required:** No business may be transacted at a meeting of Holders if a quorum is not present.
- 5.2 **Quorum for Special Resolution:** A quorum for a meeting of Holders at which a Special Resolution is to be submitted is present if Holders or their representatives are present who hold Bonds with a combined Face Value of no less than 25% of the Face Value of the Bonds held by those persons who are entitled to vote on the business to be transacted by the meeting.
- 5.3 **Quorum for other business:** A quorum for any other business at a meeting of Holders is present if Holders holding at least 10% of the Bonds are present in person or by representative and in any case at least 2 Holders or their representatives must be present.
- 5.4 **Quorum for present:** Despite subclause 5.1, if a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called under section 120(1)(b) or (c) or 161(1)(b) or (c) of the FMC Act, the meeting is dissolved; and
  - (b) in the case of any other meeting, the meeting is adjourned to the day that is 10 Business Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their representatives present are a quorum.
- 5.5 **Present by electronic means:** To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

## 6. RIGHT TO SPEAK

- 6.1 Any director, officer of or solicitor for, the Supervisor or any other person authorised in that behalf by the Supervisor 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, including, in the case of any director, officer of or solicitor for, the Supervisor or any other person authorised in that behalf by the Supervisor, in regards to any part of the business of the meeting that concerns the Supervisor's functions or the Holders for whom the Supervisor is acting.

## 7. CHAIRMAN

- 7.1 A person nominated in writing by the Supervisor shall preside as chairman 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 NZX, 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 Supervisor) 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 NZX 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 4.1(d) 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 Supervisor 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 Supervisor shall approve, shall be deposited at such place as the Supervisor, or the Issuer with the approval of the Supervisor, 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 Supervisor 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 Supervisor 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 130 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 **Supervisor may be representative:** The Supervisor and any officer of the Supervisor 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 Supervisor, 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 Supervisor or any person acting on behalf of the Supervisor 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 Supervisor, 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 SPECIAL 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 Supervisor by the deed, a meeting of the Holders shall, in addition to all other powers which by the deed are specified as exercisable by Special Resolution, but subject to section 14 of this deed, have the following powers exercisable by Special 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 FMC Act, discharge, release or exonerate the Supervisor from all liability in respect of any act or omission for which the Supervisor 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 Supervisor and approve the appointment of, or appoint, a new Supervisor;
- (g) authorise or direct the Supervisor 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 Supervisor 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. SPECIAL RESOLUTION**

- 17.1 **Special Resolution binds Holders:** A Special Resolution passed in accordance with this schedule shall be binding upon all the Holders and each of the Holders and the Supervisor (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 Supervisor 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 Supervisor, or if the Supervisor 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 Supervisor 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 Supervisor 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 Supervisor 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 Supervisor may in its sole discretion determine.

## **20. INTEREST GROUP MEETINGS**

- 20.1 A meeting of the Holders in an Interest Group may be called by the Issuer at any time, and shall be called on the written request of the Supervisor or holders of Bonds that

have a combined Face Value of not less than 5% of the Face Value of the Bonds on issue in that Interest Group. All the provisions of this deed including the definition of Special Resolution relating to meetings of Holders apply, with all necessary modifications, to a meeting of an Interest Group, except that:

- (a) 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
- (b) any Holder in the group, present in person or by proxy or representative, may demand a poll.