

MERIDIAN ENERGY LIMITED
Issuer

THREE RIVER HOLDINGS NO. 1 LIMITED
THREE RIVER HOLDINGS NO. 2 LIMITED
MERIDIAN WIND MONARO RANGE HOLDINGS PTY LIMITED
MERIDIAN WIND MONARO RANGE PTY LIMITED
MERIDIAN AUSTRALIA HOLDINGS PTY LTD
MERIDIAN WIND AUSTRALIA HOLDINGS PTY LTD
MERIDIAN ENERGY MARKETS PTY LTD
MT MERCER WINDFARM PTY LTD
MERIDIAN ENERGY AUSTRALIA PTY LIMITED
MEL MERIDIAN AUSTRALIA PARTNERSHIP
MERIDIAN FINCO PTY LIMITED
MT MILLAR WIND FARM PTY LTD
Guaranteeing Subsidiaries

TRUSTEES EXECUTORS LIMITED
Supervisor

DEED AMENDING AND RESTATING A TRUST
DEED DATED 1 DECEMBER 2008

RUSSELL McVEAGH

DEED dated 13 October 2015

PARTIES

MERIDIAN ENERGY LIMITED ("Issuer")

THREE RIVER HOLDINGS NO. 1 LIMITED, THREE RIVER HOLDINGS NO. 2 LIMITED, MERIDIAN WIND MONARO RANGE HOLDINGS PTY LIMITED, MERIDIAN WIND MONARO RANGE PTY LIMITED, MERIDIAN AUSTRALIA HOLDINGS PTY LTD, MERIDIAN WIND AUSTRALIA HOLDINGS PTY LTD, MERIDIAN ENERGY MARKETS PTY LTD, MT MERCER WINDFARM PTY LTD, MERIDIAN ENERGY AUSTRALIA PTY LIMITED, MEL MERIDIAN AUSTRALIA PARTNERSHIP, MERIDIAN FINCO PTY LIMITED and MT MILLAR WIND FARM PTY LTD ("Guaranteeing Subsidiaries")

TRUSTEES EXECUTORS LIMITED ("Supervisor")

INTRODUCTION

- A. The Issuer, the Guaranteeing Subsidiaries and the Supervisor are parties to a master trust deed dated 1 December 2008 as amended on 27 September 2012, 12 June 2013 and 16 September 2013 relating to the constitution and terms of debt securities ("**Original Deed**").
- B. The Issuer, the Guaranteeing Subsidiaries 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 23.2(a) of the Original Deed, the Supervisor and the Issuer are of the opinion that the amendments contained in this deed are:
 - (i) made to comply with the requirements of the Financial Markets Conduct Act 2013; or
 - (ii) of a minor or technical nature.
- D. The directors of the Issuer have resolved that the amendments contained in this deed will not be materially prejudicial to the interests of Holders. The Supervisor is of the opinion that the amendments contained in this deed will not be materially prejudicial to the interests of the Retail Holders.

COVENANTS

1. INTERPRETATION

- 1.1 **Definitions:** Words and expressions that are defined in the Original Deed have the same meanings when used in this deed, unless the context otherwise requires.
- 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 28 October 2015, 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.

EXECUTION

Executed as a deed

The Issuer**SIGNED** on behalf of **MERIDIAN ENERGY LIMITED** by its attorneys:

Signature of attorney

Name of attorney

Signature of attorney

Jason Adam Stein

Name of attorney

In the presence of:

Signature of witness

Name of witness

Occupation

**JAMES EDWARD CANNY
SOLICITOR
WELLINGTON**

City/town of residence

The Guaranteeing Subsidiaries**THREE RIVER HOLDINGS NO. 1
LIMITED** by:

Signature of director

Name of director

Signature of director

PAUL CHAMBERS

Name of director

**THREE RIVER HOLDINGS NO. 2
LIMITED** by:

Signature of director

Name of director

Signature of director

PAUL CHAMBERS

Name of director

EXECUTED as a deed in accordance with
section 127 of the Corporations Act 2001
by **MERIDIAN WIND MONARO RANGE
HOLDINGS PTY LIMITED:**

Signature of director

Name of director

Signature of director

PAUL CHAMBERS

Name of director

EXECUTED as a deed in accordance with
section 127 of the Corporations Act 2001
by **MERIDIAN WIND MONARO RANGE
PTY LIMITED:**

Signature of director

Name of director

Signature of director

PAUL CHAMBERS

Name of director

EXECUTED as a deed in accordance with
section 127 of the Corporations Act 2001
by **MERIDIAN AUSTRALIA HOLDINGS
PTY LTD:**

Signature of director

Name of director

Signature of director

PAUL CHAMBERS

Name of director

EXECUTED as a deed in accordance with
section 127 of the Corporations Act 2001
by **MERIDIAN WIND AUSTRALIA
HOLDINGS PTY LTD:**

Signature of director

Name of director

Signature of director

PAUL CHAMBERS

Name of director

EXECUTED as a deed in accordance with section 127 of the Corporations Act 2001 by **MERIDIAN ENERGY MARKETS PTY LTD:**

Signature of director

Name of director

Mark Binn

Signature of director

Name of director

PAUL CHAMBERS

EXECUTED as a deed in accordance with section 127 of the Corporations Act 2001 by **MT MERCER WINDFARM PTY LTD:**

Signature of director

Name of director

Mark Binn

Signature of director

Name of director

PAUL CHAMBERS

EXECUTED as a deed in accordance with section 127 of the Corporations Act 2001 by **MERIDIAN ENERGY AUSTRALIA PTY LIMITED**

Signature of director

Name of director

Mark Binn

Signature of director

Name of director

PAUL CHAMBERS

EXECUTED as a deed by **MERIDIAN ENERGY AUSTRALIA PTY LIMITED** for and on behalf of the **MEL MERIDIAN AUSTRALIA PARTNERSHIP** in its capacity as general partner of the **MEL MERIDIAN AUSTRALIA PARTNERSHIP** by:

Signature of director

Name of director

Mark Binn

Signature of director

Name of director

PAUL CHAMBERS

EXECUTED as a deed in accordance with
section 127 of the Corporations Act 2001
by **MERIDIAN FINCO PTY LIMITED:**

Signature of director

Name of director

Mark Burns

Signature of director

Name of director

PAUL CHAMBERS

EXECUTED as a deed in accordance with
section 127 of the Corporations Act 2001
by **MT MILLAR WIND FARM PTY LTD:**

Signature of director

Name of director

Mark Burns

Signature of director

Name of director

PAUL CHAMBERS

The Supervisor

SIGNED by TRUSTEES EXECUTORS LIMITED under its common seal:

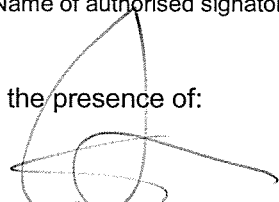


Signature of authorised signatory

Robert Gatward

Name of authorised signatory

In the presence of:



Signature of witness

Sean Roberts
Name of witness
Corporate Business Manager
Wellington

Occupation

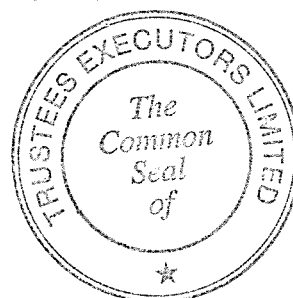
City/town of residence



Signature of authorised signatory

Stuart McLaren

Name of authorised signatory



CTS2015-166 (1/2)

SCHEDULE**Amended and Restated Trust Deed**

MERIDIAN ENERGY LIMITED

Issuer

**THREE RIVER HOLDINGS NO. 1 LIMITED
THREE RIVER HOLDINGS NO. 2 LIMITED
MERIDIAN WIND MONARO RANGE HOLDINGS PTY LIMITED
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MERIDIAN ENERGY AUSTRALIA PTY LIMITED
MEL MERIDIAN AUSTRALIA PARTNERSHIP
MERIDIAN FINCO PTY LIMITED
MT MILLAR WIND FARM PTY LTD**

Guaranteeing Subsidiaries

TRUSTEES EXECUTORS LIMITED

Supervisor

MASTER TRUST DEED

RUSSELL McVEAGH

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DEED dated 1 December 2008 as amended on 27 September 2012, 12 June 2013, 16 September 2013 and as amended and restated by the deed to which this deed is attached as a schedule.

PARTIES

MERIDIAN ENERGY LIMITED ("Issuer")

THREE RIVER HOLDINGS NO. 1 LIMITED, THREE RIVER HOLDINGS NO. 2 LIMITED, MERIDIAN WIND MONARO RANGE HOLDINGS PTY LIMITED, MERIDIAN WIND MONARO RANGE PTY LIMITED, MERIDIAN AUSTRALIA HOLDINGS PTY LTD, MERIDIAN WIND AUSTRALIA HOLDINGS PTY LTD, MERIDIAN ENERGY MARKETS PTY LTD, MT MERCER WINDFARM PTY LTD, MERIDIAN ENERGY AUSTRALIA PTY LIMITED, MEL MERIDIAN AUSTRALIA PARTNERSHIP, MERIDIAN FINCO PTY LIMITED and MT MILLAR WIND FARM PTY LTD ("Guaranteeing Subsidiaries")

TRUSTEES EXECUTORS LIMITED ("Supervisor")

INTRODUCTION

- A. The Issuer proposes to establish a debt security programme under which the Issuer may from time to time issue Securities denominated in New Zealand dollars.
- B. Each Series of Securities issued by the Issuer will be constituted by and issued on terms set out in a Supplemental Trust Deed made between the Issuer and the Supervisor. The terms of such Supplemental Trust Deed may modify the terms of this Deed in relation to the relevant Series of Securities.
- C. The Guaranteeing Group Members have agreed to each jointly and severally unconditionally guarantee on an unsecured and unsubordinated basis to Holders of each Series and (in respect of Retail Series only) the Supervisor, the due and punctual payment of all amounts payable on the Securities.
- D. The Supervisor has agreed, at the request of the Issuer, to act as supervisor for the Holders of each Retail Series and, to the limited extent expressly provided in this Deed, for the Holders of each Wholesale Series, on the terms and conditions of this Deed applicable to that Series.
- E. The Crown does not guarantee or financially support any of the Issuer's obligations or liabilities in relation to the Securities.

AGREEMENT

1. INTERPRETATION

1.1 Definitions: In this Deed, unless the context otherwise requires:

"Agency Agreement" means, in relation to any Series, the agency agreement between the Issuer and the person appointed as registrar, calculation agent and paying agent for that Series, as specified in the Supplemental Trust Deed for that Series.

"Amortisation Date" means, in respect of an Amortising Note, each date (other than the Maturity Date) for the repayment of part of the Principal Amount of that Amortising Note, being the dates recorded as such in the Register in respect of that Amortising Note.

"Amortising Note" means a Note (whether a Fixed Rate Note, Floating Rate Note, Index-linked Note or a Zero Coupon Note) the Principal Amount or part of the Principal Amount of which is repayable on the scheduled Amortisation Dates for that Security.

"Approved Issuer Levy" means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Security, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971 to enable the payment of such interest to be made to any non-tax resident for tax purposes with a deduction for New Zealand non-resident withholding tax at the rate of zero percent under section RF 12(3) of the Income Tax Act 2007.

"Audited Consolidated Financial Statements" means annual Consolidated Financial Statements as at the Issuer's balance date and for the year ending on that balance date which have been duly audited by the Auditors.

"Auditors" means the auditors for the time being of the Issuer or any Group Member or Group Members (as the case may be).

"Base Rate" means, in relation to a Series of Floating Rate Notes, the reference rate specified as such in the Supplemental Trust Deed for the Series.

"Bond" means a Security with an original tenor of more than eighteen months.

"Borrowed Money" includes money borrowed or raised (whether or not for cash consideration) by any means (including drawing, acceptance, endorsement or discounting of bills of exchange) and the deferred purchase price of assets and services (except for assets and services obtained in the ordinary course of business on normal trade terms), including indebtedness in respect of:

- (a) rental or lease payments under Finance Leases;
- (b) Derivative Transactions; and
- (c) Deeds of Guarantee in respect of the indebtedness or obligations of another person in respect of any of the foregoing.

"Business Day" means a day (other than a Saturday or Sunday) on which registered banks are generally open for business in Wellington, Auckland and, to the extent specified in the Supplemental Trust Deed in relation to a Series, the city or cities specified in that Supplemental Trust Deed.

"Capital Note" means a Subordinated Note which, in accordance with its Conditions, may be convertible to an equity security.

"Class" means a category of Securities which in the reasonable opinion of the Issuer (in consultation with the Supervisor if in relation to a Retail Series) at any particular time, for any particular purpose, constitutes a separate class of Securities and **"Class of Holders"** means the Holders of those Securities.

"Companies Act" means the Companies Act 1993.

"Conditions" means, in relation to a Series, the terms and conditions applicable to that Series set out in the Supplemental Trust Deed for that Series and (as modified by that Supplemental Trust Deed) this deed.

"Consolidated Financial Statements" means, at any date and in relation to the Group, consolidated Financial Statements of the Group as at that date prepared in accordance with GAAP and (if they are not the Audited Consolidated Financial Statements) on a basis consistent with the most recent Audited Consolidated Financial Statements of the Group, except to the extent (if any) expressly disclosed in the notes to such statements.

"Controlled Material Subsidiary" means, at any particular time, a Material Subsidiary which at that time is a Subsidiary all of the shares, or all of the voting products (as defined in the FMC Act), of which are beneficially owned by Guaranteeing Group Members.

"Date of Enforcement" means the date on which a Holder or the Supervisor makes a declaration pursuant to clause 16.1 or 16.2.

"Debt" means, at any date, the aggregate outstanding amount of all Borrowed Money of the Group (other than Subordinated Debt) at the time calculated on a consolidated basis (excluding, for the avoidance of doubt, any money raised from the issue of equity) as is or (as the case may be) would be disclosed in the Group's Reference Accounts as at that date excluding any unrealised gains or losses resulting from any Derivative Transaction.

"this Deed" means this deed and, where used or falling to be interpreted in relation to a particular Series, includes the Supplemental Trust Deed for that Series and relates to this deed as modified and supplemented by that Supplemental Trust Deed, and (for the avoidance of doubt) **"this deed"** means this deed alone.

"Deeds of Guarantee" includes any guarantee, indemnity, letter of credit, suretyship, third party security or any other obligation (whatever called and of whatever nature):

- (a) to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services or otherwise) for the payment or performance of any indebtedness or other obligation of another person; or
- (b) otherwise to be responsible or assume liability for or in respect of any indebtedness or other obligation of another person.

"Default Interest" has the meaning given in clause 9.7.

"Derivative Transaction" means:

- (a) any foreign exchange transaction (including, without limitation, any foreign exchange contracts, hedge settlement contracts, foreign exchange options, foreign exchange futures and currency exchange or swap agreements, or any combination or permutation of such transaction or any similar or related transactions);
- (b) any interest rate transaction (including, without limitation, any interest rate options, interest rate futures, forward rate agreements, interest rate exchange or swap agreements and cross-currency interest rate exchange or swap agreements, or any combination or permutation of such transaction or any similar or related transactions);

- (c) any commodity derivative transaction (including, without limitation, any energy or electricity hedge transaction);
- (d) any futures or options transaction of any nature;
- (e) any combination of any of the above.

"Director" means a director of the Issuer for the time being and includes an alternate director acting as a director of the Issuer.

"Dollars" and **"\$"** means the lawful currency of New Zealand.

"EBITDA" means, on any date, in relation to a Group Member or the Group and the 12 month period ending on that date, the earnings of the Group Member or the Group as are or (as the case may be) would be disclosed in the Reference Accounts for the Group Member or the Group as at that date and for the 12 month period ending on that date but:

- (a) after excluding:
 - (i) any amount of earnings of the Group Member or Group consisting of interest and financing costs accrued due to the Group Member or Group which is to be deducted in the calculation of Interest and Financing Costs for that period pursuant to paragraph (b) of the definition of Interest and Financing Costs; and
 - (ii) abnormal items;
 - (iii) profits and losses derived from the sale of fixed assets and investments;
 - (iv) non-cash equity accounted profits and losses;
 - (v) unrealised gains and losses resulting from any Derivative Transaction;
- (b) before charging or providing for:
 - (i) Interest and Financing Costs;
 - (ii) any provision for income tax or any other tax;
 - (iii) depreciation and amortisation;
 - (iv) extraordinary items,

in each case of or made or incurred by the Group Member or the Group for that period and calculated in accordance with GAAP.

"Equity" means, at any date, the aggregate amount on a consolidated basis of the amounts as are or (as the case may be) would be disclosed in the Group's Reference Accounts as at that date in respect of:

- (a) the consolidated shareholders' funds of the Group, being the net amount (after adding all credit balances and deducting all debit balances) of:

- (i) the amount paid up or credited as paid up in respect of contributed capital of the Group;
- (ii) the aggregate amount of the consolidated reserves of the Group; and
- (iii) any other component of the equity of the Group;

plus:

- (b) the amount of any Subordinated Debt (to the extent not included by virtue of paragraph (a) above),

after deducting or excluding any amount included in paragraphs (a) or (b) above which is attributable to:

- (c) the aggregate on a consolidated basis of the amount payable on redemption of all redeemable shares in the capital of Group members and the amount of all accrued, or accumulated but unpaid, dividends (if any) on such redeemable shares;
- (d) goodwill and other intangible assets (but excluding any customer acquisition costs disclosed in the Group's Reference Accounts);
- (e) minority interests;
- (f) non cash equity accounted profits and losses; and
- (g) unrealised gains and losses resulting from any Derivative Transactions.

"Event of Default" means any of the events specified in clause 16.1 or any event which, with the passing of time or the giving of notice or both, would constitute such an event.

"Finance Lease" means a lease, conditional sale, hire purchase or other similar arrangement constituting a finance lease for the purposes of GAAP.

"Financial Statements" has the same meaning as in the Financial Reporting Act 2013 and includes statements of financial position, financial performance, movements in equity and cashflows and the notes relating thereto.

"Fixed Rate Note" means a Security bearing a fixed rate of interest.

"Floating Rate Note" means a Security bearing interest at a margin over the Base Rate.

"FMC Act" means the Financial Markets Conduct Act 2013.

"FMC Regulations" means the Financial Markets Conduct Regulations 2014.

"GAAP" means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013.

"Group" means the Issuer and each of its Subsidiaries and associates (as determined by generally accepted accounting practice) from time to time, and **"Group Member"** means any of them.

"this Guarantee" means the guarantee by the Guaranteeing Group Members in clause 4.

"Guaranteeing Group Members" means the Issuer, the Guaranteeing Subsidiaries and each Subsidiary of the Issuer which becomes a Guaranteeing Group Member in accordance with clause 5.2 after the date of this deed. It does not include any person that has ceased to be a Guaranteeing Group Member in accordance with clause 5.4.

"Guaranteed Moneys" means at any time and in relation to the Securities all moneys payable on or in relation to the Securities to the relevant Holders pursuant to the terms and conditions thereof or of this Deed.

"Guaranteeing Subsidiaries" means Three River Holdings No. 1 Limited, Three River Holdings No. 2 Limited, Meridian Wind Monaro Range Holdings Pty Limited, Meridian Wind Monaro Range Pty Limited, Meridian Australia Holdings Pty Ltd, Meridian Wind Australia Holdings Pty Ltd, Meridian Energy Markets Pty Ltd, Mt Mercer Windfarm Pty Ltd, Meridian Energy Australia Pty Limited, MEL Meridian Australia Partnership, Meridian Finco Pty Limited and Mt Millar Wind Farm Pty Ltd.

"Holder" means, in relation to a Security at any time, the person whose name is recorded in the Register as the holder of that Security at that time.

"Index" means, in relation to a Security, the index (if any) recorded in the Register in respect of that Security by reference to which the Principal Amount of that Security and/or the amount of interest payable in respect of that Security is to be calculated.

"Index-linked Note" means a Security in respect of which either the Principal Amount of, or the interest payable on, that Security, or both, is to be calculated by reference to an Index.

"Interest and Financing Costs" means, on any date, in relation to a Group Member or the Group and the 12 month period ending on that date, an amount (determined by reference to the relevant amounts which are or (as the case may be) would be disclosed in the Reference Accounts for the Group Member or Group as at that date and for the 12 month period ending on that date) equal to:

- (a) all interest and other financing charges or costs incurred by the Group Member or Group, calculated in accordance with GAAP, for the 12 months ending on that date, after taking into account all realised losses and profits on foreign currency borrowings and any Derivative Transaction, including (without limitation):
 - (i) the amount of all discounts and similar allowances on the issue or disposal of debt instruments;
 - (ii) all finance charges under Finance Leases, and hire purchase agreements of a financing nature;
 - (iii) the amount of all dividends paid or payable on Redeemable Shares issued by the Group Member or, in the case of the Group, any member of the Group; and
 - (iv) all other expenses and amounts that are required by GAAP to be treated as interest or financing costs,

but not including interest and financing costs on moneys borrowed or raised to acquire, develop or improve fixed assets, to the extent that they have been

capitalised in the accounts of the Group Member or Group and are not paid in cash,

after deducting:

- (b) an amount equal to the aggregate of all earnings of the Group Member or Group consisting of interest and financing costs (of the nature referred to in paragraph (a) above) accrued due to the Group Member or Group on a consolidated basis in relation to such financial period on loans or deposits with banks or financial institutions, or on investments in negotiable instruments, bonds or similar instruments or products.

"Interest Payment Date" means, unless a Supplemental Trust Deed for a Series provides otherwise:

- (a) in relation to a Floating Rate Note, the last day of each Interest Period for that Floating Rate Note; and
- (b) in relation to a Fixed Rate Note, the quarterly, semi-annual or annual dates fixed at the time of issue of that Security for the payment of interest in respect of that Security and recorded as such in the Register.

"Interest Period" means, unless a Supplemental Trust Deed for a Series provides otherwise, in relation to a Floating Rate Note, a period determined in accordance with clause 10.1 in respect of that Floating Rate Note.

"Interest Rate" means, in relation to a Security, the rate of interest (if any) payable in respect of that Security (which may be a fixed rate or a margin over the Base Rate) specified at the time of issue of that Security and recorded as such in the Register.

"Issue Date" means, in relation to a Security, the date on which that Security is issued, being the date recorded as such in the Register in respect of that Security.

"Issuer" means Meridian Energy Limited (or, in relation to any particular Series, any other person which is or becomes an issuer of the Securities of that Series in accordance with clause 25).

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

"Listed" means listed and quoted on the NZDX Market and "Listing" has a corresponding meaning.

"Listing Rules" means the listing rules of the NZX in force from time to time.

"Margin" means, in relation to a Floating Rate Note, the margin specified at the time of issue and recorded as such in the Register in respect of that Floating Rate Note.

"Material Subsidiary" means a Subsidiary of the Issuer:

- (a) whose EBITDA or Total Tangible Assets represent 15 percent or more of the EBITDA or Total Tangible Assets, as the case may be, of the Group, taken as a whole, calculated in each case as at the balance date as at which the latest Audited Consolidated Financial Statements are made up (and for the year ending on that date) and by reference to the latest audited Financial Statements (consolidated or unconsolidated, as the case may be) of such Subsidiary and the latest Audited Consolidated Financial Statements, provided that in the case of a Subsidiary acquired after the end of the financial period to

which the latest Audited Consolidated Financial Statements relate, Financial Statements for the purposes of the calculations above shall, until Audited Consolidated Financial Statements for the financial period in which the acquisition is made have been prepared, be adjusted as if such Subsidiary had been represented in such accounts (by reference to that Subsidiary's then latest relevant audited Financial statements (consolidated or unconsolidated, as the case may be)) as deemed appropriate by the Auditors;

- (b) to which is transferred the whole or substantially the whole of the assets of a Subsidiary which immediately prior to such transfer is a Material Subsidiary, provided that a Subsidiary that is a Material Subsidiary by virtue of this paragraph (b) will cease to be a Material Subsidiary upon the publication of its audited Financial Statements in respect of the financial period in which the relevant transfer occurred unless, at that time, that Subsidiary is a Material Subsidiary pursuant to paragraph (a) above or paragraph (c) below; or
- (c) to which is transferred assets which, taken together with the assets of the transferee Subsidiary that were assets of that Subsidiary at the time of such transfer, represent EBITDA or Total Tangible Assets of 15 percent or more of the EBITDA or Total Tangible Assets, as the case may be, of the Group, taken as a whole, calculated in each case as referred to in paragraph (a) above provided that a Subsidiary that is a Material Subsidiary by virtue of this paragraph (c) will cease to be a Material Subsidiary upon the publication of its audited Financial Statements in respect of the financial period in which the relevant transfer occurred unless, at that time, that Subsidiary is a Material Subsidiary pursuant to paragraphs (a) or (b) above,

provided that for the purposes of paragraphs (a) to (c) above:

- (i) in the case of a Subsidiary which is not wholly owned by Guaranteeing Group Members and the Total Tangible Assets and/or EBITDA of which (as shown in the latest audited Financial Statements of that Subsidiary) are, on consolidation with the Group, not recorded in full in the latest Audited Consolidated Financial Statements, only such proportion of the Total Tangible Assets and/or EBITDA of such Subsidiary as are recorded in the latest Audited Consolidated Financial Statements shall be taken into account in applying paragraphs (a) to (c) above; and
- (ii) in the case of a Subsidiary which is not wholly owned by Guaranteeing Group Members and is acquired by Guaranteeing Group Members after the end of the financial period to which the latest Audited Consolidated Financial Statements relate and the Total Tangible Assets and/or EBITDA of which (as shown in the latest audited Financial Statements of that Subsidiary) would not, on consolidation with the Group, have been recorded in full in the Audited Consolidated Financial Statements if Audited Consolidated Financial Statements were prepared immediately following such acquisition, only such proportion of the Total Tangible Assets and/or EBITDA of such Subsidiary as would have been shown in such Audited Consolidated Financial Statements shall be taken into account in applying paragraphs (a) to (c) above.

"Maturity Date" means, in relation to a Security, the date for the repayment of that Security, being the date recorded as such in the Register in respect of that Security.

"Minimum Principal Amount" means, in relation to a Security, the minimum Principal Amount of that Security, being the amount specified as such in the relevant Supplemental Trust Deed or Offer Document.

"NZClear" means the securities clearing and settlement facility known as the NZClear System and includes any securities clearing and/or settlement facility which replaces or supersedes it from time to time.

"NZDX Market" means the market operated by NZX on which listed debt securities are traded.

"NZX" means NZX Limited, and includes any person or authority which may in the future assume and perform the functions of NZX Limited.

"Offer Document" means:

- (a) in relation to any Retail Series, the product disclosure statement or other disclosure document required by the FMC Act (or such other document required by law which may replace a product disclosure statement or other disclosure document required by the FMC Act); and
- (b) in relation to any Wholesale Series, the information memorandum or other offering document,

prepared by, or on behalf and with the approval of, the Issuer in relation to the relevant Series, together with (in each case) all documents to be distributed with or which form part of the relevant document.

"Permitted Lease Transaction" means any transaction (which shall, in addition to the overall transaction, include all separate transactions which constitute components of the overall transaction) under which:

- (a) one or more Guaranteeing Group Member(s) disposes (including, without limitation, by way of sale or lease and whether directly or through one or more intermediate Group Member(s)) of assets ("**relevant assets**") and/or its rights (including the right to acquire title) in respect of the relevant assets to a person which is not a Group Member ("**lessor**"); and
- (b) one or more Guaranteeing Group Member(s) obtains or (as the case may be) retains the use and benefit of the relevant assets under a lease or similar arrangement (whether directly from the lessor or from one or more Intermediate lessee(s) or otherwise) ("**lease**"); and
- (c) Holders of Bonds have confirmed by a Special Resolution that the following conditions are satisfied in respect of the lease (provided that confirmation from the Holders of Bonds is not unreasonably withheld or delayed and is not required if there are no Bonds outstanding at the relevant time):
 - (i) at least 85% of the value of the scheduled payment obligations of the Guaranteeing Group Member(s) under the lease are defeased;
 - (ii) arrangements consistent with cross border leasing market practice in the relevant leasing jurisdiction exist to confer on the relevant Guaranteeing Group Member(s) the right to acquire or resume title to or ownership of the relevant assets, or otherwise obtain the equivalent economic effect, on the lease termination or another (prior) date and upon payment of option exercise or similar scheduled

payments which (other than any which have been defeased and after taking into account the right of the relevant Guaranteeing Group Member(s) to realise or apply any defeasance assets relating to the transaction and to utilise the proceeds of them in or towards satisfaction of the reacquisition or resumption price) do not exceed a nominal amount;

- (iii) the transactions between the relevant Guaranteeing Group Member(s) and the lessor (but not including transactions solely between Guaranteeing Group Members) are on arm's length commercial terms assessed by reference to cross border leasing market practice in the relevant leasing jurisdiction; and
- (iv) at least 80% of the sale price, or (in the case of disposals other than by sale) 80% of the disposal price or equivalent consideration, to be received by the Guaranteeing Group Member(s) from the lessor in relation to the disposal of the relevant assets will be received by the Guaranteeing Group Member(s) immediately upon or before the disposal of the relevant assets by the Guaranteeing Group Member(s) to the lessor and the balance will be so received by the Guaranteeing Group member(s) within 18 months of that disposal, provided that in applying the foregoing where the disposal by the Guaranteeing Group Member(s) is by way of lease (a) rental or other amounts payable to the Guaranteeing Group Member(s) in the future shall be converted to their present value (applying such discount rate as is consistent with the pricing of such transaction) as at the commencement of such lease; and (b) if the right to receive such rental or other amounts is sold or factored by the Guaranteeing Group Member(s) on a non-recourse basis, the amounts received by the Guaranteeing Group Member(s) for such sale or factoring shall be regarded as the disposal price in relation to the relevant assets,

and for the purpose of this definition:

- (d) **"defeased"** means, in relation to scheduled payment obligations of any Guaranteeing Group Member, either that:
 - (i) they are legally defeased (including by way of payment or pre-payment or other legal release from liability to make such scheduled payment);
 - (ii) they are assumed by a person (not being a Group Member) which has a credit rating for its senior unsecured long term debt obligations of not less than AA- from Standard and Poor's Ratings Group or Aa3 from Moody's Investor Services, Inc. (or, in each case, any successor organisation); or
 - (iii) the lessor has recourse (whether by security or otherwise) to securities or other payment obligations of a person (not being a Group Member) which has a credit rating for its senior unsecured long term debt obligations of not less than AA- from Standard and Poor's Ratings Group or Aa3 from Moody's Investor Services, Inc. (or, in each case, any successor organisation),

provided that, in the case where the lessor retains the right to claim against the Guaranteeing Group for payment of such scheduled payment obligations upon default in payment or satisfaction thereof by the person assuming liability

therefor or from the securities or other payment obligations referred to in paragraphs (ii) and (iii), the Guaranteeing Group has not relinquished or released the rights of recourse or claim against, or access to, that person so assuming liability or those securities or obligations, which arise (whether at law, by contract or otherwise) in consequence of the Guaranteeing Group paying such scheduled payment obligations; and

- (e) **"scheduled payments"** means payments (whether by way of rental, purchase option exercise price or similar payments) payable in fixed amounts (including by reference to a floating rate) and on fixed future dates irrespective of any contingency (other than continuation of the lease and, in the case of option exercise price, the exercise of the relevant option), and shall exclude payments which are payable only upon the occurrence of other contingencies or the payment of which is not certain.

"Principal Amount" means, in relation to a Security, the amount (other than interest) payable on redemption or repayment of that Security, being the amount recorded as such in the Register in respect of that Security, or, as the context may require, in relation to an Amortising Note or an Index-linked Note, the principal amount thereof for the time being outstanding, as reduced in accordance with clause 9.4 or clause 10.4 (as the case may be).

"Record Date" means, in relation to a payment due on a Security, 5.00pm on the tenth day before the due date for that payment or, if that day is not a Business Day, the preceding Business Day or such other date as is advised by the Registrar to Holders from time to time .

"Reference Accounts" means:

- (a) in relation to the Group, the most recent Consolidated Financial Statements as at the annual balance date of the Group (and for the financial year ending on that date) or, where such determination is expressly required to be made as at a date other than such balance date, financial statements (whether or not actually prepared) which represent the Consolidated Financial Statements which would have been prepared as at (and for the year ending on) such date; or
- (b) in relation to a Group Member or a group of Group Members (other than the Group), the most recent audited Financial Statements of such Group Member or the most recent audited consolidated Financial Statements of such group of Group Members (as the case may be) or, where such determination is expressly required to be made as at a date on which no such Financial Statements have been prepared, financial statements (whether or not actually prepared) which represent Financial Statements as at (and for the year ending on) such date had such Financial Statements been prepared on a basis consistent with the most recent Audited Consolidated Financial Statements.

"Reference Banks" means Bank of New Zealand, ANZ Bank New Zealand Limited, Commonwealth Bank of Australia and Westpac Banking Corporation.

"Register" means, in relation to a Series, the register of Securities maintained by the Registrar for that Series in accordance with the provisions of this Deed and the Agency Agreement.

"Registrar" means, in respect of any Series, the person named in the relevant Agency Agreement and specified in the Supplemental Trust Deed or Offer Document for that Series as the registrar, calculation agent and paying agent for that Series, or any

successor agent appointed under the relevant Agency Agreement in relation to that Series.

"Related Person" means any Subsidiary of the Issuer that is not a Guaranteeing Group Member.

"Retail Series" means a Series of Securities which may, in accordance with the relevant Conditions be offered:

- (a) under a regulated offer; or
- (b) in accordance with clause 19 of schedule 1 to the FMC Act,

and **"Retail Security"** means a Security which is part of a Retail Series and **"Retail Holder"** means a Holder of a Retail Security.

"Security" means a debt security (which shall be an Unsubordinated Note or a Subordinated Note and shall form part of a Retail Series or a Wholesale Series) constituted by, and subject to the terms and conditions set out in, this Deed, and includes an Amortising Note, a Fixed Rate Note, a Floating Rate Note, an Index-linked Note, a Zero Coupon Note or a Capital Note.

"Security Interest" means:

- (a) any mortgage, pledge, encumbrance by way of security, lien, charge, assignment by way of security or hypothecation; or
- (b) any title retention, preferential right, trust arrangement or other agreement or arrangement the legal effect of which is the creation of security similar to those referred to in paragraph (a); or
- (c) any present or future right or interest in personal property that is a security interest for the purposes of the Personal Property Securities Act 1999 (other than any such security interest referred to in section 17(1)(b) of that Act and not included in paragraph (a) of this definition),

but, for the avoidance of doubt, does not include (i) leases or bailments arising in the ordinary course of business; or (ii) any rights or obligations arising in the ordinary course of business (whether arising by operation of law, by contract or otherwise) of, or in nature of, set-off, netting, combination, consolidation or retention of accounts, banker's lien, blocked accounts or analogous rights or obligations in relation to or affecting any credit balances or other financial obligations, except rights and obligations arising under a flawed asset or conditional debt arrangement or any other arrangement having similar effect.

"Senior Creditors" means all the creditors (present and future):

- (a) whose claims are or would be admitted in the Winding-Up of the Issuer; and
- (b) who are not the holders of indebtedness, the right to payment of which by its terms is, or is expressed to be, subordinated in the event of the Winding-Up of the Issuer to the claims of all unsubordinated creditors of the Issuer,

and, for the avoidance of doubt, includes Holders of Unsubordinated Notes.

"Series" means the Securities issued pursuant to a particular Supplemental Trust Deed (which may be issued in Tranches).

"Short Term Note" means a Security with an original tenor of eighteen months or less.

"Special Resolution" has the meaning set out in schedule 1.

"Statement" means a statement issued by the Issuer to a Holder in relation to the Bonds held by that Holder, if applicable, in compliance with the Listing Rules.

"Subordinated Debt" means any present or future indebtedness of the Issuer which has been effectively deferred in point of payment and priority on any Winding Up of the Issuer behind all other liabilities (except any other Subordinated Debt as defined in this clause).

"Subordinated Note" means a Term Subordinated Note or an Undated Subordinated Note.

"Subsidiary" means, in relation to any person, a subsidiary of that person within the meaning of section 5 of the Companies Act (or any other person which would be a subsidiary of that person if that person and the other person were both registered under the Companies Act).

"Supervisor" means Trustees Executors Limited or any replacement supervisor appointed under this deed.

"Supplemental Trust Deed" means a deed supplemental to this deed in the form or substantially in the form of schedule 2 entered into by the Issuer and the Supervisor pursuant to clause 2.3(a) constituting and setting out the terms and conditions of a Series.

"Tangible Assets" means all assets other than those which, according to GAAP, should be classified as intangible assets in Financial Statements.

"Term Subordinated Note" means a Security which, in accordance with its Conditions, is Subordinated Debt of the Issuer and which is identified in the Supplemental Trust Deed constituting it and in the Register as a Term Subordinated Note and which has a specified Maturity Date. A Term Subordinated Note may be a Fixed Rate Note, a Floating Rate Note, an Index-linked Note or a Zero Coupon Note. A Term Subordinated Note may also be a Capital Note.

"Total Assets" means Total Tangible Assets plus any customer acquisition costs disclosed in the Group's Reference Accounts.

"Total Tangible Assets" of a Group Member or any group of Group Members means all the Tangible Assets of, or (as the context may require) the aggregate of the book values of all the Tangible Assets of, that Group Member or group of Group Members (as the case may be) as at any time and from time to time valued and disclosed in (other than solely by noting to) the Reference Accounts of such Group Member or group of Group Members.

"Tranche" means Securities of the same Series in respect of which all terms are identical (except as to Maturity Date, Interest Rate and/or frequency of payment of interest).

"Transaction Documents" means, in relation to a Series, the documents specified as such in the relevant Supplemental Trust Deed.

"Trust Powers" means, in relation to a Series, the trusts, powers, authorities or discretions vested in the Supervisor by this Deed in relation to that Series.

"Undated Subordinated Note" means a Security which, in accordance with its Conditions, is Subordinated Debt of the Issuer and which is identified in the Supplemental Trust Deed constituting it and in the Register as an Undated Subordinated Note and which has no Maturity Date. An Undated Subordinated Note may be a Fixed Rate Note, a Floating Rate Note, an Index-linked Note or a Zero Coupon Note. An Undated Subordinated Note may also be a Capital Note.

"Unsubordinated Note" means a Security which is not a Subordinated Note. An Unsubordinated Note may be a Fixed Rate Note, a Floating Rate Note, an Index-linked Note or a Zero Coupon Note.

"Wholesale Series" means a Series of Securities which must not, in accordance with the relevant Conditions, be offered to any retail investors, and **"Wholesale Security"** means a Security which is part of a Wholesale Series and **"Wholesale Holder"** means a Holder of a Wholesale Security.

"Winding-Up" means any procedure, brought or instigated by any person, for the dissolution of the Issuer otherwise than for the purposes of, and followed by, an amalgamation or solvent reconstruction on terms previously approved by a Special Resolution, and **"Wound Up"** shall have a corresponding meaning.

"Zero Coupon Note" means a Security in respect of which no interest is payable issued or to be issued by the Issuer at a discount to its Principal Amount.

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

an **"authorisation"** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency; or
- (b) in relation to anything which will be proscribed or restricted in whole or part by law if a governmental agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of such period without such intervention or action.

a **"clause"** or **"schedule"** is a reference to a clause of, or schedule to, this deed.

the **"dissolution"** of any person includes the bankruptcy, winding up or liquidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets.

any **"governmental agency"** includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law. It also includes any self-regulatory organisation established under statute or any stock exchange.

"indebtedness" includes an obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money.

a **"law"** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute or other legislative measure, in each

case of any jurisdiction whatever and "**lawful**" and "**unlawful**" shall be construed accordingly.

a reference to something having a **material adverse effect** is a reference to it having a material adverse effect on the financial condition or operations of the Guaranteeing Group (taken as a whole), which materially adversely affects the ability of the Guaranteeing Group Members (taken as a whole) to perform or comply with their obligations under this Deed.

"**outstanding**" means, in relation to Securities, all Securities other than those which have been:

- (a) redeemed or repaid in full in accordance with the Conditions applicable to those Securities; or
- (b) purchased and cancelled in accordance with the Conditions applicable to those Securities.

"**payment**" includes satisfaction of a monetary obligation.

"**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.

"**related company**" has the meaning given to it in section 2(3) of the Companies Act.

"**regulated offer**" shall be construed in accordance with the FMC Act.

"**retail investor**" shall be construed in accordance with the FMC Act.

"**tax**" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called (including, for the avoidance of doubt, Approved Issuer Levy), imposed or levied by any governmental agency, together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing.

"**tax resident**" means resident in New Zealand for tax purposes or engaged in business in New Zealand through a fixed establishment in New Zealand, and "**non-tax resident**" shall be construed accordingly.

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

- 1.3 **Cross-references:** In relation to any Series, a cross-reference to any clause of this deed shall, where that clause is amended or substituted by the Supplemental Trust Deed in relation to that Series, be deemed to be a cross-reference to that clause as so amended or substituted.

1.4 **Miscellaneous:**

- (a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) Unless the context otherwise requires words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders.

- (c) References to any legislation or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless the context otherwise requires, shall also include any statutory instruments issued under any such legislation or provision.
- (d) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to any party to this deed or any other document or any Holder shall include its successors or permitted assigns.
- (f) References to a time of day are references to New Zealand time unless otherwise stated.
- (g) Anything which may be done at any time may also be done from time to time.

2. ISSUE AND FORM OF SECURITIES

2.1 **Power to issue Securities:** Securities may be issued by the Issuer under this deed at the times, in the amounts, to the persons, on the terms and conditions and at the prices from time to time determined by the Issuer.

2.2 **Form of Securities:** Without limitation to clause 2.1, Securities may be issued on terms such that the Principal Amount is a fixed amount or a reducing amount or an amount to be calculated by reference to an Index and/or that interest (if the Security is interest-bearing) will be calculated by reference to a specific interest rate (which may be a fixed rate or a margin over the Base Rate) or by reference to an Index or both. In addition, Securities shall be Subordinated or Unsubordinated Securities, as specified in the Register in respect of those Securities.

2.3 **Wholesale Securities and Retail Securities:** Securities shall be issued on the basis that the relevant Series:

- (a) may be offered under a regulated offer or in accordance with clause 19 of schedule 1 to the FMC Act (being Retail Securities); or
- (b) is not permitted to be offered to any retail investors (being Wholesale Securities),

as specified in the selling restrictions in the relevant Supplemental Trust Deed.

2.4 **Supplemental Trust Deed:** Securities shall be constituted and issued in Series. Each Series shall be subject to the terms and conditions set out in a Supplemental Trust Deed for that Series and (as modified by that Supplemental Trust Deed) this deed. To the extent that the Supplemental Trust Deed for a Series modifies this deed, or in the event of any conflict between the provisions of that Supplemental Trust Deed and those of this deed, that Supplemental Trust Deed shall prevail over this deed in relation to that Series. The provisions of the relevant Supplemental Trust Deed and this deed read together in accordance with this clause 2.4 shall constitute the Conditions for the Securities of the relevant Series.

2.5 **Creation and issue:** Securities of a Series are constituted when the Supplemental Trust Deed for that Series has been signed by the Issuer and the Supervisor. Securities

are issued and created by the Registrar entering in the Register the particulars of the Securities.

2.6 Provisions applicable to Securities: The Securities shall be issued and held with the benefit of and subject to the applicable Conditions, all of which are binding upon the Issuer, the Supervisor and the Holders. The Holders shall be deemed to have notice of the applicable Conditions.

2.7 Enforcement of Holders' rights:

- (a) The Supervisor holds its rights and benefits under this Deed in trust for, and for the benefit of, the Retail Holders and (only to the extent expressly set out in this Deed) the Wholesale Holders. No Retail Holder shall be entitled to enforce any of its rights or remedies under this Deed directly against the Issuer unless the Supervisor fails to enforce such rights or remedies after having become bound to do so in accordance with this Deed.
- (b) Wholesale Holders may enforce any of their rights or remedies under this Deed directly against the Issuer.

2.8 Form of Securities: Each Security shall:

- (a) be in uncertificated book entry form;
- (b) have a Minimum Principal Amount for holdings of that Security and also may have a minimum multiple of that amount for such holdings, in each case as specified in the relevant Supplemental Trust Deed; and
- (c) other than in the case of Undated Subordinated Notes, have a tenor of:
 - (i) in the case of Short Term Notes, eighteen months or less; and
 - (ii) in the case of Bonds, of more than eighteen months.

2.9 Listing: The Issuer may seek to have Bonds listed and quoted on the NZDX Market.

2.10 Statements: Where Bonds are accepted for listing on the NZDX Market, the Issuer must issue, or cause to be issued, to each Holder, a Statement in relation to each Bond issued to that Holder, in accordance with, and in the time required by, the Listing Rules.

3. STATUS OF SECURITIES

3.1 Status of Securities generally:

- (a) The Securities are and will at all times be direct, unsecured and (except in relation to Subordinated Notes) unconditional indebtedness of the Issuer.
- (b) Except where the Securities are expressed in the Supplemental Trust Deed for the relevant Series to be Term Subordinated Notes or Undated Subordinated Notes, the Notes shall be Unsubordinated Notes and nothing in clause 8 shall apply in respect of them.

3.2 Status of Unsubordinated Notes: Unsubordinated Notes rank and will at all times rank equally without any preference or priority among themselves and at least equally with all present and future unsubordinated and unsecured indebtedness of the Issuer

(subject to laws affecting creditors' rights generally and equitable principles of general application).

- 3.3 **Status of Term Subordinated Notes:** Term Subordinated Notes rank and will at all times rank equally without any preference or priority among themselves and at least equally with all other present and future unsecured Subordinated Debt of the Issuer having a fixed maturity date (subject to laws affecting creditors' rights generally and equitable principles of general application).
- 3.4 **Status of Undated Subordinated Notes:** Undated Subordinated Notes rank and will at all times rank equally without any preference or priority among themselves and at least equally with all other present and future unsecured Subordinated Debt of the Issuer having no fixed maturity date (subject to laws affecting creditors' rights generally and equitable principles of general application).

4. GUARANTEE

- 4.1 **Guarantee:** Each Guaranteeing Group Member jointly and severally and unconditionally and irrevocably guarantees, to and for the benefit of the Holders of each Series and (in respect of Retail Series only) the Supervisor, the due and punctual payment by each other Guaranteeing Group Member of the Guaranteed Moneys as and when the same shall become owing or payable in accordance with the terms and conditions of the Securities or under this Deed, and the due observance and punctual performance of, and compliance by each other Guaranteeing Group Member with, its obligations under the Securities and this Deed, to the Holders of each Series and (in respect of Retail Series only) the Supervisor, during the term of this Guarantee.
- 4.2 **Payment on Demand:** In the event that a Guaranteeing Group Member shall default in the due and punctual payment of such Guaranteed Moneys to Holders or the Supervisor, each Guaranteeing Group Member jointly and severally agrees, immediately upon demand by the Holders (subject to clause 2.7) or (in respect of Retail Series only) the Supervisor, to pay all amounts then due and unpaid with respect to such Guaranteed Moneys.
- 4.3 **Guaranteeing Group Member as Principal Debtor:** The liability of each Guaranteeing Group Member under this Guarantee is deemed to be the liability of a principal debtor and not merely a surety and such liability will not be affected or diminished, nor will any security or guarantee provided by any Guaranteeing Group Member be released or discharged, by any act, indulgence, omission or matter which but for this clause would have operated to release a Guaranteeing Group Member wholly or partly from its liabilities under this Deed, including:
- (a) **Granting of Time:** the granting of any time, credit, indulgence, waiver or other concession to any Guaranteeing Group Member or any other person whether by the Supervisor, the Holders or any other person (whether or not at the request of the Guaranteeing Group Member or other such person);
 - (b) **Insolvency:** the dissolution of any Guaranteeing Group Member or any other person or the appointment of any receiver, manager, inspector, trustee, statutory manager or other similar person in respect of any Guaranteeing Group Member or any other person over the whole or any part of its or their respective assets or any step being taken in respect of such dissolution or appointment;
 - (c) **Change in Position:** any Guaranteeing Group Member or any other person being or becoming a party to an amalgamation, assignment for the benefit of

creditors, scheme of arrangement, compromise, scheme of reconstruction or change in constitution, composition, status or control in each case however arising, including by reason of a change in constitutive documents or by incorporation or the death, incapacity, retirement, appointment or admission of any partner, trustee or other person;

- (d) **Liability Ceasing:** subject to clause 5.3, the liability of any Guaranteeing Group Member or any other person ceasing from any cause whatever (including any release or discharge by the Supervisor or by operation of law);
 - (e) **Other Agreements:** any other person providing or joining in providing any agreement, guarantee or security or the failure by any Guaranteeing Group Member or any other person to provide, or being incompetent to give this Guarantee or any other agreement, guarantee or security required by the Supervisor or the Holders;
 - (f) **Other Obligations:** any agreement, guarantee (including this Guarantee), security or right held by or available to the Supervisor or the Holders at any time being or becoming in whole or in part void, voidable, defective or unenforceable for any reason or being released, discharged or varied in whole or in part;
 - (g) **Variation:** any amendment, variation, waiver, compounding, compromise, release, abandonment, relinquishment or renewal of any agreement (including any alteration or addition to this Deed or any Security), guarantee, security or any assets, or any rights of the Supervisor or the Holders against any Guaranteeing Group Member or any other person (a "**change in circumstance**") or any failure to notify any Guaranteeing Group Member or such person of such change in circumstance; or
 - (h) **Enforcement:** the enforcement of, or failure to enforce (including the failure to make a valid demand in respect of), any rights under any agreement, guarantee or security or any law.
- 4.4 **Independent Obligation:** This Guarantee is a principal obligation and is in addition to and independent of and not in substitution for any other agreement, guarantee, security or right which the Supervisor or the Holders may have at any time, and will not merge with or in any way be prejudiced or affected by, or prejudice or affect, any such agreement, guarantee, security or right. Subject to clause 2.7, the Supervisor and the Holders may enforce this Guarantee without first taking steps or proceedings against any other Guaranteeing Group Member or any other person.
- 4.5 **Continuing:** This Guarantee is to be a continuing guarantee and will remain in full force and effect by way of continuing security until the whole of each Guaranteeing Group Member's indebtedness for Guaranteed Moneys has been fully paid and/or satisfied and will not be considered as wholly or partially satisfied, discharged or affected by any intermediate payment or settlement of account.
- 4.6 **Guaranteeing Group Member Accounts:** The Supervisor and each Wholesale Holder may continue any existing account or, at any time, open any new account with any Guaranteeing Group Members and the liability of any Guaranteeing Group Member under this Guarantee shall not be reduced or affected in any way by any subsequent transactions, receipts or payments into or out of any such account.
- 4.7 **Exercise of Guaranteeing Group Member's Rights:** So long as any Guaranteeing Group Member has any indebtedness for Guaranteed Moneys which is unpaid or unsatisfied:

- (a) **No Competition:** any right of any Guaranteeing Group Member, by reason of the performance of any of its obligations under this Guarantee, to be indemnified by any other Guaranteeing Group Member or any other person, to directly or indirectly prove in the estate of any other Guaranteeing Group Member or any other person, to take the benefit of or enforce any agreement, security or other guarantee or exercise any other right it may have to receive the benefit of any distribution or payment shall be exercised and enforced only in such manner and on such terms as the Holders of Bonds by a Special Resolution or (if there are no Bonds outstanding at the relevant time) the Supervisor, may require; and
- (b) **Moneys on Trust:** any amount received or recovered by any Guaranteeing Group Member:
 - (i) as a result of any exercise of any such right; or
 - (ii) in the dissolution of any Guaranteeing Group Member or any other person,

shall be held in trust for the Holders and (in respect of Retail Series only) the Supervisor and immediately paid to them.

- 4.8 **Payment in Gross:** Any dividend, distribution, payment or other money whatever received at any time by the Supervisor or the Holders which may be applied in reduction of a Guaranteeing Group Member's indebtedness for Guaranteed Moneys will be regarded as a payment in gross without any right on the part of the Guaranteeing Group Member to stand in the place of the Supervisor or the Holders in respect of, or to claim the benefit of, any moneys so received against that Guaranteeing Group Member until the whole of the Guaranteed Moneys have been paid or satisfied so that, in the event of the dissolution of a Guaranteeing Group Member or any other person, the Supervisor or the Holders may, subject to clause 2.7, prove against it for the whole indebtedness of a Guaranteeing Group Member in relation to the Guaranteed Moneys until the whole of the Guaranteed Moneys have been paid or satisfied.
- 4.9 **Suspense Account:** The Supervisor and Wholesale Holders may retain in a suspense account and appropriate (subject to the provisions of this Deed) at their discretion any amount received from any Guaranteeing Group Member in respect of a Guaranteeing Group Member's indebtedness for Guaranteed Moneys until the Supervisor and Wholesale Holders have received one hundred cents in the dollar in respect of a Guaranteeing Group Member's indebtedness for Guaranteed Moneys.
- 4.10 **Reinstatement:** If any payment made to the Supervisor or a Holder by or on behalf of any Guaranteeing Group Member is avoided by law or required to be repaid to a liquidator or similar official of the relevant Guaranteeing Group Member, such payment shall be deemed not to have discharged or affected the liability of that or any other Guaranteeing Group Member in respect of such payment and in that event the Supervisor or the Holders (as the case may be) and each Guaranteeing Group Member shall be restored to the respective positions in which each would have been and be entitled to exercise all the rights which each would have had if such payment had not been made.
- 4.11 **Indemnity:** If all or any of the Guaranteed Moneys (or any sum which, if recoverable, would have formed part of the Guaranteed Moneys) are or may be irrecoverable from the Guaranteeing Group Members, or if all or any of such moneys are not recoverable from any Guaranteeing Group Member by the Supervisor or the Holders under this Guarantee, then and in each such case:

- (a) **Indemnity:** each Guaranteeing Group Member as a separate and additional liability under this Deed indemnifies and will keep indemnified the Supervisor and the Holders in respect of such moneys; and
- (b) **Payment:** each Guaranteeing Group Member, as a principal debtor, will, on demand, pay to the Supervisor or (as the case may be) the Holders (subject to clause 2.7), a sum equal to the amount of such moneys,

and the terms of this Deed shall (with all necessary modifications) apply so far as possible to this indemnity.

- 4.12 **Not Affected:** The indemnity in clause 4.11 shall apply to all or any of the Guaranteed Moneys (or any sum which, if recoverable, would have formed part of the Guaranteed Moneys) which is or may be irrecoverable for any reason (whether or not within the knowledge of the Supervisor or the Holders) including any legal or equitable limitation, disability or incapacity of or affecting any Guaranteeing Group Member or any other person, any transaction relating to such moneys being or becoming at any time void, voidable, defective or otherwise unenforceable and any other circumstances which allow any Guaranteeing Group Member to avoid paying such sums, in whole or in part.
- 4.13 **Marshalling:** None of the Supervisor or the Holders shall be under any obligation to marshal or appropriate in favour of any Guaranteeing Group Member.
- 4.14 **Obligation to Satisfy Guaranteed Moneys:** Each Guaranteeing Group Member undertakes to each other Guaranteeing Group Member that it shall take all actions available to it to meet its liability in respect of the Guaranteed Moneys owed by that Guaranteeing Group Member including utilisation of its undistributed profits and other available reserves.

5. JOINING AND RELEASING GUARANTEEING GROUP MEMBERS

- 5.1 **Joining Guaranteeing Group Members:** Subject to clause 5.3 and continued compliance with clause 14.2(d), the Issuer covenants with the Holders of each Series and (in respect of Retail Series only) the Supervisor that it will from time to time, with all reasonable expedition, after any company becomes a Controlled Material Subsidiary, procure that such Controlled Material Subsidiary shall become a Guaranteeing Group Member and may procure, at any time, of its own volition (without being under any obligation to do so), any Group Member which is not a Guaranteeing Group Member to become a Guaranteeing Group Member.
- 5.2 **Mode of joining:** A Group Member shall become a Guaranteeing Group Member by executing and delivering a supplemental deed, substantially in the form set out in schedule 4 or in such other form as may be approved in writing by the Supervisor, to the Supervisor, whereby such Group Member guarantees jointly and severally with each of the other Guaranteeing Group Members the payment of the Guaranteed Moneys.
- 5.3 **Exemption:** Subject to continued compliance with clause 14.2(d) and obtaining the approval by Special Resolution of Holders of Bonds (which approval shall not be unreasonably withheld and shall not be required if there are no Bonds outstanding at the relevant time), the Issuer shall not be obliged to comply with the provisions of clause 5.1 in respect of any Group Member if the Issuer considers that there are good commercial reasons why a Group Member should not become a Guaranteeing Group Member and the Issuer provides to each Wholesale Holder (if any Wholesale Securities are outstanding at the relevant time) and (in respect of Retail Series only) the Supervisor a certificate signed by two directors of the Issuer certifying that there are good commercial reasons for the Group Member not becoming a Guaranteeing Group

Member and that at that time there is no reasonable prospect of the occurrence of a material adverse effect as a result of that Group Member not becoming a Guaranteeing Group Member.

5.4 **Release of Guaranteeing Group Members:** Notwithstanding clause 5.1 (but subject to continued compliance with clause 14.2(d)), and so long as no Event of Default has occurred and is continuing unremedied or unwaived, a Guaranteeing Group Member (a "**Ceasing Member**", which may not be (a) the Issuer or (b) any Guaranteeing Group Member which, other than solely in its capacity as a Guaranteeing Group Member under this Deed, has any outstanding Guaranteed Moneys owing) shall cease to be a Guaranteeing Group Member, and the Holders and the Supervisor and each other Guaranteeing Group Member shall, without the need for any further action (except as expressly provided for by clauses 5.4(a) or 5.4(c)), be deemed to have released such Ceasing Member from this Deed and its obligations and liabilities as a Guaranteeing Group Member under or by virtue of this Deed (including, for the avoidance of doubt, all indemnities) on the date specified in the certificate referred to in clause 5.4(a) or 5.4(b) (as the case may be) or the date of the release referred to in clause 5.4(c), such date being, in the case of a release pursuant to clause 5.4(a) or 5.4(b), not less than 7 Business Days after the date on which the certificate referred to in clause 5.4(a) or 5.4(b) (as the case may be) has been delivered to the Supervisor, if:

- (a) the Issuer considers there are good commercial reasons why such Ceasing Member should cease to be a Guaranteeing Group Member and the Issuer provides to the Supervisor a certificate signed by two directors of the Issuer certifying that there are good commercial reasons for the Ceasing Member not remaining a Guaranteeing Group Member and that at that time there is no reasonable prospect of the occurrence of a material adverse effect as a result of the Ceasing Member not remaining a Guaranteeing Group Member;
- (b) the Ceasing Member is not or has ceased to be, or immediately following (but in any event within 2 Business Days of) its release from this Deed will not be, a Controlled Material Subsidiary and the Company has given to the Supervisor a certificate signed by two directors of the Issuer confirming that the Ceasing Member is not or has ceased to be, or immediately following (but in any event within 2 Business Days of) its release from this Deed will not be, a Controlled Material Subsidiary; or
- (c) the Supervisor has, with the approval of a Special Resolution of Holders of Bonds (which approval shall not be unreasonably withheld and shall not be required if there are no Bonds outstanding at the relevant time) at any time, by written release signed by the Supervisor, released a Ceasing Member from all or any of its obligations under this Deed (to the extent provided in such release).

5.5 **Effect of release:** No release pursuant to any of the provisions of section 5 shall operate to release the relevant Guaranteeing Group Member or any other Guaranteeing Group Member from liability for the payment or fulfilment of any indebtedness or other obligations for which it is liable or obligated to the Supervisor or the Holders independently of this Deed.

6. TITLE AND TRANSFER

6.1 **Confirmation and Title:** If required by the FMC Act or any other applicable law, the Issuer shall procure the Registrar of the relevant Securities 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 Securities. A confirmation issued

in respect of a Security will not constitute a document of title. Entitlement will be determined solely by entry in the Register and, in the case of the beneficial interest in Securities lodged in NZClear, the records of NZClear.

6.2 Form of transfer:

- (a) Subject to this deed, a Holder may transfer any Security held by that Holder by:
 - (i) a written instrument of transfer in a usual or common form signed by the transferor and the transferee and delivered to the office of the Registrar; or
 - (ii) means of the settlement system operated by NZX; or
 - (iii) any other method of transfer approved by the Issuer and the Registrar and delivered to the office of the Registrar.
- (b) Each instrument of transfer must be accompanied by:
 - (i) any other evidence (including legal opinions) that the Issuer or the Registrar reasonably requires to prove:
 - (A) the title of the transferor; or
 - (B) the transferor's right to transfer the Securities; or
 - (C) the identity of the transferor and/or the transferee; and
 - (ii) if the form of the transfer is executed by some other person on behalf of the transferor or, in the case of the execution of the form of transfer on behalf of a corporation by its officers, the authority of that person to so execute that transfer.

6.3 Registration process:

- (a) Subject to clause 6.3(b), neither the Issuer nor the Registrar shall charge a fee to any Holder for:
 - (i) registering transfers of Securities; or
 - (ii) splitting Statements in relation to Securities; or
 - (iii) issuing Statements (where bound to do so) and transmission receipts in relation to Securities; or
 - (iv) using holder identification numbers in relation to Holders; or
 - (v) effecting conversions between sub-registers (if any) of the Register; or
 - (vi) noting transfer forms in relation to Securities.
- (b) The Issuer and the Registrar may:
 - (i) charge a fee where Statements are issued to replace a lost or destroyed Statement; and

- (ii) require the payment of any taxes and other governmental charges payable as a result of the registration of any holding of Securities or the transfer of Securities.
- (c) Neither the Issuer nor the Registrar will refuse to register or fail to register or give effect to a transfer of Securities except as permitted by this deed, any applicable law or the Listing Rules.
- (d) Subject to clause 6.4, a transfer of a Security which is listed on the NZDX Market will be effected by the Registrar within the time prescribed by the Listing Rules.

6.4 Refusal to register transfers: The Issuer may direct the Registrar to refuse to register any transfer of Securities where this deed or the Listing Rules or any applicable law permits or requires the Issuer to do so. The Registrar shall refuse to register any transfer where this deed or the Listing Rules or any applicable law requires the Issuer or the Registrar to refuse to register the transfer.

6.5 Notice of refusal to register: Where registration of a transfer of Securities is refused under clause 6.4, the Registrar must give written notice of the refusal and the precise reasons (if any) for the refusal to the party lodging the transfer within five Business Days after the date on which the transfer was lodged. Failure to give any such a notice will not invalidate the refusal to register.

6.6 Retention of instruments of transfer: The Registrar must retain on behalf of the Issuer all instruments of transfer of Securities which are registered, but any instrument of transfer of Securities the registration of which was declined or refused (except on the ground of suspected fraud) must be returned to the party lodging the transfer.

6.7 Acquisition of Securities by operation of law: When the right to any Security is acquired by any person in any manner other than by way of a transfer under this deed (whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or otherwise) the Registrar, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Security, will enter that person's name in the Register as the Holder of that Security accordingly.

6.8 Sale of less than minimum holding:

- (a) The Issuer may at any time give notice to any Holder holding less than the minimum holding of a Class of Bonds that are quoted on the NZDX Market that the Issuer intends to exercise the power of sale of those Securities set out in this clause 6.8, subject to and in accordance with the Listing Rules.
- (b) If the Issuer's power of sale becomes exercisable:
 - (i) the Issuer may arrange for the sale of those Securities through the NZDX Market or in some other manner approved by NZX;
 - (ii) the Holder will be deemed to have authorised the Issuer to act on the Holder's behalf and to execute all necessary documents for the purposes of that sale; and
 - (iii) the Issuer is to account to the Holder for the net proceeds of sale of the Securities (after deduction of reasonable sale expenses), which are to be held on trust for the Holder by the Issuer and paid to the Holder on surrender of any Statement for the Securities sold; and

- (c) the title of a purchaser of any Securities sold in accordance with this clause 6.8 will not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

6.9 **Address, account details and tax residency of Holders:** A transferee of Securities must designate to the Registrar an address, and a bank account to which payments under or in respect of the Securities transferred to it are to be made and the address and account so designated will be the address and account of such Holder for all purposes of this deed. Any change of name or address, or account to which payments are to be made, of a Holder must immediately be notified in writing to the Registrar, accompanied by such evidence of such change as the Registrar may reasonably require, and the Register will be amended accordingly. Each Holder shall give written notice to the Registrar of its residency for taxation purposes.

6.10 **Reliance on documents:** The Issuer and the Registrar shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document, and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer or the Registrar had actual notice of such forgery or defect at the time of registration of such instrument of transfer.

6.11 **Treasury instruments:** The Issuer and/or any related company of the Issuer may subscribe for Securities or acquire Securities from any Holder. Any Security acquired by the Issuer or a related company of the Issuer may, at the option of the Issuer, be cancelled upon registration of the Issuer or such related company as Holder. Any Security which is not cancelled may be held by the Issuer or such related company, and may be subsequently transferred in accordance with this deed.

6.12 **Partial transfers:** A Holder may transfer part only of its interest in a Security. However, no transfer of any part of its interest may be effected if such transfer would result in:

- (a) the transferor or the transferee holding or continuing to hold Securities with an aggregate Principal Amount of less than the applicable Minimum Principal Amount; or
- (b) the transferor failing to comply with any other restrictions on transfer that may be specified in the relevant Supplemental Trust Deed and, in the case of a Security which is listed on the NZDX Market, the Listing Rules.

6.13 **Selling restrictions:**

- (a) Each Holder shall only offer for sale or sell any Security in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) Without limitation to the generality of clause 6.13(a), Securities which are expressed in the relevant Supplemental Trust Deed to be part of a Wholesale Series shall not be offered to any investors where the offer to at least one of those investors would require disclosure under the FMC Act.
- (c) No Offer Document or any advertisement, prospectus or other offering material in respect of any Security may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.
- (d) By its purchase of Securities, each Holder agrees to indemnify the Issuer in respect of any loss, cost, liability or expense sustained or incurred by the

Issuer as a result of a breach by the Holder of the restrictions contained in this clause.

7. REGISTER

7.1 **Register:** The Issuer shall at all times while Securities are outstanding cause the Registrar for each Series to maintain the Register for that Series in New Zealand in accordance with all applicable laws including the Listing Rules, which must record in respect of each Security the particulars of the Security plus the following information:

- (a) the name, address and (where known) tax residency of the Holder;
- (b) details of the account to which payments in respect of the Securities are to be made;
- (c) transfers of the Security;
- (d) details of any RWT exemption certificate (as defined in section YA 1 of the Income Tax Act 2007) held by the Holder; and
- (e) any other information required by law and the Listing Rules.

7.2 **Disclosure and Inspection:** The Issuer shall, in relation to each Series, ensure that, if a Holder so requests, the Registrar of the relevant Securities makes available for inspection, and provides copies of or extracts from, the Register which relates to the Securities registered in the name of that Holder and all other information and matters required by the FMC Act and other applicable laws. The Issuer and the Supervisor may at any time during normal office hours upon reasonable notice to the relevant Registrar inspect and take extracts from each Register.

7.3 **Register conclusive:** Except as ordered by a court of competent jurisdiction, the Issuer, the Supervisor and each Registrar are, for the purposes of this deed, each entitled to recognise the Holder of a Security as the absolute owner of the Security and shall not be bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance, security or other adverse interest to which any Security may be subject. No recognition of any trust (express, implied or constructive), encumbrance, security or other adverse interest shall be entered on the Register. In the event of any conflict between any certificate or notice of registration issued in respect of a Security and the Register, the Register shall prevail.

7.4 **Correction of errors:** Each Registrar may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the relevant Register.

7.5 **Conflict between Register and Statement:** In the event of any conflict between a Statement for a Bond and the details recorded on the Register in relation to that Bond, the Register is to prevail.

7.6 **Co-ownership of Securities:**

- (a) Where two or more persons are registered as Holders of the same Securities by virtue of any application for Securities, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application, memorandum, or other instrument, the persons will be deemed to hold the Securities as joint tenants with right of survivorship.

- (b) The joint Holders of a Security are entitled to only one Security in relation to their joint holding, which Security is, other than where the joint Holders otherwise direct, to be issued to the joint Holder whose name appears first in the Register in relation to that joint holding. In respect of joint Holders of a Security, only the person whose name is recorded first in the Register is to be entitled to delivery of any Statement, notice, certificate or other communication from the Issuer, the Registrar or NZX.
- (c) If two or more persons apply, whether on application for any Securities or by memorandum of transfer, to be registered as Holders as tenants in common, the Registrar for the relevant Series may, after notifying the persons of its intention to do so, divide the Securities into parcels which represent each such person's share. If the Securities cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amounts (and any minimum multiples thereof), the Registrar of the relevant Securities may refuse to accept the application or memorandum of transfer (as the case may be).

7.7 Acquisition of Securities by operation of law: When the right to any Security is acquired by any person in any manner other than by way of a transfer under this Deed (whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or otherwise) the Registrar of the relevant Securities, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Security, will enter that person's name in the Register as the Holder of that Security accordingly.

7.8 Notification by Holders: Any change of name or address of any Holder or any change in any other information required to be inserted in any Register in respect of any Holder shall immediately be notified to the Registrar of the relevant Securities in writing by the Holder, or if a joint holding by all the joint Holders.

7.9 Compliance with law: The Issuer shall comply with, and shall use its best endeavours to ensure that the Registrar for each Series complies with, all statutory requirements, the Listing Rules and the requirements of this Deed relating to the keeping of the Register and the details entered in the Register. Without limitation to the generality of the foregoing, the Register in respect of any Retail Series shall be audited in accordance with applicable auditing and assurance standards by the Auditors annually within 4 months of the Issuer's balance date and at such other times as the Supervisor (acting reasonably) may request in writing.

8. SUBORDINATED NOTES

8.1 Issue of Subordinated Notes: The Issuer may, if it expressly so provides in the Supplemental Trust Deed for any Series, issue Securities which are subordinated in the event of the Winding-up of the Issuer to the claims of Senior Creditors of the Issuer, in which case this clause 8 (as it may be modified by the relevant Supplemental Trust Deed) shall apply to that Series.

8.2 Term Subordinated Notes: The rights and claims of Holders of Term Subordinated Notes are, in a Winding-Up of the Issuer, subordinated to the claims of the Senior Creditors of the Issuer (with the intent that all claims of Senior Creditors shall be paid in full before any claims of the Holders of the Term Subordinated Notes are paid), and prior to the commencement of a Winding-Up of the Issuer:

- (a) the obligation of the Issuer to make any payment in respect of the Term Subordinated Notes is conditional upon the Issuer being solvent at the time the relevant payment falls due; and

- (b) no payment shall be made in respect of the Term Subordinated Notes except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.

8.3 Undated Subordinated Notes: The rights and claims of Holders of Undated Subordinated Notes are, in a Winding-Up of the Issuer, subordinated to the claims of the Senior Creditors of the Issuer and Holders of Term Subordinated Notes (with the intent that all claims of Senior Creditors and Holders of Term Subordinated Notes are paid in full before any claims of the Holders of the Undated Subordinated Notes are paid), and prior to the commencement of a Winding-Up of the Issuer:

- (a) the obligations of the Issuer to make any payment in respect of the Undated Subordinated Notes is conditional upon the Issuer being solvent at the time the payments and other amounts owing fall due; and
- (b) no payment shall be made in respect of the Undated Subordinated Notes except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.

8.4 Solvency:

- (a) For the purposes of clauses 8.2 and 8.3, the Issuer shall be considered to be solvent at any time if at that time it is able to meet the solvency test in section 4 of the Companies Act.
- (b) A certificate as to whether the Issuer is solvent signed by two authorised signatories of the Issuer or the Auditors shall be prima facie evidence of the information contained therein.

8.5 Contingent debt: On a Winding-Up of the Issuer, the Supervisor and the Holders of Subordinated Notes shall only be entitled to prove for any sum payable in respect of the Subordinated Notes as a debt which is subject to and contingent upon prior payment in full of, in the case of Holders of Term Subordinated Notes, the Senior Creditors, or in the case of Holders of Undated Subordinated Notes, the Senior Creditors and the Holders of Term Subordinated Notes. The Supervisor agrees, and by purchasing a Subordinated Note each Holder of Subordinated Notes will be deemed to agree, that:

- (a) in accordance with section 313(3) of the Companies Act, it is accepting a lower priority in respect of the debt represented by such Security than that which it would otherwise have under section 313; and
- (b) nothing in section 313 will prevent this Deed from having effect in accordance with its terms.

8.6 No set-off: No Holder of a Subordinated Note shall be entitled to set-off against any amounts due in respect of the Subordinated Notes held by that Holder any amount held by the Holder to the credit of the Issuer or otherwise to reduce the amount due to such Holder in respect of a Subordinated Note by merger of accounts or lien or the exercise of any other rights of like effect. To the extent any set-off, merger, lien or other right is required by law to be exercised that exercise shall be subject to clause 8.7.

8.7 Trust: Any payment, whether voluntarily or in any other circumstances, received by a Holder of Subordinated Notes from or on account of the Issuer (including by way of credit, set-off or otherwise) or from any liquidator, receiver, manager or statutory manager of the Issuer in breach of this clause 8 will be held by the Supervisor or the relevant Holder in trust for and to the order of the Senior Creditors (and, in the case of payments received by the Holders of Undated Subordinated Notes, payments will also

be held in trust for and to the order of the Holders of Term Subordinated Notes). The trust hereby created shall be for a term expiring on the earlier of the date on which all Senior Creditors have been paid in full or eighty years from the date of this deed. Neither the Supervisor nor any Holder shall have any obligation under this clause 8 in respect of any payment received by anyone other than itself.

- 8.8 **Performance of trust:** The trust mentioned in clause 8.7 may be performed by a Holder or the Supervisor by paying or repaying the amount so received or recovered, or so much thereof as shall be necessary to ensure that all of the Senior Creditors are fully paid or repaid, on trust to the liquidator of, or other person charged with or responsible for the making of distributions on behalf of, the Issuer or, where there is no such person, the Issuer, for distribution to the appropriate Senior Creditors. The receipt of the liquidator or other such person or the Issuer, shall be a good discharge to the Holder or the Supervisor for the performance by it of the trust mentioned in clause 8.7. Any amount which becomes subject to the trust mentioned in clause 8.7 and which is paid or repaid by any Holder, as the case may be, or the Supervisor pursuant to this clause 8.8 shall thereafter be treated as between the Issuer and the Supervisor or the Holder as if it had never been received or recovered in the first place.
- 8.9 **Contracts Privity Act:** For the purposes of the Contracts (Privity) Act 1982 the provisions of this clause 8 are intended to confer a benefit upon the Senior Creditors and to be enforceable by the Senior Creditors directly, but no consent of the Senior Creditors shall be required to any modification or amendment to this clause 8 in accordance with clause 24.
- 8.10 **No subordination of Supervisor's entitlement:** The provisions of this clause 8 apply only to payments or repayments by way of Principal Amount or interest on the Subordinated Notes and nothing in this clause 8 shall subordinate, defer in priority or point of payment, or otherwise affect or prejudice the payment or reimbursement of the fees, expenses, indemnities or other moneys payable to the Supervisor pursuant to this Deed, or the rights and remedies of the Supervisor in respect thereof.
- 8.11 **Exercise of Supervisor's duties:** Subject to clause 19.2, the Supervisor owes no duties to Holders of Subordinated Notes which are issued as part of a Wholesale Series. In respect of Subordinated Notes issued as part of a Retail Series, the duties of the Supervisor shall be construed and interpreted to recognise and take into account the subordinated nature of the Securities including the following characteristics:
- (a) the subordination and the postponement in priority of the Securities to indebtedness to all Senior Creditors (and also, in the case of Undated Subordinated Notes, to Holders of Term Subordinated Notes);
 - (b) the Issuer may freely incur further indebtedness to Senior Creditors and further Subordinated Debt; and
 - (c) the Issuer may, in the circumstances set out in this Deed, suspend payment on the Securities;

and the duties of the Supervisor, including the duties set out in the FMC Act, shall to the extent permitted by law be limited and construed by reference to the special features of the Subordinated Notes. All Holders of Subordinated Notes are deemed to have agreed to and accept and are bound by the foregoing limitations.

- 8.12 **Unsubordinated Notes paramount:** In the execution of the trusts under this deed, the Supervisor shall at all times regard the interests of the Retail Holders of Unsubordinated Notes as paramount to the interests of the Retail Holders of Subordinated Notes and the interest of the Retail Holders of Term Subordinated Notes as paramount to the

interests of the Retail Holders of Undated Subordinated Notes, and the Supervisor shall be entitled to act accordingly taking into account the ranking of interests of Retail Holders set out in this Deed.

9. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST

- 9.1 **Determination of Principal Amount:** The Principal Amount of each Security shall be the amount recorded as such in the Register in respect of that Security, which may be the par or face value or the amount calculated by the Registrar for that Security by reference to the formula recorded in the Register in respect of that Security.
- 9.2 **Principal Amount of Wholesale Securities:** The Issuer shall, on the Maturity Date of each Wholesale Security, unconditionally pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Wholesale Security in accordance with the Conditions applicable to that Security.
- 9.3 **Principal Amount of Retail Securities:**
- (a) Subject to clause 9.3(b), the Issuer shall, on the Maturity Date of each Retail Security, pay or cause to be paid to, or to the order of, the Supervisor the Principal Amount of that Retail Security in accordance with the Conditions applicable to that Security.
 - (b) Notwithstanding clause 9.3(a), the Issuer shall, on the Maturity Date of each Retail Security, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Retail Security. Such payment shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 9.3(a).
- 9.4 **Principal Amount of Amortising Notes:** The Issuer shall, on each Amortisation Date of each Amortising Note, unconditionally pay, or cause to be paid to, or to the order of, the relevant Holder, the portion of the Principal Amount of that Amortising Note as set out in respect of that Amortisation Date in the Register in respect of that Amortising Note.
- 9.5 **Interest:** The Issuer shall pay interest on each Interest Payment Date:
- (a) on each Floating Rate Note for each Interest Period, at the rate per annum equal to the aggregate of the Base Rate for that Interest Period (as determined by the Registrar for the relevant Series) and the Margin for that Floating Rate Note;
 - (b) on each Fixed Rate Note, at the Interest Rate for that Fixed Rate Note; and
 - (c) on each Index-linked Note, in accordance with the formula or at the Interest Rate (as the case may be) recorded in the Register in respect of that Index-linked Note.
- 9.6 **Non-payment:** Each Security will cease to bear interest from its Maturity Date unless payment of the Principal Amount is improperly withheld or refused. In such event, interest will continue to accrue (after, as well as before, any judgment) up to but excluding the date on which payment in full of the Principal Amount is made.
- 9.7 **Default interest:** If any amount payable in respect of a Security or any other amount due to any person under this Deed is not paid on its due date interest ("**Default**

Interest") shall accrue on the unpaid amount (net of any interim or progress payments made) (after, as well as before, judgment) at the rate determined by the Registrar for the relevant Series to be the aggregate of 2% and the applicable Interest Rate, shall be determined at monthly intervals thereafter until the unpaid amount (net of any interim or progress payments) is paid and shall be compounded monthly until paid. For the avoidance of doubt, this clause 9.7 shall not apply in respect of payments suspended in accordance with this Deed.

10. CALCULATION OF INTEREST

10.1 **Interest Periods:** Each Interest Period in relation to a Floating Rate Note shall be a period of one, two, three, four, five or six months' duration (as specified by the Issuer at the time of issue of that Security and entered in the Register) and:

- (a) the first Interest Period will commence on (and include) the Issue Date and end on (but exclude) the next Interest Payment Date and each subsequent Interest Period will commence on (and include) the Interest Payment Date of the previous Interest Period and end on (but exclude) the next Interest Payment Date;
- (b) if an Interest Period would otherwise end on a day which is not a Business Day, it will be extended to the next Business Day unless that next Business Day falls in the next calendar month, in which case the Interest Period shall end on the immediately preceding Business Day;
- (c) where an Interest Period commences on the last day of a calendar month or on a day for which there is no numerically corresponding day in the month in which that Interest Period would otherwise end, that Interest Period shall, (subject to paragraphs (b) and (d)) end on the last day of that month; and
- (d) if the final Interest Period would otherwise extend beyond the Maturity Date, it will end on the Maturity Date.

10.2 **Floating Rate Notes:** Unless a Supplemental Trust Deed for a Series provides otherwise, interest shall be calculated on the Principal Amount of each Floating Rate Note on the basis of the number of days in the relevant Interest Period and a year of 365 days. Interest shall accrue from day to day and shall be paid to the Holder in arrears on the Interest Payment Date for that Interest Period.

10.3 **Fixed Rate Notes:** Unless a Supplemental Trust Deed for a Series provides otherwise, interest shall be calculated on the Principal Amount of each Fixed Rate Note in equal quarterly, semi-annual or annual instalments on each Interest Payment Date for the Fixed Rate Note and shall be payable in arrears on each Interest Payment Date.

10.4 **Index-linked Notes:**

- (a) In the case of an Index-linked Note for which the Principal Amount is calculated by reference to an Index, the Principal Amount on each Interest Payment Date (for the purposes of calculating the amount of interest payable by the Issuer on that Interest Payment Date) shall be determined in accordance with the formula recorded in the Register in respect of that Index-linked Note.
- (b) If the amount of interest payable on an Index-Linked Note on an Interest Payment Date is a negative amount, no amount by way of interest shall be payable by the Issuer on that Interest Payment Date and the positive

equivalent of that amount will be deducted from the Principal Amount of that Index-Linked Note for the balance of the term of that Note. Nothing in this clause obliges the Holder of that Index-Linked Note to make any payment to the Issuer by reason of the interest payable on the relevant Interest Payment Date being a negative amount.

- (c) If a deduction made pursuant to this clause results in the Principal Amount of the Index-Linked Note being equal to or less than zero, the Issuer shall not be required to make any further payments of interest or principal in respect of that Security and that Security shall be cancelled.

11. PAYMENTS

- 11.1 **Payment to Holder:** Payment of the Principal Amount of, and interest (if any) on, a Security (less any amount required to be deducted in accordance with clause 12) shall be made to the person whose name appears in the Register as the Holder of the Security on the Record Date in respect of the relevant payment. If more than one person is so named in the Register, payment will be made to the first person so named.

- 11.2 **Method of payment:** A Holder may, by notice to the Registrar for the relevant Series, request the Registrar to make payments in respect of any Security held by it to a specified bank account and may at any time cancel or amend any notice so given. No such notice, or cancellation or amendment of a notice, will have effect in respect of any payment unless received by the Registrar on or before the Record Date for that payment. In the absence of any such notice, payments in respect of each Security will be made by posting a cheque to the address of the relevant Holder appearing in the Register. A notice from one of several Holders of the same Securities shall be deemed to be given by all such Holders.

- 11.3 **Business Day:** If any Interest Payment Date or the Maturity Date of a Security is not a Business Day for that Security, the due date for the payment to be made on that date will be the next following Business Day unless that day would be in the next calendar month, in which case the Interest Payment Date or Maturity Date, as the case may be, will be the first day preceding such Interest Payment Date or Maturity Date that is a Business Day and all other provisions of this Deed and the Agency Agreement will be read and construed accordingly.

- 11.4 **Unclaimed payments:**

- (a) **Retail Securities:** In respect of any Retail Securities, if any payment made by the Issuer to any Retail Holder of that Retail Security at its address last entered in the Register is returned unclaimed the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address to be entered in the Register) be retained by the Registrar for the relevant Retail Series to be held by it for the Retail Holder concerned without any liability to invest or pay interest on that amount. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer. The Issuer will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment.
- (b) **Wholesale Securities:** In respect of any Wholesale Securities, if any payment made by the Issuer to any Wholesale Holder at its address last entered in the Register is returned unclaimed the amount concerned must (unless the Registrar or the Issuer has in the meantime received notice of a change of address to be entered in the Register) be returned to the Issuer. The Issuer

will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment.

- 11.5 **Reinstatement:** If any payment made to a Holder by, or on behalf of, the Issuer is subsequently rescinded, avoided or otherwise restored to the Issuer, that payment will be deemed not to have discharged or affected the liability of the Issuer in respect of which that payment was made. In that event the relevant Holder and the Issuer will be restored to the position in which each would have been, and be entitled to exercise all the rights which each would have had, if such payment had not been made.

12. TAXES

- 12.1 **Deductions or withholdings:** All sums payable under a Security or under this Deed 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 in this clause 12) 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 clauses 12.2 and 12.3).

- 12.2 **Non-resident Withholding Tax:** Where New Zealand non-resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to Holders unless otherwise stated in the relevant Offer Document or if the relevant Holder notifies the Issuer that it elects that non-resident withholding tax be deducted from payments to it instead of Approved Issuer Levy, if the Issuer is lawfully able to pay Approved Issuer Levy in respect of any payment of interest (or deemed interest) to Holders, the Issuer, or the Registrar for the relevant Series on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the interest (or deemed interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment at the rate otherwise applicable.

- 12.3 **Resident Withholding Tax:** Where New Zealand resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to Holders, the Issuer, or the Registrar for the relevant Series on its behalf, will deduct resident withholding tax, unless an appropriate exemption certificate is produced to the Registrar for the relevant Series on or before the Record Date for the relevant payment.

- 12.4 **No gross-up:** The Issuer will 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 Securities under clause 12.2 or 12.3. If, in respect of any Security, the Registrar for the relevant Series or the Issuer becomes liable to make any payment of, or on account of, tax payable by any Holder, then the Registrar for the relevant Series and the Issuer shall be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Registrar for the relevant Series or the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Registrar for the relevant Series or the Issuer and may be withheld from any further payments to that Holder. Nothing in this clause will prejudice or affect any other right or remedy of the Registrar for the relevant Series or the Issuer.

- 12.5 **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 or the Registrar for the relevant Series (acceptable to it) that a lesser rate is applicable.

- 12.6 **Tax status:** The Issuer and the Registrar for the relevant Series shall be entitled for the purposes of this clause 12 to rely, without further enquiry, upon any statement made by or on behalf of a Holder in relation to that Holder's tax status or tax residency.

13. REPRESENTATIONS AND WARRANTIES

- 13.1 **Representations and warranties:** The Issuer and each other Guaranteeing Group Member represents and warrants to the Supervisor (in respect of Retail Series only) and each Holder with respect to itself that, as at the date of this Deed:

- (a) **Status:** it is a company duly incorporated and validly existing under the laws of New Zealand (or, where applicable in respect of any Guaranteeing Group Member, such other jurisdiction in which it is incorporated) with indefinite corporate existence, capable of suing and being sued and has the power and authority to own its assets and to carry on its business as presently conducted;
- (b) **Power and corporate authority:** it has the power, and all necessary corporate action (including passing all resolutions) has been taken to authorise it, to enter into, execute and deliver, exercise its rights and perform its obligations under this Deed;
- (c) **Binding obligations:** its obligations under this Deed are legal, valid and binding and enforceable against it;
- (d) **Consents:** all actions, conditions and things (including the obtaining of consents and other requirements) required to be taken, fulfilled and done to ensure:
 - (i) that it is able to lawfully enter into, exercise its rights and perform its obligations under, this Deed;
 - (ii) that those obligations are legal, valid, binding and enforceable against it; and
 - (iii) that this Deed is admissible in evidence in the courts of New Zealand,
 have been taken, fulfilled and done and are in full force and effect;
- (e) **No laws violated:** neither its entry into this Deed, nor the exercise of any right or the performance or observance of any obligation under them, nor any transaction contemplated by them, will:
 - (i) violate or contravene any law to which it is subject;
 - (ii) conflict with, or result in any breach of, in any material respect, any agreement, document, arrangement, obligation or duty to which it is a party, or by which it or any material part of its assets are bound;
 - (iii) violate any of the documents constituting it or cause any limitation on any of its powers, or on the right or ability of its directors to exercise those powers, to be exceeded;

- (iv) create, or result in the creation or imposition of, any Security Interest on the whole or any part of its assets; or
- (v) result in the acceleration of any of its indebtedness for Borrowed Money, or anything which constitutes (or which, with the passing of time or the giving of notice or both, would constitute) an event of default, cancellation event, prepayment event or similar event (whatever called) under any agreement relating to its such indebtedness.

13.2 **Supplemental Trust Deed:** In respect of a Series, the Issuer shall make such further (if any) representations and warranties as are set out in the Supplemental Trust Deed for that Series.

13.3 **Repetition:**

- (a) The representations and warranties contained in clause 13.1 shall be deemed to be repeated for the benefit of the Supervisor and the Holders on the Issue Date and each Interest Payment Date of each Security.
- (b) In respect of a Series, the representations and warranties referred to in clause 13.2 shall be deemed to be repeated for the benefit of the Supervisor and the Holders of that Series on the Issue Date and each Interest Payment Date of each Security forming part of that Series.

13.4 **Disclosure:** Notwithstanding any other provision of this Deed, neither the Issuer nor any other Guaranteeing Group Member shall be in breach of this clause 13, and there shall be no Event of Default under clause 16.1(d), to the extent that any representation, warranty or statement made or (as the case may be) repeated is or was untrue or incorrect in any material respect where the matter giving rise to such untruth or incorrectness has been notified or disclosed to the Supervisor and each Wholesale Holder in writing by, or on behalf of, the Issuer or the Guaranteeing Group Member prior to the date on which such representation, warranty or statement is made or (as the case may be) repeated.

14. UNDERTAKINGS

14.1 **General undertakings:** The Issuer undertakes to the Holders of each Series and (in respect of Retail Series only) the Supervisor that it will, for so long as any Securities of the Series are outstanding:

- (a) **Agency Agreement:** comply with and perform all material obligations under each Agency Agreement and use all reasonable endeavours to ensure that each Registrar also does so;
- (b) **Notify Event of Default:** promptly notify the Supervisor and the Wholesale Holders of the occurrence of any Event of Default or if a declaration is made in accordance with clause 16.1 or 16.2;
- (c) **This Deed:** comply with and observe its obligations under this Deed;
- (d) **Registrar:** maintain a Registrar for the Series and give notice in accordance with clause 26.5 to the relevant Holders of any resignation or removal of the Registrar for the Series and the appointment of any replacement Registrar as soon as reasonably practicable following such event;

- (e) **Register:** use its best endeavours to cause the Registrar for the Series to keep the Register for the Series pursuant to the relevant Agency Agreement;
- (f) **Authorisations:** obtain, effect and promptly renew from time to time all authorisations required under any applicable law to enable it to perform and comply fully with the Conditions for the Series or required on its part for the validity or enforceability of this Deed and the Supplemental Trust Deed for the Series;
- (g) **Send Notices:** send copies to the Supervisor of all notices given by it to Holders generally;
- (h) **Corporate Existence:** maintain its corporate existence and will not amalgamate, merge or consolidate with any person unless the resulting or surviving entity assumes, to the satisfaction of the Supervisor, the obligations of the Issuer under the relevant Securities; and
- (i) **FMC Act:** where that Series is a Retail Series, comply with the provisions of the FMC Act and the FMC Regulations applicable to the Retail Securities.

14.2 **Financial covenants:** The Issuer undertakes to the Holders of each Series of Securities (other than Subordinated Notes) and (in respect of Retail Securities only) the Supervisor that it will, for so long as any Securities of the Series are outstanding, and shall procure that each other Guaranteeing Group Member will, ensure that:

- (a) on the last days of each semi-annual and annual reporting period of the Issuer (**Testing Date**) the ratio of EBITDA of the Group to Interest and Financing Costs of the Group, in each case, for any two of the three consecutive twelve month periods ending on a semi-annual or annual reporting period of the Issuer on or prior to such Testing Date is not less than 2.5 to 1.0;
- (b) at all times Debt will not be more than 55% of the Debt plus Equity;
- (c) at all times Equity will not be less than \$1,250,000,000; and
- (d) at all times the Total Tangible Assets of the Guaranteeing Group will not be less than 80% of Total Tangible Assets of the Group.

For the avoidance of doubt, EBITDA, Interest and Financing Costs, Debt and Equity exclude any unrealised gains or losses from any derivative (as defined in NZ IAS 39 (or any substitute for or amendment to it)) transaction.

14.3 **Financial undertakings:** The Issuer undertakes to the Holders of each Series and (in respect of Retail Series only) the Supervisor that it will, so long as any Securities of the Series are outstanding:

- (a) **Financial and Other Information:** deliver to each Wholesale Holder and the Supervisor:
 - (i) as soon as practicable, and in any event within 120 days after the end of each financial year, in respect of each of its financial years, the Consolidated Financial Statements of the Group, duly audited (unless the Supervisor and the Wholesale Holders agree that they need not be audited) and made up as at the last day of that financial year;
 - (ii) as soon as practicable, and in any event within 90 days after the last day of the first half of each financial year, the unaudited Consolidated

Financial Statements of the Group, made up as at the last day of that half year;

- (iii) from time to time within seven days after request by the Supervisor or a Wholesale Holder such information about the business, assets and financial condition of the Issuer and its Subsidiaries, as the Supervisor or the Wholesale Holder may reasonably require, provided that the Issuer may, in its sole discretion, refuse to deliver any information requested under this clause 14.3(a)(iii) until such time as such information is publicly available or the board of directors and/or shareholders of the Issuer have approved the information; and
 - (iv) at the same time as the Financial Statements referred to in clauses 14.3(a)(i) and (ii) are delivered to the Supervisor and each Wholesale Holder, a certificate substantially in the form set out in schedule 3 addressed to the Supervisor and each Wholesale Holder and signed by two of the directors of the Issuer confirming, as at the date of the certificate, (i) that no Event of Default has occurred and continues unremedied, (ii) the identity of the Guaranteeing Group Member(s), and (iii) compliance with clauses 14.2 and 14.7 as at the end of the relevant year or half year (as the case may be), and setting out the computations necessary to demonstrate such compliance; and
- (b) **Accounting Principles:** ensure that all Financial Statements delivered to each Wholesale Holder and the Supervisor under clauses 14.3(a)(i) and (ii):
 - (i) are prepared in accordance with GAAP, consistently applied except to the extent disclosed in those Financial Statements;
 - (ii) give a true and fair view in accordance with GAAP of the financial position of the Issuer and (if applicable) the Group and the result of the operations of the Group as at the date, and for the period ending on the date, to which those Financial Statements are prepared; and
 - (iii) are signed by two of the directors of the Issuer, and are accompanied by all documents and reports required by law to be annexed to or to accompany them; and
- (c) **Auditors Report:** deliver to the Supervisor at the same time as the audited latest Consolidated Financial Statements for the Group are provided in accordance with clause 14.3(a)(i), a separate report by the Auditors stating:
 - (i) whether, in the course of performing their duties as Auditors, they have become aware of any non-payment by the Issuer of any interest on any of the Securities and if so the amount of the interest so unpaid;
 - (ii) the aggregate Principal Amount of Securities in each Retail Series on issue and outstanding;
 - (iii) whether they, as auditors, have audited the Register for each Retail Series, and if not, whether another firm (and which firm if any) has audited the Register for each Retail Series, and to the extent that the Auditors or the other firm have audited the Register for a Retail Series, whether the Register for the Series has been duly maintained;

- (iv) whether in the performance of their duties as Auditors they have become aware of any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by this Deed or, in respect of Retail Securities, the FMC Act, and if so giving particulars thereof;
- (v) whether 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 Retail Holders; and
- (vi) that they have perused the certificates of the directors of the Issuer under clause 14.3(a)(iv) given since the last report by the Auditors and whether, so far as matters which they have observed in the performance of their duties are concerned, anything has come to their attention which would cause them to believe that any of the statements made in those reports are incorrect.

14.4 **Negative undertakings:** The Issuer undertakes to the Holders of each Series and (in respect of Retail Series only) the Supervisor that, for so long as there are any Guaranteed Moneys outstanding:

- (a) **Disposal of Assets:** it shall not, and shall procure that no other Guaranteeing Group Member shall, whether by a single transaction, or a number of related or unrelated transactions and whether at the same time or over a period of time, dispose of the legal or beneficial ownership of the whole of its assets, or of any part of its assets, which when aggregated with all other disposals by any Guaranteeing Group Member required to be taken into account under this clause 14.4(a), is material in relation to (and for this purpose "**material**" means that the value of such assets is 10% or more of) the Total Tangible Assets of the Guaranteeing Group taken as a whole or the disposal of which would have a material adverse effect, provided that the following disposals will not be taken into account under this clause 14.4(a):
 - (i) a disposal in the ordinary course of business on normal commercial terms;
 - (ii) a disposal on normal commercial terms of obsolete assets no longer required for the purpose of the Guaranteeing Group's business or operations;
 - (iii) disposal of assets (including the payment of cash or other consideration for any asset acquired) for fair value;
 - (iv) the temporary application of funds, not immediately required in the relevant Guaranteeing Group business, in the purchase or making of investments in accordance with the Issuer's usual treasury policies, or the realisation of such investments;
 - (v) the exchange of assets for other assets of a similar nature or value, or the sale of assets on normal commercial terms for cash which is to be, and is, applied in or towards the purchase of similar assets within three months;
 - (vi) the application of the proceeds of an issue of securities (whether debt or equity) for the purpose stated in the prospectus or other offering document relating to the issue;

- (vii) a disposal by a Guaranteeing Group Member to another Guaranteeing Group Member;
 - (viii) the payment of taxes by a Guaranteeing Group Member;
 - (ix) the payment or reinvestment of dividends or other monetary distributions in respect of shares, stock, options or securities;
 - (x) a disposal required by law or directive;
 - (xi) the execution and delivery of any Security Interest permitted pursuant to clauses 14.5 to 14.8;
 - (xii) a disposal of assets to a trust for the benefit of one or more Guaranteeing Group Members, provided the trust has no indebtedness and has not granted and does not grant any Security Interest over the assets so disposed of; and
 - (xiii) a disposal of assets for the purpose of or as part of a Permitted Lease Transaction in respect of those assets; and
- (b) **Transactions with Related Persons:** it shall not, and shall procure that no other Guaranteeing Group Member shall, unless approved by a Special Resolution of all Holders of Bonds (which approval shall not be unreasonably withheld and shall not be required if there are no Bonds outstanding at the relevant time):
- (i) make any loan or provide any other financial accommodation to any Related Person;
 - (ii) (except in relation to a Permitted Lease Transaction) enter into any guarantee, indemnity or other obligation of any nature in respect of an obligation of a Related Person;
 - (iii) (except in relation to a Permitted Lease Transaction) dispose of any assets or provide services to, or purchase any assets or accept any services from, any Related Person,
- except on a bona fide basis for fair value on reasonable arm's length commercial terms, and provided that this clause 14.4(b) shall not apply to (and the consent of the Holders of Bonds shall not be required in respect of):
- (iv) any transaction comprising or arising from share capital held by the Guaranteeing Group in such Related Person (including the subscription, purchase, holding, repurchase or redemption of such share capital or the distribution of dividends or other returns on it); or
 - (v) any such transaction described in paragraphs (i) to (iii) above if the aggregate principal amount of the assets the subject of, and/or the amount of the consideration in respect of, all such transactions is less than 7.5% of the Total Assets of the Group.

14.5 Negative Pledge: Subject to clauses 14.6 and 14.7, so long as there are any Guaranteed Moneys outstanding no Guaranteeing Group Member shall create or permit to arise or subsist any Security Interest whatsoever over the whole or any part of its assets as security for any indebtedness for Borrowed Money unless there is created (to the reasonable satisfaction of Holders of Bonds by a Special Resolution if there are

Bonds outstanding at the relevant time) at the same time as, or prior to the creation of, that Security Interest, the same or an equivalent Security Interest for all the indebtedness of the Guaranteeing Group Members under this Deed.

- 14.6 **Permitted Security Interests:** Notwithstanding clause 14.5 and without breach of it, a Guaranteeing Group Member may create a Security Interest or permit a Security Interest to arise or subsist without the need for creating any Security Interest in favour of the Supervisor or the Holders to the extent such Security Interest:
- (a) **Operation of Law:** arises in the ordinary course of business solely by operation of law or pursuant to any statute, or arises out of title retention provisions (for a period not exceeding 90 days) to secure the payment of the purchase price for the supply of goods or services in the ordinary course of business or secures taxes or other governmental or regulatory levies, duties or imposts, so long as (in each of the foregoing cases) the payment of money secured is not in default or the liability therefor of the Issuer or any Guaranteeing Group Member is being contested by appropriate proceedings;
 - (b) **Acquisition of Asset:** exists over any asset at the time of its acquisition provided that:
 - (i) such Security Interest is not created in contemplation of such acquisition;
 - (ii) the principal amount of the indebtedness so secured is not increased after such acquisition;
 - (iii) the maturity of any liability so secured is not extended beyond the date of its maturity as at the date of that acquisition (except by reason of any fluctuation in the amount outstanding under, and within the limits and in accordance with the terms of the facilities which exist and are secured by, the relevant Security Interest at the time of such acquisition) after such acquisition; and
 - (iv) such Security Interest is discharged, and the indebtedness so secured paid or repaid, within 24 months after such acquisition;
 - (c) **Acquisition of Guaranteeing Group Member:** exists over any asset of any company that becomes a Guaranteeing Group Member after the date of this Deed, being a Security Interest that exists or being a Security Interest that the company is contractually bound to create or permit to exist at the time it becomes a Guaranteeing Group Member, provided that:
 - (i) such Security Interest was not created or such contract entered into in contemplation of such company becoming a Guaranteeing Group Member;
 - (ii) the maturity of any liability so secured is not extended beyond the date of its maturity as at the date such company becomes a Guaranteeing Group Member;
 - (iii) the principal amount of the indebtedness so secured is not increased (except by reason of any fluctuation in the amount outstanding under, and within the limits and in accordance with the terms of the facilities which exist and are secured by, the relevant Security Interest at the time such company becomes a Guaranteeing Group Member) after such company becomes a Guaranteeing Group Member; and

- (iv) such Security Interest is discharged, and the indebtedness so secured paid or repaid, within 24 months after such company becomes a Guaranteeing Group Member;
- (d) **Concessional Terms:** is created or permitted to exist over the whole or any part of its right, title or interest in any goods to secure indebtedness created, incurred or assumed on concessional terms, in connection with the supply of those goods or any material part of them where such indebtedness arises from loans or other credit made available by (or which is entitled to the benefit of any guarantee provided by) any governmental or other agency or export-import bank or export-import credit insurer or from or arranged by a provider of those goods or any material part of them;
- (e) **Joint Venture Assets:** is created or permitted to exist over the whole or any part of its:
 - (i) right, title or interest in, or the assets of; or
 - (ii) ownership, shareholding or equity interest in any participant in,

any joint venture, partnership or similar venture (whether or not incorporated) to secure indebtedness in connection with such joint venture, partnership or similar venture;
- (f) **Purchase of Asset:** is created to secure indebtedness in connection with the purchase (which, for the avoidance of doubt, shall include financing and refinancing) of an asset (and "asset" for the purpose of this clause 14.6(f) shall include an interest in, or in the assets of, any joint venture, partnership or similar venture in which any one or more Guaranteeing Group Members is or are participants), or the maintenance, repair, improvement or development of an asset, where the principal amount of the indebtedness so secured does not exceed such purchase price or the cost of such maintenance, repair, improvement or development (as the case may be), provided that in the case of the purchase of, any maintenance, repair or development of, or improvements to, an asset forming part of the assets of any joint venture, partnership or similar venture the amount of indebtedness secured by such Security Interest shall not exceed, as a proportion of the aggregate indebtedness incurred in respect of such purchase, maintenance, repair, improvement or development, the relevant Guaranteeing Group Member's share in such joint venture, partnership or similar venture;
- (g) **Capital Projects:** is created or permitted to exist to secure indebtedness in connection with a capital project of:
 - (i) any one or more Guaranteeing Group Members; or
 - (ii) any joint venture, partnership or similar venture in which any one or more Guaranteeing Group Members is or are participant(s) where (in any such case) the financier's right of action to enforce repayment of the principal amount of that indebtedness and/or the payment of financing charges thereon is limited to a right of action or claim against the capital project so financed and/or any of the assets, revenues, contracts, licences, consents and similar rights derived from or relating to such capital project, or against the interests of the relevant Guaranteeing Group Member in any of the foregoing;

- (h) **Permitted Lease Transaction:** is constituted by or arises under any Permitted Lease Transaction;
 - (i) **In Favour of Guaranteeing Group:** is created or permitted to exist in favour of any other Guaranteeing Group Member provided that one or more Guaranteeing Group Members retain at all times the sole beneficial ownership of and all rights, powers and benefits in relation to such Security Interest;
 - (j) **Prior Consent:** is created or permitted to exist with the prior approval of Holders of Bonds by a Special Resolution; or
 - (k) **In Substitution:** is created or permitted to exist in substitution for any of the Security Interests referred to in clauses 14.6(a) to 14.6(j), provided that the principal amount of the indebtedness so secured is not increased.
- 14.7 **General Exemption:** Notwithstanding clauses 14.5 and 14.6 and without breaching this section 13.4, any Guaranteeing Group Member may, in addition to and separately from any Security Interest permitted under clause 14.6, create or permit to exist any Security Interest over any asset as security for any indebtedness for Borrowed Money provided that the aggregate principal amount of the indebtedness for Borrowed Money so secured by all such Security Interests permitted to be created or to exist by this clause 14.7 does not exceed 7.5% of the Total Assets of the Group.
- 14.8 **Calculation of Borrowed Moneys:** For the purposes of clause 14.7, the principal amount of any indebtedness secured by a Security Interest shall be deemed to be nil if the only assets of the Guaranteeing Group which are subject to such Security Interests are assets which:
- (a) do not form part of or are not taken into account in determining the total assets of the Group as shown in the latest Audited Consolidated Financial Statements of the Group; or
 - (b) in the case of assets acquired after the end of the financial period to which the latest Audited Consolidated Financial Statements relate, would not form part of or be taken into account in determining such total assets if Consolidated Financial Statements were prepared immediately following such acquisition.
- 14.9 **Other:** For so long as any Securities of a Retail Series are outstanding, the Issuer must:
- (a) **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 all documents and records relating to the Issuer; and
 - (ii) provide the Supervisor 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, information, confirmations or Financial Statements may be about any matter relevant to the performance of the Supervisor's functions and include forward-looking reports;

- (b) **Contravention or possible contravention of Issuer Obligations:** if it has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its Issuer Obligations in a material respect, as soon as practicable:
 - (i) deliver to the Supervisor a report of the contravention or possible contravention to the Supervisor; and
 - (ii) advise the Supervisor of the steps (if any) that the Issuer has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken; and
- (c) **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 soon as practicable:
 - (i) deliver to the Supervisor a report to the Supervisor containing 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.

15. APPOINTMENT OF AUDITOR

15.1 **Consultation with Supervisor:** For so long as any Retail Series is outstanding, the Issuer must:

- (a) before recommending the appointment or reappointment of a person as an Auditor:
 - (i) consult with the Supervisor on the appointment or reappointment; and
 - (ii) 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;
- (b) 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
- (c) 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.

15.2 **Specified Engagement:** For so long as any Retail Series is outstanding, the Issuer must, before recommending the appointment or reappointment of a person as the Auditor:

- (a) 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

- (b) consult with the Supervisor on the nature and scope of any such engagement.

15.3 **Terms of Appointment:** For so long as any Retail Series is outstanding, 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.

16. DEFAULT

16.1 **Events of Default:** If, in relation to any Series of Securities, any of the following occurs, whether or not within the control of the Issuer:

- (a) **Non-payment:** (subject, in respect of Subordinated Notes, to any provisions of this Deed relating to suspension of payments) payment of the Principal Amount of the Securities is not made in the manner required on the due date (or within two Business Days after its due date where non-payment on its due date has arisen solely by reason of a technical, computer or similar error outside the control of the Issuer) or payment of any amount other than the Principal Amount is not made in the manner required within three Business Days of its due date;
- (b) **Breach of Financial Covenants, Negative Pledge or Asset Disposal:** the Issuer or any other Guaranteeing Group Member commits any breach of, or omits to observe, any of its undertakings under clause 14.2, clause 14.4(a) or clauses 14.5 to 14.8;
- (c) **Other Breach:** the Issuer or any other Guaranteeing Group Member commits any breach of, or omits to observe, any of its undertakings or obligations under this Deed (other than the breaches provided for at clauses 16.1(a) and 16.1(b)) and, in respect of any such breach or omission which is capable of being remedied, such breach or omission is not remedied within 30 days of the Issuer or such Guaranteeing Group Member becoming aware of the breach or omission;
- (d) **Misrepresentation:** any representation, warranty or statement made or deemed to be repeated by the Issuer or any other Guaranteeing Group Member in this Deed or in any notice, certificate, statement or other document contemplated by, or made or delivered pursuant to, this Deed or any information or financial statement delivered pursuant to section 14.3, is or was untrue or incorrect in any material respect when made, deemed repeated or delivered;

- (e) **Withdrawal of Consent or Other Authorisation:** any material consent or other authorisation at any time necessary in connection with this Deed or any notice, certificate, statement or other document contemplated by, or made or delivered pursuant to, this Deed, or its implementation or performance, expires or is revoked, cancelled, withdrawn or modified in a manner unacceptable to the Supervisor as determined by Holders of Bonds (by a Special Resolution (such determination shall not be unreasonably withheld and shall not be required if there are no Bonds outstanding at the relevant time), or otherwise ceases to remain in full force and effect and is not replaced by a consent or other authorisation approved by Holders of Bonds by a Special Resolution (such approval shall not be unreasonably withheld and shall not be required if there are no Bonds outstanding at the relevant time));
- (f) **Invalidity of Specified Document:** any material provision of this Deed or any other document contemplated by, or made or delivered pursuant to, this Deed:
 - (i) ceases to have effect in whole or in part, other than by performance or as permitted by its terms; or
 - (ii) becomes wholly or partly void, voidable, illegal, invalid or unenforceable (other than by reason only of a party waiving any of its rights), or the performance of any such provision become illegal,

or the Issuer, or any Guaranteeing Group Member, or any person on its behalf, makes any allegation or claim to that effect;
- (g) **Cross-default:** any other indebtedness for Borrowed Money of an amount in excess in aggregate of \$10,000,000 or its equivalent in other currencies of the Issuer or any Guaranteeing Group Member is not paid when due or within any applicable grace period in any agreement relating to that indebtedness, or becomes due and payable prior to its stated maturity by reason of default, event of default, cancellation event, prepayment event or similar event (whatever called), or if steps are taken to enforce any security for any such indebtedness;
- (h) **Security:** any security over any of the assets of the Issuer or any Guaranteeing Group Member is enforced or becomes enforceable, where the liability secured by that security exceeds \$10,000,000;
- (i) **Dissolution:** an application (other than a frivolous or vexatious application which is being contested in good faith by appropriate proceedings) or an order is made, or a resolution is passed or proposed for the dissolution of the Issuer or any Guaranteeing Group Member (except for the purpose of and followed by an amalgamation or solvent reconstruction (a) where a Guaranteeing Group Member's assets are acquired by or vested in any other Guaranteeing Group Member or (b) on terms previously approved by Holders of Bonds by a Special Resolution (such approval not to be unreasonably withheld or delayed));
- (j) **Receiver, etc:** an encumbrancer takes possession or a liquidator, provisional liquidator, trustee, receiver, receiver and manager, inspector appointed under any companies or securities legislation, or similar official, is appointed in respect of the Issuer or any Guaranteeing Group Member or the whole or any part of their respective assets or application (other than a frivolous or vexatious application which is being contested in good faith by appropriate proceedings) is made for the appointment of any of the officials referred to in this clause;

- (k) **Statutory Management:** any step is taken to appoint or with a view to appointing a statutory manager (including the making of any recommendation in that regard by the Financial Markets Authority) under the Corporations (Investigation and Management) Act 1989 in respect of the Issuer or any Guaranteeing Group Member or the Issuer or any Guaranteeing Group Member is declared at risk pursuant to the provisions of that Act;
- (l) **Insolvency:** the Issuer or any Guaranteeing Group Member is unable to pay its debts when due, or is deemed or presumed unable to pay its debts under any law, or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (m) **Analogous Process:** anything analogous or having a substantially similar effect to anything referred to in clauses 16.1(i) to 16.1(l) inclusive occurs with respect to the Issuer or a Guaranteeing Group Member under the laws of a jurisdiction other than New Zealand;
- (n) **Distress or Judgment:** a distress, attachment or other execution is levied or enforced upon or commenced against any of the assets of the Issuer or any Guaranteeing Group Member and is not discharged or stayed within 30 days or a judgment for a sum exceeding \$10,000,000 is obtained against the Issuer or any Guaranteeing Group Member; or
- (o) **Supplemental Trust Deed:** any event occurs which is specified in the Conditions for the Series as an event of default,

then at any time thereafter, provided that event is continuing unremedied:

- (A) **Wholesale Series:** if the Series is a Wholesale Series, a Holder of Bonds that are part of the Wholesale Series may, without prejudice to any other remedies which that Holder may have:
 - (1) where that Event of Default occurs under clauses 16.1(a) and 16.1(i) to (m) in relation to a Bond held by that Holder; or
 - (2) where that Event of Default occurs under any other paragraph of this clause 16.1 and the Holders of Bonds of the relevant Series resolve by Special Resolution to do so,

declare all (but not some only) of the Bonds of that Series held by that Holder to be immediately due and payable by notice in writing to the Issuer; or
- (B) **Retail Series:** if the Series is a Retail Series, the Supervisor may in its discretion and shall immediately upon being directed to do so by Holders of Bonds that are part of the Retail Series by a Special Resolution declare the Bonds of that Series to be immediately due and payable by notice in writing to the Issuer,

whereupon the Issuer, or the other Guaranteeing Group Members, as the case may be, shall prepay immediately the Principal Amount of the Bonds of that Series and all other outstanding money under those Bonds.

- 16.2 **Cross-acceleration:** If a Series of Bonds has been declared immediately due and payable in accordance with clause 16.1, then provided the Event of Default in respect of which the declaration was made is continuing unremedied:

- (a) a Holder of Securities that are part of a Wholesale Series that has not been declared immediately due and payable may declare all (but not some only) of the Securities of that Series held by that Holder to be immediately due and payable by notice in writing to the Issuer; and
- (b) the Supervisor may in its discretion and shall immediately upon being directed to do so by Holders of Securities that are part of a Retail Series by a Special Resolution declare the Securities of that Series to be immediately due and payable by notice in writing to the Issuer,

whereupon the Issuer, or the other Guaranteeing Group Members, as the case may be, shall prepay immediately the Principal Amount of the Securities of that Series and all other outstanding money under those Securities.

16.3 Distribution of funds in respect of Retail Securities: All moneys received by the Supervisor in respect of Retail Securities from the Issuer on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Securities) be held and applied (subject to the provisions of clause 8 of this deed):

- (a) first, subject to any direction made by any court, in payment of all amounts due to the Supervisor under this Deed (including all expenses, losses and liabilities sustained or incurred by the Supervisor under this Deed, all fees payable to the Supervisor under this Deed, and any Default Interest on each such amount);
- (b) secondly, in or towards payment to the Retail Holders of Unsubordinated Notes in respect of which a declaration has been made in accordance with clause 16.1 or 16.2, rateably in proportion to the amounts actually or contingently owing to them in respect of the Unsubordinated Notes held by them;
- (c) thirdly, in or towards payment to the Retail Holders of Term Subordinated Notes (if any) in respect of which a declaration has been made in accordance with clause 16.1 or 16.2, rateably in proportion to the amounts actually or contingently owing to them in respect of the Term Subordinated Notes held by them;
- (d) fourthly, in or towards payment to the Retail Holders of Undated Subordinated Notes (if any) in respect of which a declaration has been made in accordance with clause 16.1 or 16.2, rateably in proportion to the amounts actually or contingently owing to them in respect of the Undated Subordinated Notes held by them; and
- (e) fifthly, the surplus (if any) of such moneys, in payment to the Issuer or to such other person (including a liquidator of the Issuer) who may be lawfully entitled thereto.

16.4 Distribution of funds in respect of Wholesale Securities: All moneys payable by the Issuer in respect of Wholesale Securities on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Securities) be applied (subject to the provisions of clause 8 of this deed):

- (a) first, in or towards payment to the Wholesale Holders of Unsubordinated Notes in respect of which a declaration has been made in accordance with clause

16.1 or 16.2, rateably in proportion to the amounts actually or contingently owing to them in respect of the Unsubordinated Notes held by them;

- (b) secondly, in or towards payment to the Wholesale Holders of Term Subordinated Notes (if any) in respect of which a declaration has been made in accordance with clause 16.1 or 16.2, rateably in proportion to the amounts actually or contingently owing to them in respect of the Term Subordinated Notes held by them; and
- (c) thirdly, in or towards payment to the Wholesale Holders of Undated Subordinated Notes (if any) in respect of which a declaration has been made in accordance with clause 16.1 or 16.2, rateably in proportion to the amounts actually or contingently owing to them in respect of the Undated Subordinated Notes held by them.

17. APPOINTMENT OF SUPERVISOR

17.1 **Appointment:** The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor for the Holders on the terms and conditions of this Deed including, without limitation:

- (a) acting on behalf of the Retail Holders in relation to:
 - (i) the Issuer;
 - (ii) any matter connected with this Deed or the terms of a regulated offer; and
 - (iii) any contravention or alleged contravention of the Issuer Obligations; and
- (b) supervising the Issuer's performance:
 - (i) of its Issuer Obligations; and
 - (ii) in order to ascertain whether the assets of the Issuer are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the Principal Amount, interest and other monies payable on, or in relation to the Securities as they become due; and
- (c) performing or exercising any other functions, duties, and powers conferred or imposed on the Supervisor by or under the FMC Act, the Financial Markets Supervisors Act 2011 or this Deed.

17.2 **Hold in trust:** The Supervisor shall hold the following in trust for the benefit of the Retail Holders:

- (a) the right to enforce the Issuer's duty to repay, or to pay interest, under the terms of the Securities;
- (b) any charge or security for repayment; and
- (c) the right to enforce any other duties that any Guaranteeing Group Member and any other person have under:

- (i) the terms of the Securities; or
- (ii) the provisions of this Deed or the FMC Act in relation to the Securities.

17.3 Duties of Supervisor: The Supervisor:

- (a) must:
 - (i) act honestly in acting as supervisor under this Deed
 - (ii) in exercising its powers and performing its duties as supervisor, act in the best interests of the Retail Holders;
 - (iii) exercise reasonable diligence in carrying out its functions as supervisor;
- (b) must do all the things it has the power to do to cause any contravention or alleged contravention of the Issuer Obligations in respect of the Securities to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Retail Holders;
- (c) subject to any court order made under section 210 of the FMC Act, must act in accordance with any direction given by a Special Resolution of Retail Holders that is not inconsistent with any enactment, rule of law or this Deed in relation to:
 - (i) seeking a remedy to a contravention or alleged contravention of the Issuer Obligations in respect of the Securities; and
 - (ii) any other matter connected with the Supervisor's functions; and
- (d) in exercising its powers and performing its duties as supervisor, must exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMC Act) would exercise in the same circumstances.

18. SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES

18.1 Fees: The Issuer shall pay to the Supervisor such fees as may from time to time be agreed between them in writing.

18.2 Expenses: The Issuer shall pay all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation, signing and (if applicable) registration of this deed, each Supplemental Trust Deed, each Offer Document and any prospectus;
- (b) the exercise of any Trust Power, including the taking of any expert advice deemed necessary or expedient by the Supervisor;
- (c) any breach or non-performance by the Issuer of any provision of this Deed;
- (d) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders; or

(e) any waiver, consent or other action requested by the Issuer.

18.3 **Indemnity by Issuer:** Without prejudice to the right of indemnity by law given to supervisors and trustees, the Supervisor shall be indemnified by the Issuer for all expenses, losses and liabilities sustained or incurred in carrying out the Trust Powers or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this Deed, other than:

- (a) in the case of a Wholesale Series, a claim arising out of a wilful default, gross negligence or wilful breach of trust; and
- (b) in the case of a Retail Series, a claim for indemnification that is not permitted by clause 22.1(b).

18.4 **Indemnity by Holders:** The Supervisor is not required to take any action or exercise any Trust Power or comply with any request or direction pursuant to this Deed unless it has first been indemnified, subject to clause 22.1, to its satisfaction against all expenses, losses and liabilities it may sustain or incur by so doing.

18.5 **Payments:** The fees, expenses, indemnities and other amounts payable under this Deed to the Supervisor shall be payable by the Issuer at the times agreed (or, in the absence of agreement, on demand) and, if not paid when due, shall carry Default Interest in accordance with clause 9.7 until paid.

19. SUPERVISOR'S POWERS

19.1 **General powers:** The powers, authorities and discretions conferred on the Supervisor by this Deed shall be in addition to any powers, authorities and discretions which may from time to time be vested in supervisors and trustees by law in relation to Retail Securities or (if applicable) Wholesale Securities and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the Holder of any Security.

19.2 **Wholesale issues:** The Supervisor shall have no powers or duties in relation to Wholesale Series except:

- (a) the powers and duties explicitly set out in the Conditions for any Wholesale Securities; and
- (b) the power to compel the Issuer to call a meeting of Holders of Wholesale Securities or any Class of Holders of Wholesale Securities when requested to do so by Holders of Wholesale Securities in accordance with this Deed or by a Class of Holders of Wholesale Securities in accordance with this Deed.

19.3 **Retail Series:** In relation to each Retail Series the Supervisor shall have the following powers and duties, subject to the terms of the Supplemental Trust Deed in relation to the relevant Series:

- (a) **Monitoring role:** The Supervisor must exercise reasonable diligence to ascertain whether or not the Issuer has breached the Conditions of any Retail Securities but, until such time as it becomes aware that, or has received actual notice from the Issuer, the Auditors or any Holder that, a breach has, or appears to have, occurred, is entitled to assume that no such breach has occurred. The Supervisor must do all the things that it is empowered to do to cause any breach of the Conditions of any Retail Securities to be remedied

(except if it is satisfied that the breach will not materially prejudice the security (if any) of the Retail Securities or the interests of the Retail Holders).

- (b) **Applications to court:** The Supervisor may, at any time, apply to the court for an order:
- (i) under section 208 of the FMC Act, if the Supervisor is satisfied that:
 - (aa) the Guaranteeing Group Members are unlikely to be able to pay all money owing in respect of one or more Retail Series as and when due;
 - (bb) the Issuer is insolvent (as defined in the FMC Act) or the financial position or management of the Issuer is otherwise inadequate;
 - (cc) there is a significant risk that the interests of Retail Holders will be materially prejudiced for any other reason; or
 - (dd) the provisions of this Deed are no longer adequate to give proper protection to the interests of the Retail Holders; or
 - (ii) 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 Retail Holders, directing it not to comply with a Special Resolution of Retail Holders,

and it may support or oppose any application to the court made by or at the instance of the Financial Markets Authority or any Retail Holder of Bonds (where applicable). The Supervisor shall, subject to clause 22.1, be indemnified by the Issuer against all expenses incurred in relation to any such application or proceedings, provided that the Supervisor must consult with the Issuer prior to making any such application before the Date of Enforcement.

- (c) **Waiver:** Subject to clause 24 and any direction given by Special Resolution of the Holders of Bonds or affected Class of Holders of Bonds, the Supervisor may at any time by written notice 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 Conditions of any Retail Securities provided the Supervisor is satisfied that the interests of the Holders of Bonds will not be materially prejudiced thereby. Any such waiver will, subject to Regulation 15.4 of schedule 1, bind all Holders of the relevant Retail Securities and, if the Supervisor so requires, must be notified by the Issuer to those Holders as soon as practicable.
- (d) **Material breach:** If any breach of this Deed occurs or any circumstances occur which may result in such a breach which the Supervisor reasonably considers may be materially prejudicial to the interests of any Retail Holders of Bonds, the Supervisor shall be entitled in its absolute discretion to require the Issuer to report to the Retail Holders of Bonds the circumstances and the nature of such breach or circumstances and any other information concerning the Issuer which the Supervisor has received in relation to this Deed and which it reasonably considers to be material to those Holders, and invite those Holders to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Trust Powers under this Deed. If the Issuer fails to give that report the Supervisor shall be entitled to do so itself.

- (e) **Notify Holders:** The Supervisor shall, promptly after having being notified of such by the Issuer under clause 14.1(b), notify the Holders of Short Term Notes that a declaration has been made in accordance with clause 16.1.
- (f) **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 Retail Holders of Bonds, represent and act on behalf of those Holders in any matter concerning them generally.
- (g) **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 19.3(g), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance and (without limiting clause 18) the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

- (h) **General meetings:** The Supervisor is entitled to receive all notices of, and other communications relating to, any general meeting of the Issuer that any member of the Issuer is entitled to receive. A representative of the Supervisor, being a person authorised to act for the purposes of this sub-clause by resolution of the directors or other governing body of the Supervisor, is entitled to:
 - (i) attend any general meeting of the Issuer; and
 - (ii) be heard at any general meeting of the Issuer that he or she attends on any part of the business of the meeting that concerns the Supervisor as a supervisor or the Holders.

20. EXERCISE OF SUPERVISOR'S POWERS

20.1 **Discretion:** Except as otherwise expressly provided in this Deed, the Supervisor:

- (a) has absolute discretion as to the exercise of the Trust Powers and as to the conduct of any action, proceeding or claim (provided it has acted in accordance with sections 112 and 113 of the FMC Act); and
- (b) may refrain from exercising any Trust Power until directed by Special Resolution of the relevant Holders of Securities or relevant Class of Holders of Securities to do so.

20.2 **Reliance:** The Supervisor shall be entitled without liability for loss, to obtain, accept and act on, or to decline and elect not to act on:

- (a) any communication or document (including any fax or email) reasonably believed by it to be genuine and correct;

- (b) any resolution which the Supervisor believes to have been properly passed at any meeting of the relevant Holders of Securities or any relevant Class of Holders of Securities;
- (c) advice and statements of lawyers, accountants and other experts reasonably selected by it or the Issuer;
- (d) a certificate signed by or on behalf of the Issuer as to any matters of fact which might reasonably be expected to be within the knowledge of the Issuer or that any particular transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the relevant Holders of Securities or any relevant Class of Holders of Securities, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and
- (e) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Deed, as conclusive evidence of the facts stated therein.

20.3 **Delegation:** The Supervisor, whenever it thinks it expedient in the interests of the relevant Holders of Securities to do so, may:

- (a) 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, delegate at any time to any person any of the Trust Powers which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit; and
- (b) authorise any person as it thinks fit to act as its representative at any meeting.

20.4 **Supervisor's consent:** Any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor thinks fit.

20.5 **Subscribers' money:** The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by purchasers of the Securities.

20.6 **Safe custody:** The Supervisor may hold or place this Deed and any other documents with any bank or any person whose business includes the undertaking of safe custody of documents or with any lawyer or firm of lawyers (in each case reasonably considered by the Supervisor to be of good repute) and the Supervisor is not responsible for or required to insure against any loss incurred in connection with that deposit.

20.7 **Fiduciary relationship:** The Supervisor and any of its related companies and officers may (without having to account to the Issuer or any Holder) engage in any kind of business with the Issuer and its Subsidiaries and may accept fees or other consideration for services without having to account to the Holders.

20.8 **Confidentiality:** Unless ordered to do so by law, court order or the Conditions, the Supervisor shall not be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by the Issuer.

21. REPLACEMENT OF SUPERVISOR

21.1 **Resignation or removal of Supervisor:** Subject, in the case of a resignation or removal under paragraphs (a), (b) or (d) below, to clause 21.2 below:

- (a) the Supervisor may resign at any time by giving not less than 30 days' written notice to the Issuer;
- (b) the Issuer may remove the Supervisor from office by giving not less than 30 days' written notice to the Supervisor;
- (c) the Supervisor may be removed by the Financial Markets Authority or the Issuer under Part 2 of the Financial Markets Supervisors Act 2011; or
- (d) the Holders may remove the Supervisor from office upon the passing of a Special Resolution of Holders to that effect.

21.2 Requirements for Retirement and Removal: The Supervisor may not:

- (a) be removed or resign under clauses 21.1(a), (b) or (d) unless:
 - (i) all functions and duties of the position have been performed;
 - (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
 - (iii) the court consents; and
- (b) be removed by the Issuer under clause 21.1(b) without:
 - (i) the Financial Market Authority's consent; and
 - (ii) the approval by a Special Resolution of Holders.

21.3 Appointment of new Supervisor: If any of the circumstances described in clauses 21.1(a) to (d) occur, the Issuer will, subject to clauses 21.2(a)(i) and (iii) and 21.2(b) (where applicable), have the right to appoint a successor Supervisor, which must be a person who is authorised to act as a supervisor under the Financial Markets Supervisors Act 2011. If a successor Supervisor has not been appointed by the Issuer or has not accepted an appointment within 30 days after any such notice, then the retiring Supervisor may, on behalf of the Issuer, appoint a successor Supervisor.

21.4 Approval of new Supervisor: The appointment of a successor Supervisor under clause 21.3 will be subject to the prior approval by a Special Resolution of Holders of Retail Securities.

21.5 Successor Supervisor: Upon the acceptance of any appointment under this clause 21 by a successor Supervisor:

- (a) the successor Supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under the Transaction Documents and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations; and
- (b) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this Deed.

21.6 Notice: The Issuer shall notify all Holders of the appointment of any new supervisor as soon as reasonably practicable following such appointment.

22. LIABILITY OF SUPERVISOR

22.1 **No exemption:** No provision of this Deed shall have the effect of exempting the Supervisor from, or indemnifying the Supervisor against:

- (a) in relation to a Wholesale Series, liability for wilful breach of trust where the Supervisor fails to show the degree of care and diligence required of the Supervisor having regard to the Trust Powers and the provisions of this Deed; and
- (b) in relation to a Retail Series, liability where the Supervisor fails to comply with the duties set out in clauses 17.3(a) and (d).

22.2 **No assumption of duty:** Notwithstanding any other provision of this Deed, the Supervisor does not assume any duty of care to the Issuer, any creditors of the Issuer, the Wholesale Holders or any other person other than the Retail Holders (subject to and in accordance with this Deed) in exercising the Trust Powers, and shall not be liable:

- (a) to any person (including the Issuer and any Holders) in any way except for wilful default, gross negligence or wilful breach of trust where the Supervisor has failed to show the reasonable degree of care and diligence required of it having regard to the provisions of this Deed; or
- (b) for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Retail Holders.

23. BENEFIT OF DEED

23.1 The Issuer acknowledges, in relation to each Series and the Holders of the Securities of that Series, that this Deed (including, for the avoidance of doubt, the Supplemental Trust Deed for that Series) is made for the benefit of, and is intended to be enforceable by, any person who is from time to time a Holder of the Securities of that Series, the Registrar for that Series, and the Supervisor.

24. AMENDMENTS

24.1 **Amendments affecting Retail Holders:**

- (a) **Right to amend:** In the case of an amendment affecting Retail Holders, the provisions of this Deed may not be amended or replaced unless the amendment or replacement is made:
 - (i) with the consent of the Supervisor; or
 - (ii) (despite anything to the contrary in this Deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this Deed) under section 109 of the FMC Act, sections 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.
- (b) **Supervisor consent:** Subject to section 112(2)(b) of the FMC Act, the Supervisor must not consent to an amendment to, or a replacement of, this Deed unless:

- (i) either:
 - (aa) the amendment or replacement is approved by, or is contingent on approval by, the Retail Holders; or
 - (bb) the Issuer and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Retail Holders; and
 - (ii) 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.
- (c) **Holder consent:** The approval of the Retail Holders for the purposes of clause 24.1(b)(i)(aa) must be the approval of a Special Resolution of:
- (i) the Retail Holders; or
 - (ii) each class of Retail Holders of the Securities that is or may be adversely affected by the amendment or replacement.

24.2 Amendments affecting Wholesale Holders:

- (a) **Limited right to amend:** In the case of an amendment affecting Wholesale Holders, except as provided in clauses 24.2(b) and (c) the Issuer may not cancel, vary or amend any provision of this deed or of any Supplemental Trust Deed while any Wholesale Securities are outstanding. Any amendment to this deed or any Supplemental Trust Deed must be in writing signed by the Issuer and the Supervisor.
- (b) **Amendment without consent:**
 - (i) The provisions of this deed and any Supplemental Trust Deed may be amended without the consent of the Wholesale Holders where such amendment (in the opinion of the Issuer):
 - (aa) is of a minor or technical nature;
 - (bb) is to correct a manifest error; or
 - (cc) is to comply with the requirements or a modification of the requirements of any applicable law or the Listing Rules,

and, in any such case, the directors of the Issuer have resolved that such amendment will not be materially prejudicial to the interests of Wholesale Holders.
 - (ii) Notice of any such amendment, including a description of the amendment, shall be provided by the Issuer to the Wholesale Holders affected by the amendment within 10 working days.
- (c) **Amendment approved by Special Resolution:** Without limiting clause 24.2(b) but subject to clause 24.3 and Regulation 15.4 of schedule 1, the provisions of this deed and any Supplemental Trust Deed may be amended if the amendment has been approved by a Special Resolution of the Wholesale Holders of Bonds or the relevant Class of Wholesale Holders of Bonds and

notified in accordance with this Deed. For the avoidance of doubt, any such amendment shall, subject to Regulation 15.4 of schedule 1, be binding on the Wholesale Holders of Short Term Notes.

- 24.3 **Notice:** Notice of any proposed variation made in accordance with clause 24.1(b)(i)(aa) or under clause 24.2(c) shall be given by the Issuer to each Holder of each affected Class of Bonds not less than 14 days before the date on which it is intended that such variation take effect, but the non-receipt of notice by any such Holder shall not affect the validity of any such variation.

25. FURTHER AND SUBSTITUTED ISSUERS

- 25.1 **Further Issuers:** The Issuer shall be entitled to nominate any wholly-owned Subsidiary of the Issuer to be the issuer of the Securities of a particular Series by so providing in the Supplemental Trust Deed for that Series, provided that the new issuer enters into the relevant Supplemental Trust Deed and agrees to become bound by the terms of this deed on terms satisfactory to the Supervisor (acting reasonably).

- 25.2 **Substituted Issuers:** The Issuer may, with the consent of each Wholesale Holder in the case of a Wholesale Series and the Supervisor in the case of a Retail Series, substitute any wholly-owned Subsidiary of the Issuer ("**Substituted Obligor**") in place of the Issuer (or of any previous substitute under this clause) as the principal debtor under this Deed and the Securities either generally or in relation to one or more Series but only if:

- (a) the Substituted Obligor succeeds to and becomes bound by all the terms and conditions of the Transaction Documents for the relevant Series by entering into such agreements and documents ("**Substitution Documents**"), each in form and substance satisfactory to the Supervisor or the Wholesale Holders (as the case may be), as the Supervisor or the Wholesale Holders (as the case may be) (acting reasonably) may deem appropriate;
- (b) such amendments are made to any other documents (including any Offer Document and prospectus in respect of the relevant Securities) as the Supervisor or the Wholesale Holders (as the case may be) may reasonably deem appropriate;
- (c) two directors of the Substituted Obligor certify that the Substituted Obligor will be solvent immediately after such substitution;
- (d) (if the relevant Securities, or any of them, are rated by a public rating agency) that rating agency confirms in writing that following such substitution the rating assigned to the relevant Securities in force immediately prior to the substitution taking effect shall be maintained or increased;
- (e) the Issuer (or any such previous Substituted Obligor) and the Substituted Obligor comply with such other reasonable requirements as the Supervisor or the Wholesale Holders (as the case may be) may direct in the interests of the Holders of the relevant Securities, which may include a requirement that the Issuer remains bound by all or certain of the provisions of this Deed in respect of the relevant Securities;
- (f) prior to the substitution being effected, the Substituted Obligor warrants and represents to the Holders that:
 - (i) it has obtained all necessary authorisations for such substitution;

- (ii) it has obtained all necessary authorisations for the performance by it of its obligations under the relevant Transaction Documents and the relevant Securities and that they are in full force and effect; and
- (g) the obligations assumed by it are its legal, valid and binding obligations, enforceable against it in accordance with their terms, subject to laws affecting creditors' rights generally and equitable principles of general application;
- (h) legal opinions (in form and substance satisfactory to the Supervisor or the Wholesale Holders (as the case may be)) have been delivered to the Supervisor or the Wholesale Holders (as the case may be) confirming that, following such substitution:
 - (i) the Transaction Documents and the Securities will constitute legal, valid and binding obligations of the Substituted Obligor, enforceable against it in accordance with their terms, subject to laws affecting creditors' rights generally and equitable principles of general application;
 - (ii) the Substituted Obligor is validly incorporated in its jurisdiction of incorporation;
 - (iii) all necessary authorisations are in full force and effect; and
 - (iv) amounts payable to any Holders will not be reduced by the existence of any applicable taxes (by deduction from such amounts or otherwise) except for such taxes (if any) in respect of which the Substituted Obligor has agreed to make compensating payments to the Holders.

25.3 **Release of substituted issuer:** Any Substitution Document entered into pursuant to clause 25.2 shall, if so expressed, release the Issuer from any or all of its obligations under the Securities and the Transaction Documents for the relevant Series. Notice of any substitution pursuant to clause 25.2 shall be given to the Holders of the relevant Series within 14 days of the execution of the Substitution Documents and compliance with the other requirements of clause 25.2.

25.4 **Completion of Substitution:** After notice has been given in accordance with clause 25.3:

- (a) the Substituted Obligor shall be deemed to be the principal debtor and to have all the rights, powers and obligations of the Issuer under the Transaction Documents for the relevant Series as if the Substituted Obligor were originally named in those Transaction Documents in place of the Issuer; and
- (b) this Deed and the Conditions of the relevant Securities shall be deemed to be amended as necessary to give effect to the substitution.

26. MEETINGS OF HOLDERS

26.1 **Holders of Bonds:** Meetings of Holders of Bonds or a Class of Holders of Bonds may be convened and held in accordance with the provisions of schedule 1.

26.2 **Wholesale Holders of Short Term Notes:**

- (a) Subject to paragraphs (b) and (c) of this clause 26.2, Wholesale Holders of Short Term Notes have no right to convene or attend meetings of Holders or any Class of Holders.
- (b) If a Series of Bonds has been declared immediately due and payable in accordance with clause 16.1, and the Event of Default in respect of which the declaration was made is continuing unremedied, Wholesale Holders of each Series of Short Term Notes may convene and attend a meeting of Holders of Short Term Notes or a Class of Short Term Notes for the purposes of considering whether a direction is to be given to the Trustee for the purposes of clause 16.2(b).
- (c) The Issuer may, if required by law or otherwise considers it desirable, convene a meeting of Wholesale Holders of Short Term Notes or a Class of Short Term Notes.
- (d) Any meeting of Wholesale Holders of Short Term Notes or a Class of Short Term Notes will be convened and held in accordance with the provisions of schedule 1 (other than regulation 15.4 of schedule 1).

26.3 **Exercise of Supervisor's duties:** Subject to clause 19.2, the Supervisor owes no duties to Holders of Short Term Notes which are issued as part of a Wholesale Series. In respect of Short Term Notes issued as part of a Retail Series, the duties of the Supervisor shall be construed and interpreted to recognise and take into account the nature of the Securities including, but without limitation, pursuant to clause 16.2, clause 24 and clause 26.2, and the duties of the Supervisor shall to the extent permitted by law be limited and construed by reference to the special features of the Short Term Notes. All Holders of Short Term Notes are deemed to have agreed to and accept and are bound by the foregoing limitations.

26.4 **Frequency of meetings of Holders:** Annual meetings of Holders are not required to be held. Meetings of Holders will occur when required and convened under the terms of this Deed.

26.5 **Written Resolutions of Holders:** Regulation 78 of the FMC Regulations does not apply to this deed.

27. **NOTICES**

27.1 **Writing:** Each notice or other communication to be given or made under this Deed to any person must:

- (a) **Writing:** be given or made in writing by fax or letter and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to the recipient at the address or fax number, and marked for the attention of the person (if any), from time to time designated by the recipient to the other for the purposes of this Deed or the Securities;
- (c) **Deemed delivery:** not be effective until received by the recipient, and any such notice or communication shall be deemed to be received:
 - (i) (if given or made by letter) when left at the address of the recipient or 5 working days after being put in the post (by airmail if to another

country), postage prepaid, and addressed to the recipient at that address; or

- (ii) (if given or made by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient,

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

27.2 **Initial address and numbers:** The initial address, fax number and person (if any) designated for the purposes of this Deed, are set out below:

(a) **The Issuer:**

Meridian Energy Limited
33 Customhouse Quay
PO Box 10-840
Wellington

Phone No: 04 381 1200
Fax No: 04 381 1201
Attention: Group Treasurer

(b) **The Supervisor:**

Supervisors Executors Limited
Level 5
10 Customhouse Quay
PO Box 3222
Wellington
Facsimile No: 04 496 2952
Attention: Business Manager, Corporate Trust

(c) **The Holders:**

The address of each Holder last entered in the Register.

27.3 **Joint Holders:** In the case of joint holders of Securities a notice given to the Holder whose name stands first in the Register in respect of such holding shall be sufficient notice to all the joint holders.

28. RELEASE

28.1 Upon being indemnified to its satisfaction pursuant to clause 18.3 and upon proof being given to the reasonable satisfaction of the Supervisor that all sums owing or outstanding in respect of the Securities or otherwise under this Deed have been paid or satisfied or that provision for such payment or satisfaction has been made in accordance with the provisions of this Deed and upon payment or retention of all costs, charges and expenses incurred by, or payable to, the Supervisor in relation to this Deed and the remuneration of the Supervisor and all other money payable hereunder the Supervisor shall, at the request and cost of the Issuer, execute a deed of release of this Deed and shall thereupon retire.

29. MISCELLANEOUS

- 29.1 **Registration of deed:** If the Issuer proposes to issue a Retail Series, it shall immediately, at its own cost, register this deed and the Supplemental Trust Deed in respect of that Series as required by the FMC Act and shall pay all costs and expenses incidental to doing so.
- 29.2 **Waivers and remedies:** Time shall be of the essence of this Deed but no delay in acting, or failure to act, by a Holder is a waiver of any of that Holder's rights. The rights provided in this Deed do not exclude any rights provided by law.
- 29.3 **Partial invalidity:** An invalid provision in this Deed shall not affect the enforceability of the remaining provisions of this Deed.
- 29.4 **Further issues:** Subject to any agreement to the contrary contained in any dealer or subscription agreement relating to the issue of any Securities, the Issuer may from time to time, without the consent of the Holders, issue securities or other debt obligations on such other terms and conditions as the Issuer may think fit.
- 29.5 **Documents:** Copies of this deed, each Supplemental Trust Deed, the Offer Document and prospectus (if any) relating to Securities held by the relevant Holder, the Agency Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series will be made available by the Issuer for inspection during usual business hours by any Holder at the registered office of the Issuer being, at the date of this deed:

Meridian Energy Limited
33 Customhouse Quay
Wellington

Each Holder will be deemed to have notice of the provisions of this Deed and each other Transaction Document in relation to the relevant Series.

- 29.6 **No liability:** No Registrar will be liable for any breach by the Issuer of any representation, obligation, undertaking, including the non-payment of any money due, nor will any Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.
- 29.7 **Survival:** The indemnities given in this Deed will survive the repayment of all the Securities and the termination of this Deed.
- 29.8 **Counterparts:** This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this Deed by signing any such counterpart.

30. GOVERNING LAW

- 30.1 **Governing law:** This deed shall be construed and take effect as a contract and declaration of trust made in New Zealand and shall be governed by New Zealand law.
- 30.2 **Submission to jurisdiction:** The Issuer submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Deed.

SIGNATURES

The Issuer

MERIDIAN ENERGY LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

The Initial Guaranteeing Subsidiaries

MEL HOLDINGS LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

MEL (WEST WIND) LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

MEL (TE ĀPITI) LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

MEL (WHITE HILL) LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

The Supervisor

SIGNED in the name and under the seal
of **TRUSTEES EXECUTORS LIMITED**
by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

SCHEDULE 1

Meetings of Holders

1. INTERPRETATION

1.1 Definitions: In these provisions:

"Appointed Time" means the day and time at which any meeting of Holders or the taking of a poll of Holders (not at a meeting of Holders) is due to be held.

"Class of Securities" means each category of Securities which in the reasonable opinion of the Issuer at any particular time, for any particular purpose, constitutes a separate class of Securities.

"Deed" means the Deed made by the Issuer to which this schedule is attached and **"Supplemental Trust Deed"** has the meaning given in the Deed.

"Special Resolution" means a resolution approved by Holders holding Securities with a Principal Amount of no less than 75% of the aggregate Principal Amount of the Securities held by those persons who are entitled to vote and who vote on the question.

"Holder" means a holder of Securities.

"Proxy Closing Time" means 48 hours before the Appointed Time of the relevant meeting of Holders or taking of a poll of Holders.

"regulation" means a clause of this schedule.

"Representative" means:

- (a) in the case of an individual Holder, a person appointed by an instrument of proxy or by power of attorney or, in the event of the death of a Holder, the personal representative of that Holder;
- (b) in the case of a Holder which is a corporation or corporation sole either:
 - (i) a person appointed by an instrument of proxy or by power of attorney; or
 - (ii) a person authorised by the directors of the corporation, or in the case of a corporation sole, a person authorised pursuant to its constitution.

"Working Day" has the meaning given to it in the Interpretation Act 1999.

1.2 **Short Term Notes:** These Regulations are to be construed in a manner consistent with clause 26.2 of the Trust Deed so that, except in the limited circumstances specified in clause 26.2, a reference in these Regulations to "Holder" means a Holder of Bonds, and a reference to "Securities" means "Bonds".

2. CONVENING

- 2.1 **Meeting required by law:** The Issuer shall, whenever required to do so pursuant to the Companies Act 1993 or the FMC Act or any other applicable law or the Listing Rules, convene a meeting of the Holders.
- 2.2 **By Holders:** The Issuer shall, subject to clause 26.2 of the Trust Deed, at the request in writing of Holders holding not less than 5% of the aggregate Principal Amount of the Securities, convene a meeting of the Holders. The request must state the nature of the business proposed to be dealt with at the meeting concerned.
- 2.3 **By Issuer:** The Issuer may at any time of its own volition convene a meeting of the Holders.
- 2.4 **By Supervisor:** In relation to any Retail Series, the Issuer shall, at the request in writing by the Supervisor, convene a meeting of Holders of that Class of Securities. The Supervisor may at any time of its own volition convene a meeting of Retail Holders. Notwithstanding regulation 2.2, the Supervisor shall not be obliged to convene a meeting of Retail Holders pursuant to that regulation until it has been indemnified (subject to clause 22.1) to its satisfaction against all costs and expenses to be incurred in relation to that meeting.
- 2.5 **Place of meeting:** Each meeting will be held in the city or town in which the registered office of the Issuer is situated at a place designated in the relevant notice of meeting.
- 2.4 **Regulations:** Meetings of Holders shall be convened and held in accordance with the provisions of this schedule.

3. CLASSES OF SECURITIES

- 3.1 If, at any time, in the opinion of the Issuer, a matter is required to be determined by the Holders of a Class of Securities, a meeting may be called in respect of Holders of that Class of Securities, in which case the provisions of this schedule shall, with all necessary modifications, apply and be construed as if references to Securities were references to the relevant Class of Securities and references to Holders were references to the Holders of that Class of Securities.

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 Working Days before the meeting:
- (a) every Holder entitled to receive notice of the meeting;
 - (b) the Supervisor; and
 - (c) every Director and an Auditor of the Issuer.
- 4.2 **Contents of Notice:** The notice must state:
- (a) 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;
 - (b) the text of any Special Resolution to be submitted to the meeting; and

- (c) the right of a Holder to appoint a proxy.

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 must be given to the Supervisor at least 10 Working Days before the notice is given under regulation 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 Working Days before the notice is given under regulation 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 proxies are present who hold Securities with a combined Principal Amount of no less than 25% of the Principal Amount of the Securities 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 Principal Amount of the Securities are present in person or by proxy and in any case at least 2 Holders or their proxies must be present.

5.4 Quorum not 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 Working 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 proxies 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. CHAIRMAN

- 6.1 **Wholesale Series:** At a meeting of Wholesale Holders a person appointed, by a resolution of Holders, from the Holders or any Representatives present will preside as chairman at a meeting.
- 6.2 **Retail Series:** A person nominated by the Supervisor shall preside at every meeting of Retail Holders. 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 or Representatives present shall appoint a person to be chairman.

7. RIGHT TO ATTEND AND SPEAK

- 7.1 Any director, officer or solicitor of the Issuer, or any person appropriately authorised by the Issuer (or, in relation to any Retail Series, any director, officer or solicitor of the Supervisor, or any person appropriately authorised by the Supervisor), may attend any meeting and all such persons will have the right to speak at the meeting.

8. ADJOURNMENT

- 8.1 **Chairman may adjourn:** The chairman may, with the consent of any meeting at which a quorum is present, and will, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- 8.2 **Business at adjourned meeting:** No business will be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

9. ONLY PERSONS ON REGISTER RECOGNISED BY COMPANY

- 9.1 The persons named as Holders in the Register will be recognised and treated as the legal owners of the Securities whether those persons are or are not in fact the owners of those Securities.

10. AUTHORITY TO VOTE

- 10.1 **Voting:** An individual Holder may vote personally or by his Representative and a Holder which is a corporation may vote by its Representative. A Holder may appoint more than one Representative, each such Representative being authorised to act on behalf of the Holder in respect of a specified Principal Amount of Securities.
- 10.2 **Entitlement:** The persons named in the Register as Holders at the Proxy Closing Time will be exclusively entitled to vote in person or by Representative in respect of the Securities recorded as owned by them.

11. PROXIES

- 11.1 **In writing:** The instrument appointing a proxy must be in writing signed by the appointer or his attorney or, if the appointer is a corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.
- 11.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder. A holder of a proxy will have the right to speak at the meeting.
- 11.3 **Deposit of proxy:** The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a solicitor or in any other manner approved by the Issuer, must be deposited at the place appointed by the Issuer in the notice convening the meeting (or, if no such place is appointed, then at the registered office of the Issuer) not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless the Issuer, in its absolute discretion, elects to accept any instrument of proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.
- 11.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form approved by the Issuer and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- 11.5 **Proxy valid for meeting:** An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.
- 11.6 **Proxy in favour of chairman:** An instrument of proxy in favour of:
- (a) the chairman of the Issuer; or
 - (b) the chairman of the meeting,
- (however expressed) will be valid and effectual as though it were in favour of a named person and will, in the case of paragraph (a) above, constitute the person holding the office of the chairman of the Issuer or, in the case of paragraph (b) above, the person who chairs the meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointer.

12. HOLDER MAY APPOINT ATTORNEY

- 12.1 Any Holder may by power of attorney appoint an attorney (who need not be a Holder) to vote and act on his behalf at any meeting. An attorney will be entitled to produce evidence of his appointment at any time before the Appointed Time. An attorney who is so empowered may exercise the Holder's right to appoint a proxy.

13. CORPORATE REPRESENTATIVES

- 13.1 **Authority:** A Representative of a Holder which is a corporation or a corporation sole will, until his authority is revoked, be entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual Holder and will be entitled to produce evidence of his authority to act at any time before the Appointed Time of, or at, the meeting or adjourned meeting or for the taking of a poll at which the Representative proposes to vote.
- 13.2 **Right to act:** A Representative will have the right to demand or join in demanding a poll and will (except 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.

14. VOTING PROCEDURE AND POLLS

- 14.1 **Show of hands:** A resolution put to the vote of a meeting will be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by:
- (a) the chairman; or
 - (b) the Issuer or any representative of the Issuer; or
 - (c) one or more Holders holding or representing not less than 5% in aggregate Principal Amount of the Securities.

A declaration by the chairman that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded.

- 14.2 **Number of votes:** On a show of hands each person present at the meeting and entitled to vote (whether personally or as a Representative) will have one vote only. On a poll every Holder who is present in person or by a Representative will have one vote for every \$1 of Principal Amount of the Securities of which he is the Holder, provided that where a Holder holds Zero Coupon Notes, for the purposes of calculating that Holder's voting entitlement in this clause, the Principal Amount of those Zero Coupon Notes is to be construed as a reference to the net present value of those Zero Coupon Notes (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Security by a proportion of any discount to that Principal Amount applicable to such Security on its Issue Date) as at the date of the meeting. On a poll votes may be given either personally or by Representative and a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
- 14.3 **Poll:** If a poll is demanded it will be taken in the manner directed by the chairman and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.4 **Chairman has casting vote:** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands took place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Holder or on behalf of Holders.
- 14.5 **Election of chairman:** A poll demanded on the election of a chairman or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and

in a place appointed by the chairman. The result of the poll will 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.

- 14.6 **No disturbance:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.
- 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 will be accepted to the exclusion of the vote of the other joint Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
- 14.8 **Disqualification:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Securities in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.

15. SPECIAL RESOLUTIONS

- 15.1 **Powers:** A meeting of Holders will, in addition to all other powers which by this Deed are specified as exercisable by Special Resolution, have the following powers exercisable by Special Resolution namely power to:
- (a) sanction either unconditionally or upon any conditions the release of the Issuer from the payment of all or any part of the moneys payable pursuant to this Deed or the Securities;
 - (b) sanction any request from the Issuer for the exchange of the Securities for, or the conversion of the Securities into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
 - (c) postpone or, with the concurrence of the Issuer, to accelerate the day when the Principal Amount of any Securities becomes payable and to suspend or postpone for a time the payment of interest on any Securities;
 - (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against the Issuer or its assets however those rights arise;
 - (e) assent to any amendment to the terms of this Deed or the relevant Supplemental Trust Deed proposed or agreed to by the Issuer (and, where required, the Supervisor) and to authorise the Issuer and the Supervisor to execute any Supplemental Trust Deed embodying any such amendment;
 - (f) give any sanction, assent, release or waiver of any breach or default by the Issuer or the Supervisor under any of the provisions of this Deed or the relevant Supplemental Trust Deed;

- (g) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation where such sanction is necessary;
- (h) authorise or direct the Issuer to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.

15.2 Binding on Holders: A Special Resolution passed at a meeting of Holders properly convened and held will be binding upon all the Holders whether or not present or entitled to be present at the meeting and the Holders will be bound to give effect to that resolution. The passing of any such resolution will, as between the Issuer and the Holders, be conclusive evidence that the circumstances justify the passing thereof the intention being that the meeting is entitled to determine without appeal whether or not the circumstances justify the passing of any such resolution. Notwithstanding the foregoing a resolution which affects a particular Holder or Holders holding a Class of Securities only (as opposed to the rights of the Holders generally) will not be binding on such Holder or Holders unless the Holder or Holders agree to be bound by the terms of such resolution or unless the Holders of that Class have so agreed by virtue of a Special Resolution of the Holders of that Class of Securities. Whenever there are Securities outstanding which do not form a single Class then the provisions of this schedule shall have effect subject to the following:

- (a) a resolution which affects one Class only of Securities is deemed to have been duly passed if passed at a properly convened and held meeting of the Holders of that Class (or pursuant to regulation 17);
- (b) a resolution which affects more than one class of Securities , but does not give rise to a conflict of interest between the Holders of any of the Classes so affected is deemed to have been duly passed if passed at a single properly convened and held meeting of the Holders of all Classes so affected (or pursuant to regulation 17);
- (c) a resolution which affects more than one Class of Securities and gives or may give rise to a conflict of interest between the Holders of any of the Classes so affected is deemed to have been duly passed if passed at separate properly convened and held meetings of the Holders of each Class so affected (or pursuant to regulation 17); and
- (d) in respect of each meeting referred to in paragraphs (a), (b) and (c) of this regulation 15.2, the provisions of this schedule apply with the necessary modifications as though references in them to Securities and Holders were references to the relevant Class or Classes and to the Holders of the Securities comprised in such Class or Classes, respectively.

15.3 Reliance on advice: The Issuer and the Supervisor may rely on, and the Holders and the Registrar for the relevant Series shall be bound by, a legal opinion from a leading law firm in New Zealand to the effect that a resolution affects one Class only or, if it affects more than one Class of Securities, does not give rise to a conflict of interest, for the purposes of determining the meeting or meetings which need to be held for the purposes of regulation 15.2.

15.4 Short Term Notes: A Special Resolution passed at a meeting of Holders of Bonds properly convened and held will also be binding on the Holders of Short Term Notes unless the Special Resolution:

- (a) alters, or purports to alter, the amount or timing of payment of any amount under any Short Term Notes (including any Principal Amount, Interest Rate, Interest Payment Date or Maturity Date relating to any Short Term Notes);
- (b) approves, or purports to approve, the appointment of a successor Supervisor under clause 21.3 of this deed;
- (b) amends, or purports to amend the terms of this deed or any Supplemental Deed other than in accordance with clause 24 of this deed; or
- (c) is an exercise of the power referred to in regulation 15.1(g).

16. MINUTES TO BE KEPT

- 16.1 Minutes of all resolutions and proceedings at every meeting will be made by the Issuer or, if the Issuer is not present at the meeting, by a person appointed by the chairman of the meeting. Minutes must be entered in books from time to time provided for that purpose by the Issuer. Any such minutes, if signed or apparently signed by the chairman of the meeting at which a resolution was passed or proceedings had or by the chairman of the next meeting of Holders, will be prima facie evidence of the matters recorded in those minutes. Until the contrary is proved every meeting in respect of which minutes have been made will be deemed to have been properly held and convened and all resolutions passed or proceedings had at that meeting to have been properly passed and had.

17. RESOLUTIONS IN WRITING

- 17.1 **Special Resolution:** Anything that may be done by Holders by a resolution or Special Resolution passed at a meeting of Holders may be done by a resolution in writing signed by not less than 75% of the Holders having the right to vote on that resolution, holding in aggregate the Securities conferring the right to cast not less than 75% of the votes which could be cast on that resolution.
- 17.2 **Counterparts:** Any such resolution may consist of several documents in similar form, each signed by one or more Holders.
- 17.3 **Execution:** Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.

SCHEDULE 2
Form of Supplemental Trust Deed

MERIDIAN ENERGY LIMITED

Issuer

TRUSTEES EXECUTORS LIMITED

Supervisor

SUPPLEMENTAL TRUST DEED

DEED dated [•]

PARTIES

MERIDIAN ENERGY LIMITED ("Issuer")

TRUSTEES EXECUTORS LIMITED ("Supervisor")

INTRODUCTION

- A. The Issuer has established a debt security programme under which the Issuer may from time to time issue securities, being either Bonds or Short Term Notes, denominated in New Zealand dollars.
- B. Each series of Securities issued by the Issuer will be constituted by and issued on terms set out in the trust deed dated 1 December 2008 (as amended) between the Issuer, the Guaranteeing Subsidiaries and the Supervisor ("**Trust Deed**") and a Supplemental Trust Deed made between the Issuer and the Supervisor.
- C. This Supplemental Trust Deed sets out the terms and conditions that apply to the Series of [Bonds/Short Term Notes] known as [•].

AGREEMENT

1. INTERPRETATION

- 1.1 **Definitions from Trust Deed:** In this deed, unless the context otherwise requires, all terms defined in the Trust Deed which are not separately defined in this deed shall have the same meanings where used in this deed.
- 1.2 **Additional definitions:** In addition, unless the context otherwise requires, [•].

2. AGENCY AGREEMENT

- 2.1 **Agency Agreement:** The Agency Agreement for the Series means the agency agreement dated [] between the Issuer and the Registrar.
- 2.2 **Registrar:** The Registrar for the Series is [].

3. TYPE OF INSTRUMENT

- 3.1 **Type of Security:** [Bond/Short Term Note];
- 3.2 **Wholesale or retail:** [Wholesale/Retail] Series.
- 3.3 **Status:** [Unsubordinated Notes].
- 3.4 **Listing:** [Yes/No.]
- 3.5 **Selling restriction:** As specified in the Offer Document for the Series.

- 3.6 **Transaction Documents:** [The Trust Deed, the Supplemental Trust Deed for the Series and the Agency Agreement for the Series].

4. **CONDITIONS**

4.1 **General:**

4.2 **Principal Amount:**

4.3 **Minimum Principal Amount:**

4.4 **Maturity Date:**

4.5 **Base Rate:**

4.6 **Margin:**

4.7 **Interest Periods:**

4.8 **Interest Rate:**

4.9 **Interest Payment Dates:**

4.10 **Interest calculation:**

4.11 **Transfers:**

4.12 **[Others]:**

5. **GOVERNING LAW**

- 5.1 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.

SIGNATURES

The Issuer

MERIDIAN ENERGY LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

The Supervisor

EXECUTED in the name and under the
seal of **TRUSTEES EXECUTORS**
LIMITED by:

Signature of authorised signatory

Name of authorised signatory

Signature of authorised signatory

Name of authorised signatory

SCHEDULE 3

Form of Directors' Reporting Certificate

1. This certificate is given pursuant to clause 14.3(a)(iv) of the Master Trust Deed dated 1 December 2008 (as amended) between Meridian Energy Limited ("**Issuer**"), the Guaranteeing Subsidiaries specified therein, and Trustees Executors Limited, as supervisor ("**Trust Deed**").
2. Unless the context otherwise requires, terms defined in the Trust Deed have the same meaning herein.
3. We certify as follows:
 - (a) As at the date of this certificate, no Event of Default has occurred and continues unremedied;
 - (b) As at the date of this certificate, the Guaranteeing Group Members are as follows:

[]; and
 - (c) As at the end of [*the financial year / the half financial year*] to which the Financial Statements delivered with this certificate relate (*the reporting date*), the Issuer and each other Guaranteeing Group Member complied with the financial covenants set out at clause 14.2 and the computations necessary to demonstrate such compliance are as follows:

(i)	EBITDA of the Group for any two of the immediately preceding three 12 months periods ending on the Testing Date:	\$[] \$[]
	Interest and Financing Costs of any two of the immediately preceding three 12 month periods ending on the Testing Date:	\$[] \$[]
	Ratio of EBITDA of the Group to Interest and Financing Costs of the Group:	[] []
	Minimum permitted ratio of EBITDA of the Group to Interest and Financing Costs of the Group in respect of two of the three 12 month periods specified in clause 14.2(a):	2.5 to 1.0
(ii)	Debt:	\$[]
	Equity	\$[]
	Percentage of Debt to Debt plus Equity:	[]%
	Maximum permitted percentage of Debt to Debt plus Equity under clause 14.2(b):	55%
(iii)	Equity:	\$[]
	Minimum permitted Equity under clause 14.2(c):	\$1,250,000,000

- (iv) Total Tangible Assets of the Guaranteeing Group: \$[]
- Total Tangible Assets of the Group: \$[]
- Percentage of Total Tangible Assets of the Guaranteeing Group to Total Tangible Assets of the Group: []%
- Minimum permitted percentage of Total Tangible Assets of the Guaranteeing Group to Total Tangible Assets of the Group under clause 14.2(d). 80%
- (v) Aggregate principal amount of indebtedness for Borrowed Money secured by all Security Interests over assets of the Guaranteeing Group (other than Security Interests permitted under clause 14.6): \$[]
- Total Assets of The Group: \$[]
- Percentage of aggregate principal amount of indebtedness for Borrowed Money secured by All Security Interests over assets of the Guaranteeing Group (other than Security Interests permitted under clause 14.6 to Total Assets of the Group): \$[]
- Maximum permitted percentage of aggregate principal amount of indebtedness for Borrowed Money secured by all Security Interests over assets of the Guaranteeing Group (other than Security Interests permitted under clause 14.6) to Total Assets of the Group under clause 14.7): 7.5%
- (vi) Customer acquisition cost (as disclosed in the Group's Reference Accounts) for the purposes of calculating Equity and Total Assets: []

Signed by:

Director

Director

Date:

BY

- NOW THEREFORE THIS SUPPLEMENTAL DEED WITNESS** as follows:

1. DEFINITIONS AND INTERPRETATIONS

To the extent to which the same are applicable, the definitions and provisions contained in section 1 of the Trust Deed shall apply to and be incorporated in this Supplemental Deed.

2. ACKNOWLEDGEMENT BY SUBSIDIARY

The Subsidiary hereby appoints the Supervisor (and the Supervisor hereby accepts appointment) on the same terms as set out in the Trust Deed and the Subsidiary acknowledges that Securities have been and will be issued to Holders on the condition and in part consideration that the Subsidiary will give or has given to the Supervisor the guarantee hereinafter contained by way of security for the obligations constituted by the Trust Deed or intended so to be.

3. GUARANTEE

The Subsidiary hereby unconditionally and irrevocably guarantees, jointly and severally with each other Guaranteeing Group Member, to and for the benefit of the Holders of each Series and (in respect of Retail Series only) the Supervisor, the due and punctual payment by each other Guaranteeing Group Member of the Guaranteed Moneys as and when the same shall become owing or payable in accordance with the terms and conditions of the Securities or under the Trust Deed and the due observance and

punctual performance of, and compliance by each other Guaranteeing Group Member with, its obligations under the Securities and the Trust Deed, and the Subsidiary hereby agrees that all of the provisions of section 4 of the Trust Deed shall be incorporated in this Supplemental Deed and shall have effect and shall apply to this guarantee.

4. INCORPORATION OF TERMS

Pursuant to section 14 of the Property Law Act 2007 it is declared that there shall be deemed to be incorporated in this Supplemental Deed all the covenants, undertakings, powers, obligations and other provisions of the Trust Deed and the schedules thereto relating to or affecting the Guaranteeing Subsidiaries or Guaranteeing Group Members in the same manner and to the same extent as if the same had been mutatis mutandis set out in full in this Supplemental Deed and made applicable to the Subsidiary, and the Subsidiary accordingly covenants, jointly and severally with each other Guaranteeing Group Member, in favour of the Supervisor to duly perform and observe and be bound by the said covenants, undertakings, powers, obligations and other provisions imposed on or relating to or affecting it by or under this Deed or the Trust Deed or by the terms and conditions of any Securities.

5. GOVERNING LAW

This Supplemental Deed shall be governed by and construed in accordance with the laws of New Zealand.

IN WITNESS WHEREOF the Subsidiary has duly executed this Supplementary Deed the day and year first above written.

SIGNED for and on behalf of **[SUBSIDIARY]**
by

Signature of director

Signature of director

Name of director

Name of director

EXECUTED in the name and under the
seal of **TRUSTEES EXECUTORS**
LIMITED by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory