



Master Trust Deed

in relation to

—

The New Zealand Refining Company Limited (**Issuer**)

The New Zealand Guardian Trust Company Limited (**Supervisor**)

—

Master Trust Deed

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Details

Date 20 November 2018

Parties

Name **The New Zealand Refining Company Limited**
Company number 65859
Short form name **Issuer**
Notice details Address: Marsden Point, Whangarei, New Zealand
Facsimile: (09) 432 5100
Email: denise.jensen@refiningnz.com
Attention: Denise Jensen

Name **The New Zealand Guardian Trust Company Limited**
Company number 115240
Short form name **Supervisor**
Notice details Address: Level 6, 191 Queen Street, Auckland 1010
Facsimile: (09) 969 3732
Email: ct-auckland@nzgt.co.nz
Attention: General Manager, Corporate Trusts

Background

- A The Issuer is incorporated under the Companies Act 1993. The Issuer proposes to establish a bond programme under which it may from time to time issue Bonds.
- B Each issue of Bonds will be constituted by, and issued on terms set out in, this deed as supplemented by the relevant Supplemental Deed.
- C 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 provided for in this deed, for the benefit of the Holders of each Wholesale Series, on the terms and conditions of this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Agency Agreement means, in respect of a Series, the registrar and agency agreement (however described) between the Issuer and the persons appointed as registrar, paying agent and, if applicable, Calculation Agent for that Series.

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 Bond, the levy payable by the Issuer in accordance with Part 6B of that Act.

Auditor means a qualified auditor for the time being of the Issuer.

Authorised Officers means a Director, a chief executive officer or chief financial officer of the Issuer (or such officer of the Issuer howsoever designated as may from time to time replace or succeed such officer), and any other officer appointed by the Directors or their duly authorised delegates as an Authorised Officer for the purposes of this deed and notified in writing to the Supervisor.

Bond means a bond, note or other debt security in any form and however described constituted by, and subject to the terms and conditions set out in, this deed as supplemented by the relevant Supplemental Deed, and includes a Retail Bond and a Wholesale Bond.

Bond Moneys means, in relation to a Bond at any time, the Principal Amount, interest and other moneys payable on, or in relation to, that Bond to the Holder of that Bond or (in relation to a Retail Series) at the direction of the Supervisor at that time under or pursuant to this deed, or (in relation to a Retail Series) to the Supervisor pursuant to clause 13.6 (*Payments*), and a reference to **Bond Moneys** includes any part of them.

Calculation Agent means, in relation to any Series, the person appointed by the Issuer from time to time to calculate Interest Rates or other amounts due on the Bonds of that Series and, if none is appointed, means the Registrar for that Series.

Class means a category of Bonds which constitutes a separate class of Bonds being:

- (a) all Retail Bonds; or
- (b) all Wholesale Bonds; or
- (c) in relation to matters affecting a Series only, that Series; or
- (d) all Retail Bonds which have attached to them identical rights, privileges, limitations and conditions (but which may have a different Issue Date, Maturity Date, Interest Rate and/or Interest Payment Dates); or
- (e) any category of Bonds having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of the Issuer (in consultation with the Supervisor in relation to a Retail Series) at any particular time, for any particular purpose, constitutes a separate class of Bonds either within Wholesale Bonds or Retail Bonds, or within both, as the case may be.

Class of Holders means the Holders of Bonds of a particular Class.

Companies Act means the *Companies Act 1993*.

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

Consolidated Group means, at any date, the Issuer and its Subsidiaries at that date.

CRS means the *New Zealand CRS Applied Standard* based on the *OECD's Common Standard on Reporting and Due Diligence for Financial Account Information*, known as the "*Common Reporting Standard*" (including any associated commentary or other official guidance).

Date of Enforcement means the date on which a Wholesale Holder or the Supervisor makes a declaration pursuant to clause 11.1 (*Events of Default*).

Default Interest has the meaning given to such term in clause 6.7 (*Default Interest*).

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

Directors' Report means a report signed by two Directors substantially in the form set out in Schedule 3, or such other form as specified in a Supplemental Deed for a Series or as the Issuer and the Supervisor may agree in writing.

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

Event of Default means any of the events or circumstances set out in clause 11.1 (*Events of Default*).

Extraordinary Resolution has the meaning set out in Schedule 1 or Schedule 2 (as applicable).

FATCA means sections 1471 through 1474 of the *United States Internal Revenue Code of 1986*, as amended (or any consolidation, amendment, re-enactment or replacement of those sections and including any current or future regulations or official interpretations issued), commonly known as the *Foreign Account Tax Compliance Act*, as implemented in New Zealand pursuant to the agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA and the *Tax Administration Act 1994*.

Financial Reporting Act means the *Financial Reporting Act 2013*.

Financial Statements means, with respect to a person or group of persons, financial statements of that person or group of persons within the meaning of section 6 or 7 (as appropriate) of the Financial Reporting Act.

FMA means the Financial Markets Authority.

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

FMCA means the *Financial Markets Conduct Act 2013*.

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

Interest Payment Date means in relation to a Bond, the dates specified as such in the relevant Supplemental Deed.

Interest Rate means, in relation to a Bond, the rate of interest (if any) payable in respect of that Bond specified in or determined in accordance with the relevant Supplemental Deed and recorded as such in the Register in respect of that Bond.

Issue Date means, in relation to a Bond, the date on which that Bond is issued, being the date recorded as such in the relevant Register.

Issue Price means, in relation to a Bond, the amount specified as such in the relevant Supplemental Deed or, if no such amount is specified, means the face value of that Bond.

Listed means listed and quoted on the NZX Debt Market or any alternative or successor recognised stock exchange, and Listing has a corresponding meaning.

Listing Rules means the NZX Main Board/Debt Market Listing Rules or, if the relevant Bonds are listed on an alternative or successor exchange, the listing rules of that exchange, in each case as in force from time to time and applicable to the Issuer and the relevant Bonds.

Material Adverse Change means a material adverse change:

- (a) with respect to the financial position, business or operations of the Issuer; or
- (b) in the Issuer's ability to repay the Bond Moneys in accordance with this deed; or
- (c) on the Supervisor's ability to recover the Bond Moneys or to enforce the performance of the Issuer's obligations under this deed.

Maturity Date means, in relation to a Bond, the final date for the repayment of that Bond, being the date specified or determined in accordance with the relevant Supplemental Deed and recorded as such in the relevant Register.

Minimum Principal Amount means, in relation to a Series, the minimum Principal Amount for that Series for subscription and/or holding and transfer specified in the relevant Supplemental Deed.

Non-Resident Holder means a Holder or (where applicable) any person beneficially deriving the interest under the Bond, in each case who is not a Tax resident in New Zealand and who:

- (a) does not derive the interest for the purposes of a business that the non-resident carries on in New Zealand through a fixed establishment in New Zealand; or
- (b) where the non-resident is a bank, is not registered as such under New Zealand law and is not engaged in business in New Zealand through a fixed establishment in New Zealand.

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.

NZX means NZX Limited.

NZX Debt Market means the debt security market operated by NZX.

Offer Document means, in relation to any Series, any information memorandum, product disclosure statement, offering circular or other offering document relating to that Series which has been prepared by, or on behalf and with the approval of, the Issuer in relation to the relevant Series and shall include all supplements or amendments to, the relevant document.

PPSA means the *Personal Property Securities Act 1999*.

Principal Amount means, in relation to a Bond, the amount (other than interest) payable on redemption or repayment of that Bond set out in the relevant Conditions, being the amount recorded as such, or determined by reference to a formula set out, in the relevant Register in respect of that Bond.

Record Date means, in relation to a payment, 5.00pm on the tenth business day before the due date for that payment or, if that day is not a business day, the immediately preceding business day.

Register means, in relation to a Series, the register of Bonds maintained by the relevant Registrar in accordance with the provisions of this deed and any applicable Agency Agreement.

Registrar means, in respect of any Series, the person or persons named in the relevant Supplemental Deed for that Series as being the person which maintains the Register in respect of that Series and undertakes any other functions specified in its terms of appointment, or any successor agent appointed.

Related Company has the meaning given in section 2(3) of the Companies Act 1993.

Retail Series means a Series which is offered under a regulated offer (as defined in the FMCA) or offered in reliance on clause 19 of Schedule 1 to the FMCA or is expressed in the relevant Supplemental Deed to be a "Retail Series", and **Retail Bond** means a Bond which is part of a Retail Series and **Retail Holder** means a Holder of a Retail Bond.

RWT Exemption Certificate means a certificate issued by the Commissioner of Inland Revenue in accordance with section RE 27 of the Income Tax Act 2007.

Security Interest means:

- (a) a mortgage, pledge, charge, lien, assignment, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (b) a "security interest" as defined in the PPSA.

Series means the Bonds issued pursuant to a particular Supplemental Deed (which may be issued in one or more Tranches).

Statement means a holding statement issued by the Issuer (or the Registrar on its behalf) to a Holder in relation to the Listed Bonds held by that Holder, in compliance with the Listing Rules.

Supervisor means The New Zealand Guardian Trust Company Limited or any replacement Supervisor appointed under this deed.

Supplemental Deed means a deed supplemental to this deed entered into by the Issuer and the Supervisor pursuant to clause 2.5 (*Supplemental Deed*) constituting and setting out the conditions of a particular Series or Tranche.

Tax includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called (including Approved Issuer Levy), imposed or levied by any governmental agency, in each case together with any interest, penalty, charge, fee or other amount imposed or made on or in relation to any of the foregoing.

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

Transaction Documents means, in relation to a Tranche or Series, this deed, the relevant Supplemental Deed, the relevant Agency Agreement and each other document specified as such in the relevant Supplemental Deed.

Trust Powers means, in relation to a Bond, the trusts, powers, authorities and discretions vested in the Supervisor by this deed, the relevant Supplemental Deed in relation to that Bond and, where relevant, by law.

Wholesale Series means a Series which is expressed in the relevant Supplemental Deed to be a "Wholesale Series" or is not permitted, in accordance with the relevant Conditions, to be offered or sold to any retail investor, and **Wholesale Bond** means a Bond which is part of a Wholesale Series and **Wholesale Holder** means a Holder of a Wholesale Bond.

1.2 References

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

authorisation means:

- (a) an authorisation, consent, approval, agreement, notarisation, certificate, permission, authority, licence, exemption, filing, lodgement or registration; or
- (b) in relation to anything which will be fully or partly prohibited or restricted 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 that period without intervention or action;

borrowed money indebtedness means any indebtedness in respect of money borrowed or raised (whether or not for cash and by whatever means), including acceptances, deposits, discountings, factorings, finance or capital leases, hire purchase agreements, sale and leasebacks, sales and repurchases and any form of balance sheet financing, and also includes any indebtedness for the deferred purchase price of assets and services (except for assets and services obtained on normal trade terms in the ordinary course of trading);

business day means a day (other than a Saturday or Sunday) on which registered banks are generally open for business in Auckland and Wellington except that in the context of the Listing Rules it means a day on which the NZX Debt Market is open for trading;

debt security has the meaning given to it in the FMCA;

this deed means:

- (a) this deed; and
- (b) where used or to be interpreted in relation to a particular Series, includes the Supplemental Deed for that Series and means this deed as modified and supplemented by that Supplemental Deed;

dissolution means, in relation to a person:

- (a) the bankruptcy, winding-up or liquidation of that person;

- (b) the removal from any relevant register applicable to that person;
- (c) any amalgamation under the Companies Act where that person is not the surviving entity; and
- (d) any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business;

expenses includes all expenses, losses, claims, costs (including legal costs on a solicitor and own client basis), disbursements, Taxes, travel expenses, out of pocket expenses, and audit, investigative or administrative costs;

governmental agency means any government or any governmental, semi-governmental, regulatory or judicial entity, agency or authority (including a local authority), or legislative body, or any person or body charged with the administration of any law and also includes any stock exchange or self-regulatory organisation established under statute;

indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint, several or joint and several, and as principal, surety or otherwise) for the payment or repayment or delivery of money;

issuer obligation has the same meaning set out in the FMCA, being an obligation imposed on the Issuer under this deed in respect of the relevant Retail Series, the terms of the offer of that Retail Series, the FMCA or any court order relating to that Retail Series;

law includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute or other legislative measure, in each case of any jurisdiction whatever, and **lawful** and **unlawful** shall be construed accordingly;

outstanding means all Bonds other than:

- (a) those which have been repaid or redeemed in full in accordance with the Conditions relevant to those Bonds;
- (b) any Bonds:
 - (i) for which the date for repayment or redemption pursuant to the relevant Conditions has occurred; and
 - (ii) the repayment or redemption moneys (including any interest accrued on those moneys to the date for such repayment or redemption) for which have been duly paid to or to the order of the Supervisor or to any relevant paying agent and remain available for payment; and
- (c) those which have been purchased and cancelled in accordance with the Conditions relevant to those Bonds;

payment includes satisfaction of a monetary obligation;

person includes an individual, firm, organisation, a body corporate, any association of persons (whether corporate or not), a trust and a state and any governmental agency (in each case whether or not having separate legal personality);

qualified auditor shall be construed in accordance with the FMCA;

regulated offer shall be construed in accordance with the FMCA;

retail investor shall be construed in accordance with the FMCA;

wholesale investor shall be construed in accordance with the FMCA;

working days has the meaning given to it in the *Interpretation Act 1999*; and

written and **in writing** includes all means of reproducing words, figures and symbols in a tangible and permanently visible form including by facsimile transmission.

1.3 Cross references and Statutory definitions

- (a) 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 Deed in relation to that Series, be deemed to be a cross-reference to that clause as so amended or substituted.

- (b) Unless inconsistent with specific definitions contained in this deed, words defined in the Companies Act, the FMCA or the Financial Reporting Act have the same meanings in this deed. In the case of conflict, the definitions in the FMCA prevail over those in the Companies Act and the Financial Reporting Act, and the definitions in the Financial Reporting Act prevail over those in the Companies Act.
- (c) Expressions that are utilised in connection with accounting functions or reporting or in the description of either thereof in this deed shall bear the respective meanings accepted in respect of or ascribed to them in the preparation of the latest financial statements of the Issuer.

1.4 Construction

In this deed, unless the context requires otherwise:

- (a) **(headings)** headings are inserted for convenience only, and do not affect interpretation;
- (b) **(singular and plural)** the singular includes the plural and vice versa;
- (c) **(clauses)** references to clauses, sub-clauses, paragraphs and Schedules are to the clauses, sub-clauses and paragraphs of, and schedules to, this deed;
- (d) **(legislation)** a reference to legislation or to a provision of legislation includes any amendments, and re-enactments of it, a legislative provision substituted for it and a statutory regulation, a rule, order or instrument made under or issued pursuant to it;
- (e) **(agreements or document)** reference to any deed (including this deed), agreement or other instrument are to be read as referring to that deed, agreement or other instrument as from time to time modified, amended, supplemented, novated or replaced from time to time;
- (f) **(Listing Rules)** reference to a requirement of the Listing Rules means such requirement as modified, novated, supplemented, varied or replaced from time to time;
- (g) **(time)** a reference to a time of day is a reference to New Zealand time unless otherwise stated; and
- (h) **(successors and assigns)** a reference to a particular party or person includes that party's or person's executors, administrators, successors, substitutes and permitted assigns.

2. Issue and form of Bonds

2.1 Power to issue Bonds

The Issuer may issue Bonds 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 and specified in the relevant Supplemental Deed.

2.2 Form of Bonds

Without limiting clause 2.1 (*Power to issue Bonds*), Bonds may be issued on terms such that the Principal Amount is a fixed amount, a reducing amount or an amount to be calculated by reference to an index and/or that interest will be calculated by reference to a specific interest rate (which may be a fixed rate or a margin over a base rate) or by reference to an index or both. Bonds may be Retail Bonds or Wholesale Bonds, in each case as specified in the relevant Conditions.

2.3 Creation and issue

- (a) Bonds of a Series are constituted when the Supplemental Deed for that Series has been executed by the Issuer and the Supervisor and any conditions to the constitution of such Bonds have been satisfied or waived.
- (b) Bonds of a Series are issued by the Issuer (or the Registrar on its behalf) entering in the relevant Register the particulars of those Bonds.
- (c) Bonds will be issued on the basis that the relevant Series may be offered or sold under a regulated offer (being a Retail Series) or on the basis that the relevant Series is not

permitted to be offered or sold to retail investors and may only be offered to wholesale investors (being a Wholesale Series), as specified in the relevant Supplemental Deed.

- (d) Bonds shall be issued and held subject to the applicable Conditions, all of which will be binding upon the Issuer, the Supervisor and the Holders and all persons claiming through and under them respectively. The Holders and all persons claiming by or through them shall be deemed to have notice of the applicable Conditions, the provisions of this deed and each other Transaction Document in relation to the relevant Series.

2.4 Listing

Bonds may be Listed or unlisted as specified in the relevant Supplemental Deed. If the Supplemental Deed relating to a Bond specifies that the Bond is to be Listed, the Issuer must issue, or cause to be issued, to each Holder, a Statement in relation to the Bond in accordance with, and in the time required by, the Listing Rules.

2.5 Supplemental Deed

- (a) Bonds shall be constituted by this deed as supplemented by the relevant Supplemental Deed and issued in a Series which may be separated into Tranches. Each Tranche which forms part of a Series shall be subject to the terms and conditions set out in the relevant Supplemental Deed and (as modified by that Supplemental Deed) this deed.
- (b) To the extent that the Supplemental Deed for a Series modifies this deed, or in the event of any conflict between the provisions of that Supplemental Deed and those of this deed, that Supplemental Deed shall prevail over this deed in relation to that Series.
- (c) The provisions of the relevant Supplemental Deed and this deed, read together in accordance with this clause 2.5 (*Supplemental Deed*), shall constitute the Conditions for the Bonds of the relevant Series.
- (d) For the avoidance of doubt, the Holders of a Series will not receive any benefit in respect of the Bonds of that Series from the obligations of the Issuer or any other person in respect of Bonds issued pursuant to another Series.

2.6 Enforcement of Holders' rights

- (a) The Supervisor holds its rights and benefits under this deed, the relevant Supplemental Deed and any relevant law in trust for the benefit of the Retail Holders and (only to the extent expressly set out in this deed and the relevant Conditions) the Wholesale Holders, including in the case of Retail Holders (without limitation):
 - (i) the right to enforce the Issuer's duty to repay the Principal Amount, or to pay interest, under the terms of the Bonds;
 - (ii) any charge or security for repayment; and
 - (iii) the right to enforce any other duties that the Issuer and any other person have under the Conditions of any Retail Bonds, or the provisions of this deed or the FMCA, when applicable, in relation to the Retail Bonds.
- (b) No Retail Holder shall be entitled to enforce any of its rights or remedies under the applicable Transaction Documents directly against the Issuer unless the Supervisor fails to enforce such rights or remedies within a reasonable period after having become bound to do so in accordance with this deed.
- (c) Wholesale Holders may enforce any of their rights or remedies under this deed or the relevant Supplemental Deed directly against the Issuer.

2.7 Features of Bonds

Each Bond shall:

- (a) be in uncertificated book entry form;
- (b) be denominated in Dollars (unless otherwise specified in the relevant Supplemental Deed); and
- (c) have a face value of NZ\$1.00 or such other amount as may be specified in the relevant Supplemental Deed.

2.8 Minimum Principal Amount

Each Series may have a Minimum Principal Amount for holdings and/or transfers of Bonds of that Series and also may have a minimum multiple for any holdings and/or transfers, in each case as specified in the relevant Supplemental Deed.

3. Status of bonds

3.1 Status of Bonds generally

Unless specified otherwise in the relevant Supplemental Deed, the Bonds are and will at all times be direct, unsecured, unsubordinated and unconditional indebtedness of the Issuer.

3.2 Status of Bonds

Unless specified otherwise in the relevant Supplemental Deed, the Bonds 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 (except indebtedness preferred solely by operation of law and subject to general laws affecting creditors' rights generally and equitable principles of general application).

3.3 Purchase or cancellation

Except as provided in the Conditions in relation to a Series:

- (a) the Issuer or any other member of the Consolidated Group may, but is not obliged to, purchase Bonds from any person, at any time, on any market or by private treaty and at any price; and
- (b) in the case of Bonds purchased by the Issuer, any Bonds so purchased may be cancelled by the Issuer or held by it as treasury stock and re-issued.

4. Title and transfer

4.1 Certificates

At the request of a Holder, or otherwise as required by the FMCA, the Listing Rules or any applicable law, the Issuer shall procure the relevant Registrar of the relevant Bonds to issue to that Holder a confirmation, certificate, Statement or notice of registration in relation to the Bonds held by that Holder, such confirmation, certificate, Statement or notice to be provided in the manner required by the FMCA (if applicable) and to be in the form agreed between the Issuer and the relevant Registrar and to comply with the law and, in respect of any Listed Bonds, the Listing Rules. A confirmation, Statement, certificate or notice of registration issued in respect of a Bond will not constitute a document of title. Entitlement will be determined solely by entry in the relevant Register and, in the case of the beneficial interest in Bonds lodged in NZClear, the records of NZClear.

4.2 Form of transfer

A Holder may transfer any Bond held by it by:

- (a) delivery to the Registrar of a written instrument of transfer in any commonly used form that complies with the standard form and procedures of the Registrar and, if applicable, the FMCA or the Listing Rules; or
- (b) any other method of transfer of marketable securities that is not contrary to any law and that may be operated in accordance with any Listing Rules (if applicable) and that is approved by the Issuer; or
- (c) instructing the Registrar to transfer the Bond into the name(s) of the transferee(s) through NZClear.

The entry of the name of a transferee of a Bond in the relevant Register at the relevant time will constitute the passing of title in that Bond.

4.3 Bonds separate

Each Bond is a separate debt of the Issuer and may be transferred separately from any other Bond held by a Holder.

4.4 Partial transfers

A Holder may transfer part of its interest in a Bond. However, no transfer of any part of its interest may be effected if such transfer would result in the transferor or the transferee holding or continuing to hold Bonds with an aggregate Principal Amount other than an amount equal to the applicable Minimum Principal Amount (or minimum multiple above that).

4.5 Fees

- (a) The Issuer shall, and shall procure that each Registrar will, make no service charge to the Holders for the registration of any holding of Bonds or the transfer of registered title to any Bonds.
- (b) The Issuer and each Registrar may, however, require the payment of any Taxes and other governmental charges payable as a result of any transfer.

4.6 Selling restrictions

- (a) Each Holder shall only offer for sale or sell any Bond in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) Without limiting the generality of clause 4.6(a), Bonds which are expressed in the relevant Supplemental Deed to be part of a Wholesale Series shall not be offered or sold by the Issuer or any Holder to any investors where the offer to at least one of those investors would require disclosure under Part 3 of the FMCA.
- (c) No Offer Document or any advertisement or other offering material in respect of any Bond 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.
- (d) In respect of a Series, the Issuer may specify any further selling restrictions it considers necessary or appropriate in an Offer Document (including any document or information lodged on the Disclose Register) for that Series, and no Bonds may be offered or sold by the Issuer or any Holder in breach of any such further selling restrictions.
- (e) The Supplemental Deed for any Series may set out additional selling restrictions.

4.7 Indemnity for breach of selling restrictions

Subject to clause 17.1 (*Supervisor not Indemnified*), each Holder, by subscribing for or otherwise acquiring a Bond, agrees to indemnify the Issuer, the Supervisor and any arranger, lead manager, manager, co-manager, dealer, organising participant or other primary market participant invited by the lead manager and/or lead arranger to participate in the offer as part of the selling syndicate (other than in respect of itself), and their respective directors, officers, employees and agents, in respect of any Tranche, for any liability, cost, loss or damages suffered by any one or more of them by reason of any breach of the selling restrictions referred to in clause 4.6 (*Selling restrictions*). Any moneys paid by any of the Issuer, the Supervisor and any arranger, lead manager, dealer, organising participant or other primary market participant invited by the lead manager and/or lead arranger in respect of such liability, cost, loss or damage may be recovered from the Holder as a debt due and may be withheld from any further payments to that Holder. Nothing in this clause 4.7 (*Indemnity for breach of selling restrictions*) limits or affects any other right or remedy.

5. Register

5.1 Register

The Issuer shall, at all times while Bonds are outstanding, cause the Registrar for each Series to maintain the Register for that Series in New Zealand, which must record in respect of each Bond the information required by law (including information required under section 217(1) of the FMCA) and any other information agreed between the Issuer and the Registrar for the relevant Bonds.

5.2 Disclosure and Inspection

- (a) The Issuer shall ensure that the Registrar of the relevant Bonds discloses to a Holder who so requests any information held on the Register which relates to the Bond(s) registered in the name of that Holder and all other information and matters required by applicable law.

- (b) The Issuer and the Supervisor may, at all reasonable times during the office hours of the relevant Registrar and subject to any applicable law, inspect and take extracts (including electronic copies) from each Register. Such an extract does not evidence title to any Bond.
- (c) The Issuer will procure that the Registrar will make available for inspection and provide copies of or extracts from, the Register to the extent required by, and in accordance with, the FMCA, the FMC Regulations and any other applicable law.

5.3 Register conclusive

- (a) Except as ordered by a court of competent jurisdiction, the Issuer, the Supervisor and each Registrar are each entitled to recognise the Holder of a Bond as the absolute owner of the Bond and shall not be:
 - (i) bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance, Security Interest or other adverse interest to which any Bond may be subject; or
 - (ii) required to enter on any Register any recognition of any trust (express, implied or constructive), encumbrance, Security Interest or order adverse interest in which any Bond may be subject.
- (b) In the event of any conflict between any confirmation, certificate, Statement or notice of registration issued in respect of a Bond and a Register, the Register shall prevail.

5.4 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, including due to any fraud.

5.5 Co-ownership Bonds

- (a) Where two or more persons are registered as Holders of the same Bond(s) by virtue of any application for Bonds, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application, memorandum or other instrument, those persons will be deemed to hold the Bond(s) as joint tenants with right of survivorship.
- (b) If two or more persons apply (on an application for any Bonds or by memorandum of transfer or other instrument) to be registered as Holders as tenants in common, the relevant Registrar may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share. If the Bonds cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amount (and any minimum multiples thereof), the relevant Registrar may refuse to accept the application, memorandum of transfer or other instrument (as the case may be).

5.6 Acquisition of Bonds by operation of law

When the right to any Bond is acquired by any person in any manner other than by way of a transfer under this deed or the relevant Supplemental 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 Bonds, 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 Bond, will enter that person's name in the Register as the Holder of that Bond accordingly.

5.7 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 relevant Registrar in writing by the Holder, or if a joint holding by all the joint Holders (and, for the avoidance of doubt, this clause 5.7 (*Notification by Holders*) does not place any obligation on the Issuer).

5.8 Register compliance

The Issuer shall comply with, and shall use all reasonable endeavours to ensure that each Registrar complies with, all statutory requirements (including the Listing Rules where applicable) and the requirements of this deed and the relevant Supplemental Deed relating to each Register.

Without limiting the generality of the foregoing, the Register in respect of any Retail Series shall be audited in accordance with the requirements of the FMCA and FMC Regulations, including the applicable auditing and assurance standards (as defined by reference to section 6 of the FMCA) by the Auditor (or such other qualified auditor that is acceptable to the Supervisor), at the times required by the FMC Regulations and at such times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements of this clause 5 are not being complied with in relation to the Register for any Retail Series.

5.9 Reliance on documents

The Issuer, the Supervisor 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 or other document which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer, the Supervisor or the Registrar had actual notice of such forgery or defect at the time of registration of such instrument of transfer or other document.

5.10 No liability

No Registrar will be liable for any breach by the Issuer of any representation, obligation or 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.

6. Payment of Principal Amount and interest

6.1 Determination of Principal Amount

The Principal Amount of each Bond shall be the amount recorded as such in the Register in respect of that Bond, which may be par or face value or the amount calculated by the relevant Registrar by reference to a formula specified in the relevant Supplemental Deed.

6.2 Principal Amount of Retail Bonds

Subject to clause 6.4 (*Payments to Retail Holders*), the Issuer shall, on the Maturity Date of each Retail Bond, pay or cause to be paid to, or to the order of, the Supervisor the Principal Amount of that Retail Bond in accordance with the relevant Conditions.

6.3 Interest and other amounts on Retail Bonds

Subject to clause 6.4 (*Payments to Retail Holders*), the Issuer shall, on each Interest Payment Date or otherwise as and when due and payable in accordance with the relevant Conditions, unconditionally pay or cause to be paid to, or to the order of, the Supervisor all interest and other amounts payable in respect of each Retail Bond in accordance with the relevant Conditions.

6.4 Payments to Retail Holders

Notwithstanding clause 6.2 (*Principal Amount of Retail Bonds*) and clause 6.3 (*Interest and other amounts on Retail Bonds*), the Issuer shall, on the Maturity Date or otherwise as and when due and payable in accordance with the relevant Conditions applicable to each Retail Bond, unless and until otherwise requested by the Supervisor and without the need for any Retail Holder or the Supervisor to give notice that payment is required, pay or cause to be paid to, or to the order of, the relevant Retail Holder the Principal Amount, interest and other amounts payable in respect of that Retail Bond in accordance with the relevant Conditions applicable to that Retail Bond. 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 6.2 (*Principal Amount of Retail Bonds*) and clause 6.3 (*Interest and other amounts on Retail Bonds*).

6.5 Payments to Wholesale Holders

The Issuer shall:

- (a) on the Maturity Date of each Wholesale Bond, pay or cause to be paid to, or to the order of, the relevant Wholesale Holder the Principal Amount of that Wholesale Bond in accordance with the relevant Conditions; and
- (b) on each Interest Payment Date or otherwise as and when due and payable in accordance with the Conditions applicable to each Wholesale Bond, unconditionally pay or cause to

be paid to, or to the order of, the relevant Wholesale Holder all interest and other amounts payable in respect of that Wholesale Bond in accordance with the relevant Conditions.

6.6 Non-payment

Each Bond will cease to bear interest from its Maturity Date unless payment of the Principal Amount is not made in full on that date. In such event, interest will continue to accrue (after, as well as before, any judgment) on the unpaid portion up to but excluding the date on which payment in full of the Principal Amount is made.

6.7 Default Interest

If any amount payable in respect of a Bond is not paid on its due date, Default Interest shall accrue on the unpaid amount (net of any interim or progress payments made including by way of deduction for withholding tax) (after, as well as before, judgment) at the rate specified in the relevant Supplemental Deed or, if no rate is specified, the rate determined by the Calculation Agent to be the aggregate of the applicable Interest Rate and (2%) per annum. Default Interest shall be compounded monthly until paid. For the avoidance of doubt, this clause 6.7 (*Default Interest*) shall not apply in relation to payments of interest on any Bonds which have been suspended in accordance with the Conditions of those Bonds.

6.8 Payments through Registrar as Paying Agent

Unless the Supervisor notifies the Issuer otherwise, or except as otherwise specified in the relevant Conditions, all payments from the Issuer to Holders in relation to the Bonds shall be effected by the Registrar on its behalf as paying agent of the Issuer, and the Issuer shall ensure that the Registrar is directly placed in funds in sufficient time to enable it to make such payments.

7. Payments

7.1 Payment to Holder

Payment of the Principal Amount of, and interest (if any) on, a Bond (less any amount required to be deducted in accordance with clause 8 (*Taxes*)) shall be made to the person whose name appears in the Register for the relevant Series as the Holder of the Bond on the relevant Record Date, unless the relevant Conditions require otherwise. If more than one person is so named in the Register, payment will be made to the first person so named, unless specified otherwise in the Conditions of the Bond.

7.2 Method of payment

- (a) If the Issuer pays an amount in relation to a Bond in accordance with clause 6.4 (*Payments to Retail Holders*) or clause 6.5 (*Payments to Wholesale Holders*), all payments in respect of that Bond shall be paid by the Registrar by direct credit to a bank account specified by that Holder by written notice from time to time or, in the absence of such specification, by cheque sent to the address of the Holder as recorded in the relevant Register. A Holder may, at any time prior to the Record Date for a payment, amend any notice so given, provided that no amendment of a notice shall have effect unless another address or bank account is specified by that Holder.
- (b) No notice or amendment of a notice given under clause 7.2(a) will have effect in respect of any payment unless received by the Registrar on or before the Record Date for that payment (with a valid bank account or address specified). A notice from one of several Holders of the same Bonds shall be deemed to be given by all such Holders.
- (c) If, for whatever reason, at any time a Holder has provided neither a current address nor current details of a bank account to the Registrar, any payments in respect of any Bond to that Holder shall be deemed to be unclaimed money for the purpose of clause 7.5 (*Unclaimed payments*).

7.3 Receipt of Payments

- (a) If payment is made to a bank account of a Holder, that payment shall be deemed to have been received by that Holder on the due date for payment if an irrevocable instruction for the making of that payment by electronic transfer is given, being an instruction which would reasonably be expected to result, in the ordinary course of banking business, in the funds the subject of the transfer reaching the bank account of the Holder on or before the

due date, even if the funds the subject of the transfer do not actually reach that bank account on that date.

- (b) No further amount will be payable in respect of the relevant Bond as a result of funds the subject of such electronic transfer not reaching the bank account of the Holder on the due date.
- (c) Nothing in paragraphs (a) or (b) above shall in any way limit or prejudice the Issuer's obligation to pay any amount to a Holder under or pursuant to this deed, a Supplemental Deed or a Bond.

7.4 Business day

If any due date (**Original Due Date**) for a payment in relation to a Bond is not a business day, the due date for the payment to be made on that date will, subject to the terms of the relevant Supplemental Deed, be:

- (a) in relation to a fixed rate Bond (being a Bond bearing a fixed rate of interest), the next following business day; and
- (b) in relation to a floating rate Bond (being a Bond bearing interest at a margin over a base rate), the next following business day unless that following business day falls in the next calendar month, in which case the due date for payment to be made will be the first business day preceding the relevant Original Due Date,

and all other provisions of this deed and each Agency Agreement will be read and construed accordingly.

7.5 Unclaimed payments

- (a) (**Retail Bonds**) In respect of any Retail Bond, if any payment made by the Issuer to any Retail Holder of that Retail Bond to the address, or into the bank account, last specified by that Retail Holder to the Issuer or the Registrar is returned unclaimed (or address or bank account details are not provided as set out in clause 7.2(c)), the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the relevant Register) be retained by the relevant Registrar 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 unclaimed amount if it remains unclaimed six years after the original date of payment.
- (b) (**Wholesale Bonds**) In respect of any Wholesale Bonds, if any payment made by the Issuer to any Wholesale Holder of that Wholesale Bond to the address, or into the bank account, last specified by that Wholesale Holder to the Issuer or the Registrar is returned unclaimed (or address or bank account details are not provided as set out in clause 7.2(c)), the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the relevant Register) be returned to the Issuer unless it is otherwise agreed between the Issuer and the Registrar for the relevant Wholesale Bonds that such unclaimed monies are to be retained by the Registrar. The Issuer will have no liability in respect of the unclaimed amount if it remains unclaimed six years after the original date of payment.

7.6 Reinstatement

If any payment made to a Holder by, or on behalf of, the Issuer is subsequently rescinded, avoided by law, required to be repaid to a liquidator or similar official of the Issuer 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 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.

8. Taxes

8.1 Deductions or withholdings

Subject to clause 8.2(d), all sums payable under a Bond or under this deed or any relevant Supplemental Deed must be paid without set-off or counterclaim and free and clear of, and without deduction of or withholding on account of any Tax or otherwise unless such a withholding or deduction is required by law.

8.2 Non-resident withholding tax

- (a) Provided that it is lawfully able to, the Issuer shall ensure that it is, at all times while any amount is owing to any Holder under or in respect of this deed, registered as an "approved issuer" (as defined in section YA 1 of the Income Tax Act 2007) and that this deed and each other Transaction Document in relation to each Series is registered with the Commissioner of Inland Revenue as a "registered security" (as defined in section YA 1 of the Income Tax Act 2007) such as to enable the payment of Approved Issuer Levy in respect of any interest payable in respect of all Bonds issued thereunder.
- (b) In respect of any Series, unless:
 - (i) otherwise stated in the relevant Offer Document; or
 - (ii) the relevant Non-Resident Holder notifies the Issuer that it elects that non-resident withholding tax be deducted from payments to it instead of the Approved Issuer Levy (and has not, at least 10 business days prior to the relevant payment, revoked such notice); or
 - (iii) the Issuer is not lawfully able to do so,the Issuer shall elect to apply a 0% rate of non-resident withholding tax to any payment of interest (or payments deemed by law to be interest) to a Non-Resident Holder. Upon such election, the Issuer, or the relevant Registrar on its behalf, shall take such steps as are necessary to apply the 0% rate, including applying the Approved Issuer Levy regime or providing the required information to the appropriate governmental agency.
- (c) Upon application of the Approved Issuer Levy regime the Issuer will:
 - (i) to the extent it is able to do so, apply the zero rate under the Approved Issuer Levy regime; and
 - (ii) otherwise, pay the Approved Issuer Levy to the appropriate governmental agency.
- (d) The Issuer may, if it elects to do so in respect of any Series, deduct and retain for its own benefit an amount equal to any amount of Approved Issuer Levy so paid from the interest (or deemed interest) payable to the Holder in lieu of deducting non-resident withholding tax from that payment at the rate otherwise applicable.
- (e) If the Approved Issuer Levy regime does not apply or the Non-Resident Holder has so elected, then non-resident withholding tax will be deducted at the applicable rate from payments of interest (or payments deemed by law to be interest) to that Non-Resident Holder.
- (f) If a Non-Resident Holder derives interest jointly with one or more New Zealand tax resident Holders, non-resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) at the applicable rate.

8.3 Resident withholding tax

New Zealand resident withholding tax will be deducted by the Registrar from payments of interest (or payments deemed by law to be interest) to any Holder other than a Non-Resident Holder, unless the Holder is able to establish to the satisfaction of the Issuer, or the relevant Registrar on its behalf, either by means of a copy of an RWT Exemption Certificate or otherwise before the Record Date for the relevant payment, that no such Tax need be deducted.

8.4 No gross-up; indemnity

- (a) 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 Bonds under clauses 8.2 (*Non-resident withholding tax*) or 8.3 (*Resident withholding tax*) or that arises under or in connection with FATCA.

- (b) If, in respect of any Bond, the Registrar, the Issuer or the Supervisor becomes liable to make any payment of, or on account of, Tax payable by any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond), then the relevant Holder shall indemnify the Registrar, the Issuer or the Supervisor (as appropriate) in respect of such liability. Any moneys paid by the relevant Registrar, the Issuer or the Supervisor in respect of such liability may be recovered from the Holder as a debt due to the relevant Registrar, the Issuer or the Supervisor and may be withheld from any further payments to that Holder.
- (c) Nothing in this clause 8.4 (*No gross-up; indemnity*) will prejudice or affect any other right or remedy of the Registrar for the relevant Series, the Issuer or the Supervisor.

8.5 Maximum rate

Deductions or withholdings of non-resident or resident withholding tax will be made, at the Issuer's election, either at the rate specified by a Holder or at the maximum rates from time to time applicable unless a Holder (or, if applicable, any person who beneficially derives interest under the relevant Bond) provides evidence to the Issuer or the relevant Registrar (acceptable to it) that a lesser rate or an exemption is applicable.

8.6 Tax status

- (a) The Issuer, the Supervisor and the Registrar shall be entitled for the purposes of this clause 8 (*Taxes*) to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Holder in relation to that Holder's Tax status or Tax residency, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Bonds.
- (b) If the Holder notifies the Registrar in writing that another person beneficially derives interest under a Bond, the Holder shall confirm whether it should be treated as a Non-Resident Holder for the purpose of this clause 8 (*Taxes*) due to the Tax residency of that other person, and the Issuer, the Supervisor and the Registrar shall proceed accordingly.

8.7 Tax details

- (a) Each Holder shall give written notice to the Registrar of: (i) its country of residency for Taxation purposes; (ii) whether the Holder is a Non-Resident Holder; (iii) if relevant, equivalent details regarding any person beneficially deriving the interest under the Bond; and (iv) any other information requested by the Registrar in order to determine the payment or withholding obligations of the Issuer, and for the purposes of the Issuer's compliance with any law including FATCA and the CRS. A Holder must also notify the Registrar prior to the Record Date in respect of any Interest Payment Date of any change in circumstances from those previously notified that could affect the payment or withholding obligations of the Issuer, or the Issuer's compliance with its obligations under FATCA and the CRS.
- (b) As part of its compliance with FATCA and the CRS, the Issuer may be required to provide information about a Holder to the New Zealand Inland Revenue (who may pass on that information to another tax authority). The Holder acknowledges that the Issuer is not liable for any resulting consequence arising from the Issuer's compliance with FATCA and the CRS.

9. Representations and warranties

9.1 Issuer representations and warranties

The Issuer represents and warrants to the Supervisor and the Holders that:

- (a) (**incorporation**) it is a company duly incorporated and validly existing under the laws of New Zealand;
- (b) (**capacity**) it has the power to enter into, perform, deliver and comply with its obligations under each Transaction Document to which it is a party and to issue Bonds;

- (c) **(authorisations)** it has taken all necessary corporate and other relevant action required to be taken to authorise the entry into and performance of, and compliance with, its obligations under each Transaction Document to which it is a party and to issue Bonds;
- (d) **(binding obligations)** its obligations under each Transaction Document to which it is a party, and the Bonds (once issued) are legal, valid, binding and enforceable (subject to laws relating to creditors rights generally and to the application of equitable principles);
- (e) **(no conflict)** to the best of its knowledge, the execution, delivery and performance by it of its obligations under each Transaction Document to which it is a party do not (and the Bonds when issued will not) violate:
 - (i) any law applicable to it;
 - (ii) its constitution; or
 - (iii) any agreement or other instrument binding upon it or any material part of its assets, any breach of which would reasonably be expected to have a Material Adverse Change;
- (f) **(no Event of Default)** no Event of Default has occurred and is continuing; and
- (g) **(Supplemental Deed)** in relation to each Series held by the relevant Holders, any representations and warranties (if any) expressed to be for the benefit of the Holders in the Supplemental Deed for that Series are true and correct.

9.2 Supplemental Deed

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

9.3 Repetition

- (a) The representations and warranties contained in clause 9.1 (*Issuer representations and warranties*) shall be deemed to be repeated by the Issuer for the benefit of the Supervisor and the Holders on the Issue Date and each Interest Payment Date of each Bond.
- (b) In respect of a Series, subject to the terms of the relevant Supplemental Deed, the representations and warranties referred to in clause 9.2 (*Supplemental Deed*) (if any) shall be deemed to be repeated by the Issuer for the benefit of the Supervisor and the Holders of that Series on the Issue Date and each Interest Payment Date for the relevant Bonds only.

10. Undertakings

10.1 General undertakings

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

- (a) **(notify Event of Default)** promptly, and in no event later than 2 business days after it becomes known to the Chief Executive Officer or Chief Financial Officer of the Issuer, notify the Supervisor and any Wholesale Holders of the occurrence of any Event of Default;
- (b) **(FMCA and other laws)** comply with the applicable provisions of the FMCA, the FMC Regulations and any other applicable regulations made under the FMCA, and comply with all other applicable laws in relation to the Bonds in all material respects;
- (c) **(authorisations)** obtain, effect and promptly renew from time to time all material authorisations required under New Zealand law to enable it to perform and comply fully with its obligations under the Transaction Documents to which it is a party, including the Conditions for that Series, or required on its part for the validity or enforceability of this deed or any other Transaction Document to which it is party;
- (d) **(notices)** send to the Holders such statements or notices as may be required pursuant to applicable law or the Listing Rules;
- (e) **(quotation)** if the Offer Document for any Series of Bonds indicates that those Bonds are intended to be Listed, use its best endeavours to ensure that those Bonds are, promptly

after issue, quoted on the NZX Debt Market or any alternative or successor recognised stock exchange and that such quotation is maintained;

- (f) **(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) report 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;
- (g) **(serious financial problems)** if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent (as defined in the FMCA), as soon as practicable:
 - (i) disclose to the Supervisor all information relevant to that matter that is in the possession or under the control of the Issuer and that was obtained in the course of, or in connection with, the performance of its functions as Issuer; and
 - (ii) advise the Supervisor of the steps (if any) that the Issuer intends to take in respect of that matter and the date by which the steps are to be taken;
- (h) **(Notification)** ensure that:
 - (i) at the same time as it notifies the Registrar of Financial Service Providers under section 95 of the FMCA, notify the Supervisor of any 'prescribed changes' to the register as defined in section 95(2) of the FMCA; and
 - (ii) in respect of any other change to the register required for the purposes of section 57(1)(b)(ii) of the FMCA, notify the Supervisor within five working days after becoming aware of the change.

10.2 Supplemental Undertakings

In respect of each Series, the Issuer undertakes to the Holders of that Series and, in respect of Retail Bonds, the Supervisor that it will, for so long as any Bonds of that Series are outstanding:

- (a) **(Transaction Documents)** comply in all material respects with, and perform all material obligations under, each Transaction Document (including, without limitation, any financial undertakings set out in the relevant Supplemental Deed) for that Series to which it is a party;
- (b) **(Agency Agreement)** comply in all material respects with, and perform all material obligations under, each Agency Agreement for that Series;
- (c) **(Registrar)** give, or procure that the relevant Registrar gives, notice to the Supervisor and the relevant Holders of any resignation or removal of the Registrar for that Series and the appointment of any replacement Registrar promptly following such event, provided that so long as any Bond under that Series is outstanding, any resignation or removal of the Registrar shall not be effective until a new Registrar is duly appointed;
- (d) **(Register)** use all reasonable endeavours to cause the relevant Registrar to keep the relevant Register pursuant to the relevant Agency Agreement; and
- (e) **(compliance with Listing Rules)** where and for so long as any Series of Bonds is Listed, comply with all material obligations imposed by the Listing Rules applicable to debt securities, and without limiting the foregoing shall supply to Holders of the relevant Bonds such annual and/or half yearly reports and/or Statements by such times and in such manner as may be prescribed.

10.3 Reports and information

The Issuer covenants with the Supervisor that, so long as any Retail Bonds are outstanding, the Issuer will deliver to the Supervisor:

- (a) **(Annual Report and Financial Statements)** not later than 120 days (or by such other time as is prescribed under the Listing Rules) after the end of each of its financial years, a copy of the latest annual report, including the Financial Statements of the Consolidated

Group for the preceding financial year, prepared as at the last day of that financial year and duly audited;

- (b) **(Interim Report and Financial Statements)** not later than 90 days (or by such other time as is prescribed under the Listing Rules) after the end of each of its financial half-years, the latest Financial Statements of the Consolidated Group, in each case for the preceding half-year and prepared as at the last day of that financial half-year;
- (c) **(Directors' Report)** at the times of delivery of the latest annual report and Financial Statements pursuant to clauses 10.3(a) or 10.3(b) a Directors' Report in relation to each Retail Series signed by two Directors, stating the matters referred to therein as at the end of and in respect of such year or half-year as the case may be;
- (d) **(notices to Holders)** in respect of each Series, copies of all notices or other information given by it to Holders of that Series generally or, where any of the Bonds are Listed to NZX;
- (e) **(other information)** (to the extent lawfully entitled to do so) any other information which the Supervisor may reasonably request with respect to the business, assets or financial condition of the Issuer or the Consolidated Group;
- (f) **(requested information and reports)** if requested by the Supervisor (or a person authorised by the Supervisor to exercise its powers), within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor:
 - (i) make available to the Supervisor (or other authorised person) all documents and records relating to the Issuer; and
 - (ii) provide the Supervisor (or other authorised person) with any other reports or information required by the Supervisor (or other authorised person).

The reports or information may be about any matter relevant to the performance of the Supervisor's functions and include forward-looking reports;

- (g) **(Auditor's Report)** at the same time as the audited latest Financial Statements are provided in accordance with clause 10.3(a), a report by the Auditor stating:
 - (i) whether, in the course of performing its duties as Auditor, they have become aware of:
 - (A) any non-payment of Principal Amount or interest (including any suspension of interest) or any breach of the provisions of this deed, and if so giving particulars thereof; or
 - (B) 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 by the FMCA (if applicable) or any other law, and if so giving particulars thereof;
 - (ii) whether they have audited the Register for each Series for which they act as auditors, and to the extent that they have audited a Register, whether that Register has been duly maintained in accordance with the requirements of clause 5 (*Register*) and the FMCA;
 - (iii) 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 Holders;
 - (iv) that they have perused each of the Directors' Reports given since the last report by the Auditor (or the date of this deed, whichever is the later), and that, so far as matters which they have observed in the performance of their duties as auditors are concerned, nothing has come to their attention to show that the statements made in the Directors' Reports are not correct; and
 - (v) the aggregate Principal Amount of Bonds in each Series on issue and outstanding.

The report provided by the Auditor must be provided in such form as agreed between the Issuer and the Supervisor from time to time;

- (h) **(Register Audit)** if the Auditor has not audited the Register for a Series for whom they act as auditor, a report from another qualified auditor acceptable to the Supervisor confirming whether or not the Register for that Series has been duly maintained in accordance with the requirements of clause 5 (*Register*) and the FMCA.

10.4 Negative Undertakings

The Issuer undertakes to the Holders and, in respect of Retail Bonds, the Supervisor that, for so long as any Bonds of the Issuer are outstanding, it shall not issue an Offer Document (**Offer Document**) in respect of a Retail Series without prior consultation with the Supervisor, and not include any statement in any Offer Document in respect of a Retail Series, referring to the Supervisor without the prior written consent of the Supervisor (such consent is not to be unreasonably withheld or delayed).

10.5 Appointment of Auditor

For so long as any Retail Bonds are outstanding, the Issuer must, before recommending the appointment or reappointment of a person as an auditor of the Issuer:

- (a) consult with the Supervisor on such appointment or reappointment and the nature and scope of any assurance engagement in relation to the Issuer's compliance with this deed;
- (b) ensure that any comments of the Supervisor concerning the proposed Auditor are brought to the attention of the persons appointing or reappointing the Auditor;
- (c) give the Supervisor an opportunity to be a party to the assurance engagement for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the Supervisor's powers or duties; and
- (d) ensure that the terms of appointment of the Auditor, whether the Auditor is conducting an audit, review or other engagement, include that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, to raise or discuss:
 - (i) at the beginning of such engagement, any issues or concerns relevant to the exercise or performance of the Supervisor's powers or duties; and
 - (ii) matters arising in the performance of such engagement and to answer any questions the Supervisor may have concerning such engagement.

10.6 Resignation

For so long as any Retail Bonds are outstanding, the Issuer must 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 its appointment or declining to accept appointment or reappointment. The Issuer must not attempt to prevent any person who has resigned its appointment as an auditor, or declined to accept an appointment or reappointment as an auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

11. Default

11.1 Events of Default

If, in relation to a Series, any of the events specified as an event of default in the Supplemental Deed for that series, occurs, then at any time following such Event of Default, and for so long as that Event of Default is continuing unremedied:

- (a) **(Retail Series)** the Supervisor may in its discretion, and shall immediately upon being directed to do so by an Extraordinary Resolution passed by Holders of a Retail Series by notice in writing to the Issuer, declare the Principal Amount of the Bonds of that Retail Series together with interest and any other amounts payable thereon to be immediately due and payable; and
- (b) **(Wholesale Series)** a Wholesale Holder may by notice in writing to the Issuer, without prejudice to any other remedies which that Holder may have:
 - (i) where that Event of Default occurs as a result of non-payment of any amounts owing in connection with a Bond held by that Holder; or

- (ii) where that Event of Default occurs for any other reason and the Holders of the Wholesale Bonds resolve by Extraordinary Resolution to do so,

declare the Principal Amount of all (but not some only) of the Wholesale Bonds held by that Holder together with interest and any other amounts payable thereon to be immediately due and payable,

whereupon such amounts shall be immediately due and payable.

11.2 Distribution of funds in respect of Retail Bonds

All moneys received by the Supervisor in respect of Retail Bonds from or on behalf of 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 Retail Bonds) be held and applied:

- (a) first, subject to any direction made by any court, in payment of all amounts due to the Supervisor under this deed and the relevant Supplemental 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 Holders of those Retail Bonds, rateably in proportion to the Bond Moneys owing to them in respect of the Retail Bonds held by them; and
- (c) thirdly, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

12. Appointment of Supervisor

12.1 Appointment

The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor and trustee for the Retail Holders on the terms and conditions contained in this deed. The Supervisor shall have no duties or obligations to any Wholesale Holders, except as expressly set out in the conditions for any Series of Wholesale Bonds. The Supervisor shall hold in trust for the benefit of all Retail Holders the right to enforce any obligations or duties that the Issuer, any guarantor and any other person has under a Retail Bond, this deed and the FMCA, including the right to enforce the Issuer's obligation to repay a Holder the Principal Amount of the Retail Bonds held by that Holder, together with interest thereon, in accordance with the terms of this deed and, if applicable, any charge or security for repayment of the Retail Bonds. For the avoidance of doubt, the Supervisor is the licensed supervisor for the debt securities for the purposes of the FMCA.

12.2 Warranty

The Supervisor represents and warrants to the Issuer and the Retail Holders that it is licensed (as that term is defined in the FMCA) and that licence covers the supervision of all Retail Bonds issued under this deed. The representation and warranty contained in this clause 12.2 (*Warranty*) shall be deemed to be repeated for the benefit of the Issuer and each Retail Holder on the Issue Date and each Interest Payment Date of each Retail Bond.

13. Supervisor's fees, expenses and indemnities

13.1 Fees

The Issuer shall pay, or shall procure that another member of the Consolidated Group shall pay, to the Supervisor such fees (plus goods and services tax (if any)) as may be from time to time agreed by the Issuer and the Supervisor in writing.

13.2 Expenses

The Issuer shall pay, or shall procure that another member of the Consolidated Group shall pay, all out of pocket expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably and properly incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation, execution and (if applicable) registration of this deed, each Supplemental Deed and each Offer Document in respect of a Retail Bond;

- (b) the exercise of any Trust Power, including the taking of any expert advice deemed reasonably necessary or expedient by the Supervisor in connection with the exercise of such Trust Power;
- (c) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders in accordance with the terms and conditions of this deed and any Supplemental Deed; and
- (d) any waiver, consent or other action requested by the Issuer.

13.3 Enforcement

The Issuer shall pay, or shall procure that another member of the Consolidated Group shall pay, all expenses (including legal fees on a full indemnity basis) properly incurred by the Supervisor in connection with the enforcement or preservation of, or attempted enforcement or preservation of, any right under a Transaction Document or otherwise in the exercise of any Trust Power, including taking of any expert advice deemed reasonably necessary or expedient by the Supervisor in connection with the above matters.

13.4 Indemnity by Issuer

Subject to clause 17.1 (*Supervisor not Indemnified*), and without prejudice to the right of indemnity by law given to supervisors or trustees, but subject to any limitations placed on such rights of indemnity by law, the Issuer shall indemnify or shall procure that another member of the Consolidated Group acceptable to the Supervisor shall indemnify, the Supervisor (and each of its officers, directors, employees and agents) for all expenses and liabilities (and for the avoidance of doubt excluding income tax on the Supervisor's remuneration) reasonably 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 claim arising out of a wilful default, fraud, gross negligence or wilful breach of trust.

13.5 Indemnity by Holders

- (a) Subject to clause 13.5(b), 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 or any relevant Supplemental Deed (whether or not it is expressed to be bound to do so) unless it has first been indemnified by the Retail Holders and/or, in the case of taking any action or exercising any Trust Power in connection with any Wholesale Series, by the Wholesale Holders, to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, damages, expenses and liabilities which it may incur by so doing, and the Supervisor will not be responsible for any costs, damages, expenses, liabilities or inconvenience that may result from the actions so taken.
- (b) The Holders shall not be required to indemnify, and shall not be liable to, the Supervisor for any costs, damages, expenses or liabilities of the Supervisor that result from the Supervisor's wilful default, fraud, gross negligence or wilful breach of trust.

13.6 Payments

The fees, expenses, indemnities and other amounts payable under this deed and any relevant Supplemental Deed to the Supervisor (excluding for the avoidance of doubt amounts payable in respect of the Bonds) form part of the Bond Moneys and shall be payable by the Issuer and the Holders (as the case may be):

- (a) at the times agreed; or
- (b) in the absence of agreement, on demand; and
- (c) if not paid when due shall carry Default Interest under clause 6.7 (*Default Interest*) until paid.

13.7 Primary Obligations

The fact that the Issuer is entitled to procure that another member of the Consolidated Group shall satisfy the payments referred to in this clause 13 (*Supervisor's Fees, Expenses And Indemnities*) shall not relieve the Issuer of its primary obligation to ensure that such payments are duly made.

14. Supervisor's powers

14.1 General powers

The powers, authorities and discretions conferred on the Supervisor by this deed and each Supplemental Deed shall be in addition to any powers, authorities and discretions which may from time to time be vested in supervisors or trustees by law in relation to Bonds and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the Holder of any Bond.

14.2 Retail Series

In relation to each Retail Series the Supervisor shall, in addition to any powers provided by law, have the following powers and duties, subject to the terms of the relevant Supplemental Deed:

- (a) **(general duties)** the Supervisor:
- (i) is responsible for acting on behalf of the Retail Holders in relation to the Issuer, any matter connected with this deed or the terms of the offer of a Retail Series and any contravention or alleged contravention of the issuer obligations in respect of a Retail Series;
 - (ii) is responsible for supervising the Issuer's performance of its issuer obligations and in order to ascertain whether or not the assets of the Issuer that are or may be available, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of Retail Bonds as they become due; and
 - (iii) is responsible for performing and exercising any other functions, duties and powers conferred or imposed on the Supervisor by this deed, the FMCA and the Financial Markets Supervisors Act 2011;
- (b) **(monitoring role)** the Supervisor must:
- (i) act honestly in acting as a supervisor;
 - (ii) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Retail Holders;
 - (iii) exercise reasonable diligence in carrying out its functions as a supervisor;
 - (iv) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMCA) would exercise in the same circumstances;
 - (v) do all the things it has the power to do to cause any contravention referred to in section 111(1)(a)(iii) of the FMCA to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on any Class of Retail Holders); and
 - (vi) subject to any court order made under section 210 of the FMCA, act in accordance with any direction given by an Extraordinary Resolution that is not inconsistent with any enactment, rule of law, or this deed in relation to:
 - (A) seeking a remedy to a contravention referred to in section 111(1)(a)(iii) of the FMCA; and
 - (B) any other matter connected with the Supervisor's functions,and the Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by the Retail Holders.
- (c) **(applications to court)** If, after due inquiry and after consultation with the Issuer, the Supervisor is of the reasonable opinion that:
- (i) the Issuer is unlikely to be able to pay any amounts payable in relation to one or more Series of Retail Bonds as and when due;
 - (ii) that the provisions of this deed or the relevant Supplemental Deed are no longer adequate to give protection to the interests of any of the Retail Holders;

- (iii) the Issuer is insolvent;
- (iv) the security of benefits or the financial position or management of the Issuer is otherwise inadequate; or
- (v) there is a significant risk that the interests of Holders will be materially prejudiced for any other reasons,

then, and whenever the Supervisor, acting reasonably, considers it in the best interests of the Retail Holders having regard to any other powers or remedies available to it under this deed or the relevant Supplemental Deed or at law for the protection of the interests of such Retail Holders and to all other circumstances relevant to the general interests of such Retail Holders, the Supervisor may apply to the court:

- (i) pursuant to section 207 of the FMCA:
 - (A) for an order that the Trust Powers be exercised under the direction of the court; or
 - (B) for directions or any other order in relation to the extent of or, the carrying out of, the Trust Powers; or
- (ii) for any other order under section 207, 208 or 210 of the FMCA.

The Supervisor may support or oppose any application to the court made by or at the instance of any Retail Holder or the FMA. Subject to clause 17.1 (*Supervisor not Indemnified*), the Supervisor shall be indemnified by the Issuer against all expenses incurred in relation to any such application or proceedings, but only if the Supervisor has consulted with the Issuer prior to making any such application before the Date of Enforcement.

- (d) **(material breach)** If any breach of this deed or any relevant Supplemental Deed occurs, then unless the Supervisor is satisfied that the breach will not have a material adverse effect on any Class of Retail Holders, the Supervisor shall be entitled in its absolute discretion to require the Issuer to report to the Retail Holders the circumstances and the nature of such breach and any other relevant information concerning the Issuer which the Supervisor has received in relation to this deed and which it reasonably considers to be material to those Retail Holders, and invite those Retail 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 within 30 days, the Supervisor shall be entitled to do so itself.
- (e) **(represent Retail 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, represent and act on behalf of those Retail Holders in any manner concerning them generally.
- (f) **(investment)** Any moneys held by the Supervisor which are subject to the trusts created by this deed or any relevant Supplemental Deed may, at the Supervisor's discretion, be invested in the name of the Supervisor or its nominee in any investments whatsoever, with power to vary those investments for others of a similar nature and from time to time to deal with or dispose of them or any part of them. The income arising from all such investments made by the Supervisor will belong to the person on behalf of whom such money is held by the Supervisor.
- (g) **(power to remedy breach)** The Supervisor's powers to remedy any breach of this deed are subject to any other provision of this deed which is inconsistent with the exercise of such powers.
- (h) **(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:
 - (i) to determine the financial position of the Issuer; or
 - (ii) to review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 14.2(h), the Issuer shall provide reasonable assistance to the expert to provide the assistance and (without limiting clause 13.2(b)) the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

14.3 Delegation

- (a) The Supervisor must not delegate any of its functions under clause 14.2(a) (except as expressly permitted by section 111(2) of the FMCA or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011); and
- (b) Subject to paragraph (a) above, the Supervisor may, whenever it thinks it expedient in the interests of the relevant Retail Holders to do so:
 - (i) where permitted to do so by the FMCA or as permitted by any other law, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011, delegate at any time to any person any Trust Power (other than those set out in paragraph (a) above) which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit provided any such delegation shall not relieve the Supervisor of its responsibilities under this deed; and
 - (ii) authorise any person as it thinks fit to act as its representative at any meeting.

15. Exercise of Supervisor's powers

15.1 Discretion

Except as otherwise expressly provided in this deed (including clause 13.5 (*Indemnity by Holders*)) and subject to the proper performance of its duties in accordance with clauses 14.2(b)(i) to 14.2(b)(vi), the Supervisor:

- (a) has absolute and uncontrolled discretion as to the exercise or non-exercise of the Trust Powers and as to the conduct of any action, proceeding or claim (provided it has acted with reasonable care and diligence);
- (b) may refrain from exercising any Trust Power until directed by Extraordinary Resolution of Retail Holders or of the affected Class of Retail Holders to do so; and
- (c) will not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of any Trust Power.

15.2 Reliance

The Supervisor shall be entitled, without liability for loss, to obtain, accept and act on, or (other than as provided for by clause 15.1 (*Discretion*)) 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 Retail Holders or the affected Class of Retail Holders;
- (c) advice and statements of, or any information obtained from, lawyers, accountants and other experts reasonably selected by it or the Issuer even though it may subsequently be found to contain some error or not be authentic;
- (d) a certificate signed by or on behalf of the Issuer by at least two Authorised Officers, 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 Retail Holders generally or of any Class of Retail Holders, 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 or any Supplemental Deed, as conclusive evidence of the facts stated therein.

15.3 Subscribers' Moneys

The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by the subscribers of the Bonds or be bound to see to the application of that money.

15.4 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 acting reasonably thinks fit.

15.5 Fiduciary relationship

Nothing in this deed prohibits the Supervisor, its holding company, any of its subsidiaries or any of the subsidiaries or its holding company (each a **Relevant Company**) or the directors or officers of each Relevant Company from:

- (a) being a Holder or a holder of shares or other securities of the Issuer or any associated company of the Issuer; or
- (b) acting in any representative capacity for a Holder or any such holder of shares or other securities.

Without limitation, the Relevant Company may so act on its own account or as executor, administrator, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity. In doing so, it will not be deemed to be a breach of this deed, any Supplemental Deed or obligations imposed or implied by law arising out of the fiduciary relationship between the Supervisor and the Holders.

The Relevant Company will not by reason of its fiduciary capacity be prevented from:

- (a) making any contracts or entering into any transactions with the Issuer or any associated company of the Issuer in the ordinary course of the business of the Relevant Company; or
- (b) undertaking any insurance, financial or agency service for any of them; or
- (c) accepting or holding the office of trustee for the holders of any securities (whether secured or unsecured) issued by the Issuer or by any other entity.

The Relevant Company will not be accountable to the Issuer or to any other company or the Holders for any profits arising from any such contracts, transactions or offices.

15.6 Confidentiality

The Supervisor shall not (except to the extent required by the Conditions or law or by court order) be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by the Issuer.

15.7 Binding on all relevant Holders

Any action taken by the Supervisor in accordance with this deed is binding on:

- (a) all relevant Retail Holders; and
- (b) only to the extent the Supervisor has authority to act on behalf of any Wholesale Holders in accordance with the relevant Conditions, the relevant Wholesale Holders.

15.8 No obligation to consult

Except where expressly required otherwise in this deed or the relevant Supplemental Deed, the Supervisor is not obliged to consult with the Holders before giving any consent, approval or agreement or making any determination under this deed.

15.9 Knowledge of default

- (a) The Supervisor:
 - (i) may assume that the Issuer is complying with this deed and any Supplemental Deed; and
 - (ii) is not taken to have knowledge of the occurrence of an Event of Default in relation to a Series,

unless any of its officers having responsibility for the transaction actually become aware of the relevant non-compliance or Event of Default or the Supervisor has received written notice from a Holder or the Issuer or NZX stating that the non-compliance or Event of Default has occurred and describing it.

- (b) In the event of non-compliance with the Listing Rules, the Supervisor, in determining the action to be taken or not taken by it, shall be entitled to have regard to the actions of NZX, as relevant, in relation to that non-compliance by the Issuer.

16. Replacement of Supervisor

16.1 Resignation or removal of Supervisor

Subject, in the case of resignation or removal under clause 16.1(a), 16.1(b) or 16.1(d) below, to clause 16.2 (*Requirements for retirement and removal*):

- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice (or such lesser period of notice as the Issuer may agree in writing) to the Issuer;
- (b) the Issuer may remove the Supervisor from office by giving not less than 90 days' written notice (or such lesser period of notice as the Supervisor may agree in writing) to the Supervisor;
- (c) the Supervisor may be removed by the FMA or the Issuer under Part 2 of the Financial Markets Supervisors Act 2011; or
- (d) the Retail Holders may remove the Supervisor from office by giving not less than 90 days' written notice to the Issuer and Supervisor upon the passing of an Extraordinary Resolution of Retail Holders to that effect.

16.2 Requirements for retirement and removal

The Supervisor may not:

- (a) be removed or resign under clause 16.1(a), 16.1(b) or 16.1(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 16.1(b) without the FMA's consent.

16.3 Appointment of a new Supervisor

Upon such a notice of resignation or removal being given, the Issuer will, subject to clause 16.4 (*Approval by Extraordinary Resolution*), have the right to appoint a successor Supervisor, which must be a person who is authorised to act as a supervisor under section 103(1)(b) of the FMCA.

16.4 Approval by Extraordinary Resolution

Where the successor Supervisor is to be appointed pursuant to clause 16.3 (*Appointment of a new Supervisor*) and at such time there are Retail Bonds outstanding under this deed and any Supplemental Deed, then the removal of the Supervisor pursuant to clause 16.1(b) and the appointment of the successor Supervisor pursuant to clause 16.2 (*Requirements for retirement and removal*), shall be subject to approval by an Extraordinary Resolution of Retail Holders.

16.5 Failure to Appoint Supervisor

Other than where the successor Supervisor requires approval pursuant to clause 16.4 (*Approval by Extraordinary Resolution*), if a successor Supervisor has not been appointed by the Issuer or has not accepted an appointment within 60 days after any such notice, then the retiring Supervisor may, on behalf of the Issuer, appoint a successor Supervisor. In circumstances where the successor Supervisor requires approval by an Extraordinary Resolution of Retail Holders, any failure of the Issuer to appoint or have approved a successor Supervisor will entitle the Retail Holders, by an Extraordinary Resolution of Retail Holders, to appoint a new Supervisor.

16.6 Successor Supervisor

Where an appointment under this clause 16 (*Replacement of Supervisor*) is accepted 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;
- (b) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this deed;
- (c) the successor and retiring Supervisors shall execute all such documents which are necessary or appropriate and in such form as may be reasonably required by the other parties to the Transaction Documents, such that the successor Supervisor is bound by all the covenants on the part of the Supervisor under the Transaction Documents from the date of such appointment; and
- (d) the Issuer shall execute all such documents which are necessary or appropriate and in such form as may be reasonably required by the retiring Supervisor, such that the retiring Supervisor is indemnified to its satisfaction in respect of the effectiveness of its retirement and any actions of the successor Supervisor.

16.7 Notice

The Issuer agrees to notify all Retail Holders of the appointment of any new supervisor as soon as reasonably practicable following such appointment and, within 5 working days after a change to the Supervisor, the Issuer shall ensure that notice of the change is lodged with the Registrar of Financial Service Providers.

17. Liability of Supervisor

17.1 Supervisor not Indemnified

The Supervisor's rights to be indemnified in relation to the performance of the Supervisor's licensee obligations (as defined in section 4 of the Financial Markets Supervisors Act 2011) under this deed in respect of Retail Bonds shall not apply to any liability which arises from a failure by the Supervisor to properly perform its duties in accordance with clauses 14.2(b)(i) to 14.2(b)(iv) (inclusive) and no other provision of this deed that is contrary to the foregoing shall have any effect.

17.2 Duty of Care

Notwithstanding any other provision of this deed, but subject to the provisions of any Supplemental Deed and any applicable law, 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 to any person (including the Issuer and any Holders) in any way except for wilful default, fraud, gross negligence or wilful breach of trust where the Supervisor has failed to show the degree of care and diligence required of it having regard to the provisions of this deed. The Supervisor is not liable for anything done or omitted to be done, in good faith, in giving effect to a direction given to it by Holders.

18. Benefit of deed

The Issuer acknowledges, in relation to each Retail Series and the Holders of the Bonds of that Retail Series, that this deed (including, for the avoidance of doubt, the Supplemental Deed for that Retail Series) is made for the benefit of, and (subject to clause 2.6 (*Enforcement of Holders' rights*)) is intended to be enforceable by, any person who is from time to time a Holder of the Bonds of that Retail Series, the Registrar for that Retail Series, and the Supervisor.

19. Amendments

19.1 Limited right to amend

In relation to each Series of Bonds, except as expressly permitted by any Transaction Document and except as provided in this clause 19 (*Amendments*) the Issuer may not cancel, vary or amend

any provision of this deed or any Supplemental Deed while any Bonds are outstanding. Any amendment to this deed or any Supplemental Trust Deed must be:

- (a) in writing signed by the Issuer and the Supervisor (and, in relation to an amendment affecting Retail Bonds, the Supervisor must, where required by the FMCA, provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA); or
- (b) made under section 109 of the FMCA or 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or under any other power to amend this deed under any other applicable law.

19.2 Amendment without consent of Holders

In relation to each Series, the provisions of this deed and the relevant Supplemental Deed may be amended without the consent of the Holders of that Series where:

- (a) in relation to a Wholesale Series, such amendment, in the opinion of the Issuer is:
 - (i) of a minor, formal, administrative or technical nature;
 - (ii) to correct a manifest error;
 - (iii) to comply with the requirements or a modification of the requirements of any applicable law or any rules of any stock exchange in New Zealand or elsewhere;
 - (iv) necessary or desirable for the purposes of obtaining or maintaining a quotation on any stock exchange in New Zealand or elsewhere; or
 - (v) in respect of any of the provisions of reporting to the Supervisor under this deed or a Supplemental Trust Deed or in respect of clause 13 (*Supervisors fees, expenses and indemnities*) or clause 15 (*Exercise of Supervisor's powers*),

and, in any such case, the Issuer is of the opinion that such amendment will not be materially prejudicial to the interests of Holders of that Series; and

- (b) in relation to a Retail Series:
 - (i) the Supervisor is satisfied that such amendment does not have a material adverse effect on Holders of that Retail Series; or
 - (ii) such amendment is agreed to by the Supervisor pursuant to clause 20.3 (*Statutory Exemptions*).

Notice of any such amendment shall be provided to the Holders of the relevant Series within 10 business days of the amendment being made.

19.3 Amendment approved by Holders

Without limiting clause 19.2 (*Amendments without consent*), the provisions of this deed may be amended in relation to each Class of Bonds if the amendment has been approved, or is contingent upon approval by an Extraordinary Resolution of:

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

19.4 Single meeting

Where an amendment requiring approval of the Holders pursuant to clause 19.3 (*Amendment approved by Holders*) relates to or arises from any general change in the constitution, affairs or business of the Issuer, the approval of any Retail Holder may be obtained at a meeting of all Retail Holders and will not be required to be dealt with by way of separate meetings of each Class of Holders unless the Supervisor determines that there is a material difference in the effect of such resolution on those Classes. For the avoidance of doubt, where such approval is dealt with by way of a single meeting, the meeting shall be convened and held in accordance with the provisions of Schedule 1.

19.5 Notice

Notice of any proposed amendment under clause 19.3 (*Amendment approved by Holders*) must be given by the Issuer to each Holder not less than 14 days before the date on which it is

intended that such amendment will take effect. The non-receipt of notice by any such Holder will not affect the validity of any such amendment.

19.6 Notice to Registrar

Within 5 working days after an amendment to, or replacement of, this deed, the Issuer must ensure that notice of the amendment or replacement and a copy of the certificate relating to such amendment or replacement is lodged with the Registrar of Financial Service Providers.

20. Waiver

20.1 Waivers

Subject to clause 19 (*Amendments*) to the extent that any waiver will take effect as an amendment, and any applicable law and except to the extent expressly provided otherwise in the Conditions for any Series:

- (a) in the case of a Retail Series, the Supervisor may by notice to the Issuer if it is satisfied that it will not have a material adverse effect on the Retail Holders, and must if so directed by an Extraordinary Resolution of the Retail Holders; and
- (b) in the case of a Wholesale Series, the Wholesale Holders may be Extraordinary Resolution,

waive any breach or anticipated breach by the Issuer of this deed or the relevant Supplemental Deed applicable to any Series either wholly or in part for a specified period or indefinitely and on such other terms and conditions. Any such waiver by Extraordinary Resolution of the Wholesale Holders will bind all Wholesale Holders, and any such waiver by the Supervisor will bind all Retail Holders and, if the Supervisor reasonably requires, must be notified by the Issuer to Retail Holders as soon as practicable.

20.2 Temporary Variation

In addition to, and not in abrogation of or substitution for, clause 19 (*Amendments*) (but subject to any applicable law and except to the extent expressly provided otherwise in the Conditions for any Bonds) the Supervisor may, in respect of any Retail Series, temporarily vary the provisions of this deed or any Supplemental Deed applicable to any Retail Bonds in each case for such period and on such terms as:

- (a) the Supervisor may deem appropriate; or
- (b) may be agreed by the Supervisor pursuant to clause 20.3 (*Statutory Exemptions*),

provided that, in either case, the Supervisor shall be satisfied that the temporary variation will not have a material adverse effect on Retail Holders of that Series and the Supervisor must provide, or where applicable, obtain the certificates required under section 108(2)(b) of the FMCA.

20.3 Statutory Exemptions

In relation to each Retail Series, subject to any applicable law (including, but not limited to, section 108 of the FMCA), and except to the extent expressly provided otherwise in the Conditions for that Retail Series, if the Issuer is granted an exemption, or an exemption is applicable to the Issuer, in relation to any obligation imposed upon the Issuer by or pursuant to the Financial Reporting Act, the FMCA or the FMC Regulations or the Listing Rules which is materially the same as or analogous to any obligation of the Issuer under this deed or any Supplemental Deed or any Bonds, then provided two Authorised Officers of the Issuer certify that such amendment, temporary variation or waiver will not have a Material Adverse Change, the Supervisor may in respect of that Retail Series agree to amend or temporarily vary this deed or any Supplemental Deed or the Bonds of that Retail Series or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

21. Substitution

21.1 Substitution

The Issuer may, with the consent of the Supervisor but without the consent of the Holders of any Series, substitute any person incorporated in New Zealand (**Substituted Obligor**) in place of the Issuer (or of any previous substitute under this clause) as the principal debtor under this deed and the Bonds either generally or in relation to one or more Series 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, as the Supervisor may reasonably deem appropriate;
- (b) (where the relevant series is a Retail Series) such amendments are made to any other documents (including any Offer Document in respect of the relevant Bonds) as the Supervisor may reasonably deem appropriate;
- (c) any two Authorised Officers of the Substituted Obligor certify that the Substituted Obligor will be solvent immediately after the substitution;
- (d) (if the relevant Bonds, or any of them, are publicly rated by a rating agency as a result of a contract between the Issuer and that rating agency) that rating agency confirms in writing that following the substitution the rating assigned to the relevant Bonds in force immediately prior to the substitution taking effect will be maintained or increased;
- (e) (if, at the relevant time, the relevant Bonds, or any of them, are not publicly rated by a rating agency as a result of a contract between the Issuer and that rating agency, but the Issuer is publicly rated by a rating agency as a result of a contract between the Issuer and that rating agency) that rating agency confirms in writing that following such substitution the rating assigned to the Substituted Obligor or any person guaranteeing the obligations of the Substituted Obligor under this deed immediately prior to the substitution taking effect shall be maintained at or increased above the Issuer's then public rating;
- (f) prior to the substitution being effected, the Substituted Obligor warrants and represents to the Supervisor for the benefit of Holders that:
 - (i) it has obtained all necessary authorisations for the substitution;
 - (ii) it has obtained all necessary authorisations for the performance by it of its obligations under this deed, any relevant Supplemental Deed for the Series and the Substitution Documents (collectively the Transaction Documents) and the relevant Bonds and that they are in full force and effect; and
 - (iii) the obligations assumed by it are 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;
- (g) legal opinions (in form and substance reasonably satisfactory to the Supervisor in respect of the relevant Retail Series or the Holders of the relevant Wholesale Series, as the case may be and, if the Conditions relating to that Wholesale Series explicitly sets out powers and duties of the Supervisor, as the Supervisor may deem appropriate) have been delivered to the Supervisor confirming that, following the substitution:
 - (i) the Transaction Documents and the Bonds will constitute legal, valid and binding obligations of the Substituted Obligor, enforceable against it in accordance with their terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and equitable principles of general application;
 - (ii) the Substituted Obligor is validly incorporated in New Zealand;
 - (iii) all necessary authorisations are in full force and effect; and
 - (iv) the Substituted Obligor will not be required by law to withhold or deduct an amount on account of Tax from any payment under the relevant Bond, other than an amount equal to the amount that would have been withheld or deducted by the Issuer if the substitution had not occurred, or such other withholding or deduction in respect of which the Substituted Obligor has agreed to compensate the Holders of that Series; and
- (h) the Issuer (or such previous Substituted Obligor) and the Substituted Obligor comply with such other reasonable requirements as the Supervisor may direct in writing in the interests of the Holders of the relevant Bonds.

21.2 Release of substituted issuer

Any Substitution Document entered into pursuant to clause 21.1 (*Substitution*) will, if so expressed, release the Issuer from any or all of its obligations under the Transaction Documents and the Bonds for the relevant Series. Notice of the substitution must be given to the Holders of the Series within 14 days after the execution of the Substitution Documents and compliance with the other requirements of clause 21.1 (*Substitution*).

21.3 Completion of Substitution

After notice has been given in accordance with clause 21.2 (*Release of substituted issuer*):

- (a) the Substituted Obligor is 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 the Transaction Documents in place of the Issuer in respect of that Series; and
- (b) the terms of the relevant Bonds and all Transaction Documents for the relevant Series are taken to be amended as necessary to give effect to the substitution.

22. Meetings of Holders

22.1 Meetings

Meetings of Holders and any Class of Holders are to be convened and held in accordance with the provisions of Schedule 1 (unless a meeting only relates to Wholesale Holders, in which case the meeting is to be convened and held in accordance with the provisions of Schedule 2).

22.2 Resolutions of Holders

Regulation 78 and Schedule 11 of the FMC Regulations (other than clauses 2 and 5 of Schedule 11) do not apply except to the extent incorporated into Schedule 1. For the avoidance of doubt, in respect of any meeting involving Retail Holders to approve an Extraordinary Resolution, to the extent of any inconsistency, clause 2 and 5 of Schedule 11 of the FMC Regulations shall prevail over any section in Schedule 1 (except to the extent that clauses 2 and 5 of Schedule 11 of the FMC Regulations are expressly subject to, or allow matters to be set out by, a trust deed). None of the provisions of regulation 78 and Schedule 11 of the FMC Regulations will apply to a meeting convened and held in accordance with Schedule 2. Any matter relating to this deed or the Bonds may be agreed or approved by the relevant Class of Holders by signing (in any number of counterparts) a memorandum in writing, recording the matter so agreed or approved in accordance with regulation 16 of Schedule 1 or regulation 16 of Schedule 2 of this deed.

22.3 No voting by Issuer

Notwithstanding any other provision of this deed, where the Issuer or any Related Company of the Issuer is a Holder, neither the Issuer nor that Related Company of the Issuer may vote on any matter relating to the Bonds held by the Issuer or that Related Company of the Issuer.

23. Notices

23.1 Writing

Each notice or other communication to be given or made under this deed or a Supplemental Deed to any person must:

- (a) be given or made in writing by fax, email, letter or by public notice (including, but not limited to, a leading daily newspaper of general circulation in New Zealand) and be signed by the sender or an authorised officer of the sender;
- (b) be given or made to the recipient at the address, fax number or email address (if not via public notice), 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 Bonds;
- (c) 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 3 business days after being put in the post (by airmail if to another country), postage prepaid, and addressed to the recipient at that address;

- (ii) (if given or made by email) when dispatched in tangible, readable form by the sender to the email address advised by the recipient from time to time;
- (iii) (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; or
- (iv) (if given or made by public notice) upon the release, circulation or publishing of that notice,

provided that any notice or communication received or deemed received after 5.00pm on a business day in the place to which it is sent, or on a day which is not a business day in that place, shall be deemed not to have been received until the next business day in that place.

23.2 Initial address and numbers

The initial address and person (if any) designated for the purposes of this deed are set out below:

- (a) **(the Issuer)**
Marsden Point
Whangarei
New Zealand
Fax: (09) 432 5100
Email: denise.jensen@refiningnz.com
Attention: Denise Jensen
- (b) **(the Supervisor)**
Level 6
191 Queen Street
Auckland 1010
New Zealand
Fax: (09) 969 3732
Email: ct-auckland@nzgt.co.nz
Attention: General Manager, Corporate Trusts
- (c) **(the Holders)** The address of each Holder last entered in the Register.

23.3 Joint Holders

In the case of joint holders of Bonds, 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.

24. Miscellaneous

24.1 Registration of deed

If the Issuer proposes to issue a Retail Series, it shall promptly, at its own cost, register this deed, the relevant Supplemental Deed in respect of that Series and any amendment to this deed or such Supplemental Deed as required by the FMCA and/or any applicable law and shall pay all costs and expenses incidental to doing so.

24.2 Waivers and remedies

Time shall be of the essence of this deed and any relevant Supplemental Deed but no delay in acting, or failure to act, by the Supervisor or a Holder is a waiver of any of the Supervisor's or that Holder's rights, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights provided in this deed and any relevant Supplemental Deed do not exclude any rights provided by law.

24.3 No effect if contravenes FMCA

A provision of this deed or any Supplemental Deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA, the FMC Regulations or any term implied into this deed by the FMCA or the FMC Regulations (other than where such contravention, or inconsistency, is permitted by the FMCA or the FMC Regulations). An invalid provision in this deed and any

relevant Supplemental Deed shall not affect the enforceability of the remaining provisions of this deed and any relevant Supplemental Deed.

24.4 Further issues

Subject to the terms of this deed, the Issuer may from time to time, without the consent of the Holders, issue Bonds or issue or guarantee other debt obligations on such other terms and conditions as the Issuer may think fit.

24.5 Documents

The Issuer must:

- (a) make copies of this deed, the relevant Supplemental Deed, the Offer Documents relating to Bonds held by the relevant Holder and the Agency Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series available for inspection during usual business hours by any Holder at the registered office of the Issuer (or such other office as the Issuer may notify the Holders from time to time) which, at the date of this deed, is as specified at clause 23.2 (*Initial address and numbers*); and
- (b) in relation to a Retail Series, retain, make available for inspection, provide and deliver copies of any document or information as required by, and in accordance with, the FMCA for such fee as permitted by the FMCA.

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.

24.6 Survival

Clause 7.5 (*Unclaimed payments*) of this deed and the indemnities given in this deed and any relevant Supplemental Deed will survive the repayment of all the Bonds and the termination of this deed and any relevant Supplemental Deed.

24.7 Remedies Cumulative

The rights, powers and remedies provided in this deed and any relevant Supplemental Deed are cumulative and not exclusive of any rights powers or remedies provided by law.

24.8 Counterparts

This deed may be executed in any number of counterparts, all of which together constitute one and the same instrument. Any party may execute this deed by executing any such counterpart.

25. Release

Upon being indemnified to its reasonable satisfaction pursuant to clause 13.4 (*Indemnity by Issuer*) and upon proof being given to the reasonable satisfaction of the Supervisor that all sums owing or outstanding in respect of the Bonds or otherwise under this deed and any relevant Supplemental Deed have been paid or satisfied or that provision for such payment or satisfaction has been made and upon payment or retention of all costs, charges and expenses incurred by, or payable to, the Supervisor in relation to this deed and any relevant Supplemental 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 any relevant Supplemental Deed and shall thereupon retire as Supervisor.

26. Governing law and jurisdiction

26.1 Governing law

This deed shall be governed by New Zealand law.

26.2 Submission to jurisdiction

Each party to this deed submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this deed.

27. Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by a party (the delivering party), immediately on the earlier of:

- (a) physical delivery of an original of this deed, executed by the delivering party, into the custody of the other parties or the solicitors of the other parties; or
- (b) transmission by the delivering party or its solicitors (or any other person authorised in writing by the delivering party) of a facsimile, photocopied or scanned copy of an original of this deed, executed by the delivering party, to the other parties or the solicitors of the other parties.

28. Contract and Commercial Law Act 2017

Subject to clause 2.6(b), this deed is legally enforceable as between the Issuer, the Registrar, the Supervisor and the Holders and shall take effect as a contract (as well as a deed) to the extent provided in this deed and shall be enforceable for the benefit of the Registrar and every Holder. The benefit so extended to the Registrar and Holders is intended to be limited by, and enforceable subject to, the rights of parties to this deed to vary or discharge benefits or obligations as provided in this deed without the consent of the Registrar or any Holder, other than as so provided.

Schedule 1- Meetings of Retail Holders or all Holders

1. Definitions

1.1 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.

Authorised Person means the person authorised by the Supervisor to receive and count votes at that meeting cast in accordance with regulation 11 or, if no such person is authorised, the Supervisor.

Extraordinary Resolution means a resolution passed at a meeting of Holders, properly convened and held in accordance with the provisions of this Schedule, at which not less than 75% of the aggregate Principal Amount of the Bonds held by those persons entitled to vote and voting on the question, or if a poll is properly demanded, not less than 75% of the aggregate Principal Amount of the Bonds eligible to vote on such a poll, voted in favour of the resolution.

the **Principal Amount** of a Bond that is issued at a discount is to be taken as at any time to equal the lesser of:

- (a) its face value; and
- (b) if specified in the Conditions in respect of that Bond, its Amortised Face Amount at that time,

where the **Amortised Face Amount** means, in relation to a Bond, an amount equal to the sum of:

- (a) the Issue Price; and
- (b) the amount resulting from the application of the amortisation yield specified in the Conditions in respect of that Bond (compounded annually) to the Issue Price from (and including) the Issue Date specified in the relevant Conditions to (but excluding) the date fixed for redemption or (as the case may be) the date the Bond becomes due and repayable.

If the calculation of the Amortised Face Amount is to be made for a period which is not a whole number of years, the calculation in respect of the period of less than a full year must be made on the basis of the actual number of days in the period divided by 365, unless the relevant Conditions provide otherwise.

Proxy Closing Time means 48 hours before the Appointed Time of the relevant meeting of Holders or taking of a poll of Holders or such other time approved by the Supervisor.

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 or, in the event of bankruptcy, the assignee in bankruptcy of that Holder;
- (b) in the case of a Holder which is a body corporate either:
 - (i) a person appointed by an instrument of proxy or by power of attorney; or
 - (ii) a person authorised by the directors or governing body, or pursuant to the constitution, of the body corporate.

working days has the meaning given to it in the *Interpretation Act 1999*.

1.2 Classes

In this Schedule, references to Bonds and Holders are references to the Bonds of the relevant Class of Bonds only and the Holders of the relevant Class of Bonds only.

1.3 Meetings of Wholesale Holders Only

In relation to a meeting which relates only to Wholesale Holders, the meeting shall be convened and held in accordance with the provisions of Schedule 2 and the provisions of this Schedule, other than this regulation 1.3, shall be of no effect. For the avoidance of doubt, if a meeting relates to both Wholesale Holders and Retail Holders, the meeting shall be convened and held in accordance with the provisions of this Schedule.

2. Convening

2.1 Meeting required by law

The Issuer shall, whenever required to do so pursuant to the Companies Act 1993, the FMCA or any other applicable law, convene a meeting of the Holders.

2.2 By written request of Holders or the Supervisor

The Issuer shall, at the request in writing of:

- (a) Holders holding not less than 5% of the aggregate Principal Amount of the Bonds then outstanding; or
- (b) the Supervisor,

convene a meeting of the Holders. Any such 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 and shall, at the request in writing of a person authorised by the FMCA or the FMC Regulations to call a meeting of a Class of Retail Holders, convene a meeting of that Class of Retail Holders.

2.4 By Supervisor

The Supervisor may at any time of its own volition (after such consultation with the Issuer which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting), or the Issuer shall, at the request in writing of the Supervisor, convene a meeting of Retail Holders. The Supervisor shall not be obliged to convene a meeting of Retail Holders pursuant to this regulation 2.4 (*By Supervisor*) until it has been indemnified to its reasonable satisfaction, subject to clause 17.1 (*Supervisor not Indemnified*), against all costs and expenses to be incurred in relation that meeting.

2.5 Place and manner of meeting

Each meeting will be held in Auckland or at such other place designated by the Issuer and a quorate meeting will comprise participation of the requisite number of Holders or their Representatives either:

- (a) by attendance in person; or
- (b) by means of audio, or audio and video conferencing technology or electronic communication; or
- (c) by a combination of both of the methods of participation at paragraphs (a) and (b) above.

2.6 Regulations

Meetings of Holders shall be convened and held in accordance with the provisions of this Schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this Schedule, as the Supervisor and the Issuer may agree from time to time.

3. Notice of meetings

3.1 Persons to be notified

Notice of every meeting shall be given in the manner provided in clause 23 (*Notices*) of this deed to:

- (a) every Holder entered in the Register as at the close of business five business days prior to the date of dispatch of the notice;
- (b) each director of the Issuer;
- (c) the auditor for the time being of the Issuer;
- (d) the Issuer, if the meeting is convened by the Supervisor;
- (e) the Supervisor; and
- (f) if the relevant Bonds are listed, by the Issuer to any stock exchange on which those Bonds are listed.

3.2 Time for notification

Subject to regulations 3.4 (*Short or irregular notice*) and 5.3 (*Notice of adjourned meeting*), at least 15 working days' notice of every meeting will be given. The notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.

3.3 Contents of notice

A notice of a meeting of Holders must specify the following:

- (a) the place and Appointed Time of the meeting;
- (b) the general nature of the business to be transacted at that meeting in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;
- (c) in the case of a resolution proposed to be passed as an Extraordinary Resolution only, the text of such resolution;
- (d) the right of each Holder to appoint a Representative; and
- (e) the Authorised Person (if any) for the meeting.

In addition, if an Extraordinary Resolution is to be submitted to the meeting:

- (f) a draft of the notice to be issued for that meeting shall be provided to the Supervisor at least ten working days (or any lesser period as agreed with the Supervisor) in advance of the notice period provided for under regulation 3.2 (*Time for notification*); and
- (g) where the Supervisor has provided its comments on the text of the Extraordinary Resolution at least five working days in advance of the notice period provided for under regulation 3.2 (*Time for notification*), the notice must include a copy of the Supervisor's comments.

3.4 Short or irregular notice

Notwithstanding any other provision of this regulation 3, a meeting may be called by shorter notice than that specified in regulation 3.2 (*Time for notification*), by notice without compliance with regulation 3.3 (*Contents of notice*), or by notice with any other irregularity or called without any formal notice, and any such meeting shall be deemed to have been duly called and any such meeting shall be deemed to have been duly called and any such irregularity or lack of formal notice shall be waived if:

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

3.5 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any Holder entitled to receive such notice will not invalidate the proceedings at any meeting.

3.6 Notice of meetings to approve related party benefit

Clause 3 of Schedule 11 to the FMC Regulations does not apply.

4. Quorum

4.1 Quorum required

No business will be transacted at any meeting unless the requisite quorum is participating or present at the commencement of business. A Holder is present at a meeting for the purposes of this Schedule and part of the quorum if that Holder is present in person or by Representative or is participating in that meeting by means of audio, audio and visual or electronic communication.

4.2 Quorum for Extraordinary Resolution

Subject to regulation 5.1 (*Quorum not present*), the quorum for a meeting at which an Extraordinary Resolution is proposed to be submitted will be the Holders (participating or present in person or by Representative) holding or representing (in aggregate) no less than 25% of the Principal Amount of the Bonds held by persons entitled to vote on the Extraordinary Resolution.

4.3 Quorum for other business

Subject to regulation 5.1 (*Quorum not present*), the quorum for the transaction of any business other than the passing of an Extraordinary Resolution will be two or more Holders participating or present in person or by Representative holding together at least 10% in Principal Amount of the Bonds.

5. Adjournment

5.1 Quorum not present

If, within 30 minutes after the Appointed Time, a quorum is not present at the meeting, if convened under regulations 2.2(a), the meeting will be dissolved. In any other case, it will be adjourned to:

- (a) a day that is 10 working days from the Appointed Time provided that the time and place of the adjourned meeting remain the same; or
- (b) such other time, date and place as the Supervisor may appoint,

and in any event, if a quorum is not present 30 minutes after the time appointed for the adjourned meeting, all the Holders present in person or by Representative at the adjourned meeting will comprise a quorum for the transaction of business including the passing of Extraordinary Resolutions.

5.2 Chairperson may adjourn

The chairperson of the meeting may, with the consent of the 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.

5.3 Notice of adjourned meeting

Notice of an adjourned meeting of Holders relating to an adjourned meeting at which an Extraordinary Resolution is to be submitted, notwithstanding regulation 3.1 (*Persons to be notified*), shall be given in the same manner as for an original meeting (except that only seven clear days' notice will be required) and such notice will state that if a quorum is not present 30 minutes after the Appointed Time, the Holders present in person or by Representative at the adjourned meeting will form a quorum notwithstanding the Principal Amount of Bonds held by them provided that if a meeting is adjourned for less than 30 days, it will not be required to give notice of the time and place of the adjourned meeting other than by announcement at the meeting originally adjourned.

5.4 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.

6. Chairperson

A person nominated by the Supervisor shall preside as chairperson at every meeting convened in accordance with this Schedule. If no such person is nominated or if at any meeting the person

nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders present shall appoint a person to be chairman.

7. Right to attend and speak

Any director, officer or solicitor, auditor or accountant of the Issuer, or any person appropriately authorised by the Issuer (or 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 (in the case of any director, officer or solicitor of the Supervisor, or any person appropriately authorised by the Supervisor, only on any part of the business of the meeting that concerns the Supervisor's functions or the Holders).

8. Only persons on Register recognised by Issuer

The persons named as Holders in the Register at Proxy Closing Time will be recognised and treated as the legal owners of the Bonds whether those persons are or are not in fact the beneficial owners of the Bonds.

9. Authority to vote

9.1 Entitlement

- (a) The person named in the Register as Holder at the Proxy Closing Time, or the Representative(s) of any such Holder will be exclusively entitled to vote in person or by Representative in respect of the Bonds recorded as owned by them in the Register (whether or not such person is in fact the beneficial owner of those Bonds).
- (b) Subject to the Conditions of any Bond, where an amount is owed and remains unpaid by a Holder to the Issuer in respect of Bonds owned by it, that Holder will be deemed to have lost its entitlement to vote in respect of those Bonds.

9.2 Voting

An individual Holder may vote personally or by his Representative and a Holder which is a body corporate 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 Bonds, provided that only one proxy is appointed to exercise the rights relating to a particular Bond held by that Holder.

10. Voting procedure and polls

10.1 Show of hands

The manner of voting on an Extraordinary Resolution by the Holders must be by poll. The manner of voting on any business at a meeting of Holders other than the passing of an Extraordinary Resolution will be determined by the Chairman or, in the case of a meeting of Holders held where:

- (a) the Holders or their Representatives are in attendance in person the manner of voting must be by one of two methods as determined by the chairperson, being:
 - (i) voting by voice; or
 - (ii) voting by show of hands; and
- (b) the Holders or their Representatives are in attendance in person or by way of use of audio, or audio and video conferencing technology or electronic communication the manner of voting may be by any method permitted by the chairperson,

unless in either case, a poll is demanded (before or after the vote is taken on a resolution) by:

- (c) the chairperson of the meeting;
- (d) the Supervisor;
- (e) the Issuer or any representative of the Issuer; or
- (f) one or more Holders entitled to request a meeting under regulation 2.2 (*By written request of Holders or the Supervisor*).

10.2 Chairperson's declaration

A declaration by the chairperson of the meeting that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded in accordance with regulation 10.4 (*Poll*)

10.3 Number of votes

- (a) 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 entitled to vote and is present in person or by a Representative at the meeting will have one vote for every NZ\$1 of Principal Amount of the Bonds of which that person is the Holder at the date of the meeting.
- (b) 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 their votes or cast all the votes they use in the same way.

10.4 Poll

If a poll is demanded it will be taken in the manner directed by the chairperson of the meeting and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

10.5 Chairperson has no casting vote

The chairperson of any meeting will not have a casting vote in addition to the votes (if any) to which the chairperson may be entitled as a Holder or on behalf of any Holder.

10.6 Time of poll

A poll demanded on the election of a chairperson of the meeting 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 chairperson. 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.

10.7 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.

10.8 Joint Holders

In the case of joint Holders, the vote of the person named first in the Register who tenders a vote whether in person or by Representative will be accepted to the exclusion of the vote of the other joint Holders.

10.9 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 body corporate) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds 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.

11. Voting by post, email or other electronic means

11.1 General

Any Holder may exercise the right to vote on each resolution the subject of that meeting by delivering a postal vote, a vote by email correspondence or by using any other electronic means expressly authorised by the Issuer or the Supervisor.

11.2 Delivery of votes

A Holder may deliver its vote(s) on all or any of the matters to be voted on at a meeting by sending a notice of the manner in which that Holder's Bonds are to be voted on to the Issuer or the Authorised Person for that meeting. This notice must be received by that person no later than the Proxy Closing Time, unless the Issuer or the Authorised Person (as the case may be), in its absolute discretion, elects to accept any notice notwithstanding that that notice is received or produced at a place other than that specified above or out of time.

11.3 Issuer and Authorised Persons duties

The duties of the Issuer or the Authorised Person for that meeting (as applicable) are as follows:

- (a) to collect all votes received by it or the Issuer and to reconcile the Holder casting the vote against the Holder recorded in the Register;
- (b) with respect to each resolution to be voted on at the meeting, to count:
 - (i) the number of Holders voting in favour of that resolution and the number of votes cast by, or on behalf of, each such Holder in favour of the resolution; and
 - (ii) the number of Holders voting against that resolution and the number of votes cast by, or on behalf of, each such Holder against the resolution; and
- (c) to sign a certificate that each of the duties contained in paragraphs (a) and (b) above have been fulfilled and the result of the vote; and
- (d) to present, or ensure that the certificate referred to under paragraph (c) above is presented, to the chairperson of the meeting.

11.4 Chairperson's duties

Where votes have been cast under this regulation 11, the duties of the chairperson for that meeting are as follows:

- (a) irrespective of whether votes are cast by a show of hands or by poll, include those votes in the overall result; and
- (b) call for a vote by poll on a resolution, where the chairperson is of the view that the result of a vote taken by way of poll may differ from that taken by show of hands.

12. Proxies

12.1 Provisions of Constitution

The provisions of the Issuer's constitution in relation to proxies shall apply to all meetings of Holders as if set out in this Schedule, with any necessary modifications required by law.

12.2 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 a meeting.

13. Holder may appoint attorney

Any Holder entitled to vote 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.

14. Corporate Representatives

14.1 Authority

A Representative of a Holder which is a body corporate will, until his authority is revoked, be entitled to exercise the same powers on behalf of the body corporate as that body corporate 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.

14.2 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.

15. Minutes to be kept

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 chairperson 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 chairperson of the meeting at which a resolution was passed or proceedings had or by the chairperson 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.

16. Extraordinary resolutions

16.1 Powers

Without limiting the rights, powers and discretions conferred on the Supervisor by this deed, a meeting of Holders will, in addition to all other powers which by this deed are specified as exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary 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 Bonds;
- (b) sanction any request from the Issuer for the exchange of the Bonds for, or the conversion of the Bonds 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 Bonds becomes payable and to suspend or postpone for a time the payment of interest on any Bonds;
- (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 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 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 Deed;
- (g) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other body corporate where such sanction is necessary;
- (h) discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under this deed or any Supplemental Deed;
- (i) subject to the provisions of this deed, remove any Supervisor and to approve the appointment of or appoint a new Supervisor;
- (j) consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in any of the foregoing paragraphs of this regulation 16.1 (*Powers*), or as to any other matter which may be necessary to carry out and give effect to any Extraordinary Resolution; and
- (k) authorise or direct the Supervisor and the Issuer to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.

16.2 Binding on Holders

An Extraordinary Resolution passed by Holders in accordance with this Schedule will be binding upon all the Holders whether or not they were present or entitled to be present at the relevant meeting, or signed the relevant resolution pursuant to regulation 17 (*Resolutions in writing*), as the case may be, and all 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. Notwithstanding the foregoing:

- (a) any meeting of both Wholesale Holders and Retail Holders being held in accordance with this Schedule 1 (*Meetings of Retail Holders or all Holders*) whereby any resolution to that is required to be done by way of special resolution (as defined in the FMC Regulations) (including any amendment of this deed in accordance with clause 19 (*Amendments*)), must be voted on by the Retail Holders and the Wholesale Holders separately;
- (b) a resolution which affects a particular Holder only, rather than the rights of all Holders generally, or of a particular Class of Holders generally, will not be binding on such Holder unless such Holder agrees to be bound by the terms of such resolution;
- (c) a resolution which affects one Class only of Bonds 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 (*Resolutions in Writing*);
- (d) a resolution which affects more than one Class of Bonds, 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 (*Resolutions in Writing*); and
- (e) a resolution which affects more than one Class of Bonds 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 (*Resolutions in Writing*).

16.3 Reliance on advice

The Issuer and the Supervisor may rely on, and the Holders and the Registrar for the relevant Class shall be bound by, a legal opinion from a law firm in New Zealand to the effect that a resolution affects one Class only or, if it affects more than one Class of Bonds, 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 16.2 (*Binding on Holders*).

17. Resolutions in writing

17.1 Extraordinary Resolution

Anything that may be done by Holders by a resolution or Extraordinary Resolution passed at a meeting of Holders may be done by a resolution in writing signed by not less than 75% of the Holders entitled to vote on that resolution, holding in aggregate Bonds 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 (including letters, electronic mail or other similar means of communication), 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 - Meetings of Wholesale Holders only

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.

Extraordinary Resolution means a resolution passed at a meeting of Holders, properly convened and held in accordance with the provisions of this Schedule, at which not less than 75% of the persons entitled to vote and voting on the question, or if a poll is properly demanded, not less than 75% of the eligible votes given on such a poll, voted in favour of the resolution.

the **Principal Amount** of a Bond that is issued at a discount is to be taken as at any time to equal the lesser of:

- (a) its face value; and
- (b) if specified in the Conditions in respect of that Bond, its Amortised Face Amount at that time,

where the **Amortised Face Amount** means, in relation to a Bond, an amount equal to the sum of:

- (a) the Issue Price; and
- (b) the amount resulting from the application of the amortisation yield specified in the Conditions in respect of that Bond (compounded annually) to the Issue Price from (and including) the Issue Date specified in the relevant Conditions to (but excluding) the date fixed for redemption or (as the case may be) the date the Bond becomes due and repayable.

If the calculation of the Amortised Face Amount is to be made for a period which is not a whole number of years, the calculation in respect of the period of less than a full year must be made on the basis of the actual number of days in the period divided by 365, unless the relevant Conditions provide otherwise.

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 or, in the event of bankruptcy, the assignee in bankruptcy of that Holder;
- (b) in the case of a Holder which is a body corporate 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 or governing body, or pursuant to the constitution, of the body corporate.

1.1 Classes

In this Schedule, references to Bonds and Holders are references to:

- (a) the Bonds of the relevant Class of Bonds only and the Holders of the relevant Class of Bonds only; and
- (b) Wholesale Bonds only and Wholesale Holders only.

2. Convening

2.1 Meeting required by law

The Issuer shall, whenever required to do so pursuant to the Companies Act 1993, the FMCA or any other applicable law, convene a meeting of the Holders.

2.2 By written request of Holders

The Issuer shall, at the request in writing of Holders holding not less than 10% of the aggregate Principal Amount of the Bonds then outstanding, convene a meeting of the Holders. Any such 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 Place and manner of meeting

Each meeting will be held in Auckland or at such other place designated by the Issuer and a quorate meeting will comprise participation of the requisite number of Holders or their Representatives either:

- (a) by attendance in person; or
- (b) by means of audio, or audio and video conferencing technology or electronic communication; or
- (c) by a combination of both of the methods of participation at paragraphs (a) and (b) above.

2.5 Regulations

Meetings of Holders shall be convened and held in accordance with the provisions of this Schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this Schedule as agreed between the Issuer and Holders pursuant to an Extraordinary Resolution of Holders.

3. Notice of meetings

3.1 Persons to be notified

Notice of every meeting shall be given in the manner provided in clause 23 (*Notices*) of this deed to:

- (a) every Holder entered in the Register as at the close of business five business days prior to the date of dispatch of the notice;
- (b) the Supervisor, if the meeting is convened by the Issuer; and
- (c) if the relevant Bonds are listed, by the Issuer to any stock exchange on which those Bonds are listed.

3.2 Time for notification

Subject to regulations 3.4 (*Short or irregular notice*) and 5.3 (*Notice of adjourned meeting*), at least 10 business days' notice of every meeting will be given. The notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.

3.3 Contents of notice

A notice must specify the following:

- (a) the place and Appointed Time of the meeting; and
- (b) in the case of a resolution proposed to be passed as an Extraordinary Resolution only, the text of such resolution.

3.4 Short or irregular notice

Notwithstanding any other provision of this regulation 3, a meeting may be called by shorter notice than that specified in regulation 3.2 (*Time for notification*), without any formal notice and without

compliance with regulation 3.3 (*Contents of notice*), and shall be deemed to have been duly called if it is so agreed by all Holders before, at or after that meeting.

3.5 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any Holder entitled to receive such notice will not invalidate the proceedings at any meeting.

3.6 Notice of meetings to approve related party benefit

Clause 3 of Schedule 11 to the FMC Regulations does not apply.

4. Quorum

4.1 Quorum required

No business will be transacted at any meeting unless the requisite quorum is participating or present at the commencement of business.

4.2 Quorum for Extraordinary Resolution

Subject to regulation 5.1 (*Quorum not present*), the quorum for a meeting at which an Extraordinary Resolution is proposed to be submitted will be the Holders (participating or present in person or by Representative) holding or representing (in aggregate) no less than 25% of the Principal Amount of the Bonds.

4.3 Quorum for other business

Subject to regulation 5.1 (*Quorum not present*), the quorum for the transaction of any business other than the passing of an Extraordinary Resolution will be two or more Holders participating or present in person or by Representative holding together at least 10% in Principal Amount of the Bonds.

5. Adjournment

5.1 Quorum not present

- (a) If, within 15 minutes (or any longer time not exceeding 45 minutes as the chairman of the meeting may decide) after the Appointed Time, a quorum is not present at the meeting, if convened at the request of the Holders, the meeting will be dissolved. In any other case, it will be adjourned to a day and time (not being less than 5 business days later) and to a place as may be appointed by the chairman.
- (b) At such adjourned meeting all the Holders present in person or by Representative at the adjourned meeting will comprise a quorum for the transaction of business including the passing of Extraordinary Resolutions.

5.2 Chairperson may adjourn

The chairperson of the meeting may, with the consent of the 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.

5.3 Notice of adjourned meeting

Notice of an adjourned meeting of Holders relating to an adjourned meeting at which an Extraordinary Resolution is to be submitted, notwithstanding regulation 3.1 (*Persons to be notified*), shall be given to the same persons as those who were given notice of the original meeting, Holders recorded in the Register as at the day before the notice of adjourned meeting is given and otherwise will be given in the same manner as for an original meeting (except that only 7 clear days' notice will be required) and such notice will state that if a quorum is not present 30 minutes after the Appointed Time the Holders present in person or by Representative at the adjourned meeting will form a quorum notwithstanding the Principal Amount of Bonds held by them, provided that, if a meeting is adjourned for less than 30 days, it will not be necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting originally adjourned.

5.4 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.

6. Chairperson

A person nominated by the Issuer shall preside as chairperson at every meeting convened in accordance with this Schedule. If no such person is nominated or it at any meeting the person nominated is not present within 15 minutes after the appointed time for holding the meeting, the Holders present shall appoint a person to be chairman.

7. Right to attend and speak

The following may attend any meeting and will have the right to speak at the meeting:

- (a) any director, officer or solicitor, auditor or accountant of the Issuer;
- (b) any person appropriately authorised by the Issuer;
- (c) any director, officer or solicitor of the Supervisor; and
- (d) any person appropriately authorised by the Supervisor.

8. Only persons on Register recognised by Issuer

The persons named as Holders in the Register at Proxy Closing Time will be recognised and treated as the legal owners of the Bonds whether those persons are or are not in fact the beneficial owners of the Bonds.

9. Authority to vote

9.1 Entitlement

- (a) The person named in the Register as Holder at the Proxy Closing Time, or the Representative(s) of any such Holder will be exclusively entitled to vote in person or by Representative in respect of the Bonds recorded as owned by them in the Register (whether or not such person is in fact the beneficial owner of those Bonds).
- (b) Subject to the Conditions of any Bond, where an amount is owed and remains unpaid by a Holder to the Issuer in respect of Bonds owned by it, that Holder will be deemed to have lost its entitlement to vote in respect of those Bonds.

9.2 Voting

An individual Holder may vote personally or by his Representative and a Holder which is a body corporate 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 Bonds.

10. Voting procedure and polls

10.1 Show of hands

The manner of voting on an Extraordinary Resolution by the Holders must be by poll. The manner of voting on any business at a meeting of Holders other than the passing of an Extraordinary Resolution will be determined by the Chairman or, in the case of a meeting of Holders held where:

- (a) the Holders or their Representatives are in attendance in person the manner of voting must be by one of two methods as determined by the chairperson, being:
 - (i) voting by voice; or
 - (ii) voting by show of hands; and
- (b) the Holders or their Representatives are in attendance in person or by way of use of audio, or audio and video conferencing technology or electronic communication the manner of voting may be by any method permitted by the chairperson,

unless in either case, a poll is demanded (before or after the vote is taken on a resolution) by:

- (c) the chairperson of the meeting;
- (d) the Supervisor;
- (e) the Issuer or any representative of the Issuer; or
- (f) one or more Holders entitled to request a meeting under regulation 2.2 (*By written request of Holders*).

10.2 Chairperson's declaration

A declaration by the chairperson of the meeting that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded, in accordance with regulation 10.4 (*Poll*).

10.3 Number of votes

- (a) 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 NZ\$1 of Principal Amount of the Bonds of which that person is the Holder at the date of the meeting.
- (b) 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 their votes or cast all the votes they use in the same way.

10.4 Poll

If a poll is demanded it will be taken in the manner directed by the chairperson of the meeting and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

10.5 Chairperson has no casting vote

The chairperson of any meeting will not have a casting vote in addition to the votes (if any) to which the chairperson may be entitled as a Holder or on behalf of any Holder.

10.6 Election of chairperson

A poll demanded on the election of a chairperson of the meeting 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 chairperson. 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.

10.7 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.

10.8 Joint Holders

In the case of joint Holders, the vote of the person named first in the Register who tenders a vote whether in person or by Representative will be accepted to the exclusion of the vote of the other joint Holders.

10.9 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 body corporate) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds 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.

11. Voting by post, email or other electronic means

11.1 General

Any Holder may exercise the right to vote on each resolution the subject of that meeting by delivering a postal vote, a vote by email correspondence or by using any other electronic means expressly authorised by the Issuer.

11.2 Delivery of votes

A Holder may deliver its vote(s) by sending a notice to the Issuer indicating the manner in which that Holder's Bonds are to be voted on to the Issuer, vote(s) in a manner authorised under this regulation 11. This notice must be received by the Issuer no later than the Proxy Closing Time, unless the Issuer, in its absolute discretion, elects to accept any notice notwithstanding that that notice is received or produced at a place other than that specified above.

12. Proxies

12.1 Provisions of Constitution

The provisions of the Issuer's constitution in relation to proxies shall apply to all meetings of Holders as if set out in this Schedule, with any necessary modifications required by law.

12.2 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 a meeting.

13. Holder may appoint attorney

Any Holder entitled to vote 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.

14. Corporate Representatives

14.1 Authority

A Representative of a Holder which is a body corporate will, until his authority is revoked, be entitled to exercise the same powers on behalf of the body corporate as that body corporate 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.

14.2 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.

15. Minutes to be kept

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 chairperson 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 chairperson of the meeting at which a resolution was passed or proceedings had or by the chairperson 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.

16. Extraordinary resolutions

16.1 Powers

A meeting of Holders will, in addition to all other powers which by this deed are specified as exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary 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 Bonds;
- (b) sanction any request from the Issuer for the exchange of the Bonds for, or the conversion of the Bonds 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 Bonds becomes payable and to suspend or postpone for a time the payment of interest on any Bonds;
- (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 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 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 Deed;
- (g) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other body corporate where such sanction is necessary;
- (h) discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under this deed or any Supplemental Deed;
- (i) subject to the provisions of this deed, remove any Supervisor and to approve the appointment of or appoint a new Supervisor;
- (j) consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in any of the foregoing paragraphs of this regulation 16.1 (*Powers*), or as to any other matter which may be necessary to carry out and give effect to any Extraordinary Resolution; and
- (k) 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.

16.2 Binding on Holders

An Extraordinary Resolution passed by Holders in accordance with this Schedule will be binding upon all the Holders whether or not they were present or entitled to be present at the relevant meeting, or signed the relevant resolution pursuant to regulation 17 (*Resolutions in writing*), as the case may be, and all 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. Notwithstanding the foregoing:

- (a) a resolution which affects a particular Holder only, rather than the rights of all Holders generally, or of a particular Class of Holders generally, will not be binding on such Holder unless such Holder agrees to be bound by the terms of such resolution;
- (b) a resolution which affects one Class only of Bonds 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 (*Resolutions in Writing*);
- (c) a resolution which affects more than one Class of Bonds, 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 (*Resolutions in Writing*); and

- (d) a resolution which affects more than one Class of Bonds 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 (*Resolutions in Writing*).

16.3 Reliance on advice

The Issuer and the Supervisor may rely on, and the Holders and the Registrar for the relevant Class shall be bound by, a legal opinion from a law firm in New Zealand to the effect that a resolution affects one Class only or, if it affects more than one Class of Bonds, 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 16.2 (*Binding on Holders*).

17. Resolutions in writing

17.1 Extraordinary Resolution

Anything that may be done by Holders by a resolution or Extraordinary Resolution passed at a meeting of Holders may be done by a resolution in writing signed by not less than 66% of the Holders having the right to vote on that resolution, holding in aggregate Bonds conferring the right to cast not less than 66% 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 3 - Form of Directors' Report

1. This report is given by the undersigned Directors of The New Zealand Refining Company Limited (the **Issuer**) pursuant to clause 10.3(c) of the Master Trust Deed dated [] (the **Trust Deed**) between the Issuer and The New Zealand Guardian Trust Company Limited as Supervisor in connection with [specify relevant Series].
2. Unless the context otherwise requires, terms defined in the Trust Deed have the same meaning herein.
3. We, the undersigned, hereby state that as at the last day of the financial [year/half year] ending on [] (**Reporting Date**), to the best of our knowledge and belief having made all due inquiries, and, during the immediately preceding financial [year/half year]:
 - (a) the Issuer has observed and complied with its issuer obligations and all of its other obligations under the Trust Deed and the relevant Supplemental Deed in respect of Bonds including the payment of all interest on, and the Principal Amount (if any) in respect of, the Bonds;
[If the Issuer has not so complied and observed the provisions of the Trust Deed or any Supplemental Deed set out the particulars of the contravention and proposal to remedy the same]
 - (b) no Event of Default has occurred;
[If any Event of Default has occurred, set out the particulars of the Event of Default and, if appropriate, details of how it has been, or is proposed to be, remedied.]
 - (c) the Principal Amount of Bonds (if any) which have been repaid on maturity is NZ\$[•], details of which are set out below:
[•];
 - (d) [all interest due on the Bonds has been paid;]
 - (e) each Register in respect of a Series has been duly maintained in accordance with the Trust Deed;
4. As at the date of this certificate, having considered the financial position (including contingent liabilities) of the Issuer as a going concern (which the Directors are satisfied will be the case) and such budgets, reports, projections and certificates and assurances as they deem necessary and the anticipated trading transactions and sources of finance arranged or capable of being arranged during the 12 months from the Reporting Date, to the best of our knowledge and belief, the Issuer will be able to meet all its liabilities (including maturing Bonds and interest on Bonds) which fall due during the 12 months from the Reporting Date in accordance with accepted commercial practice.
5. As at the Reporting Date the aggregate Principal Amount of the Bonds outstanding is NZ\$[].

This report is given on the day of 20[]

Director of Issuer

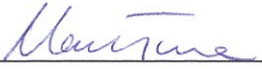
Director of Issuer

Signing page

EXECUTED as a deed


The Issuer

**THE NEW ZEALAND REFINING
COMPANY LIMITED** by:



Signature of director
MARK TUME

Name of director (print)



Signature of director
SIMON ALLEN

Name of director (print)

The Supervisor

**THE NEW ZEALAND GUARDIAN TRUST
COMPANY LIMITED** by:

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signature of authorised person

Name of authorised person

Signature of authorised person

Name of authorised person

Signing page

EXECUTED as a deed

The Issuer

**THE NEW ZEALAND REFINING
COMPANY LIMITED** by:

Signature of director

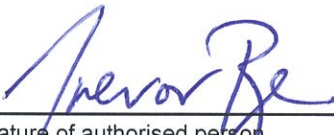
Signature of director

Name of director (print)

Name of director (print)

The Supervisor

**THE NEW ZEALAND GUARDIAN TRUST
COMPANY LIMITED** by:



Signature of authorised person

TREVOR PYE

Name of authorised person

Signature of witness
WITNESS TO BOTH SIGNATURES

Full Name: Debra Gail Morton

Name of witness

Residential Address: Auckland

Occupation: Corporate Trusts Administrator



Signature of authorised person

ASIF SALEEM

Name of authorised person

Occupation of witness 

City/town of residence **ACT 1577**