

Amendment and Restatement Deed relating to a Master Trust Deed

Z Energy Limited (the Issuer)

Trustees Executors Limited (the Supervisor)

Z Energy Limited and Z Energy 2015 Limited
(the Guarantors)

AMENDMENT AND RESTATEMENT DEED RELATING TO A MASTER TRUST DEED

Date: 10 May 2020

PARTIES

Z Energy Limited (the *Issuer*)

Trustees Executors Limited (the *Supervisor*)

Z Energy Limited and Z Energy 2015 Limited (the *Guarantors*)

BACKGROUND

- A The Issuer, the Supervisor and the Guarantors are parties to a Master Trust Deed dated 11 August 2010, as amended and/or restated from time to time including as amended and restated by deed dated 23 May 2019 (the *Master Trust Deed*).
- B The parties to this deed have agreed to amend and restate the terms of the Master Trust Deed on the terms and conditions set out in this deed.
- C Clause 22.2(a)(ii) of the Master Trust Deed permits an amendment without the consent of Holders if the Supervisor is satisfied that the amendment does not have a material adverse effect on the relevant Holders. The Supervisor is satisfied that the amendments to the Master Trust Deed effected by this document do not have a material adverse effect on Holders.
- D As at the date of this document, there are no Wholesale Series on issue.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this document, unless the context requires otherwise, words and expressions defined, and references construed, in the Master Trust Deed (as amended and restated by this document) and not otherwise defined or construed in this document have the same meanings and constructions when used in this document. In addition, unless the context requires otherwise:

Amended Master Trust Deed means the Master Trust Deed as amended and restated by clause 2 of this document; and

Effective Date means the date the Supervisor confirms to the Issuer in writing that it has received the following in form and substance satisfactory to it:

- (a) a duly executed copy of this document;
- (b) evidence that the Issuer has approved the proposed equity raising referred to in the Amended Master Trust Deed;
- (c) an executed copy of an amendment and restatement deed dated on or about the date of this document in relation to the Facilities Agreement;

- (d) either:
- (i) an executed copy of an amendment number one and waiver agreement dated on or about the date of this document in relation to the Note Purchase Agreement dated 1 November 2017 between the Issuer and the purchasers named therein, and acknowledged by Z Energy 2015 Limited (*USPP Amendment Agreement*); or
 - (ii) an execution copy of the USPP Amendment Agreement;
- (e) a legal opinion from the solicitors to the Issuer regarding the due execution and enforceability of this document; and
- (f) confirmation from the solicitors to the Issuer that the Master Trust Deed (as amended and restated by this document) will comply with sections 104 to 106 of the FMCA.

2 AMENDMENT AND RESTATEMENT

With effect on and from the Effective Date the Master Trust Deed is amended and restated in the form set out in the schedule to this document.

3 CONDITION SUBSEQUENT

If clause (d)(ii) in the definition of Effective Date is relied upon, then an executed copy of the USPP Amendment Agreement in materially the same form as provided for the purposes of clause (d)(ii) must be provided to the Supervisor by the Issuer within 10 Business Days of the Effective Date.

4 CONTINUATION

Each of the parties to this document agrees that on and from the Effective Date:

- (a) the Master Trust Deed as amended and restated by clause 2 of this document will continue in full force and effect; and
- (b) all references in each other agreement between them to the Master Trust Deed will be a reference to the Master Trust Deed as amended and restated by this document.

5 COUNTERPARTS

This document may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. Once the parties have signed the counterparts, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

6 GOVERNING LAW

This document will be governed by New Zealand law.

7 **DELIVERY**

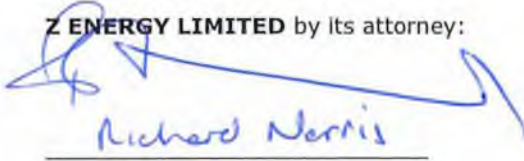
For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each of the parties to this deed immediately on the earlier of:

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

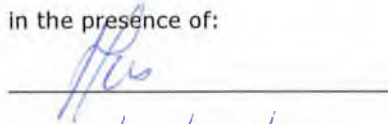
EXECUTED AND DELIVERED AS A DEED

The Issuer

Z ENERGY LIMITED by its attorney:


Richard Norris

in the presence of:



Name: Lindis Jones

Occupation: Chief Financial Officer

Address: Wellington

The Supervisor

TRUSTEES EXECUTORS LIMITED by:

in the presence of:

Authorised Signatory

Name:

Occupation:

Address:

Authorised Signatory

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Richard James Norris of Wellington, New Zealand, Treasurer of Z Energy Limited certify:

- 1 That by deed dated 8 May 2020, Z Energy Limited, company number 12046, a company incorporated in New Zealand and having its registered office at 3 Queens Wharf, Wellington, New Zealand appointed me its attorney.
- 2 That I have not received notice of any event revoking the power of attorney.

Signed at Wellington this 10th day of May 2020



Richard James Norris

EXECUTED AND DELIVERED AS A DEED

The Issuer

Z ENERGY LIMITED by its attorney:

in the presence of:

Name:

Occupation:

Address:

The Supervisor

TRUSTEES EXECUTORS LIMITED by:

in the presence of:

Name:

Occupation:

Address:

[Handwritten Signature]

Authorised Signatory

Matthew Joseph Band

David Shaw
Senior Client Manager
Auckland

Authorised Signatory


Yana Lushnikova
Operations Administrator
Auckland



[Handwritten signature]

Guarantors

Z ENERGY LIMITED by its attorney:


Richard Norris

in the presence of:




Name: Lindis Jones

Occupation: Chief Financial Officer

Address: Wellington

Z ENERGY 2015 LIMITED by its attorney:


Richard Norris

in the presence of:



Name: Lindis Jones

Occupation: Chief Financial Officer

Address: Wellington

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Richard James Norris of Wellington, New Zealand, Treasurer of Z Energy Limited certify:

- 1 That by deed dated 8 May 2020, Z Energy Limited, company number 12046, a company incorporated in New Zealand and having its registered office at 3 Queens Wharf, Wellington, New Zealand appointed me its attorney.
- 2 That I have not received notice of any event revoking the power of attorney.

Signed at Wellington this 10th day of May 2020



Richard James Norris

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Richard James Norris of Wellington, New Zealand, Treasurer of Z Energy Limited certify:

- 1 That by deed dated 8 May 2020, Z Energy 2015 Limited, company number 4482, a company incorporated in New Zealand and having its registered office at 3 Queens Wharf, Wellington, New Zealand appointed me its attorney.
- 2 That I have not received notice of any event revoking the power of attorney.

Signed at Wellington this 10th day of May 2020



Richard James Norris

SCHEDULE: AMENDED AND RESTATED MASTER TRUST DEED

Master Trust Deed for the Issue of Bonds

Z Energy Limited (Issuer)

The Parties listed in Schedule 1
(the Guarantors)

Trustees Executors Limited (the Supervisor)



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MASTER TRUST DEED FOR THE ISSUE OF BONDS

Date: 11 August 2010, as amended and/or restated from time to time, including by deeds dated 23 May 2019 and 10 May 2020

PARTIES

Z Energy Limited (*Issuer*)

The Parties listed in Schedule 1 (*the Guarantors*)

Trustees Executors Limited (NZ Company Number 142877) (*the Supervisor*)

BACKGROUND

- A The Issuer enters into this Deed to constitute and issue Retail Bonds to members of the public in New Zealand, and Wholesale Bonds, from time to time.
- B Bonds are constituted and issued in separate Series, each of which may comprise more than one Tranche. Each Series is constituted by, and issued subject to and with the benefit of, a Supplemental Trust Deed and any other relevant Bond Document.
- C The Supervisor has agreed to act as supervisor and trustee on behalf of Retail Holders in accordance with this Deed and applicable law.
- D The Issuer is a company registered under the Companies Act 1993.

TERMS OF THIS DEED:

1 INTERPRETATION

1.1 Definitions

Except to the extent the context requires otherwise, in this Deed:

Amendment Date means the Effective Date (as defined in the Amendment Deed).

Amendment Deed means the amendment and restatement deed dated 23 May 2019 relating to this Deed, between, amongst others, the Issuer and the Supervisor.

Auditor means, at any time, the qualified auditor of the Issuer at that time.

Base Rate means, in relation to a Series, the rate specified as such, or determined in accordance with, the Bond Documents for that Series.

Bond Conditions means, in relation to a Series, the terms and conditions applicable to Bonds of that Series from time to time set out or referred to in, or contemplated by, a Bond Document or Offer Document for that Series.



Bond Debt means, in relation to a Bond, all indebtedness of the Issuer to, or for the benefit of, the relevant Holder or, in the case of a Retail Bond, the Supervisor in relation to that Bond, and includes any part of that indebtedness.

Bond Documents means, in relation to a Series:

- (a) this Deed;
- (b) the Supplemental Trust Deed for the Series;
- (c) any other document specified as a Bond Document in that Supplemental Trust Deed; and
- (d) any other document specified as a Bond Document in an Offer Document for that Series, in the case of a Retail Bond, that the Issuer and the Supervisor agree is a Bond Document for that Series.

Bond Obligations means, in relation to a Bond, all obligations of any nature (whether present or future, express or implied, actual or contingent, secured or unsecured and whether incurred alone, jointly, severally, or jointly and severally, as principal, surety or otherwise) of an Obligor to, or for the benefit of, the relevant Holder or, in the case of a Retail Bond, the Supervisor under the Bond Documents in relation to that Bond, other than the Bond Debt, and includes any obligation owed to a Supervisor or nominee for Holders or the Supervisor.

Bonds means, at any time, the bonds and other debt securities (whatever called) constituted by, and issued under, this Deed and outstanding at that time.

Business Day means any day (other than a Saturday or a Sunday) on which Registered Banks are open for general banking 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.

Calculation Date means 31 March 2011, and the last day of each Financial Year and half Financial Year after that.

Calculation Period means a 12 month period ending on a Calculation Date.

Class means:

- (a) all Retail Bonds;
- (b) all Wholesale Bonds;
- (c) in relation to a matter affecting a Series only, that Series;
- (d) all Retail Bonds which have attached to them identical rights, privileges, limitations and conditions (but which may have a different Maturity Date, Interest Rate and/or Interest Payment Dates); and
- (e) any Bonds that the Issuer reasonably considers (in the case of Retail Bonds, with the Supervisor's approval) constitutes a separate class of



Bonds either within Wholesale Bonds or Retail Bonds, or both, as the case may be for the relevant purpose on the grounds their affected rights are identical or affected in the same way.

Class of Holders means Holders of Bonds of the same Class.

Core Business means the downstream petroleum refining and marketing business as is undertaken by, the Group in New Zealand.

Current Cost of Supply Accounting Principles has the meaning given to it in the Facilities Agreement (being, on the date of this Deed, the accounting principles set out in Schedule 8).

Deed means this deed, including the Schedules to it, as amended and supplemented from time to time, including in relation to a Series the relevant Supplemental Trust Deed.

Deed of Accession means a deed of accession to this Deed substantially in the form set out in Schedule 7.

Default Rate means, in relation to any period, the aggregate of:

- (a) in relation to a Floating Rate Bond, the Base Rate for that period plus the Margin; or
 - (b) in relation to a Fixed Rate Bond, the applicable Interest Rate,
- plus, in either case, 2 per cent per annum.

Designated Amount means, in respect of a Calculation Date occurring on or after the Effective Date and on or prior to 30 September 2021 (inclusive), the amount actually standing to the credit of the Equity Proceeds Account on that Calculation Date that is identified as the "Designated Amount" in the compliance certificate delivered to the Supervisor under clause 13.1(c) in respect of that date, which amount must:

- (a) not be higher than the amount of Excess Equity Proceeds; and
- (b) in respect of the Calculation Dates falling on 31 March 2021 and 30 September 2021, not be lower than (i) the most recent Designated Amount, minus (ii) the aggregate of any Repayment Amounts that have been applied towards Financial Indebtedness in accordance with clause 12.3(c)(i) since the previous Calculation Date).

Directors' Report means a report substantially in the form set out in Schedule 2 and delivered in accordance with clause 13.1(d).

Dollars or \$ means the lawful currency of New Zealand.

EBITDA means, of a person or group for a period, the consolidated earnings of that person or group for that period as determined in accordance with NZ GAAP (except, in relation to cost of sales (including stock and inventory), which shall be



determined on the basis of Current Cost of Supply Accounting Principles) and adjusted to exclude (by adding back or deducting, as the case may be), to the extent included (but without double-counting):

- (a) any deduction in respect of Net Interest Expense;
- (b) any deduction in respect of taxes;
- (c) any deductions in respect of depreciation or amortisation;
- (d) any deductions or contributions in respect of:
 - (i) abnormal items;
 - (ii) profits and losses on the sale of fixed assets or investments;
 - (iii) non-cash equity accounted profits and losses; or
 - (iv) unrealised exchange gains and losses.

To avoid doubt, the only dividends included in EBITDA are any cash dividends received by a person or a member of the group from The New Zealand Refining Company Limited or any other company.

Effective Date has the meaning given to that term in the amendment and restatement deed relating to this master trust deed dated on or about 10 May 2020 between the Issuer, the Guarantors and the Supervisor.

Equity Proceeds Account means a bank account in the name of the Issuer and held with the facility agent or a lender under the Facilities Agreement, which:

- (a) has had all rights of set-off and combination of account disappplied by the account bank (on terms acceptable to the Supervisor, acting reasonably); and
- (b) is designated as the "Equity Proceeds Account".

Enforcement Date means, in relation to a Series, the date of any declaration under clause 15.2 in relation to that Series.

Equity Proceeds has the meaning given to that term in the definition of Excess Equity Proceeds in this clause 1.1;

Event of Default means, in relation to a Series:

- (c) unless the Supplemental Trust Deed for that Series provides otherwise, any of the events set out in clause 15.1; and
- (d) any other event described as an Event of Default in the Bond Documents for that Series.

Excess Equity Proceeds means an amount equal to:



- (a) the gross proceeds of the Issuer's equity raising proposed for May/June 2020 (and in any event completed by 29 September 2020) (the *Equity Proceeds*);

minus the aggregate of:

- (b) costs, expenses and taxes incurred by any Obligor directly relating to the equity raising; and
- (c) the amount applied in prepayment of Facility A, as required under the Facilities Agreement.

Exchange means NZX Limited (NZ Company Number 1266120).

Extraordinary Resolution means, in relation to a Class:

- (a) a resolution passed at a duly convened meeting of the relevant Class of Holders by Holders holding at least 75 per cent of the nominal value of the Bonds of that Class and that are held by persons entitled to vote and voting; or
- (b) a resolution in writing signed by, or on behalf of, Holders holding at least 75 per cent of the Bonds of that Class and that are held by persons entitled to vote and voting,

in each case subject to applicable law, and, in relation to a Listed Bond, the Listing Rules.

Facilities Agreement means the facilities agreement dated 26 March 2010, as amended and/or restated from time to time, between, amongst others, Z Energy Limited, ANZ Bank New Zealand Limited, Bank of New Zealand, The Hongkong and Shanghai Banking Corporation Limited and Westpac New Zealand Limited as facility A and facility B joint lead arrangers, ANZ National Bank Limited, Bank of New Zealand, The Hongkong and Shanghai Banking Corporation Limited, MUFG Bank, Ltd. acting through its Auckland Branch, Westpac New Zealand Limited as original lenders and Bank of New Zealand as facility agent and security trustee.

Facility Documents means the "Finance Documents" as defined in the Facilities Agreement.

Facility Event of Default means an "Event of Default" as defined in the Facilities Agreement.

Finance Lease means a lease or hire purchase contract, a liability under which would, in accordance with NZ GAAP, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with NZ GAAP applicable to the Consolidated Group prior to its adoption of amendments to IFRS 16 on 1 April 2019, have been treated as an operating lease).

Financial Covenant Breach Period means each period:



- (a) beginning on any Calculation Date on which the Total Debt Coverage Ratio exceeds the Maximum Debt Coverage Ratio; and
- (b) ending on the next date on which the Total Debt Coverage Ratio no longer exceeds the Maximum Debt Coverage Ratio (including by reason of remedy or waiver).

Financial Indebtedness means any indebtedness or other monetary liability (present or future, actual or contingent) which consists of indebtedness or any other monetary liability:

- (a) for money borrowed or raised;
- (b) relating to the sale or negotiation of any negotiable instrument;
- (c) as lessee or hirer under any Finance Lease or as purchaser under any title retention agreement (except any such title retention agreement entered into in the ordinary course of the ordinary business of the relevant person);
- (d) relating to any preference share or unit categorised as debt under NZ GAAP;
- (e) under any commodity, currency or interest rate swap agreement, forward exchange rate agreement or futures contract;
- (f) in respect of receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) in respect of consideration for the acquisition of assets or services payable in the ordinary course of normal business;
- (h) under any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; or
- (i) under any guarantee relating to any of the indebtedness or liabilities referred to in paragraphs (a) to (h) above.

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, including any directors' reports or auditor's report attached to or intended to be read with any of those statements (as applicable) in each case as provided or to be provided (as the context requires) to the Supervisor pursuant to clause 13.1.

Financial Year means a financial year of the Issuer.



First Interest Accrual Date means, in relation to a Tranche, the date from which interest begins to accrue on the Principal Amount set out in, or set in accordance with, the relevant Bond Documents or Offer Documents.

Fixed Rate Bonds means Bonds specified as "Fixed Rate Bonds" in the Bond Documents.

Floating Rate Bonds means Bonds specified as "Floating Rate Bonds" in the Bond Documents.

FMA means the Financial Markets Authority.

FMCA means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

FMSA means the Financial Markets Supervisors Act 2011.

Group means Z Energy Limited and its Subsidiaries.

Guarantee means the guarantee given by the Guarantors in favour of the Holders of the Guaranteed Bonds and, where applicable, the Supervisor under clause 8.

Guaranteed Bond Debt means, in relation to a Guaranteed Bond, all Bond Debt in relation to that Bond, and includes any part of such Bond Debt.

Guaranteed Bond Obligations means, in relation to a Guaranteed Bond, the Bond Obligations of the Issuer to, or for the benefit of, the relevant Holder or, where applicable, the Supervisor .

Guaranteed Bonds means Bonds specified as "Guaranteed Bonds" in the Bond Documents.

Guaranteeing Group means, in relation to a Series, the Issuer and each Guarantor for that Series.

Guarantor means:

- (a) each person named in Schedule 1; or
- (b) any person who becomes a party to the Guarantee in accordance with clause 8.12,

from time to time. It does not include any person that has been released from its obligations under the Guarantee (or such other Bond Document) in accordance with the Guarantee (or other Bond Document).

Holder means, in relation to a Bond in respect of any time, the person or persons named in the Register as the holder of the Bond in respect of that time.



Insolvency Event means, in relation to a person, the occurrence of any of the following events:

- (a) *Cessation of business*: that person ceases to carry on all of its business or operations;
- (b) *Dissolution or reorganisation*: an application is made to a court for an order, an order is made, an effective resolution is passed, any corporate action is taken, or any other step is taken for the dissolution or reorganisation of that person, except:
 - (i) vexatious or frivolous legal proceedings;
 - (ii) legal proceedings or other steps stayed or dismissed within 10 Business Days or which that person is contesting in good faith by appropriate proceedings; or
 - (iii) for the purpose of, and followed by, a solvent reconstruction, merger, consolidation or voluntary liquidation, in relation to a Retail Bond, on terms approved in advance by the Supervisor;
- (c) *Moratorium etc*: that person convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, moratorium, compromise or composition with or for the benefit of its creditors generally with a view to avoiding insolvency;
- (d) *Appointment of receiver etc*: a receiver, receiver and manager, administrator, liquidator, provisional liquidator, trustee, inspector under any companies or securities legislation, or similar official, is appointed in respect of that person or all of its assets;
- (e) *Distress, execution etc*: a distress, attachment or other execution is levied or enforced upon, or commenced against, any assets of that person in respect of indebtedness of more than \$10,000,000, except any distress, attachment or other execution:
 - (i) discharged or stayed within 10 Business Days; or
 - (ii) that person is contesting in good faith by appropriate proceedings;
- (f) *Insolvency*: that person
 - (i) is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation; or
 - (ii) suspends or stops or threatens to suspend or stop payments generally;
- (g) *Statutory management*:



- (i) that person is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- (ii) a statutory or judicial manager is appointed over all or any of the assets of that person; or
- (iii) any recommendation is made by the Financial Markets Authority to the Minister of Justice or, as the case may be, the Minister of Finance that that person or any associated person of that person be placed in statutory management under the Corporations (Investigation and Management) Act 1989.

Interest Payment Date means, in relation to a Bond:

- (a) each interest payment date for the Bond set out in, or set in accordance with, the relevant Bond Documents;
- (b) the Maturity Date for the Bond; and
- (c) any Redemption Date for the Bond.

Interest Period means:

- (a) initially, the period from and including the First Interest Accrual Date to but excluding the first Interest Payment Date; and
- (b) thereafter, the period from and including one Interest Payment Date to, but excluding, the next Interest Payment Date.

Interest Rate means, in relation to a Bond, the rate of interest payable on the Bond set out in, or set in accordance with, the relevant Bond Documents.

Listed Bonds means Bonds that are, or are required by the relevant Bond Documents to be, Quoted.

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

Lowest Average Working Capital Balance means, on any Calculation Date, the lowest average aggregate principal amount of indebtedness of the Group under the Working Capital Facility over three consecutive days in the six months before that Calculation Date.

Margin has the meaning given to it in any Bond Document relating to Floating Rate Bonds.

Maturity Date means, in relation to a Bond, the maturity date for the Bond set out in, or set in accordance with, the relevant Bond Documents.

Maximum Debt Coverage Ratio means, at any time, the ratio of x:1 where "x" is the lesser of:

- (a) 4.0; and



- (b) the antecedent of the maximum ratio (expressed as y:1) that the "Total Debt Coverage Ratio" as defined in the Facilities Agreement is permitted to be under the Facilities Agreement at that time, plus 0.5.

Net Interest Expense means, of a group for a period:

- (a) the gross amount of all interest (including amounts in the nature of interest, or having a similar purpose or effect to interest) and financing costs incurred by that group over that period, including:
- (i) any dividend payable on any share or stock the obligations in respect of which constitute Financial Indebtedness (including Redeemable Shares but excluding any capitalising interest payable on loans from direct or indirect shareholders);
 - (ii) any discount on any bills or bonds, notes or other instruments drawn, accepted or endorsed;
 - (iii) any line, facility, acceptance, discount, guarantee or other fees and amounts incurred on a regular basis payable in relation to Financial Indebtedness;
 - (iv) Finance Lease charges comprising that portion of hire and rental payments under any Finance Lease entered into which exceeds the reduction of principal indebtedness attributable to the Finance Lease resulting from those payments which ought to be included in an audited profit and loss statement prepared at that time as having been paid or incurred; and
 - (v) all other expenses and amounts that are required by NZ GAAP to be treated as interest or financing costs other than establishment and arrangement fees and other upfront loan establishment costs; less
- (b) interest income of that group for that period,

in each case, calculated on a consolidated basis in accordance with NZ GAAP.

Non-Resident Holder means:

- (a) a Holder; or
- (b) (where applicable) any person beneficially deriving the interest under the Bond,

who is not resident in New Zealand for tax purposes and is a person to whom the payment of interest (or payment deemed by law to be interest) is subject to the New Zealand non-resident withholding tax rules in respect of the Bond.

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



NZDX means the debt securities market operated by the Exchange.

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

Obligors means the Issuer and, in relation to Guaranteed Bonds, the Guarantors, and *Obligor* means any one of them.

Offer Document means, in relation to a Bond, the prospectus, investment statement, product disclosure statement (as applicable), issue flyer, information memorandum, offering circular or other document describing the Issuer, the offer or Bond Conditions for that Bond.

Principal Amount means, in relation to a Bond, the principal amount of that Bond as set out in, or set in accordance with, the Bond Documents.

Record Date means the date determined by the Issuer, in accordance with any applicable law and Listing Rules, as the date as at which any entitlement or other matter in relation to any Bonds is to be determined (including entitlement to any payment or notice, in which case the Record Date must be no less than 10 Business Days prior to the date on which the payment is due or the notice is to be given).

Redeemable Shares means:

- (a) shares which are redeemable in cash, or by the issue of other redeemable shares, either compulsorily, or at the option of the holder or issuer of such shares; and
- (b) units in any trust which are analogous in nature to the shares referred to in paragraph (a), if that unit trust is a member of the Group, or if a member of the Group is responsible for the redemption of those units.

Redemption Date means, in relation to a Bond, any date on which the Bond is or is to be redeemed or purchased for cash, excluding the Maturity Date.

Register means:

- (a) when used in relation to a Bond or Series, the Register for the relevant Series; or
- (b) otherwise the register or registers of Bonds to be established and maintained in accordance with this Deed.

Registered Bank has the meaning given to that expression in the Reserve Bank of New Zealand Act 1989.

Registrar means the person who maintains a Register from time to time, which may be the Issuer or any other person from time to time appointed by the Issuer for the purpose.

Repayment Amount has the meaning given to that term in clause 12.3(c)(i).



Retail Bonds means:

- (a) Bonds that are, in accordance with the relevant Bond Conditions, offered or sold in a manner that requires the Issuer to appoint a trustee in respect of the Bonds to comply with the Securities Act 1978; or
- (b) Bonds that are, in accordance with the relevant Bond Conditions, offered or sold under a regulated offer as defined in the FMCA; or
- (c) Bonds that are, in accordance with the relevant Bond Conditions, offered or sold in accordance with clause 19 of Schedule 1 to the FMCA,

and are constituted in accordance with clause 3.2(a) and specified as "Retail Bonds" in the relevant Bond Documents.

Retail Holder means a Holder of a Retail Bond or Retail Bonds.

Retail Series means a Series of Retail Bonds.

Secured Bonds means Bonds specified as "Secured Bonds" in the relevant Bond Documents.

Series means the Bonds constituted by, and issued under, the same Supplemental Trust Deed (which may be issued in separate 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.

Subordinated Bonds means Bonds specified as "Subordinated Bonds" in the relevant Bond Documents.

Subordinated Debt means Financial Indebtedness which two directors of the Issuer certify to the Supervisor is subordinated in a manner satisfactory to the "Facility Agent" (as defined in the Facility Documents) in right of payment behind the Secured Money.

Subsidiary of any other person means:

- (a) any subsidiary of such person within the meaning given to that term in section 5 of the Companies Act 1993; and
- (b) any subsidiary of that person determined in accordance with NZ GAAP.

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

Supplemental Trust Deed means:

- (a) in the case of a Retail Bond, a supplemental trust deed entered into by the Issuer and the Supervisor under clause 3.2(a); and



- (b) in the case of a Wholesale Bond, a supplemental trust deed entered into by the Issuer under clause 3.2(b).

Total Debt means, on any Calculation Date, the sum of:

- (a) the aggregate amount of all Financial Indebtedness of the Group (calculated on a consolidated basis in accordance with NZ GAAP but when measuring the aggregate amount of Financial Indebtedness of the type described in paragraph (e) of that definition, only the out of the money mark-to-market values thereof shall be taken into account), less the sum of:
- (i) the aggregate amount of all Subordinated Debt of the Group at that date (calculated on a consolidated basis in accordance with NZ GAAP);
 - (ii) the aggregate principal amount of indebtedness of the Group under the Working Capital Facility; and
 - (iii) (in respect of any Calculation Date that occurs on or after the Effective Date and on or prior to 30 September 2021 (inclusive)) the Designated Amount in respect of that Calculation Date,

and excluding any Financial Indebtedness under any guarantee relating to indebtedness or liabilities of another member of the Group; and

- (b) the Lowest Average Working Capital Balance,

on that date.

Total Debt Coverage Ratio means, on a Calculation Date, the ratio of:

- (a) Total Debt on that Calculation Date; to
- (b) EBITDA of the Group for the Calculation Period ending on that Calculation Date.

Total Tangible Assets means, of a person or group as at any date, an amount equal to the consolidated assets of the person or group as at that date which, according to NZ GAAP, would be classified as assets, excluding assets which, according to NZ GAAP, would be classified as intangible assets.

Tranche means Bonds of the same Series that are identical in all respects except in relation to the issue date, the maturity date, interest rate, first interest accrual date, initial interest payment date, issue price, denomination and/or any other feature (other than ranking or whether or not guaranteed) determined by the Issuer and, in the case of a Retail Bond, agreed with the Supervisor.

Unlisted Bonds means Bonds that are not Listed Bonds.

Unsecured Bonds means Bonds that are not Secured Bonds.



Unsubordinated Bonds means Bonds that are not specified as “Subordinated Bonds” in the relevant Bond Documents;

Wholesale Bonds means Bonds specified as “Wholesale Bonds” in the relevant Bond Documents, and that are not permitted, in accordance with the relevant Bond Conditions, to be offered or sold to any retail investor, and are constituted in accordance with clause 3.2(b) and specified as “Wholesale Bonds” in the relevant Bond Documents.

Wholesale Holder means a Holder of a Wholesale Bond or Wholesale Bonds.

Wholesale Series means a Series of Wholesale Bonds; and

Working Capital Facility means:

- (a) “Facility B” as defined in the Facilities Agreement; and
- (b) any other financial accommodation provided to an Obligor from time to time that two directors of the Issuer certify to the Supervisor:
 - (i) shall be a “Working Capital Facility” for the purposes of this Deed;
 - (ii) may only be used by an Obligor to fund the general working capital requirements of the Group; and
 - (iii) is otherwise provided on terms that are the same in all material respects (where applicable, and excluding price or term) as “Facility B” as defined in the Facilities Agreement at the time of that certificate, or if “Facility B” as defined in the Facilities Agreement has been cancelled, immediately before it was cancelled.

1.2 Terms defined in the Listing Rules

Except to the extent the context requires otherwise, in this Deed the terms “Quoted” and “Listed” shall have the meanings given to them in the Listing Rules.

1.3 Interpretation

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

an agreement includes a contract, document, deed, licence, franchise, undertaking, certificate, instrument, security or other arrangement (in each case whether oral or written);

claims includes any actions, proceedings, demands and liabilities (absolute or contingent);

a consent includes an approval, authorisation, exemption, filing, licence, clearance, order, permit, resource consent, recording or registration (and references to obtaining consents shall be construed accordingly);



costs includes any costs, charges, fees, commissions, indemnities, taxes, damages, losses, expenses (including legal fees and expenses on a full indemnity basis and goods and services and similar taxes thereon), fines and penalties;

the *dissolution* of a person includes the winding-up, liquidation, removal from the register or bankruptcy of that person or an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

any *document or agreement* (however described and including this Deed) includes that document or agreement as amended, extended, modified, novated, supplemented, varied or replaced from time to time;

governmental agency includes any state or government and any governmental, semi-governmental, judicial, statutory, monetary, accounting or regulatory entity, authority, body or agency or any other person charged with the administration of any law;

guarantee includes any guarantee, indemnity, letter of credit, legally binding letter of comfort, suretyship or other assurance against loss;

indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, and whether incurred alone, jointly, severally, or jointly and severally, as principal or surety or otherwise) relating to the payment or repayment 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;

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

something having a *material adverse effect* on a person or a group of persons is a reference to it having a material adverse effect on:

- (a) the person's or group's financial condition, business or prospects (or on the consolidated financial condition or business of the group of companies of which it forms part);
- (b) the person's or group's ability or willingness to perform and comply with its obligations under the Bond Documents to which it is party; or
- (c) the Holder's or, where applicable, Supervisor's ability to recover the Bond Debt or Guaranteed Bond Debt, as applicable, to enforce performance of the person's or group's obligations under the Bond Documents;

month means a calendar month;



obligations includes covenants, conditions, stipulations, representations, warranties, guarantees, undertakings, assurances, agreements and duties;

outstanding means, in relation to any Bonds, all of the relevant Bonds that have been constituted and issued in accordance with the relevant Bond Documents other than:

- (a) Bonds which have been redeemed in full in accordance with the Bond Documents; and
- (b) Bonds which have been purchased and cancelled in accordance with the Bond Documents;

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

powers includes rights, privileges, authorities, discretions and remedies;

qualified auditor has the same meaning set out in the FMCA;

regulated offer has the same meaning set out in the FMCA;

resident means a New Zealand resident as defined in section YA1 of the Income Tax Act 2007;

resource consent has the meaning given to it by section 2 of the Resource Management Act 1991;

retail investor has the same meaning set out in the FMCA;

a *security interest* includes a "security interest" (as defined in section 17 of the Personal Property Securities Act 1999), a mortgage, encumbrance, lien, pledge, charge (whether fixed or floating), lien, Finance Lease, deferred purchase, sale and repurchase, flawed asset, sale and leaseback, title retention, assignment by way of security, trust, hypothecation, and any other security agreement or arrangement of whatsoever nature (however described) that in substance secures payment or performance of an obligation without regard to the form of the transaction and the identity of the parties (and *secured* and *unsecured* shall be construed accordingly); and

tax(es) includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including any interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, or any municipal authority, on whomsoever imposed, levied, collected, withheld or assessed.

1.4 **Miscellaneous**

Except to the extent that the context requires otherwise, in this Deed:

- (a) references to **clauses** and **Schedules** are to clauses of and schedules to this Deed;



- (b) **derivatives** of any defined word or term shall have a corresponding meaning;
- (c) the **headings** to clauses are inserted for convenience only and shall be ignored in construing this Deed;
- (d) the word **including** and other similar words do not imply any limitation;
- (e) any **party** to this Deed (or any other document) includes its successors and permitted assignees and transferees;
- (f) the **plural** includes the singular and vice versa;
- (g) reference to a **statute** or a provision of a statute includes that statute or provision as amended, modified, substituted or re-enacted from time to time and any regulations, orders in council and other instruments issued or made under that statute from time to time; and
- (h) a reference to a **time of day** is to New Zealand time.

1.5 **Non-Business Days:** Anything which is required by any Bond Document to be done on, or as of, a day that is not a Business Day is to be done on, or as of, the next Business Day, without adjusting interest or any other payment.

2 APPOINTMENT OF SUPERVISOR

2.1 Appointment

The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor and trustee for the Holders of the Retail Bonds on the terms of this Deed and applicable law, and with the rights, powers and obligations conferred by this Deed or by applicable law.

2.2 Covenant to pay

The Issuer covenants with the Supervisor that it will pay all Bond Debt in relation to Retail Bonds when due and payable to, or as directed by, the Supervisor.

2.3 Pro tanto satisfaction

Every payment to Retail Holders of (or on account of) the Bond Debt due and payable on their Retail Bonds in accordance with the applicable Bond Conditions satisfies pro tanto the indebtedness the Issuer agrees to pay under clause 2.2.

3 CONSTITUTION AND ISSUE OF BONDS

3.1 Constitution of Bonds

The Issuer may, from time to time, constitute and issue Bonds under, and in accordance with, this Deed.

3.2 Supplemental Trust Deed:

- (a) Each Series of Retail Bonds shall be constituted by the Issuer entering into a Supplemental Trust Deed with the Supervisor.



- (b) Each Series of Wholesale Bonds shall be constituted by the Issuer entering into a Supplemental Trust Deed.
- (c) Each Supplemental Trust Deed may modify this Deed in relation to the relevant Series. If there is a conflict between a Supplemental Trust Deed and this Deed, then the Supplemental Trust Deed shall prevail in relation to the relevant Series.

3.3 Bond Conditions:

- (a) Each Bond is to be issued, and held by the Holder, with the benefit of and subject to the applicable Bond Conditions.
- (b) The applicable Bond Conditions are binding on the Issuer, the Holders, any Guarantor party to them and, where applicable, the Supervisor.
- (c) Each Holder will be deemed to have notice of the applicable Bond Conditions.

3.4 Form of Bonds

Bonds shall be:

- (a) constituted and issued in registered form;
- (b) denominated in such currency or currencies as may be specified in the relevant Bond Conditions; and
- (c) issued in the minimum aggregate Principal Amount, and multiples, specified in the relevant Bond Conditions.

3.5 Premium or discount

A Bond may be issued at a discount or premium to its Principal Amount.

4 STATUS AND RANKING OF BONDS

4.1 Status of Bonds

The Bond Debt shall constitute direct and, except in the case of Subordinated Bonds, unconditional indebtedness of the Issuer.

4.2 Ranking of Bonds

The liability of the Issuer to the Holders and, where applicable, the Supervisor to pay the Bond Debt will at all times rank:

- (a) in the case of unsecured Unsubordinated Bonds, at least equally with all the Issuer's other unsecured and unsubordinated indebtedness except indebtedness preferred solely by operation of law;
- (b) otherwise, in point of priority and payment as specified in the Bond Documents.

Bonds of any Series shall rank *pari passu* and without priority or preference among themselves.



5 REPAYMENT AND PURCHASE

5.1 Maturity Date

- (a) Subject to clause 15, unless and until a Bond becomes due and payable earlier under a Bond Document, the Issuer shall redeem that Bond by payment of the outstanding Bond Debt for that Bond on the Maturity Date.
- (b) A Holder is entitled to be repaid at the Maturity Date without having to give notice that repayment is required.

5.2 Cancellation on redemption

Each Bond which is redeemed in accordance with this Deed is cancelled, and neither the Issuer nor, where applicable, the Supervisor will have any further liabilities or obligations in respect of that Bond.

5.3 Purchase of Bonds

- (a) Any member of the Group may, subject to and in accordance with (in the case of a Listed Bond) the Listing Rules, at any time purchase a Bond for its own account.
- (b) Each Bond so purchased may, at the option of the relevant member of the Group, be cancelled or reissued and upon cancellation neither the Issuer nor, where applicable, the Supervisor will have any further liabilities or obligations in respect of that Bond.
- (c) To avoid doubt, a restriction in the Bond Conditions on prepayment of a Bond does not, of itself, restrict a purchase of that Bond.

6 INTEREST

6.1 Interest Rate

The Issuer shall pay interest on the Principal Amount of each Bond at the Interest Rate, in the case of a Floating Rate Bond, for each Interest Period.

6.2 Interest Payment

On each Interest Payment Date, the Issuer shall pay:

- (a) interest on each relevant Fixed Rate Bond calculated in accordance with the following formula:

$$\frac{A \times B}{C}$$

unless the relevant Interest Period is not exactly 3 months, 6 months or 12 months where interest is payable on the Bond quarterly, semi-annually, or annually, respectively,

Where:

A = the Principal Amount of the Bond;

B = the Interest Rate for the Bond; and



C = where interest is payable on the Bond quarterly, 4; semi-annually, 2; or annually, 1; and

- (b) otherwise, all unpaid interest accrued on each relevant Bond in the relevant Interest Period.

6.3 Calculation of interest

Interest on a Bond shall:

- (a) be payable in arrears on the relevant Interest Payment Date;
- (b) accrue daily from (and including) the First Interest Accrual Date to (but excluding) the Maturity Date; and
- (c) be calculated on the basis of a year of 365 days and, unless clause 6.2(a) applies, the actual number of days elapsed.

6.4 ITOS

The first payment of interest in respect of a Bond shall be made to the original subscriber of the Bond, regardless of whether there has been any transfer of the relevant Bond prior to the first Interest Payment Date.

6.5 Default interest

- (a) If any Bond Debt is not paid on its due date, the Issuer shall pay interest on the unpaid amount (before and after any judgment) at the applicable Default Rate from the due date to the date the unpaid amount is discharged.
- (b) The interest shall be calculated in respect of successive periods of 30 days or, in the case of any Retail Bond, of at least one month and no more than six months selected by the Supervisor, the first of which shall begin on (and include) the due date.
- (c) The interest shall be due and payable, without the need for demand, at the end of each period in respect of which it is calculated and if not paid shall compound as from the last day of each such period.

7 PAYMENTS

7.1 Currency and time

All payments in respect of the Bond Debt shall be made:

- (a) in Dollars; and
- (b) at the time specified in the relevant Bond Document or, if no time is specified, during normal banking hours on the due date.

7.2 Holder entitled to payment

- (a) Subject to clause 6.4, any payment in respect of the Bond Debt must be made to the person named in the Register as the Holder of the Bond on the Record Date for that payment.



- (b) If more than one person is so named in the Register, the payment must be made to the first person so named.

7.3 Method of payment

All payments in respect of the Bond Debt may be made, at the payer's option, by:

- (a) *Direct credit:* direct credit to any New Zealand bank account nominated in writing by the Holder and entered in the Register on the Record Date in relation to that Holder; or
- (b) *Post:* mailing a cheque payable to the Holder to the Holder's address entered in the Register on the Record Date.

7.4 Payments to be Free and Clear

All amounts paid by an Obligor under or pursuant to the Bond Documents shall be paid:

- (a) *No Restriction:* free and clear of any restriction or condition;
- (b) *No Withholding:* free and clear of and (except to the extent required by law) without any deduction or withholding on account of any tax or directive; and
- (c) *No Set-Off:* without any deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

7.5 Unclaimed payments

Any amount paid to or for the benefit of a Holder under and in accordance with the Bond Documents that is unclaimed shall be retained by the payer for the relevant Holder, without any obligation to invest or pay interest on that amount. If that amount is not claimed within five years from the original date of payment, it will be forfeited to the payer for its benefit and shall no longer be treated as an unclaimed payment.

7.6 Reinstatement

If any payment received or recovered by or on behalf of a Holder or the Supervisor is or is likely to be avoided, whether by law or otherwise, then:

- (a) *No Discharge:* the relevant Obligor's obligation to have made such payment will be deemed not to have been affected or discharged; and
- (b) *Reinstate:* the Holder or Supervisor (as applicable) and the Obligor will be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.



8 GUARANTEE

8.1 Guarantee

Each Guarantor jointly and severally unconditionally and irrevocably guarantees to each Holder and, where applicable, the Supervisor the due and punctual payment of the Guaranteed Bond Debt as and when it becomes due and payable under the Bond Documents (whether on the normal due date, on acceleration or otherwise) and the due observance and punctual performance of and compliance with the Guaranteed Bond Obligations.

8.2 Payment

If, for any reason, the Issuer does not pay all or any part of the Guaranteed Bond Debt to a Holder or (where applicable) Supervisor on or before the due date for payment, each Guarantor shall pay the Guaranteed Bond Debt to the Holder or Supervisor (as applicable) on demand (whether or not demand for payment has been made on the Issuer or any other person).

8.3 Principal Debtor

Each Guarantor's liability under the guarantee given in this clause 8 is deemed to be the liability of a principal debtor and not merely a surety.

8.4 Unconditional Obligations

Each Guarantor's liability will not be affected or diminished, nor will any security or guarantee provided by the relevant Guarantor be released or discharged, by any act, omission or matter which but for this clause 8.4 would have released the relevant Guarantor wholly or partly from its liability to a Holder or, where applicable, the Supervisor (whether or not known to, or done or omitted to be done by, the relevant Guarantor, a Holder, the Supervisor or any other person) including:

- (a) *Granting of Time:* the granting of any time, credit, indulgence, waiver or other concession to any Obligor or any other person whether by a Holder, the Supervisor or any other person (whether or not at the request of the Guarantor or other such person);
- (b) *Insolvency:* the dissolution of any Obligor or any other person or the appointment of any receiver, manager, administrator, inspector, trustee, statutory manager or other similar person in respect of any Obligor or any other person over the whole or any part of its or their respective assets or any step being taken towards such dissolution or appointment;
- (c) *Change in Position:* any Obligor or other person being party to an amalgamation, assignment for the benefit of creditors, scheme of arrangement, composition of debts, scheme of reconstruction or change in constitution, composition, status or control whether by reason of a change in constitutive documents or by incorporation or the death, incapacity, retirement, appointment or admission of any partner, trustee or other person;
- (d) *Liability Ceasing:* any liability of an Obligor or any other person ceasing from any cause whatever (including any release or discharge by a Holder or the Supervisor or by operation of law);



- (e) *Other Agreements:* any person providing or joining in providing any Bond Document or other agreement, guarantee or security or the failure by any Obligor or any other person to provide, or it being incompetent to give, any Bond Document or any other agreement, guarantee or security;
- (f) *Other Obligations:* any Bond Document, any other agreement, guarantee, or security in favour of a Holder or the Supervisor, or any right of either of them, at any time being or becoming in whole or in part void, voidable, defective or unenforceable for any reason or being released, discharged or varied in whole or in part;
- (g) *Amendment:* any amendment, waiver, compounding, compromise, release, abandonment, relinquishment or renewal of any Bond Document, or any other agreement, guarantee, security, or any assets, or any rights of a Holder or the Supervisor against any Obligor or any other person ("change in circumstance") or any failure to notify any Obligor or such person of such change in circumstance;
- (h) *Enforcement:* the enforcement of, or failure to enforce (including the failure to make a valid demand), any rights under any Bond Document or any other agreement, guarantee or security or any law; or
- (i) *Additional loans:* the provision of further financial accommodation to the Issuer, with or without the consent of the Guarantors.

8.5 **Obligations Continuing**

The Guarantee:

- (a) is a continuing guarantee and will remain in full force and effect in relation to each Guarantor by way of continuing security for a Bond Debt or Bond Obligations until released; and
- (b) will not be considered as wholly or partially satisfied, discharged or affected by any intermediate payment or settlement of account or other matter or thing whatsoever.

8.6 **Independent Obligation**

The Guarantee is in addition to, independent of, and not in substitution for any other guarantee, security or right which a Holder or the Supervisor may have at any time and will not merge with or in any way be prejudiced or affected by, or prejudice or affect, any such guarantee, security or right.

8.7 **Discretion**

Subject to clause 16.1, a Holder or, in the case of a Retail Bond, the Supervisor may at any time:

- (a) *Determination:* determine whether to enforce or refrain from enforcing the Guarantee (or any part of it) or any other Bond Document or any other guarantee or security or right;



- (b) *No Proceedings Against Others:* enforce the Guarantee (or any part of it) against a Guarantor without first taking steps or proceedings against any Obligor or any other person; and
- (c) *Arrangements:* make any arrangement or compromise with any Obligor or any other person which the Holder or, in the case of a Retail Bond, the Supervisor considers expedient.

8.8 No Marshalling

A Holder and, where applicable, the Supervisor is not required to marshal, enforce or apply under, or appropriate, recover or exercise, any security, guarantee or other right held by it at any time or any amount or asset which it holds or is entitled to receive at any time prior to enforcing the Guarantee.

8.9 Restrictions

Until the Guarantee has been released, each Guarantor undertakes in favour of any Wholesale Holders in relation to any Wholesale Bonds held by them, and the Supervisor in relation to any Retail Bonds, not to:

- (a) *Hold Other Security Interest:* hold any security interest from any other guarantor or any person who has given any security interest to a Holder or the Supervisor for any Guaranteed Bond Debt;
- (b) *Marshall:* exercise any right of subrogation or contribution, or require marshalling, or claim the benefit of any indemnity from another Obligor, or of any guarantee or security interest now or in the future held by a Holder or the Supervisor for the payment of any Guaranteed Bond Debt;
- (c) *Recover:* following any Event of Default take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property, or exercise or enforce rights, in respect of any amount due to it (whether actually or contingently) from anyone who has given a guarantee or security interest in respect of the Guaranteed Bond Debt; or
- (d) *Claim or Prove:* claim or prove in the dissolution of any other guarantor or any other person who has given a guarantee or security interest in respect of the Guaranteed Bond Debt in competition with a Holder or the Supervisor,

unless required to do so by:

- (e) in relation to Wholesale Bonds, an Extraordinary Resolution of the relevant Holders; or
- (f) in relation to Retail Bonds, the Supervisor.

8.10 Guarantors to Account

If, notwithstanding, and in breach of clause 8.9, a Guarantor:

- (a) *Holds Property:* holds any security interest, money or other property from any other guarantor or from any person who has given a security interest to a Holder or the Supervisor for any Guaranteed Bond Debt; or



- (b) *Proves*: proves in the relevant Guarantor's own name in the dissolution of any other guarantor or of any other person who has given any security interest to a Holder or the Supervisor for any Guaranteed Bond Debt (whether or not Holders or the Supervisor required the relevant Guarantor to do so, or consented to the relevant Guarantor doing so), for all or any part of any amount due (whether actually or contingently) from such other guarantor or person to the relevant Guarantor,

that Guarantor shall immediately pay or transfer to the relevant Holders or, where applicable, the Supervisor all such security interests, money or other property, or all amounts received by that Guarantor in relation to any such proof, and all interest accruing thereon, and, until that payment or transfer is made, shall hold such security interests, money or other property, or the benefit of that proof, (and all interest), on trust for the relevant Holders or, where applicable, the Supervisor.

8.11 Waiver

Each Guarantor waives in favour of the Holders and the Supervisor all rights against the Issuer, any other Obligor and any other person or its or their estate and assets so far as is necessary to give effect to anything in the Guarantee.

8.12 New Guarantors

Subject to clause 8.13, each Obligor undertakes in favour of any Wholesale Holders in relation to any Wholesale Bonds held by them and the Supervisor in relation to any Retail Bonds, that it will procure that any Subsidiary of it, as soon as practicable and in any event within 10 Business Days:

- (a) accedes to this Deed by executing and delivering a duly completed Deed of Accession;
- (b) accedes to any other document to which a Supplemental Trust Deed requires each such Subsidiary to accede, in the manner specified in that Supplemental Trust Deed; and
- (c) while any Retail Bonds are outstanding, delivers to the Supervisor such resolutions, documents, legal opinions, certificates and other evidence as the Supervisor may reasonably require,

to the extent required to ensure that at all times:

- (d) any Subsidiary that guarantees any indebtedness under the Facility Documents is also an Obligor;
- (e) the Total Tangible Assets of the Obligors are not less than 95% (or such other percentage as two directors of the Issuer may certify to the Supervisor applies for the same purpose under the Facilities Agreement) of the Total Tangible Assets of the Group; and
- (f) the EBITDA of the Obligors is not less than 95% (or such other percentage as two directors of the Issuer may certify to the Supervisor applies for the same purpose under the Facilities Agreement) of the EBITDA of the Group.



8.13 Release of Guarantors in relation to Retail Bonds

The Supervisor shall (by executing appropriate release or other documents):

- (a) release a Guarantor from the Guarantee and the other covenants given by it under the Bond Documents and any document described in clause 8.12(b); or
- (b) permit a Subsidiary to not become a Guarantor or accede to any document described in clause 8.12(b),

and shall accept any request from an Obligor to do so, in relation to Retail Bonds, if two directors of the Issuer certify to the Supervisor that:

- (c) the relevant Guarantor no longer guarantees or will, immediately after the release referred to in clause 8.13(a) takes effect, no longer guarantee, or the Subsidiary is not required to and does not guarantee, any indebtedness under the Facility Documents (provided that the relevant Guarantor or Subsidiary shall be required to become a Guarantor in accordance with clause 8.12 if it subsequently guarantees any indebtedness under the Facility Documents); or
- (d) if the Facilities Agreement has been cancelled:
 - (i) there are sound commercial reasons why the Guarantor should cease to be a Guarantor or the Subsidiary should not become a Guarantor; and
 - (ii) releasing the Guarantor will not:
 - (A) result in an Event of Default in relation to any Retail Bonds; nor
 - (B) in their opinion, materially adversely affect the holders of any Retail Series generally in the reasonably foreseeable future.

8.14 Release of Guarantors in relation to Wholesale Bonds

- (a) A Guarantor shall be released from the Guarantee and the other covenants given by it under the Bond Documents; and
- (b) a Subsidiary shall not be required to become Guarantor,

in relation to Wholesale Bonds, provided that two directors of the Issuer certify that:

- (c) there are sound commercial reasons why the relevant Guarantor should cease to be a Guarantor or the Subsidiary should not become a Guarantor; and
- (d) releasing the relevant Guarantor or permitting the Subsidiary to not become a Guarantor will not:



- (i) result in an Event of Default in relation to any Wholesale Bonds; nor
- (ii) in their opinion, materially adversely affect the Wholesale Holders generally in the reasonably foreseeable future.

9 REGISTER

9.1 Establish and maintain Register

- (a) The Issuer shall engage the Registrar to establish and maintain the Register for each Series in New Zealand, in accordance with this Deed and all applicable laws.
- (b) The Issuer may engage a different Registrar to establish and maintain the Register for any Series, provided all financial products of the "same class" (as that term is defined in the FMCA) must be recorded in the same Register.
- (c) The Register may be an electronic register or be kept in any other reasonable manner that the Issuer thinks fit.

9.2 Details on Register

Each Register must show the information specified in Schedule 4 in respect of each Bond of the relevant Series.

9.3 Inspection of Register

- (a) The Issuer and the Supervisor may at all reasonable times during usual office hours obtain (in electronic form, if requested) a copy of any Register without payment of any fee.
- (b) The Issuer will procure that the Registrar of the relevant Bonds discloses to any Holder, upon request and without fee, any information held on a Register in relation to that Holder and all other matters required by applicable law.
- (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 applicable law.

9.4 Change of details

Each Holder (or if a joint Holding all the joint Holders) shall notify the Registrar in writing of any change of any information about it or them required by Schedule 4 to be entered in the relevant Register and, following such notice, the Registrar must alter the relevant Register accordingly. No change of information will have effect in respect of any entitlement unless received by the Registrar on or before the Record Date for that entitlement.

9.5 No trusts

The Registrar is not required to enter notice of any trust, equity, security or other interest affecting a Bond on the Register.

9.6 Register conclusive

Each of the Issuer, the Supervisor and the Registrar is:



- (a) *rely on Register*: entitled to rely upon the Register as constituting the sole and conclusive record of the ownership and, to the extent recorded in the Register, the terms of, each Bond;
- (b) *no trusts*: not affected by any trust, equity, security or other interest affecting a Bond, whether or not it is aware of the interest (except as required by law);
- (c) *absolute owner*: entitled to treat the person named in the Register as the Holder of a Bond as the absolute owner, free from all other interests, and none of them will be required to obtain proof, or make further enquires, of the ownership or identity of any Holder; and
- (d) *no liability*: not liable to each other or any Holder or former Holder for relying on a Register or for accepting in good faith as valid any detail recorded on a Register subsequently found to be forged, irregular or not authentic.

In any event of conflict between any confirmation, certificate, Statement or notice of registration issued in respect of a Bond and a Register, the Register shall prevail.

9.7 Correct Register

The Issuer or, where applicable, the Supervisor may, on such evidence as appears to it to be sufficient, correct errors in, or omissions from, a Register.

9.8 Certificates

At the request of a Holder, or otherwise required by the FMCA, the FMC Regulations, 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.

9.9 Joint ownership

Subject, in the case of a Listed Bond, to the Listing Rules:

- (a) Where two or more persons are registered as Holders of the same Bonds, then, unless those persons notify the Issuer to the contrary, the persons will be deemed to hold the Bonds as joint tenants with right of survivorship.
- (b) If two or more persons notify the Issuer that they hold Bonds as tenants in common, the Issuer may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share.



- (c) Any communication under or in respect of this Deed is, unless the joint Holders or Holders as tenants in common notify the Issuer otherwise, only required to be sent to the address of the joint Holder or tenant in common whose name appears first in the relevant Register in relation to that joint holding.

9.10 Audit of Register

The Issuer shall ensure that each Register shall be audited by the Auditors or any other qualified auditor in accordance with the requirements of the FMCA and FMC Regulations from time to time, including the applicable auditing and assurance standards (as defined in section 6 of the FMCA). The audit must determine whether, in the Auditor's (or any other qualified auditor's) opinion, there is reasonable assurance that the register, in all material respects, correctly contains the information specified in section 217 of the FMCA.

9.11 No Charge to Holders

The Registrar shall not charge a Holder or transferee for entering any transfer in, or otherwise maintaining, a Register, but may charge the Issuer, in accordance with its terms of engagement.

9.12 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 Trust Deed relating to each Register.

10 TRANSFER OF BONDS

10.1 Transfer

- (a) An Unlisted Bond is transferred by entry of the transfer in the Register.
- (b) A Listed Bond is transferred in accordance with any systems and procedures approved for the purpose from time to time by the Exchange.
- (c) Without limiting (a) and (b) above, any Bond may also be transferred by any other means approved by the Issuer from time to time that is not contrary to any law or, in the case of a Listed Bond, the Listing Rules.

10.2 Minimum amounts, holdings and liens

The Registrar shall, if directed to do so by the Issuer, refuse to register a transfer of Bonds:

- (a) with an aggregate Principal Amount less than the minimum transfer amount set out in, or set in accordance with, the Bond Conditions; or
- (b) if, as a result, the transferor or transferee would hold Bonds with an aggregate Principal Amount that is less than the minimum holding amount set out in, or set in accordance with, the Bond Conditions; or
- (c) if the Issuer has a lien over the Bonds.



10.3 **Transfer Form**

The Registrar must enter a transfer of an Unlisted Bond in the Register upon receiving:

- (a) a written instrument of transfer in the form approved by the Issuer, or any other usual or common form, signed by or on behalf of the transferor and the transferee of the Bond;
- (b) such evidence as the Issuer, Supervisor or Registrar may reasonably require of:
 - (i) the transferor's entitlement to transfer the Bonds, including the identity and authority of any signatory to sign the transfer on behalf of the transferor or transferee; and
 - (ii) the payment of any taxes payable in respect of the transfer,

unless a Bond Document or any applicable law permits or requires the Issuer or Registrar to refuse to register the transfer.

10.4 **Notice of refusal to register**

Where registration of a transfer of Bond is refused, the Registrar must give written notice of the refusal and the reasons for the refusal to the party lodging the transfer, if any, within five Business Days after the date on which the transfer was lodged. The failure to give such a notice will not invalidate the decision not to register.

10.5 **Retention of transfers**

The Registrar shall retain all instruments of transfer of Bonds which are registered, but must return any instrument of transfer that it refuses to register to the party that lodged it (unless it refused to register the instrument of transfer because of suspected fraud).

10.6 **Powers of attorney**

Any power of attorney granted by a Holder empowering the attorney to deal with, or transfer Bonds, which is lodged with or provided to the Registrar will be deemed to continue and remain in full force and effect as between the Issuer, the Supervisor, the Registrar and the grantor of that power, and may be acted on, until express notice in writing that it has been revoked or notice of the death or dissolution of the grantor has been received by the Registrar.

10.7 **Transmission of Bonds**

- (a) Any person becoming entitled to any Bond by operation of law (including on the death or dissolution of any Holder) shall, upon satisfying the Issuer that it is legally entitled to the Bond, be registered as the Holder of the Bond or be entitled to transfer the Bond.
- (b) The only persons recognised by the Issuer and the Supervisor as having title to the relevant Bond on the death of a Holder shall be:
 - (i) in the case of the death of a Holder who is not a joint Holder, the executors or administrators of the deceased Holder; and



- (ii) in the case of the death of a joint Holder, the surviving joint Holder or Holders.
- (c) The Issuer may retain any amount payable in respect of any Bond to which this clause 10.7 applies until a transmission or transfer of the Bond has been registered.

10.8 Reliance on documents

The Issuer shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document presented to it in respect of a transfer, and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer had actual notice of such forgery or defect at the time of registering the instrument.

10.9 Selling restrictions for Bonds

No Holder shall offer for sale or sell any Bond except:

- (a) in compliance with all applicable laws in any jurisdiction in which such Bond is offered, sold or delivered; and
- (b) in accordance with any selling restrictions contained in the relevant Bond Conditions or an Offer Document relating to the Bond.

11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Issuer

The Issuer (and in relation to any Guaranteed Bonds, each Obligor) represents and warrants to each Wholesale Holder (if any), and the Supervisor if any Retail Bonds are outstanding, that:

- (a) *Duly formed*: it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation with indefinite corporate existence, capable of suing and being sued and has the power and authority to own its assets and to carry on its business as presently conducted;
- (b) *Power and authority*: it has the power, and all necessary action (including passing all resolutions) has been taken to authorise it, to enter into, execute and deliver, and exercise its rights and perform its obligations under, the relevant Bond Documents and to issue the relevant Bonds;
- (c) *Binding obligations*: its obligations under the relevant Bond Documents are legal, valid and binding and enforceable against it subject to laws affecting creditors' rights generally;
- (d) *No contravention*: its entry into, and the exercise of its rights and performance of its obligations under, the relevant Bond Documents to which it is a party does not and will not conflict with, violate or contravene:
 - (i) any applicable law; or



(ii) its constitutive documents;

nor cause any limit on its powers or the powers of its directors to be exceeded; and

(e) *Legal requirements met:* all consents, acts, conditions and things required to be obtained, done, fulfilled and performed in order to:

(i) enable it lawfully to enter into, exercise its rights and perform its obligations under the relevant Bond Documents;

(ii) ensure that its obligations under the relevant Bond Documents are legal, valid, binding and enforceable against it subject to laws affecting creditors rights generally; and

(iii) make the relevant Bond Documents (after stamping and/or registration, if applicable) admissible in evidence,

have been obtained, done, fulfilled and performed and all consents remain in full force and effect.

11.2 Representation and Warranty of the Supervisor

The Supervisor represents and warrants to the Issuer and the Retail Holders that the Supervisor is licensed (as the term is defined in the FMCA) and that licence covers the supervision of all Retail Bonds issued under this Deed.

11.3 Repetition

The representations and warranties (as applicable) contained in clause 11.1 will be deemed to be repeated by the Issuer and, where applicable, each Obligor in relation to any Bonds:

(i) on each date on which the Bonds are issued; and

(ii) on each Interest Payment Date for those Bonds,

by reference to the circumstances then existing.

12 COVENANTS

12.1 General covenants

The Issuer undertakes in favour of any Wholesale Holders in relation to the Wholesale Bonds held by them and the Supervisor in relation to any Retail Bonds that it will (any in relation to any Guaranteed Bonds, ensure that each other Obligor will):

(a) *Notify Event of Default:* promptly upon becoming aware of the occurrence of an Event of Default in relation to a:

(i) Retail Bond, notify the Supervisor; and

(ii) Wholesale Bond, the relevant Wholesale Holders,



of the Event of Default;

- (b) *Report of 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;
- (c) *Serious financial problems:* if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent (as 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;
- (d) *Comply with all laws:* duly and promptly comply in all respects with the Listing Rules and all laws applicable to it (including the FMCA and the FMC Regulations);
- (e) *Maintain Quotation:* use reasonable endeavours to ensure that all Listed Bonds are and remain Quoted;
- (f) *Maintain corporate existence:* do all things necessary to maintain its corporate existence in its current jurisdiction of incorporation and will not change its place of incorporation or move its principal place of business outside New Zealand;
- (g) *Core business:* not, whether by a single transaction or a number of related or unrelated transactions, whether by disposal, acquisition or otherwise, and whether at the same time or over a period of time, materially change the Core Business from that applying at the issue date of the relevant Bonds;
- (h) *Financial statements:* ensure that all financial statements delivered to the Supervisor under clause 13 (*Reporting*);
 - (i) are prepared in accordance with NZ GAAP; and



- (ii) are signed by two directors and are accompanied by all documents and reports required by law to be annexed to them;
- (i) *Bond Documents:* comply in all material respects with its obligations under the relevant *Bond Documents*;
- (j) *Appointment of Auditor:* before recommending the appointment or reappointment of a person as an auditor of the Issuer:
 - (i) 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;
 - (ii) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the persons appointing or reappointing the auditor;
 - (iii) 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;
 - (iv) 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:
 - (A) at the beginning of such engagement, any issues or concerns relevant to the exercise or performance of the Supervisor's powers or duties; and
 - (B) matters arising in the performance of such engagement and to answer any questions the Supervisor may have concerning such engagement;
- (k) *Resignation of Auditor:* notify the Supervisor if any Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
- (l) *Distributions:* not, and will procure that each other Obligor will not, make any distribution to a person who is not an Obligor at any time during the period from (and including) the Effective Date to (and including) 30 September 2021. For the avoidance of doubt, nothing in this clause 12.1(l) restricts or prohibits an Obligor from making a distribution in respect of the Financial Year that commences on 1 April 2021 (or any part of that Financial Year), provided that the distribution is made after 30 September 2021.



12.2 Covenants in favour of the Supervisor

The Issuer undertakes in favour of the Supervisor that it will:

- (a) *Approval of Offer Documents:* not register or issue a prospectus, product disclosure statement or investment statement (as applicable) for Retail Bonds unless it has been approved by the Supervisor;
- (b) *Information:* while any Retail Bonds are outstanding, ensure that each Obligor gives to the Supervisor upon written request such information regarding the Group's financial condition as the Supervisor may reasonably request for the purposes of performing or exercising the obligations, trusts and powers imposed or conferred on it under the Bond Documents or by law; and
- (c) *Give Supervisor notices:* give the Supervisor a copy of each notice given by the Issuer to Retail Holders of any Series generally, at the same time as such notice is sent to those Holders.

12.3 Financial Covenant

- (a) The Issuer undertakes in favour of the Supervisor in relation to any Retail Bonds to ensure that the Total Debt Coverage Ratio does not exceed the Maximum Debt Coverage Ratio on two successive Calculation Dates.
- (b) For the avoidance of doubt, the financial covenant under sub-clause (a) shall be calculated in relation to Finance Leases and operating leases by reference to NZ GAAP applicable to the Consolidated Group prior to its adoption of amendments to IFRS 16 on 1 April 2019.
- (c) The Issuer undertakes in favour of the Supervisor in relation to any Retail Bonds:
 - (i) to maintain a sufficient balance in the Equity Proceeds Account such that the credit balance in the Equity Proceeds Account is at all times at least equal to the Designated Amount that has been included in the compliance certificate most recently delivered to the Supervisor under clause 13.1(c), provided that amounts may be withdrawn from the Equity Proceeds Account causing the credit balance of the Equity Proceeds Account to be lower than the most recent Designated Amount only if an amount of the withdrawn proceeds that is equal to the amount by which the credit balance of the Equity Proceeds Account is lower than that Designated Amount is used to repay Financial Indebtedness (other than Subordinated Debt or indebtedness arising under the Working Capital Facility) that was incurred on or prior to the Effective Date (*Repayment Amount*);
 - (ii) that it will provide the Supervisor with at least two Business Days' prior written notice before it withdraws any Repayment Amount from the Equity Proceeds Account. Such written notice must include a description of the Financial Indebtedness that the Repayment Amount will be applied to in accordance with clause 12.3(c)(i);
 - (iii) that it will, on or prior to 30 September 2020, notify the Supervisor in writing of the amount of the Equity Proceeds and the Excess Equity Proceeds.



- (d) The Issuer may:
- (i) use any Equity Proceeds as it sees fit, including by placing all (or any part) of the proceeds (up to the amount of Excess Equity Proceeds) in the Equity Proceeds Account, but subject at all times to compliance with clause 12.3(c) in respect of any Designated Amount;
 - (ii) withdraw any amount in the Equity Proceeds Account in excess of the most recent Designated Amount at any time and apply that amount for any purpose it sees fit; and
 - (iii) deposit any amount in the Equity Proceeds Account at any time, provided that the balance of the Equity Proceeds Account may not at any time exceed the amount of Excess Equity Proceeds plus interest earned in respect of the Equity Proceeds Account.
- (e) Clause 12.3(c) shall cease to apply on and from the first date after 30 September 2021 on which the balance of the Equity Proceeds Account has been reduced to zero in accordance with clause 12.3(c)(i).

12.3A Changes in NZ GAAP

The Issuer and each Guarantor will, if any time after the Amendment Date there is any change to NZ GAAP or any change in the interpretation or application of NZ GAAP or to any accounting practice adopted by the Issuer as in effect and/or applied at the Amendment Date:

- (a) at the request of the Supervisor or at its own request negotiate with the Supervisor in good faith with a view to agreeing such amendments to the covenants in clauses 8.12 or 12.3(a) and/or the definitions or meanings of the terms used in the calculation of those covenants as are necessary to leave the parties (including, for the avoidance of doubt, any Holders) in no better and no worse a position than that contemplated at the Amendment Date; and
- (b) if no such amendments are agreed, ensure that each of the capitalised terms used in those covenants will be calculated by reference to NZ GAAP and the accounting practices as in effect and/or applied immediately before the relevant change.

12.4 Distribution stopper

Without limiting clause 12.1(l), the Issuer undertakes in favour of the Supervisor in relation to any Retail Bonds to ensure that no Obligor shall declare, make, or pay any distribution to any person that is not an Obligor:

- (a) during a Financial Covenant Breach Period;
- (b) while an Event of Default is continuing; or
- (c) while a Facility Event of Default is continuing.



12.5 Governance

The Issuer operates subject to the provisions of the Companies Act 1993 and other laws relating to governance, its constitution and (to the extent applicable) the Listing Rules.

12.6 Supervisor covenants

The Supervisor undertakes that it will notify the Issuer as soon as reasonably practicable, and in any event within 10 Business Days, if the Supervisor ceases to be a licensed supervisor in respect of any Retail Bonds.

13 REPORTING

13.1 Financial information

The Issuer shall, while any Retail Bonds are outstanding, deliver to the Supervisor:

- (a) *Yearly*: as soon as they become available, and in any event within four months of the end of each Financial Year (or, if earlier, by such other time prescribed by any applicable law or the Listing Rules), audited Financial Statements of the Group (on a consolidated basis) as at the end of and for that Financial Year;
- (b) *Half-yearly*: as soon as they become available, and in any event within three months after the end of each half Financial Year of the Issuer (or, if earlier, by such other time prescribed by any applicable law or the Listing Rules), unaudited Financial Statements of the Group (on a consolidated basis) as at the end of and for that half Financial Year;
- (c) *Covenant Compliance Certificate*: within 45 days after the end of each Financial Year and each half Financial Year, a compliance certificate in the form set out in Schedule 3 on the basis of unaudited consolidated management accounts which includes sufficient information and detail in relation to the adjustments made pursuant to clause 12.3(b) or clause 12.3A(b) in calculating the covenants set out in the Compliance Certificate (in such form and substance as the Supervisor reasonably requires) to enable the Supervisor to make an accurate comparison between the financial position indicated in the Financial Statements and the position reflected in the calculation of the covenant under clause 8.12 or clause 12.3(a) (as applicable), signed by the chief executive officer or chief financial officer (provided that it is acknowledged that such compliance certificate shall be provided for information purposes only and no Obligor shall be considered to have breached clause 8.12 or clause 12.3(a) on the basis of any such compliance certificate or unaudited consolidated management accounts);
- (d) *Directors' Report*: at the same time as the Financial Statements under clauses 13.1(a) and 13.1(b), in respect of the Calculation Date at the end of the relevant Financial Year or half Financial Year, a Directors' Report, which includes sufficient information and detail in relation to the adjustments made pursuant to clause 12.3(b) or clause 12.3A(b) in calculating the covenants set out in the Director's Report (in such form and substance as the Supervisor reasonably requires) to enable the Supervisor



to make an accurate comparison between the financial position indicated in the Financial Statements and the position reflected in the calculation of the covenant under clause 8.12 or clause 12.3(a) (as applicable); and

- (e) *Auditor's Report:* at the same time as the Financial Statements under clause 13.1(a), a report by the Auditors addressed, and in a form reasonably acceptable, to the Supervisor stating as of the end of the relevant Financial Year:
- (i) whether or not, in the performance of their duties as Auditors, they have become aware of:
 - (A) any breach of this Deed, any Supplemental Trust Deed or Bond Conditions for Retail Bonds; or
 - (B) any other matter relevant to the Supervisor's powers or duties under this Deed, any Supplemental Trust Deed for Retail Bonds, law or otherwise or calling for further investigation by the Supervisor in the interests of Retail Holders,

and, if so, reasonable details of any such breach or matter;
 - (ii) that they have audited the Register or Registers for any Retail Series and, to that extent, whether or not the Registrar has maintained the Register in accordance with this Deed and any applicable law, and, if not, reasonable details of the non-compliance;
 - (iii) that they have audited the Register or Registers for any Retail Series and, to that extent, whether in the Auditor's opinion, there is reasonable assurance that the Register, in all material respects, correctly contains the information referred to in clause 9.2; and
 - (iv) whether or not, having reviewed the Directors' Report given pursuant to clause 13.1(d) in relation to the relevant Financial Year, they have become aware, in the performance of their duties as Auditors, that any of the statements in the Directors' Report is incorrect and if so, reasonable details of the incorrect statement;
 - (v) such statement as reasonably required by the Supervisor from time to time, in relation to the calculation of the covenants under clause 8.12 or clause 12.3(a) (including any adjustments made as referred to in the relevant Directors' Report delivered pursuant to clause 13.1(d)); and
 - (vi) with the Supervisor's consent, such other statements (in addition to or substitution of any of the above statements).

13.2 Preparation of financial information

The Issuer shall ensure that all Financial Statements delivered to the Supervisor under clause 13.1 are prepared in accordance with NZ GAAP (except to the extent agreed by the Supervisor).



13.3 Provide requested information and reports

- (a) Subject to clause 13.3(b), if requested by the Supervisor (or a person authorised by the Supervisor), the Issuer must:
 - (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),

within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor.
- (b) The reports or information referred to in clause 13.3(a) may be about any matter relevant to the performance of the Supervisor's functions and may include forward-looking reports.

14 TAXES

14.1 Withholding tax

- (a) All payments or credits to, or to the account of, Holders (including payments of, and credits in respect of, interest) will be made net of any tax in respect thereof required by law to be withheld, deducted or paid by the Issuer or Supervisor, except to the extent that the Issuer or Supervisor is satisfied that the Holder is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made.
- (b) If, in relation to any Bond or any payment made by the Issuer or Supervisor to the Holder in respect of that Bond, the Issuer or the Supervisor becomes liable to make any payment of or on account of tax payable by the Holder or in relation to any Bonds or any payment made in respect of that Bond, the Holder shall indemnify the Issuer and, where applicable, the Supervisor for any such liability. The Issuer shall also indemnify the Supervisor for any such liability.
- (c) Nothing in this clause affects any other right or remedy of the Supervisor or any Obligor.

14.2 Approved Issuer Levy

The Issuer must:

- (a) register as an "approved issuer" as defined in section YA 1 of the Income Tax Act 2007 and register any Bonds with the Commissioner of Inland Revenue under section 86H of the Stamp and Cheque Duties Act 1971 and use its reasonable endeavours to maintain that status;
- (b) notify the Supervisor immediately upon becoming aware that it has failed to maintain its status as an "approved issuer";
- (c) in respect of any payment of interest (or payment deemed by law to be interest) to a Non-Resident Holder, make the relevant payment of "approved issuer levy" or provide the required information in accordance with section 86I(1) of the Stamp and Cheque Duties Act 1971 in order to



reduce (to the extent permitted by law) the applicable level of non-resident withholding tax to zero per cent; and

- (d) deduct the amount of such approved issuer levy (if any) from that payment of interest (or payment deemed by law to be interest).

15 **DEFAULT**

15.1 **Default**

If at any time and for any reason, whether within or beyond the control of any Obligor, any of the following events occur, then that shall constitute an Event of Default in relation to the relevant Series:

- (a) *Non-payment*: the Issuer fails to pay any of the Bond Debt for a Series within 5 Business Days after the due date;
- (b) *Major bond covenant breach*: in relation to any Retail Bonds:
 - (i) the Issuer breaches clause 12.3(a) or clause 12.3(c)(i); or
 - (ii) there is a breach of clause 12.1(g) or clause 12.4 and, where that breach is capable of remedy, that breach is not remedied within 30 days after the Supervisor notifies the Issuer requiring it to remedy the breach;
- (c) *Other breaches*: any Obligor breaches any other Bond Obligation for a Series and:
 - (i) where the failure is capable of remedy, that failure is not remedied within 30 days after the Supervisor, in the case of a Retail Series, or a Holder, in the case of a Wholesale Series, notifies the Obligor requiring it to remedy the breach; and
 - (ii) in the case of a Retail Series, the Supervisor considers, acting reasonably, that the breach has or is likely to have a material adverse effect on the Group; or
 - (iii) in the case of a Wholesale Series, the breach has or is likely to have a material adverse effect on the Group;
- (d) *Misrepresentation*: any statement, representation or warranty made or deemed to have been made by or on behalf of any Obligor in any Bond Document in relation to a Series or in any certificate, statement or notice delivered or made pursuant to a Bond Document in relation to a Series is or was untrue, inaccurate or incorrect, in any material respect, when made or repeated or deemed to have been made or repeated, and:
 - (i) if the relevant circumstances giving rise to the statement, representation, or warranty being untrue, inaccurate or incorrect are capable of remedy, those circumstances are not remedied within 30 days after the Supervisor, in the case of a Retail Series, or Holder, in



the case of a Wholesale Series, notifies the Obligor requiring it to remedy the breach; and

- (ii) in the case of a Retail Series, the Supervisor considers, acting reasonably, that the circumstances have or are likely to have a material adverse effect on the Group; or
 - (iii) in the case of a Wholesale Series, the circumstance have or are likely to have a material adverse effect on the Group;
- (e) *Insolvency Event:* an Insolvency Event occurs in relation to any Obligor;
- (f) *Cross acceleration:* any Financial Indebtedness of any Obligor other than the Bond Debt is declared due and payable or is placed on demand prior to its specified maturity as a result of an event of default or review event (in each case however described), provided that no Event of Default will occur under this clause 15.1(f) if the aggregate amount of such Financial Indebtedness is less than NZ\$10 million (or its equivalent in any other currency or currencies);
- (g) *Vitiation of Bond Documents:* all or any part of any Bond Document in relation to a Series:
- (i) is or becomes void, illegal, invalid, unenforceable or of limited force and effect;
 - (ii) is or becomes capable of being avoided, rescinded, terminated or cancelled by any Obligor; or
 - (iii) is repudiated by any Obligor or an Obligor evidences an intention to repudiate it; or
- (h) *Supplemental Trust Deed:* any event occurs which is specified in the Supplemental Trust Deed for a Series as an event of default for that Series.

15.2 Acceleration

Subject to, in the case of Subordinated Bonds, provisions relating to the ranking contemplated by clause 4.2, at any time while an Event of Default in relation to a Series is continuing:

- (a) in the case of a Retail Series, the Supervisor may at its discretion, and shall, if so directed by or pursuant to an Extraordinary Resolution of the Holders of the relevant Series (subject to being indemnified to its satisfaction); or
- (b) in the case of a Wholesale Series, any Holder of a Wholesale Bond of that Series may,

by notice to the Issuer, declare the Bond Debt in respect of each Bond of that Series to be immediately due and payable in cash (and such amounts shall become immediately due and payable accordingly).



16 ENFORCEMENT OF HOLDERS' RIGHTS

16.1 Retail Bonds

- (a) The Supervisor holds its rights and benefits under this Deed, the relevant Supplemental Trust Deed and any relevant law in trust for the benefit of, the Retail Holders including (without limitation):
- (i) the covenants given to the Supervisor by the Obligors under the relevant Bond Documents (other than those covenants intended to be for the benefit of the Supervisor for its own account);
 - (ii) the right to enforce the Issuer's duty in relation to Retail Bonds to repay the Principal Amount, or to pay interest under the Bond Conditions;
 - (iii) any rights it holds as a "Beneficiary Representative" and a "Beneficiary" under the Security Trust Deed dated 4 July 2013 between, among others, Bank of New Zealand as security trustee, the Supervisor and the Issuer; and
 - (iv) the right to enforce any other duties that the Issuer, any Guarantor, and any other person have under the Bond Conditions, 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 Bond Documents directly against the Obligors 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.

16.2 Wholesale Bonds

A Holder of a Wholesale Bond may enforce, and bring an action, claim or proceeding against any person to enforce, any of its rights or remedies under any Bond Document in relation to the Wholesale Bond directly against the Issuer.

17 DISTRIBUTION BY SUPERVISOR

17.1 Distribution

Any amount received by the Supervisor in respect of any Series from, and including, any Enforcement Date must be applied, except as required by law:

- (a) *Prior ranking indebtedness*: firstly, in or towards payment of all claims ranking in priority to the Bond Debt for that Series;
- (b) *Supervisor's expenses*: secondly, in payment or as a retention for all amounts payable to the Supervisor (or any officer, employee or agent of the Supervisor) under the Bond Documents in relation to that Series;
- (c) *Holder's indebtedness*: thirdly, and, if applicable, in the order of priority specified in the Bond Conditions of the Series, in or towards payment to each Holder of Bonds of that Series, and any other Bonds which rank equally with that Series, *pari passu* in proportion to the Bond Debt for those Bonds then owing to them; and



- (d) *Surplus to Issuer:* fourthly, in payment of the surplus (if any) of that amount to the Issuer or to such other person as may otherwise be lawfully entitled to it.

The Supervisor is not liable to account for any proceeds of enforcement until actually received, free and clear of any restriction or condition.

17.2 Supervisor's Powers to Postpone Distribution

If the amount available to be applied under clause 17.1 is less than 10% of the Bond Debt owing in respect of any Series, the Supervisor may at its discretion postpone applying that amount and invest it in accordance with this Deed until the investments, income accumulated from them, and any other amounts that become available to applied under clause 17.1 for the purpose, is 10% or more of the relevant Bond Debt.

18 POWERS AND DUTIES OF SUPERVISOR

18.1 General responsibilities and duties

In relation to each Retail Series, the Supervisor:

- (a) is responsible for acting on behalf of the Retail Holders in relation to the Issuer, any matter connected with this Deed or a Supplemental Trust Deed for a Retail Series, any matter connected with the terms of the offer of any Retail Bonds and any contravention or alleged contravention of the issuer obligations in respect of any Retail Bonds;
- (b) is responsible for supervising the Issuer's performance of its issuer obligations and in order to ascertain whether the assets of the Issuer and of each Guarantor that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the Bond Debt in relation to the Retail Bonds as it becomes due;
- (c) is responsible for performing or exercising any other functions, duties and powers conferred or imposed on the Supervisor by this Deed, any Supplemental Trust Deed, the FMCA, the FMC Regulations and the FMCA.

18.2 Monitoring role

In relation to each Retail Series, the Supervisor must:

- (a) act honestly in acting as a supervisor;
- (b) in exercising its powers and performing its duties as supervisor, act in the best interests of the Retail Holders;
- (c) exercise reasonable diligence in carrying out its functions as supervisor;
- (d) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMCA) would exercise in the same circumstances;



- (e) do all the things that it has the power to do to cause any contravention or alleged contravention of the issuer obligations to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Holders of Retail Bonds); and
- (f) subject to any court order made under section 210 of the FMCA, act in accordance with any direction given by Extraordinary Resolution of Retail Holders that is not inconsistent with any enactment, rule of law, this Deed or any Supplemental Trust Deed in relation to:
 - (i) seeking a remedy to a contravention or alleged contravention of the issuer obligations; and
 - (ii) any other matter connected with the Supervisor's functions.

18.3 No duty of enquiry

Other than as required by clauses 18.1, 18.2, and applicable law, the Supervisor is not required to take steps to ascertain whether or not any breach of the terms of this Deed or of the terms of the offer of any Retail Bonds has occurred, and shall only cease to be entitled to assume without enquiry that no such breach is occurring or has occurred upon:

- (a) the Supervisor receiving specific advice that a breach has, or appears to have, occurred or threatens to occur, from the directors of the Issuer, the Auditors or a Retail Holder; or
- (b) the Supervisor receiving actual notice of an Event of Default.

18.4 Additional powers

In relation to each Retail Series, the Supervisor shall have the following powers, in addition to its other powers under this Deed or law:

- (a) *Determination of material prejudice:* The Supervisor may determine whether or not a breach by an Obligor of a Bond Document is, in its opinion, capable of remedy or is materially prejudicial to the interests of the Holders of any Retail Series, or in the case of Secured Bonds, the security. Any such determination shall be conclusive and binding upon such Holders.
- (b) *Consult Holders on material breaches:* Subject to clause 18.9 and without limiting clause 18.4(c), following any breach of a Bond Document in relation to a Retail Series by an Obligor which the Supervisor reasonably considers may be materially prejudicial to the interests of the Holders of that Series, the Supervisor may, in its absolute discretion:
 - (i) report or require the Issuer to report (which the Issuer shall be obliged to do) to the Holders of that Series the circumstances and nature of such breach and any other information concerning the Group which the Supervisor has received under or in relation to a Bond Document in relation to the relevant Series and which it reasonably considers to be material to the Holders of that Series; and



- (ii) invite the Holders of that Series to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Supervisor's powers under any of the Bond Documents in relation to the relevant Series or as to any act or omission by the Supervisor in relation to the breach.

Any such report may be given in such manner as the Supervisor, acting reasonably, determines.

- (c) *Represent Holders:* The Supervisor may at its discretion, and shall if so directed by an Extraordinary Resolution, represent any Holders of a Series in any investigation, negotiation, action, transaction, matter or proceeding affecting the interests of Holders of that Series.
- (d) *Remedy breach:*
 - (i) If an Obligor fails to pay any amount due under a Bond Document in relation to a Retail Series then, without prejudice to any other rights and remedies of the Supervisor, the Supervisor may (at its sole discretion) pay any such amount. All amounts so paid by the Supervisor will be payable by the Obligor to the Supervisor upon demand, together with all reasonable costs incurred by the Supervisor in making that payment.
 - (ii) The Supervisor's powers to remedy any breach of a Bond Document are subject to any other provision of a Bond Document which is inconsistent with the exercise of such powers.
- (e) *Apply to court:* The Supervisor may:
 - (i) apply to the court for an order under section 208 of the FMCA if, after due enquiry, the Supervisor considers that the requirements under section 207(1) of the FMCA are satisfied;
 - (ii) apply for an order under section 210 of the FMCA in circumstances where an Extraordinary Resolution has been passed by Retail Holders; and
 - (iii) consent to, approve or oppose any application to court by an Obligor or by or at the instance of any Holder of Retail Bonds.
- (f) *Investment:* The Supervisor may, at its discretion, invest any amount held by it subject to the trusts constituted or to be constituted under this Deed in any investments it considers fit. The investments may be made in the name of the Supervisor or its nominee. The Supervisor may vary such investments for others of a like nature and deal with or dispose of such investments, and all income from such investments will belong to the person in respect of whom that amount is held by the Supervisor.
- (g) *Attend meetings:* Any representative of the Supervisor may attend any general meeting of the Issuer, or a meeting of any Holders of Retail Bonds, and is entitled to be heard at any such meeting on any part of the business



of the meeting which concerns the Supervisor as supervisor or such Holders.

- (h) *Power to delegate:* The Supervisor must not delegate any of its functions under clause 18.1 unless such delegation is expressly permitted by the FMCA or permitted by, and then subject to, conditions imposed under the FMSA but may, for the avoidance of doubt delegate its other functions. Where the Supervisor considers that it is in the interests of the Holders to do so, it may:
 - (i) delegate at any time to any person any of the trusts or powers conferred on the Supervisor under a Bond Document which cannot conveniently be performed or exercised by it or through its officers or employees upon such terms and conditions (including the power to sub-delegate) as the Supervisor may determine, acting reasonably (provided that the Supervisor shall remain liable for the actions of any delegate); and
 - (ii) authorise any person to represent it at any meeting.
- (i) *Power to engage expert:* The Supervisor may engage an expert (for example, an auditor, investigating accountant, valuer or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert:
 - (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 18.4(i), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance, and the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the Issuer.

18.5 Discretion

Except as otherwise expressly provided in a Bond Document and subject to applicable law, the Supervisor will have absolute discretion as to:

- (a) the exercise or non-exercise of any trusts and powers conferred on the Supervisor under the Bond Documents, and, provided it acts with reasonable care and diligence, it will not be responsible for any loss, cost or claim that may result from the exercise or non-exercise of such trusts and powers;
- (b) the terms and conditions on which it may give any consent; and
- (c) the commencement, modification, discontinuance, compromise or conduct of any action, proceeding or claim.

**18.6 Reliance**

The Supervisor may, without liability for any loss, cost or claim, obtain, accept and act on (or, except in the case of (d) below, reject or refrain from acting on):

- (a) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, stockbroker, financial adviser, auditor, chartered accountant or other expert (whether obtained by an Obligor, any Holder, the Supervisor or otherwise), even though it may subsequently be found to contain some error or not be authentic;
- (b) a certificate or report signed by or on behalf of an Obligor as to any fact or matter prima facie within the knowledge of the Obligor as sufficient evidence of that fact or matter or that any particular dealing, step or thing is commercially desirable and not to the detriment of Holders;
- (c) statements in any certificate or report given in accordance with a Bond Document as conclusive evidence of the facts stated in that certificate or report; and
- (d) any resolution that appears to have been, and that the Supervisor believes has been, duly passed at any meeting of the Holders, even if the resolution is subsequently found to be defective for any reason.

18.7 No duties to Obligors or Wholesale Holders

The Supervisor has no obligations under this Deed:

- (a) to any Holder which is an Obligor or any Subsidiary of an Obligor, other than under clause 17.1; and
- (b) to any Holder of a Wholesale Bond in relation that Wholesale Bond.

18.8 No duty to monitor application of subscriptions

The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by purchasers of Bonds.

18.9 Confidential information

Subject to any applicable law, the Supervisor shall not be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by any Obligor.

18.10 Subordinated Bonds

The Supervisor has entered into this Deed on the basis that, in respect of any Subordinated Bonds, the duties of the Supervisor (if any) shall be construed and interpreted to recognise and take into account the following characteristics of the Subordinated Bonds:

- (a) the subordination and the postponement in priority of the Subordinated Bonds specified in the relevant Bond Documents; and
- (b) the limitations on the rights of the Holders and the Supervisor on behalf of the Holders to compel or enforce payment of any principal, interest or other amounts and the other limitations on the rights of the Holders or the



Supervisor (including in respect of any breach by the Issuer) provided in the relevant Bond Documents,

and shall, to the maximum extent permitted by law, be limited accordingly. All Holders of any Subordinated Bonds shall be deemed to know of and to have accepted the above.

18.11 Unsubordinated Bondholders' Interests Paramount

In addition to the restrictions applicable to Subordinated Bonds set out in the relevant Bond Documents, in the performance or exercise of the trusts or powers conferred on it under the Bond Documents, the Supervisor shall at all times regard the interests of:

- (a) the Holders of Unsubordinated Bonds as paramount to the interests of the Holders of Subordinated Bonds; and
- (b) the Holders of Secured Bonds as paramount to the interests of the Holders of Unsecured Bonds.

18.12 Fiduciary relationship

The Supervisor may not be a Holder on its own account. However, nothing in this Deed prohibits the Supervisor, its holding company or any of their Subsidiaries (each a *Related Company*) or their officers or shareholders from:

- (a) being a Holder in any supervisor, agency, nominee or other representative capacity;
- (b) being a creditor or shareholder of, or having any other interest in, any member of the Group; or
- (c) acting in any other fiduciary, contractual, agency or representative capacity for a Holder (including, to avoid doubt, a Wholesale Holder), or any member of the Group.

The Supervisor or any Related Company may enter into any transaction with any member or the Group and will not be accountable to the Holders for any profits arising from such transactions.

19 SUPERVISOR'S FEES, COSTS, LIABILITY AND INDEMNITY

19.1 Fees

The Issuer shall pay to the Supervisor such fees as may from time to time be agreed by them in writing.



19.2 Costs

The Issuer shall pay all reasonable costs properly incurred by or on behalf of the Supervisor in connection with:

- (a) *Preparation, execution and modification of documents:* the preparation, execution, amendment, waiver, and release (when applicable) of this Deed, the other Bond Documents and the Offer Documents in relation to any Retail Bonds;
- (b) *Exercise of powers:* any proper performance or exercise by the Supervisor of the trusts or any power conferred on the Supervisor under a Bond Document, including obtaining any expert advice the Supervisor, acting reasonably, decides to obtain; and
- (c) *Meetings of Holders:* convening and holding any meeting of Holders of Retail Bonds in accordance with this Deed, and carrying out any directions or resolutions of such a meeting.

19.3 Limitation of liability

The Supervisor will not be liable to any Obligor or any Holder for anything done, or omitted to be done, in good faith in giving effect to a direction to it by the Retail Holders.

19.4 Indemnity

Without prejudice to the right of indemnity given to supervisors and trustees by law, the Supervisor and each of its officers, employees or agents shall be indemnified by the Issuer for:

- (a) all costs reasonably incurred by it or any of them in the performance or exercise or attempted or purported performance or exercise of any of the trusts or powers conferred on any of them under a Bond Document; and
- (b) against all losses or claims suffered or incurred by any of them in respect of any matter or thing done or omitted in any way relating to a Bond Document,

in each case only to the extent those costs, losses or claims relate to the Supervisor's proper performance of its duties under sections 112(1) and 113 of the FMCA.

The Supervisor may retain and pay out of any amounts it holds upon the trusts of this Deed, all amounts necessary to effect and satisfy that indemnity, together with the fees and costs of the Supervisor as provided for in this Deed.

19.5 Right to require indemnity before acting

The Supervisor may decline to take any action or exercise any power or comply with or implement any direction, resolution or request given in accordance with this Deed in respect of any Series whether or not it is otherwise bound to so act unless and until the Supervisor and each of its officers, employees or agents are first indemnified by the Holders of that Series to its satisfaction against all costs which any of them may reasonably incur, and all losses or claims that they may suffer or incur, as a result.



20 REPLACEMENT OF SUPERVISOR

20.1 Resignation or removal of a Supervisor

Subject to applicable law:

- (a) *Voluntary retirement:* the Supervisor may retire at any time upon giving 90 days' notice (or such shorter period of notice as the Issuer may agree) to the Issuer, subject to the due appointment of a new supervisor and the transfer to such new supervisor of all amounts and investments held by the Supervisor under the Bond Documents;
- (b) *By Extraordinary Resolution:* the Holders of Retail Bonds may remove the Supervisor by an Extraordinary Resolution of each Class of Holders; and
- (c) *FMA or Issuer removal:* the Supervisor may be removed by the FMA or the Issuer under Part 2 of the FMSA.

20.2 Requirements for retirement and removal

The Supervisor may not be removed or retire under clauses 20.1(a) or (b) unless:

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

20.3 Appointment of new Supervisor

- (a) *Appointment by the Issuer subject to approval by Holders:* The power to appoint a new Supervisor is vested in the Holders of Retail Bonds by way of an Extraordinary Resolution (and, where there are Listed Bonds outstanding, an Extraordinary Resolution of the Holders of those Bonds) and in the Issuer, but no new supervisor may be appointed by the Issuer unless such appointment is first approved by an Extraordinary Resolution. Upon the Supervisor notifying the Issuer that it wishes to retire, or upon the Issuer wishing to appoint a new Supervisor, the Issuer must promptly call a meeting of the Holders for the purposes of approving an appointment of a new Supervisor and, if such approval is given, the Issuer may exercise its power of appointment.
- (b) *Appointment by Holders:* If the Issuer, within 60 days of receiving notice of the Supervisor's intention to retire, fails to call a meeting of the Holders in accordance with clause 20.3(a) or to exercise the power vested in it under that clause to appoint a new Supervisor, the Holders may by Extraordinary Resolution exercise such power to the exclusion of the Issuer.
- (c) *Notification of new Supervisor:* The Issuer shall notify all Holders of the identity of any new Supervisor appointed as soon as reasonably possible following such appointment.



- (d) *Lodging change of Supervisor*: The Issuer shall ensure that notice of a change in Supervisor in accordance with clause 20.1 is lodged with the Registrar of Financial Service Providers within 5 working days after the change.

21 MEETINGS OF HOLDERS

- (a) Each meeting of any Holders is to be convened and held in accordance with Schedule 5 and 6 (as applicable). Meetings of Holders and any Class of Holders are to be convened and held in accordance with the provisions in Schedule 5 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 6.
- (b) 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 5.

22 WAIVER, AMENDMENT AND RELEASE

22.1 Waivers

- (a) Subject to clause 22.2, the Supervisor may (and shall or shall not if so directed by an Extraordinary Resolution of the relevant Holders) from time to time waive any breach or anticipated breach by any Obligor of any Bond Document in relation to any Retail Bonds in part or in whole, for a specified period or completely, and on such terms and conditions (if any) as it determines, by notice to the Issuer.
- (b) Any breach or anticipated breach by any Obligor of any Bond Document in relation to any Wholesale Bonds may be waived in part or in whole, for a specified period or completely, and on such terms and conditions (if any) specified in, an Extraordinary Resolution of Holders of the relevant Wholesale Bonds.

Any such waiver will be binding on all Holders of the relevant Bonds.

22.2 Amendments to Retail Series

- (a) Any amendment to this Deed or any Supplemental Trust Deed in respect of a Retail Series must be made:
 - (i) with the consent of the Supervisor under section 108(2)(a)(i) of the FMCA, and 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
 - (ii) with the consent of the Supervisor under section 108(2)(a)(ii) of the FMCA, and the Supervisor must, where required by the FMCA, provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA;
 - (iii) in accordance with section 109 of the FMCA; or
 - (iv) in accordance with section 22(7) or 37(6) of the FMSA; or



- (v) if the FMCA does not apply to a Retail Series, with the consent of the Supervisor, if in the opinion of the Issuer and the Supervisor, the amendment is not, and is not likely to become, materially prejudicial to the interest of the Holders of that Series; or
 - (vi) in accordance with any other power to amend or replace this Deed or any Supplemental Trust Deed under any other applicable law.
- (b) If an amendment is made pursuant to clause 22.2(a)(i), the Holders approving the Extraordinary Resolution must be:
- (i) of the relevant Class of Holders; or
 - (ii) of each Class of Holders that is or may be adversely affected by the amendment.

Any such amendment will be binding on all Holders of the relevant Bonds.

22.3 **Amendments to Wholesale Series**

The Issuer may, by supplemental deed, amend any Bond Document in respect of a Wholesale Series without the consent of the relevant Holders, if, in the opinion of the Issuer it is:

- (a) made to correct a manifest error;
- (b) made to comply with law or the Listing Rules; and
- (c) of a minor, formal, administrative or technical nature.

22.4 **Notice of amendments**

The Issuer must notify the Holders of the relevant Bonds of any amendment within 20 Business Days of the amendment being made. The non-receipt of notice by any such Holder will not affect the validity of any such amendment.

22.5 **Release by Supervisor**

The Supervisor shall, if requested by the Issuer, release the Issuer from this Deed in respect of any Retail Series (by executing appropriate release documents) provided that it is satisfied, acting reasonably, that:

- (a) no Bond Debt on the Retail Bonds, or any other indebtedness to the Supervisor in relation to the Retail Series, is actually or contingently owing;
- (b) no payment in respect of the Bond Debt or other indebtedness to the Supervisor in relation to the Retail Series is reasonably likely to be avoided by law; and
- (c) there is no unremedied breach of a Bond Obligation or the Deed in relation to the Retail Series,

or that appropriate provision has been made, or indemnity has been given, for any such indebtedness or breach.



22.6 Wholesale Bonds unaffected

To avoid doubt, any such release shall not prejudice or otherwise affect any Bond Debt or Bond Obligations in respect of any Wholesale Series.

23 SUBSTITUTED ISSUER

23.1 Substitution

The Supervisor may agree, without the consent of the Holders, to the substitution in place of the Issuer of all or any Bonds (*Relevant Bonds*) (or of any previous Substituted Issuer under this clause 23), as the principal debtor under this Deed in respect of the Relevant Bonds, of any other Obligor incorporated and resident for tax purposes in New Zealand (in this clause 23 called the *Substituted Issuer*), provided that:

- (a) *Trust Deed*: a trust deed is executed or some other form of undertaking is given by the Substituted Issuer to the Supervisor, in form and manner satisfactory to the Supervisor, agreeing to be bound by the terms of this Deed and the Relevant Bonds with any consequential amendments that may be appropriate as fully as if the Substituted Issuer had been named in this Deed and on the Relevant Bonds as the principal debtor in place of the Issuer (or of any such previous Substituted Issuer);
- (b) *Maintain rights*: arrangements are made satisfactory to the Supervisor for the Holders of the Relevant Bonds to have or be able to have the same rights mutatis mutandis against the Substituted Issuer as they have against the Issuer (or any such previous Substituted Issuer);
- (c) *Guarantees*: the Relevant Bonds continue to carry the unconditional and irrevocable guarantee of the Guarantors (other than the Issuer) and in addition are unconditionally and irrevocably guaranteed by the Issuer on the same terms and conditions;
- (d) *Other requirements*: the Issuer (or any such previous Substituted Issuer) and the Substituted Issuer comply with such other reasonable requirements as the Supervisor may direct in the interests of the Holders of the Relevant Bonds, which may include a requirement that the Guarantors or any of them remain bound by all or certain of the provisions of this Deed in respect of the Relevant Bonds in their capacities as guarantors thereof; and
- (e) *Approvals*: the Supervisor is satisfied that:
 - (i) the Substituted Issuer has obtained all necessary governmental and regulatory approvals and consents necessary for its assumption of the obligations and liability as principal debtor under this Deed in respect of the Relevant Bonds in place of the Issuer (or of any such previous Substituted Issuer);
 - (ii) where applicable, the Guarantors and the Issuer have obtained all necessary governmental and regulatory approvals and consents necessary for the effectiveness of its or their guarantees referred to in clause 23.1(c); and



- (iii) such approvals and consents are at the time of the substitution in full force and effect.

23.2 Release of Obligations

Any such agreement by the Supervisor pursuant to clause 23.1 shall to the extent so expressed operate to release the Issuer or previous Substituted Issuer (as the case may be) from any or all of its obligations under this Deed in respect of the Relevant Bonds. Not later than 14 days after the execution of any such documents as aforesaid and after compliance with the Supervisor's said requirements, the Supervisor shall give notice thereof to the Holders in the manner provided in clause 24.

23.3 Amendments

Upon the execution of such documents and compliance with the said requirements the Substituted Issuer shall be deemed to be named in this Deed and on the Relevant Bonds as the principal debtor in place of the Issuer or any previous Substituted Issuer, and this Deed and the Relevant Bonds shall thereupon be deemed to be amended in such manner as shall be necessary to give effect to the substitution and, without prejudice to the generality of the foregoing, any references in this Deed and in the Relevant Bonds to the Issuer or any previous Substituted Issuer shall be deemed to be references to the Substituted Issuer.

23.4 Solvency

If any two directors or equivalent officers of the Substituted Issuer shall certify to the Supervisor that the Substituted Issuer is solvent at the time at which the said substitution is proposed to be effected the Supervisor shall not be bound to have regard to the financial condition, profits or prospects of the Substituted Issuer or to compare the same with those of the Issuer or any previous Substituted Issuer.

23.5 Interests of Holders

In connection with any substitution in accordance with this clause 23, the Supervisor shall not have regard and shall be released from any obligation or duty it might otherwise have under this Deed or implied at law in relation to the exercise of any of its discretions or powers under this clause 23 or to advising Holders in connection with any meeting of same, to have regard to the consequences of such substitution for individual Holders resulting from their being for any purpose domiciled or resident in or otherwise connected with or subject to the jurisdiction of any particular territory.

23.6 Supervisor's Discretion

The exercise or non-exercise of the Supervisor's rights and powers under this clause 23, and the terms of any such exercise, shall be at the discretion of the Supervisor which may refuse to exercise the same without the approval of an Extraordinary Resolution of the Holders of the Relevant Bonds, provided that, where the Substituted Issuer is a Guarantor, the Supervisor shall not refuse to exercise its powers to agree to such substitution unless there is reasonable evidence indicating the likelihood that the Holders of the Relevant Bonds will be materially prejudiced thereby.



24 NOTICES

24.1 Writing

Each notice, demand, consent, request and other communication (each a *communication*) to be given, delivered or made under this Deed is to be in writing but may be sent by personal delivery, post (by airmail if to another country), email or facsimile.

24.2 Addresses of Holders

Each communication under this Deed to a Holder is to be sent to the address of such Holder last entered in the Register.

24.3 Addresses of parties to this Deed

Each communication under this Deed to a party to this Deed is to be sent to the address, email or facsimile number of the relevant party set out below or to any other address, email, or facsimile number from time to time designated for that purpose and unless expressed otherwise, by at least 5 Business Days' prior notice to the other party. The initial address, email and facsimile details of the parties are:

The Issuer and Guarantors: Z Energy Limited
 3 Queens Wharf
 Wellington
 Email: Richard.Norris@z.co.nz
 Facsimile: +64 4 463 4018
 Attention: The Treasurer

The Supervisor: Trustees Executors Limited
Delivery address
 Level 5
 10 Customhouse Quay
 Wellington
Postal address
 PO Box 3222
 Wellington
 Email: cts@trustees.co.nz
 Facsimile: 04 496 2952
 Attention: Client Manager

24.4 Receipt

A communication under this Deed will only be effective:

- (a) *Delivery:* in the case of personal delivery, when delivered;



- (b) *By Post*: if posted, 5 working days, in the place of receipt, after posting (by airmail if to another country);
- (c) *By Email*: if made by email, when dispatched in tangible, readable form by the sender to the email address advised by the recipient from time to time;
- (d) *By Facsimile*: if made by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates complete transmission to the facsimile number of the recipient designated for the purposes of this Deed; and

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

24.5 **Other Bond Documents**

Any communications given, delivered or made under any other Bond Document may be given, delivered or made in accordance with this clause 24 unless that other Bond Document or the context requires otherwise.

25 **GENERAL**

25.1 **Benefit of this Deed**

- (a) Subject to clause 25.1(b), a person who is not a party to this Deed shall not have any rights under or in connection with this Deed by virtue of the Contract and Commercial Law Act 2017.
- (b) Subject to clause 16.1, this Deed confers a benefit on, and is intended to be enforceable by, the Holders.

25.2 **Partial Invalidity**

A provision in this Deed or any Supplemental Trust 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 Trust Deed shall not affect the enforceability of the remaining provisions of this Deed and any relevant Supplemental Trust Deed.

25.3 **Counterparts**

This Deed and any other Bond Document may be executed in any number of counterparts (including letters, email, facsimile, scanned PDF or other similar means of communication), all of which when taken together shall constitute one and the same instrument, and any of the parties may execute this Deed by signing any such counterpart.

25.4 **Governing Law**

This Deed is governed by and shall be construed in accordance with New Zealand law.



25.5 Jurisdiction

The Issuer and the Supervisor submit to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Deed.

25.6 Delivery

Without limiting any other mode of delivery, this Deed will be delivered by each of the parties to this Deed on the earlier of:

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

EXECUTED AND DELIVERED AS A DEED

Issuer

Z Energy Limited by:

Director

Director



Guarantors

Z Energy Limited by:

Director

Director

Z Energy 2015 Limited by:

Director

Director



Supervisor
Trustees Executors Limited by
two authorised signatories

in the presence of:

Name:

Occupation:

Address:



SCHEDULE 1: GUARANTORS

Z Energy Limited (NZ Company Number 12046)

Z Energy 2015 Limited (NZ Company Number 4482)



SCHEDULE 2: FORM OF DIRECTORS' REPORT

[Issuer's letterhead]

[insert name of Supervisor]

[address of Supervisor]

[Insert date]

Directors' report

- 1 This report is given under clause 13.1(d) of the Master Trust Deed between *[insert name of Issuer]*, the Guarantor (as defined in it) and *[insert name of Supervisor]* dated 11 August 2010 (as amended from time to time) (the *Deed*). Terms defined in the Deed have the same meaning in this report.
- 2 To the best of our knowledge and belief, having made due enquiry, during the [6/12] month period ending on *[insert date]* (the *Reporting Date*):
 - (a) no matter or circumstance has arisen which would materially and adversely affect the ability of any Obligor to perform its obligations under any Bond Document for any Retail Bond *[other than [include details]]*;
 - (b) each Obligor has duly observed, performed and complied with its issuer obligations (as defined in the Financial Markets Conduct Act 2013) under all Bond Documents for Retail Bonds *[other than [insert details of the contravention and proposals to remedy the same]]*;
 - (c) [the/each] Register has been duly maintained in accordance with the Deed *[other than [insert particulars of the failure to maintain]]*;
 - (d) no Retail Bonds have been redeemed, cancelled, or purchased by any member of the Group *[other than [insert details of the redemption, cancellation or purchase]]*;
 - (e) all interest due on any Retail Bonds has been paid *[other than the following amount of interest which has been suspended in accordance with the Conditions of the relevant Subordinated Bonds: [insert the amount of the suspended interest]]*;
 - (f) each Obligor has remained solvent;
 - (g) nothing has arisen which causes the board of directors to believe that any Obligor will be unable to pay its debts as those debts fall due in the ordinary course of that company's business during the next 12 months;
 - (h) no Event of Default has occurred or is continuing.
- 3 The aggregate Principal Amount of the Retail Bonds of each Series outstanding as at the Reporting Date is as follows *[insert details]*.



- 4 The following Wholesale Bonds have been issued since the last report *[insert details]* **OR** No Wholesale Bonds have been issued since the last report.
- 5 We also confirm that, as at the Reporting Date:
- (a) Total Tangible Assets of:
- (i) the Obligors are NZ\$[];
- (ii) the Group are NZ\$[],
- and the ratio of the amount in (a)(i) to the amount in (a)(ii) is []%
- Under clause 8.12(e) this ratio must be equal to or greater than [95]%
- (b) EBITDA of:
- (i) the Obligors is NZ\$[];
- (ii) the Group is NZ\$[],
- and the ratio of the amount in (b)(i) to the amount in (b)(ii) is []%
- Under clause 8.12(f) this ratio must be equal to or greater than [95]%
- (c) [the balance of the Equity Proceeds Account was NZ\$[] and the Designated Amount is NZ\$[]]*
- (d) the Total Debt Coverage Ratio [on the basis of paragraph (c) above]*is []:1.00
- Under clause 12.3(a) the Total Debt Coverage Ratio must not exceed the Maximum Debt Coverage Ratio on two successive Calculation Dates.
- (e) the Maximum Debt Coverage Ratio is: []:1.00
- (f) [the Issuer is in compliance with clause 12.3(c)(i) of the Master Trust Deed.]*

The Total Debt Coverage Ratio and Maximum Debt Coverage Ratio on the *[insert immediately prior Calculation Date]* were []:1.00 and []:1.00 respectively.

Calculations of the above financial ratios (including information and detail in relation to the adjustments made in calculating the financial covenant set out in this Director's Report in accordance with clause 12.3(b)) are set out in the first schedule attached to this Director's Report.



** [To be included in the reports relating to the September 2020, March 2021 and September 2021 Calculation Dates only.]*

[Insert any other information required by any relevant Supplemental Trust Deed.]

Director

Director



SCHEDULE 3: FORM OF COMPLIANCE CERTIFICATE

[Issuer's letterhead]

[insert name of Supervisor]

[address of Supervisor]

[Insert date]

Z Energy Limited – Master Trust Deed for the Issue of Bonds dated 11 August 2010 (as amended from time to time) (Deed) – Compliance Certificate

We refer to the Deed. Terms defined in the Deed have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

We confirm that, on the basis of our unaudited consolidated management accounts, as at **[insert most recent Calculation Date]**:

- (a) Total Tangible Assets of:
 - (i) the Obligors are NZ\$[];
 - (ii) the Group are NZ\$[],
 and the ratio of the amount in (a)(i) to the amount in (a)(ii) is []%
 Under clause 8.12(e) this ratio must be equal to or greater than [95]%

- (b) EBITDA of:
 - (i) the Obligors is NZ\$[];
 - (ii) the Group is NZ\$[],
 and the ratio of the amount in (b)(i) to the amount in (b)(ii) is []%
 Under clause 8.12(f) this ratio must be equal to or greater than [95]%

- (c) [the balance of the Equity Proceeds Account was NZ\$[] and the Designated Amount is NZ\$[]]*

[] :1.00

- (d) the Total Debt Coverage Ratio [on the basis of paragraph (c) above]* is

[] :1.00

Under clause 12.3(a) the Total Debt Coverage Ratio must not exceed the Maximum Debt Coverage Ratio on two successive Calculation Dates.

- (e) the Maximum Debt Coverage Ratio is:

[] :1.00



The Total Debt Coverage Ratio and Maximum Debt Coverage Ratio on the [*insert immediately prior Calculation Date*] were [] :**1.00** and [] :**1.00** respectively.

(f) [the Issuer is in compliance with clause 12.3(c)(i) of the Master Trust Deed.]*

Calculations of the above financial ratios (including information and detail in relation to the adjustments made in calculating the financial covenant set out in this Compliance Certificate in accordance with clause 12.3(b)) are set out in the first schedule attached to this Compliance Certificate.

* [*To be included in the certificates relating to the September 2020, March 2021 and September 2021 Calculation Dates only.*]

Signed on behalf of
Z Energy Limited by:

Signature of [Chief Executive Officer/
Chief Financial Officer]

Name of [Chief Executive Officer/
Chief Financial Officer]



SCHEDULE 4: PARTICULARS OF BONDS IN REGISTER

Series.

Tranche.

Nature of the Bond.

Issue date.

Principal Amount of the Bond.

Interest rate.

First Interest Accrual Date.

Interest Payment Dates.

Due date of the Bond.

Minimum holding and increments.

The name, address and, if known, tax residency of each Holder.

Details of the bank account to which payments in relation to the relevant Bonds are to be made.

The date on which the Bond was issued or transferred to each Holder, as the case may be.

Details of all cancellations of Bonds.

Details of any resident withholding tax exemption certificate (or other acceptable evidence of resident withholding tax exempt status) held by a Holder and provided to the Registrar.

Such other information as may be required by law, applicable Listing Rules, the Issuer, or the Supervisor.



SCHEDULE 5: PROCEEDINGS OF MEETINGS OF RETAIL HOLDERS OR ALL HOLDERS

1 INTERPRETATION

1.1 In this Schedule, unless the context requires otherwise:

Authorised Person means the person authorised by the Supervisor to receive and count votes at the meeting cast in accordance with paragraph 9, or if no such person is authorised, the Supervisor.

Holders means only Holders of the Class or Classes for which the relevant meeting is convened, and *Bonds* shall be construed accordingly;

paragraph means a paragraph of this Schedule;

Proxy Closing Time means 48 hours before the day and time appointed for commencement of the relevant meeting of any Holders or the taking of a poll of any Holders; and

Representative means:

- (a) in the case of a Holder who is an individual, a person appointed by an instrument of proxy or by power of attorney (in either case, in a form satisfactory to the Issuer or, in the case of a Retail Bond, the Supervisor);
- (b) in the case of a Holder which is a body corporate, either:
 - (i) a person appointed by an notice of proxy in accordance with paragraph 7 or by power of attorney (in a form satisfactory to the Issuer or, in the case of a Retail Bond, the Supervisor); or
 - (ii) a person authorised in a manner equivalent to section 10 of Schedule 1 to the Companies Act 1993 or, in the case of a corporation sole, a person authorised pursuant to its constitution; or
- (c) a person who has become entitled to a Bond by operation of law, or such person's representative appointed or authorised under (a) or (b) above.

1.2 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 6 and the provisions of this Schedule, other than this paragraph 1.2, shall be of no effect. For the avoidance of doubt, if a meeting relates to both Wholesale and Retail Holders, the meeting shall be convened and held in accordance with the provisions of this Schedule.

2 CONVENING MEETINGS

2.1 Meeting convened by Issuer

The Issuer may at any time convene a meeting of Holders of any Class 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.

2.2 Meeting required by law

The Issuer shall whenever required by law convene a meeting of Holders of any Class.

2.3 Meeting required by Holders or the Supervisor

The Issuer shall, upon a written request of:

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

convene a meeting of the Holders. Any such request must state the nature of business proposed to be dealt with at the meeting.

2.4 Place of meeting

Each meeting will be held in the city or town in which the registered office of the Issuer is situated, or such other place designated by the Issuer and, in the case of Retail Bonds, approved by the Supervisor.

3 NOTICE OF MEETING

3.1 Persons to be notified

The Issuer must ensure that written notice is sent to the following:

- (a) if the meeting is convened by the Issuer, to the Supervisor;
- (b) if the meeting is convened by the Supervisor, to the Issuer;
- (c) to each Holder of the relevant Class entered in the Register on the Record Date;
- (d) if the relevant Bonds are Listed Bonds, to the Exchange; and
- (e) the Auditors and every director of the Issuer.

3.2 Notice period

Subject to paragraph 3.6 (*Short or irregular notice*) and 5.5(b) (*Adjourned meeting*), at least 15 working days' notice (excluding the day on which the notice is given and including the day on which the meeting is held) of a meeting must be given.

3.3 Content of notice

The notice of meeting must specify:

- (a) the day, time and place of meeting;
- (b) the nature of the business to be transacted at the meeting in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;



- (c) the text of any Extraordinary Resolution to be submitted at the meeting;
- (d) the right of a 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 proposed notice of meeting shall be provided to the Supervisor at least 10 working days (or any lesser period as agreed with the Supervisor) in advance of the notice period provided for under paragraph 3.2 above; and
- (g) where the Supervisor has provided its comments on the proposed Extraordinary Resolution, at least 5 working days in advance of the notice period provided for under paragraph 3.2 above, the notice must include a copy of the Supervisor's comments.

3.4 Accidental omission

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

3.5 Short or irregular notice

Notwithstanding any other provision of this paragraph 3, a meeting may be called by shorter notice than that specified in paragraph 3.2 above, by notice without compliance with paragraph 3.3, 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 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 it is unlikely to result, in any material prejudice to the Retail Holders.

3.6 All notices and communications

The Issuer must ensure that the Supervisor receives the notices and communications in relation to the meeting that any Holder is entitled to receive.

4 CHAIRPERSON

A person nominated in writing by the Supervisor shall preside as Chairperson at every meeting convened in accordance with this Schedule.

If no such nomination is made, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the meeting, the Holders and Representatives present shall choose one of their number to chair the meeting.



5 **QUORUM**

5.1 **Quorum required**

No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Holder is present at a meeting for the purposes of this Schedule 5 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.

5.2 **Quorum for Extraordinary Resolution**

Subject to paragraph 5.4, the quorum for passing an Extraordinary Resolution will be Holders present in person or by Representative of not less than 25% of the aggregate Principal Amount of the Bonds held by those persons entitled to vote on the business to be transacted by the meeting.

5.3 **Quorum for other business**

The quorum for the transaction of any business other than passing an Extraordinary Resolution will be at least two Holders present in person or by Representative of not less than 5% of the aggregate Principal Amount of the Bonds.

5.4 **Quorum not present**

- (a) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, the meeting, if convened at the request of Holders, will be dissolved.
- (b) In any other case the meeting will be adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place, or to such other date, time and place as the Supervisor may appoint.

5.5 **Adjourned meeting**

- (a) At any meeting adjourned under paragraph 5.4(b), if a quorum is not present 30 minutes after the time appointed for the meeting, all the Holders present in person or by Representative will be a quorum for the transaction of business, including passing Extraordinary Resolutions.
- (b) 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 that is adjourned. In any other case, notwithstanding paragraph 3, notice of any adjourned meeting of Holders at which an Extraordinary Resolution is to be submitted shall be given to the same persons as those who were given notice of the original meeting and shall otherwise be given in the same manner as for an original meeting and such notice will state that, if a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders present in person or by Representative at the adjourned meeting will form a quorum (whatever the aggregate Principal Amount of Bonds held or represented by them).

6 **ATTENDANCE AT MEETINGS**

6.1 **Right to attend**

The following may attend and speak at any meeting:



- (a) the Supervisor;
- (b) the Issuer;
- (c) an officer, employee, agent, professional adviser of, and other person authorised by, the Supervisor or the Issuer; and
- (d) persons registered as Holders in the relevant Register at the Proxy Closing Time, or their Representatives.

6.2 Supervisor must attend meetings for Retail Bonds

For a meeting of Holders of Retail Bonds to be validly constituted, the Supervisor must be present.

7 PROXIES

7.1 Appointment

A proxy may be appointed by notice in writing signed by, or in the case of an electronic notice sent:

- (a) where an appointor is an individual, the appointor or the appointor's attorney; or
- (b) where the appointor is a body corporate, either under seal or signed on its behalf by an officer, attorney, director or other person who has actual authority to appoint a proxy on behalf of that body corporate.

The notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a Holder and the notice need not be witnessed.

7.2 Delivery of notice

No proxy is effective in relation to a meeting unless a copy of the notice appointing a proxy is delivered to the registered office of the Issuer (or such other place specified in the address specified in the Issuer's proxy appointment form (or otherwise as permitted by that form) by the time specified in that form before the start of the meeting and not later than the Proxy Closing Time unless the Authorised Person at the meeting waives the requirement. If the notice appointing a proxy is signed under power of attorney, a copy of the power of attorney and a signed certificate of non-revocation of the power of attorney must accompany the notice.

7.3 Form of notice appointing a proxy

A notice appointing a proxy may be in any usual form or in such other form as the Issuer or, in the case of Retail Bonds, Supervisor approves. A form of notice appointing a proxy shall be sent with each notice of meeting of Holders. That form:

- (a) must provide for 2-way voting on all resolutions; and
- (b) must not be sent with any name or office filled in as proxy holder.



7.4 Validity of proxy

- (a) A proxy will, unless the notice appointing the proxy states otherwise, be valid for any adjournment of the meeting as well as for the meeting to which it relates.
- (b) Notwithstanding anything in the notice appointing a proxy, no such notice will be valid for longer than 12 months from the date of its execution. This subparagraph (b) does not apply to the appointment of any other Representative.

7.5 Appointment of chairperson

A notice appointing a proxy in favour of:

- (a) the chairperson of the Issuer; or
- (b) the chairperson of the meeting, or “the Chairperson”

(however expressed) will be as valid and effectual as if it were in favour of a named person and will in the case of (a) above constitute the person holding the office of the chairperson of the Issuer and in the case of (a) above the person who chairs the meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointor.

8 REPRESENTATIVES

8.1 Rights of Representatives

A Representative may attend and speak at a meeting, and may demand or join in demanding a poll, and will (except and to the extent to which the Representative is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.

8.2 Holder’s representative

The Supervisor, or any of its officers or employees, may be appointed a Representative of a Holder.

8.3 Validity of votes cast

Any act done (including vote cast) by a Representative in accordance with the terms of its appointment will be valid notwithstanding:

- (a) the revocation of the appointment (including by the death or dissolution of the appointor) or the authority under which the appointment was made; or
- (b) the transfer of the relevant Bonds,
- (c) provided that no notice of such revocation or transfer was received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the act was done.

9 VOTING

9.1 Voting on resolutions

- (a) The manner of voting on an Extraordinary Resolution by the Holders must be by poll.



- (b) A resolution put to the vote of a meeting of Holders or their Representatives entitled to vote will be by whichever of the following methods is determined by the chairperson of the meeting:
 - (i) voting by voice; or
 - (ii) voting by show of hands.
- (c) In the case of a meeting where Holders or their Representatives entitled to vote are participating by means of audio, audio and visual, or electronic communication, unless a poll is demanded, voting at the meeting must be by any method permitted by the chairperson of the meeting.
- (d) A poll may be demanded by:
 - (i) the chairperson of the meeting;
 - (ii) by Holders or Representatives entitled to vote holding or representing not less than 5% of the aggregate Principal Amount of the relevant Bonds; or
 - (iii) in the case of Retail Bonds, the Supervisor.
- (e) Unless a poll is so demanded, a declaration by the chairperson that a resolution has been passed, carried by a requisite majority or unanimously, or lost, will be conclusive evidence of the fact.
- (f) If a poll is conducted, the resolution will be passed if approved by a simple majority of the votes entitled to be cast, and cast, on the poll.

9.2 Entitlement to vote

- (a) The persons registered as Holders in the relevant Register at the Proxy Closing Time will be exclusively entitled to vote in respect of Bonds recorded in their name, in person or by Representative.
- (b) For the purpose of establishing voting entitlements at a meeting, the relevant Register will be closed as of close of business on the Business Day immediately preceding the day on which the Proxy Closing Time falls and will remain closed until after the relevant meeting has been closed or adjourned.
- (c) No vote may be cast in respect of any Bond which, or the voting rights of which, are held or controlled by any Obligor or any Subsidiary of any Obligor.

9.3 Number of votes

- (a) On a show of hands each Holder present at the meeting in person or casting a vote pursuant to paragraph 9.8 below and entitled to vote will have one vote only.
- (b) On a poll every Holder who is present in person and entitled to vote will have one vote for each dollar of the Principal Amount of every Bond held by the Holder.



9.4 Conduct of poll

- (a) If a poll is required, it will be taken in such manner as the chairperson may direct and the result of such poll will be deemed to be the resolution of the meeting at which the poll was required.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith.
- (c) A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such 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.
- (d) The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question on which the poll has been demanded.

9.5 Casting vote

In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which the chairperson may be entitled as a Holder or on behalf of Holders.

9.6 Joint Holders

If more than one person is named in the Register as the Holder of a Bond, the vote of the senior who tenders a vote, whether in person or by Representative, will be accepted to the exclusion of the votes of the other Holders, and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.

9.7 Written ordinary resolutions

- (a) A resolution in writing signed or assented to by, or on behalf of, at least 50 per cent by number of the relevant Class of Holders, that together hold Bonds of that Class with an aggregate Principal Amount of more than 50 per cent of the aggregate Principal Amount of the Bonds of that Class outstanding at that time shall be as valid and effective as a resolution passed at a duly convened and held meeting.
- (b) The resolution may consist of one or more documents in similar form (including letters, facsimiles, email, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Holders.

9.8 Voting by other means

- (a) 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.
- (b) A Holder may cast a vote(s) under this paragraph 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.

- (c) The Supervisor or the Authorised Person (as applicable) must:
 - (i) collect together all of the votes received by him or her or by the Issuer;
 - (ii) in relation to each resolution to be voted on at the meeting, count:
 - (A) 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
 - (B) the number of Holders against the resolution and the number of votes cast by, or on behalf of, each such Holder in favour of the resolution; and
 - (iii) sign a certificate that he or she has carried out the duties set out in paragraphs 9.8(c)(i) and (ii) and that sets out the results of the counts required by paragraph 9.8(c)(ii); and
 - (iv) ensure that the certificate required by paragraph 9.8(c)(iii) above is presented to the chairperson of the meeting.
- (d) If a vote is taken at a meeting on a resolution on which votes under this paragraph have been cast, the chairperson of the meeting must:
 - (i) irrespective of whether votes are cast by a show of hands or by poll, include those votes in the overall result; and
 - (ii) call for a vote on a resolution, on which he or she holds sufficient votes under this paragraph 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.

10 EXTRAORDINARY RESOLUTIONS

10.1 Additional powers

A meeting of the Holders, in addition to the powers expressed in this Deed to be exercised by Extraordinary Resolution, and without prejudice to any powers conferred the Supervisor by the Bond Documents, has the following powers exercisable by Extraordinary Resolution:

- (a) *Release of Bond Debt:* to sanction either unconditionally or upon any conditions the release of an Obligor from the payment of all or any part of the Bond Debt or Guaranteed Bond Debt;
- (b) *Conversion of Bonds:* to 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) *Change a payment date:* to postpone or, with the agreement 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 proposal in respect of the Deed or Bonds:* to sanction, either unconditionally or conditionally, any proposal by the Issuer for any amendment, release, novation, or arrangement relating to, the rights of the Holders against an Obligor under a Bond Document or the Bond Conditions;
- (e) *Assent to amendment of the Bond Documents or Conditions:* to assent to any proposal to amend a Bond Document or the Bonds Conditions which is proposed by the Issuer;
- (f) *Authorise execution of documents:* to authorise any person or persons to concur in and execute all such documents and do all such acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution;
- (g) *Discharge liability:* to discharge or exonerate any person or persons from any liability in respect of any act or omission for which such person or persons may have become responsible under a Bond Document or the Bond Conditions;
- (h) *Sanction, breach or default:* to give any sanction, assent, release or waiver of any breach or default by an Obligor under a Bond Document or the Bond Conditions;
- (i) *Reconstruction or amalgamation:* to sanction any scheme for the reconstruction of an Obligor or for the amalgamation of an Obligor with any other person where such sanction is necessary;
- (j) *Authorise, direct or sanction:* to give any authority, direction or sanction or approval which under the provisions of a Bond Document or the Bond Conditions that is required to be given by Extraordinary Resolution;
- (k) *Remove Supervisor:* to request the removal of the Supervisor and to approve the appointment of a new supervisor;
- (l) *Appoint committee of Holders:* to appoint any persons (whether or not Holders) as a committee or committees to represent the interest of the Holders and to confer upon such committee or committees any powers or discretions which the Holders could themselves exercise by Extraordinary Resolution; and
- (m) *Direct or request Supervisor:* to direct or request the Supervisor to take such action or do such things as the Supervisor may lawfully do under the Bond Documents.



10.2 Extraordinary Resolutions binding

An Extraordinary Resolution passed in accordance with this Schedule will be binding upon all the Holders and each of the Holders and, the Supervisor will be bound to give effect to that resolution accordingly. Notwithstanding the above:

- (a) any meeting of both Wholesale Holders and Retail Holders being held in accordance with this Schedule 5 (*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 22.2), 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;
- (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; 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.

11 MINUTES

11.1 Minutes of all resolutions and proceedings at every meeting of Holders must be made and duly entered in records to be from time to time maintained for that purpose at the expense of the Issuer by:

- (a) in the case of Retail Bonds, the Supervisor (in which case, the Supervisor must give copies of the minutes to the Issuer as soon as reasonably practicable after the meeting); and
- (b) in the case of Wholesale Bonds, the Issuer.

11.2 Any such minutes signed by the chairperson of the meeting at which such resolutions were passed or proceedings transacted, or by the chairperson of the next succeeding meeting of the Holders, will be *prima facie* evidence of the matters recorded in them. Until the contrary is proved, every meeting whose proceedings have been so minuted and signed will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed and transacted.



11.3 The chairperson of the meeting must ensure that a certificate of votes under this clause held by him or her is attached to the minutes of the meeting.

12 **OTHER RULES FOR RETAIL BONDS**

The Supervisor may agree with the Issuer additional rules or variations of the rules set out in this Schedule for meetings of a Retail Series, without the approval of the relevant Holders.



SCHEDULE 6: PROCEEDINGS OF MEETING OF WHOLESALE HOLDERS ONLY

1 INTERPRETATION

In this Schedule, unless the context requires otherwise:

*Holder*s means only Holders of the Class or Classes for which the relevant meeting is convened, and *Bonds* shall be construed accordingly;

paragraph means a paragraph of this Schedule;

Proxy Closing Time means 48 hours before the day and time appointed for commencement of the relevant meeting of any Holders or the taking of a poll of any Holders; and

Representative means:

- (a) in the case of a Holder who is an individual, a person appointed by an instrument of proxy or by power of attorney (in either case, in a form satisfactory to the Issuer);
- (b) in the case of a Holder which is a body corporate, either:
 - (i) a person appointed by an notice of proxy in accordance with paragraph 7 or by power of attorney (in a form satisfactory to the Issuer); or
 - (ii) a person authorised in a manner equivalent to section 10 of Schedule 1 to the Companies Act 1993 or, in the case of a corporation sole, a person authorised pursuant to its constitution; or
- (c) a person who has become entitled to a Bond by operation of law, or such person's representative appointed or authorised under (a) or (b) above.

2 CONVENING MEETINGS

2.1 Meeting convened by Issuer

The Issuer may at any time convene a meeting of Holders of any Class.

2.2 Meeting required by law

The Issuer shall whenever required by law convene a meeting of Holders of any Class.

2.3 Meeting required by Holders

The Issuer shall, upon a written request from Holders holding not less than 10% of the aggregate Principal Amount of Bonds of any Class, convene a meeting of that Class. Any such request must state the nature of business proposed to be dealt with at the meeting.

2.4 Place of meeting

Each meeting will be held in the city or town in which the registered office of the Issuer is situated, or such other place designated by the Issuer.



3 NOTICE OF MEETING

3.1 Persons to be notified

A person convening a meeting under paragraph 3 must give notice to each Holder of the relevant Class entered in the Register on the Record Date.

3.2 Notice period

At least 10 working days' notice (excluding the day on which the notice is given and including the day on which the meeting is held) of a meeting must be given, provided that a meeting called on shorter notice will be deemed to have been duly called if it is so agreed by Holders who together hold not less than 75% of the aggregate Principal Amount of the relevant Bonds.

3.3 Content of notice

The notice of meeting must:

- (a) specify the day, time and place of meeting;
- (b) indicate the general nature of the business to be transacted at the meeting, but need not contain the agenda of the meeting or specify the terms of any proposed *Ordinary Resolutions*; and
- (c) specify the text of any proposed *Extraordinary Resolution*.

3.4 Accidental omission

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

4 CHAIRPERSON

A person nominated in writing by the Issuer shall chair the meeting, unless an alternative is nominated in writing by any Holder(s) holding not less than 10% of the aggregate Principal Amount of the relevant Bonds before the Proxy Closing Time for the meeting.

If no such nomination is made, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the meeting, the Holders and Representatives present shall choose one of their number to chair the meeting.

5 QUORUM

5.1 Quorum required

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

5.2 Quorum for Extraordinary Resolution

Subject to paragraph 5.4, the quorum for passing an *Extraordinary Resolution* will be Holders present in person or by Representative of not less than 10% of the aggregate Principal Amount of the Bonds.



5.3 Quorum for other business

The quorum for the transaction of any business other than passing an Extraordinary Resolution will be Holders present in person or by Representative of not less than 5% of the aggregate Principal Amount of the Bonds.

5.4 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 time appointed for the meeting, a quorum is not present, the meeting, if convened at the request of Holders, will be dissolved.
- (b) In any other case it will be adjourned to a day and time (not being less than 10 working days later) and to a place as may be appointed by the chairperson of the meeting.

5.5 Adjourned meeting

- (a) At any meeting adjourned under paragraph (b), all the Holders present in person or by Representative will be a quorum for the transaction of business, including passing Extraordinary Resolutions.
- (b) Notwithstanding paragraph 3, notice of any adjourned meeting of Holders at which an Extraordinary Resolution is to be submitted shall be given to the same persons as those who were given notice of the original meeting and shall otherwise be given in the same manner as for an original meeting (except that only five working days' notice will be required) and such notice will state that the Holders present in person or by Representative at the adjourned meeting will form a quorum (whatever the aggregate Principal Amount of Bonds held or represented by them).

6 ATTENDANCE AT MEETINGS

6.1 Right to attend

The following may attend and speak at any meeting:

- (a) the Issuer;
- (b) an officer, employee, agent, professional adviser of, and other person authorised by the Issuer; and
- (c) persons registered as Holders in the relevant Register at the Proxy Closing Time, or their Representatives.

7 PROXIES

7.1 Appointment

A proxy may be appointed by notice in writing signed by:

- (a) where an appointer is an individual, the appointor or the appointor's attorney; or



- (b) where the appointor is a body corporate, either under seal or signed on its behalf by an officer, attorney, director or other person who has actual authority to appoint a proxy on behalf of that body corporate.

The notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a Holder and the notice need not be witnessed.

7.2 Delivery of notice

No proxy is effective in relation to a meeting unless a copy of the notice appointing a proxy is delivered to the registered office of the Issuer (or such other place specified for that purpose in the notice convening the meeting) not later than the Proxy Closing Time. If the notice appointing a proxy is signed under power of attorney, a copy of the power of attorney and a signed certificate of non-revocation of the power of attorney must accompany the notice.

7.3 Form of notice appointing a proxy

A notice appointing a proxy may be in any usual form or in such other form as the Issuer. A form of notice appointing a proxy shall be sent with each notice of meeting of Holders. That form:

- (a) must provide for 2-way voting on all resolutions; and
- (b) must not be sent with any name or office filled in as proxy holder.

7.4 Validity of proxy

- (a) A proxy will, unless the notice appointing the proxy states otherwise, be valid for any adjournment of the meeting as well as for the meeting to which it relates.
- (b) Notwithstanding anything in the notice appointing a proxy, no such notice will be valid for longer than 12 months from the date of its execution. This subparagraph (b) does not apply to the appointment of any other Representative.

7.5 Appointment of chairperson

A notice appointing a proxy in favour of:

- (a) the chairperson of the Issuer; or
- (b) the chairperson of the meeting, or "the Chairperson",

(however expressed) will be as valid and effectual as if it were in favour of a named person and will in the case of (a) above constitute the person holding the office of the chairperson of the Issuer and in the case of (b) above the person who chairs the meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointor.

8 REPRESENTATIVES

8.1 Rights of Representatives

A Representative may attend and speak at a meeting, and may demand or join in demanding a poll, and will (except and to the extent to which the Representative



is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.

8.2 Holder's representative

Any of the Holder's officers or employees, may be appointed a Representative of a Holder.

8.3 Validity of votes cast

Any act done (including vote cast) by a Representative in accordance with the terms of its appointment will be valid notwithstanding:

- (a) the revocation of the appointment (including by the death or dissolution of the appointor) or the authority under which the appointment was made; or
- (b) the transfer of the relevant Bonds,

provided that no notice of such revocation or transfer was received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the act was done.

9 VOTING

9.1 Voting on resolutions

- (a) A resolution put to the vote of a meeting will be decided on a show of hands of Holders or their Representatives entitled to vote unless a poll is demanded before or on the declaration of the result of the show of hands.
- (b) A poll may be demanded by:
 - (i) the chairperson of the meeting; or
 - (ii) Holders or Representatives entitled to vote holding or representing not less than 5% of the aggregate Principal Amount of the relevant Bonds.
- (c) Unless a poll is so demanded, a declaration by the chairperson that a resolution has been passed, carried by a particular majority or unanimously, or lost, will be conclusive evidence of the fact.
- (d) If a poll is conducted, the resolution will be passed if approved by a simple majority of the votes entitled to be cast, and cast, on the poll.

9.2 Entitlement to vote

- (a) The persons registered as Holders in the relevant Register at the Proxy Closing Time will be exclusively entitled to vote in respect of Bonds recorded in their name, in person or by Representative.
- (b) For the purpose of establishing voting entitlements at a meeting, the relevant Register will be closed as of close of business on the Business Day immediately preceding the day on which the Proxy Closing Time falls and will remain closed until after the relevant meeting has been closed or adjourned.



- (c) No vote may be cast in respect of any Bond which, or the voting rights of which, are held or controlled by any Obligor or any Subsidiary of any Obligor.

9.3 Number of votes

- (a) On a show of hands each Holder present at the meeting in person or by Representative and entitled to vote will have one vote only.
- (b) On a poll every Holder who is present in person or by a Representative and entitled to vote will have one vote for each dollar of the Principal Amount of every Bond held by the Holder.

9.4 Conduct of poll

- (a) If a poll is required, it will be taken in such manner as the chairperson may direct and the result of such poll will be deemed to be the resolution of the meeting at which the poll was required.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith.
- (c) A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such 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.
- (d) The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question on which the poll has been demanded.

9.5 Casting vote

In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which the chairperson may be entitled as a Holder or on behalf of Holders.

9.6 Joint Holders

If more than one person is named in the Register as the Holder of a Bond, the vote of the senior who tenders a vote, whether in person or by Representative, will be accepted to the exclusion of the votes of the other Holders, and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.

9.7 Written ordinary resolutions

- (a) A resolution in writing signed or assented to by, or on behalf of, at least 50 per cent by number of the relevant Class of Holders, that together hold Bonds of that Class with an aggregate Principal Amount of more than 50 per cent of the aggregate Principal Amount of the Bonds of that Class outstanding at that time shall be as valid and effective as a resolution passed at a duly convened and held meeting.



- (b) The resolution may consist of one or more documents in similar form (including letters, facsimiles, email, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Holders.

10 EXTRAORDINARY RESOLUTIONS

10.1 Additional powers

A meeting of the Holders, in addition to the powers expressed in this Deed to be exercised by Extraordinary Resolution, has the following powers exercisable by Extraordinary Resolution:

- (a) *Release of Bond Debt:* to sanction either unconditionally or upon any conditions the release of an Obligor from the payment of all or any part of the Bond Debt or Guaranteed Bond Debt;
- (b) *Conversion of Bonds:* to 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) *Change a payment date:* to postpone or, with the agreement 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 proposal in respect of the Deed or Bonds:* to sanction, either unconditionally or conditionally, any proposal by the Issuer for any amendment, release, novation, or arrangement relating to, the rights of the Holders against an Obligor under a Bond Document or the Bond Conditions;
- (e) *Assent to amendment of the Bond Documents or Conditions:* to assent to any proposal to amend a Bond Document or the Bonds Conditions which is proposed by the Issuer;
- (f) *Authorise execution of documents:* to authorise any person or persons to concur in and execute all such documents and do all such acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution;
- (g) *Discharge liability:* to discharge or exonerate any person or persons from any liability in respect of any act or omission for which such person or persons may have become responsible under a Bond Document or the Bond Conditions;
- (h) *Sanction, breach or default:* to give any sanction, assent, release or waiver of any breach or default by an Obligor under a Bond Document or the Bond Conditions;
- (i) *Reconstruction or amalgamation:* to sanction any scheme for the reconstruction of an Obligor or for the amalgamation of an Obligor with any other person where such sanction is necessary;



- (j) *Authorise, direct or sanction:* to give any authority, direction or sanction or approval which under the provisions of a Bond Document or the Bond Conditions that is required to be given by Extraordinary Resolution;
- (k) *Appoint committee of Holders:* to appoint any persons (whether or not Holders) as a committee or committees to represent the interest of the Holders and to confer upon such committee or committees any powers or discretions which the Holders could themselves exercise by Extraordinary Resolution; and

10.2 **Extraordinary Resolutions binding**

An Extraordinary Resolution passed in accordance with this Schedule will be binding upon all the Holders and each of the Holders. Notwithstanding the above:

- (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;
- (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; 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.

11 **MINUTES**

- (a) Minutes of all resolutions and proceedings at every meeting of Holders must be made and duly entered in records to be from time to time maintained for that purpose at the expense of the Issuer by
- (b) Any such minutes signed by the chairperson of the meeting at which such resolutions were passed or proceedings transacted, or by the chairperson of the next succeeding meeting of the Holders, will be *prima facie* evidence of the matters recorded in them. Until the contrary is proved, every meeting whose proceedings have been so minuted and signed will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed and transacted.



SCHEDULE 7: FORM OF ACCESSION TO GUARANTEE

DATED 20[XX]

PARTIES

- (1) **[FULL NAME OF NEW GUARANTOR]**, (Company Number []) at [] (the *New Guarantor*)
- (2) **[FULL NAME OF COMPANY]**, (Company Number []) at [] (the **Supervisor**)

BACKGROUND

- A. The New Guarantor is a Subsidiary of Z Energy Limited (the **"Parent"**).
- B. The Issuer and the Supervisor, among others, have entered into a master trust deed (the **"Trust Deed"**) dated [DATE], as amended and supplemented from time to time.
- C. At the request of the Issuer, the New Guarantor wishes to guarantee the Bond Obligations on the terms of this deed of accession (this **"Deed"**) and the Trust Deed.
- D. The board of directors of the New Guarantor is satisfied that entering into this Deed is in the best interests of and for the benefit of the [New Guarantor/Parent], pursuant to [].

IT IS AGREED:

1 INTERPRETATION

The Trust Deed (including the definitions and other rules of interpretation in clause 1 of the Trust Deed) applies in this Deed, except to the extent modified by this Deed. To the extent that this Deed conflicts with the Trust Deed, this Deed prevails in relation to the Guarantee.

2 ACCESSION AND ACKNOWLEDGEMENT

With effect from the date of this Deed:

- 2.1 *Agreement to be bound:* The New Guarantor agrees to be bound by all the terms and conditions of the Trust Deed as if it were a party to the Trust Deed with the rights and obligations of a Guarantor under the Trust Deed.
- 2.2 *Acknowledgement:* The New Guarantor acknowledges that the Bonds have been and will continue to be taken up by the Holders on the condition and in part consideration that the New Guarantor will give or has given the guarantee contained in this Deed by way of security for the obligations constituted by the Trust Deed.
- 2.3 *Guarantee:* The New Guarantor jointly and severally with each other Guarantor hereby irrevocably and unconditionally guarantees to the Supervisor the due and punctual payment of the Guaranteed Bond Debt as and when it becomes due and payable and the due observance and punctual performance of the Guaranteed Bond



Obligations. Clause 8 of the Trust Deed shall have effect and shall apply to it (as a Guarantor) and to the guarantee given by it in this clause 2.3 (as well as to each other Guarantor) as if those provisions were set out in full in this clause 2.3.

- 2.4 *Incorporation of terms:* Pursuant to section 14 of the Property Law Act 2007 but without limiting the obligations imposed by clause 2.3 it is declared that there shall be deemed to be incorporated in this Deed all the covenants, powers, conditions and provisions of the Trust Deed in the same manner and to the same extent as if the covenants, powers, conditions and provisions had been mutatis mutandis set out in full in this Deed and made applicable to the New Guarantor and the New Guarantor accordingly covenants and agrees jointly and severally with all other Guarantors to duly perform and comply with and be bound by the covenants, powers, conditions and provisions.

3 NOTICES

For the purposes of clause 24.3 of the Trust Deed, the initial address, facsimile and email details of the New Guarantor are:

[Insert name of New Guarantor]

[Insert address]

Attention: [Insert name/position]

Fax No.: [Insert fax. No.]

Email: [Insert email]

4 COUNTERPARTS

This Deed may be executed in any number of counterparts (including facsimile, email or scanned PDF counterpart), all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Deed by signing any such counterpart.

5 GOVERNING LAW AND JURISDICTION

- 5.1 *Governing Law:* This Deed is governed by and shall be construed in accordance with New Zealand law.

- 5.2 *Jurisdiction:* The New Guarantor submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Deed.

6 DELIVERY

Without limiting any other mode of delivery this Deed will be delivered by the New Guarantor on the earlier of:

- (a) unconditional physical delivery of an original of this Deed, executed by the New Guarantor, into the custody of the Supervisor or its solicitors; or



SCHEDULE 8: CURRENT COST OF SUPPLY ACCOUNTING PRINCIPLES

Introduction

- 1 Reporting on a current cost of supply ("**CCS**") basis essentially produces results which are comparable to results that have used last in first out ("**LIFO**") as a stock valuation method. In an environment of rising oil prices, this has a negative impact on gross margin compared to first in first out ("**FIFO**") accounting, because monthly results are prepared with cost of sales based on the current cost of sales, rather than the historical cost (FIFO) cost of sales.
- 2 This accounting approach is applied by the industry internationally and:
 - (a) reflects the industry pricing approach for fuel sales which are based on current market cost to acquire replenishment stocks; and
 - (b) allows company performance within a period to be evaluated in respect of fuel margins earned for that period which are not influenced by movements in unsold inventory values.

Cost of sales adjustment

- 3 The cost of sales adjustment ("**COSA**") is the adjustment to derive CCS reported earnings from FIFO (GAAP) earnings.
- 4 The COSA adjustment is prepared for management reporting purposes with the statutory accounts being prepared on a FIFO basis.
- 5 It is important to note the income tax is calculated on FIFO earnings, that is tax deductions for cost of sales are based on FIFO.

COSA calculation

- 6 COSA is calculated monthly for the management accounts for Class of Business (e.g. Retail, B2B, Aviation, Marine etc business unit performance) to account for cost of goods sold ("**COGS**") on a CCS basis.
- 7 COSA enables COGS to be restated from FIFO to CCS based on the monthly average purchase price of inventory.
- 8 The calculation is complex but in summary the inputs for the COSA calculation are:
 - Opening stock volume at CCS prices, where CCS prices are the average price of purchases (and sales) of crude oil (by grade and quality) for the preceding month (A);
 - Opening stock volume at FIFO prices (B);
 - Closing stock volume at CCS prices (C);



Closing stock volume at FIFO prices (D);

The calculation is $(A - B) - (C - D) = \text{COSA}$ where $\text{FIFO} + \text{COSA} = \text{CCS}$

Z ENERGY LIMITED

CERTIFICATE OF COMPLIANCE

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

Background

- 1 We refer to a master trust deed dated 11 August 2010 (as amended and/or restated from time to time) (*Master Trust Deed*) between, amongst others, Z Energy Limited (ZEL) and Trustees Executors Limited (TEL), as amended and restated by an amendment and restatement deed dated 10 May 2020 between, amongst others, ZEL and TEL (*Amending Deed*).
- 2 In this certificate, the *Amended Trust Deed* means the Master Trust Deed as amended and restated by the Amending Deed.
- 3 This is a certificate for the purposes of section 108(2)(b) of the Financial Markets Conduct Act 2013 (FMCA).

Certifications

We certify that:

- (a) we are satisfied that the Amending Deed (and the amendment and restatement of the Master Trust Deed thereunder) does not have a material adverse effect on the Holders (as defined in the Amended Trust Deed); and
- (b) the Amended Trust Deed complies with sections 104 to 106 of the FMCA on the basis that:
 - (i) the Amended Trust Deed contains the provisions required by sections 104 to 106 of the FMCA; and
 - (ii) we have received a legal opinion which confirms that the Amended Trust Deed complies with sections 104 to 106 of the FMCA.

Dated 10 May 2020

Trustees Executors Limited by:

Authorised Signatory

Matthew Joseph Band

David Shaw
Senior Client Manager
Auckland

Authorised Signatory

Witness to Authorised Signatories' Signatures:

Signature.....

Name.....

Occupation Yana Lushnikova

Address Operations Administrator
Auckland