

GENESIS ENERGY LIMITED

Issuer

TRUSTEES EXECUTORS LIMITED

Supervisor

MASTER TRUST DEED

RUSSELL McVEAGH

CONTENTS

1.	INTERPRETATION	1
2.	ISSUE AND FORM OF BONDS	12
3.	STATUS OF BONDS	13
4.	TITLE AND TRANSFER	14
5.	REGISTER	15
6.	SUBORDINATED BONDS.....	16
7.	PAYMENT OF PRINCIPAL AMOUNT AND INTEREST	19
8.	CALCULATION OF INTEREST	21
9.	PAYMENTS.....	22
10.	TAXES	23
11.	REPRESENTATIONS AND WARRANTIES	24
12.	UNDERTAKINGS.....	25
13.	DEFAULT	30
14.	APPOINTMENT OF SUPERVISOR	32
15.	SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES	34
16.	SUPERVISOR'S POWERS	35
17.	EXERCISE OF SUPERVISOR'S POWERS.....	37
18.	REPLACEMENT OF SUPERVISOR	38
19.	LIABILITY OF SUPERVISOR	40
20.	BENEFIT OF DEED	40
21.	AMENDMENTS.....	41
22.	WAIVER	42
23.	MEETINGS AND RESOLUTIONS OF BONDHOLDERS	43
24.	NOTICES.....	43
25.	GENERAL.....	45
26.	GOVERNING LAW	45
	SIGNED AS A DEED	46
	SCHEDULE 1	47
	MEETINGS OF HOLDERS	47
	SCHEDULE 2.....	56
	FORM OF DIRECTORS' REPORTING CERTIFICATE	56
	SCHEDULE 3.....	58
	PARTICULARS OF BONDS IN REGISTER.....	58

DEED dated 25 November 2008 (as amended and restated on 20 July 2016)

PARTIES

GENESIS ENERGY LIMITED ("Issuer")

TRUSTEES EXECUTORS LIMITED ("Supervisor")

INTRODUCTION

- A. The Issuer proposes to establish a bond programme under which the Issuer may from time to time issue debt securities.
- B. Each Tranche of Bonds issued by the Issuer will be constituted by and issued on terms set out in a Supplemental Trust Deed made between the Issuer and the Supervisor. The terms of any such Supplemental Trust Deed may modify the terms of this deed in relation to the relevant Tranche of Bonds.
- C. The FMC Act requires the appointment of a supervisor in respect of the Retail Bonds and the execution by the Issuer and the Supervisor of a trust deed.
- D. The Supervisor has agreed, at the request of the Issuer, to act as supervisor for the Retail Holders and, to the limited extent expressly provided in this Deed, for the Wholesale Holders, on the terms and conditions of this Deed applicable to that Series.

COVENANTS

1. INTERPRETATION

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

"Agency Agreement" means, in relation to any Series, the registrar and paying agency agreement (however described) between the Issuer and the person appointed as the registrar, paying agent and, if applicable, the Calculation Agent for that Series.

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

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

"Approved Issuer Levy" means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Bond, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971.

"Auditors" means the auditors for the time being of the Issuer.

"Authorised Officers" means any person who is a director, chief executive officer, chief financial officer, general counsel or corporate structure manager of the Issuer (or such officer of the Issuer howsoever designated as may from time to time replace or succeed

such officer), any officer of the Issuer with the words "general manager" in their title, and any other officer of the Issuer, in each case as formally appointed by the Issuer's directors or their duly authorised delegates and notified in writing to the Supervisor.

"**Base Rate**" means, in relation to an Interest Period, either:

(a) **Bill rate:**

- (i) if the Interest Period is 1, 2, 3, 4, 5, or 6 months, the FRA settlement rate (rounded, if necessary, to the nearest two decimal places) as displayed at or about 10.45am on the first day of that Interest Period on the Reuters Monitor Screen page BKBM (or its successor page) ("**Reuters Monitor Screen**") for bank bills having a term approximately equal to that Interest Period; or
- (ii) if the Interest Period is longer than one month but shorter than six months, and not two, three, four, or five months, the rate resulting from straight line interpolation (rounded, if necessary, to the nearest two decimal places) between the FRA settlement rates as displayed at or about 10.45am on the first day of that Interest Period on the Reuters Monitor Screen for bank bills having a term:
 - (aa) shorter than, but closest to, that Interest Period; and
 - (bb) longer than, but closest to, that Interest Period; or
- (iii) (in either case) if:
 - (aa) there are no such rates displayed for bank bills having the relevant term; or
 - (bb) fewer than four persons are displayed on the Reuters Monitor Screen as quoting such a rate,

then the average (rounded, if necessary, to the nearest two decimal places and ignoring the highest and lowest rates quoted) of the rates quoted to the Calculation Agent for the relevant Tranche by each of the Reference Banks (or such one or more of them as are quoting) as being its buy rate for bank bills having a term approximately equal to the relevant Interest Period at or about that time on that date; or

- (b) **Other specified rate:** any other reference rate as may be specified in the Supplemental Trust Deed for a Tranche.

"**Bond**" means a bond, note or other instrument by whatever name called (which shall be an Unsubordinated Bond or a Subordinated Bond and shall form part of a Series) constituted by, and subject to the terms and conditions set out in, this Deed, and includes an Amortising Bond, a Fixed Rate Bond, a Floating Rate Bond, an Index-linked Bond or a Zero Coupon Bond.

"**Bond Moneys**" means, in relation to a Bond at any time, the Principal Amount, interest and other moneys payable on, or in relation to, that Bond to the Holder of that Bond at the direction of the Supervisor at that time under or pursuant to this Deed and a reference to "**Bond Moneys**" includes any part of them.

"**Borrowings**" includes any liabilities or indebtedness, whether actual or contingent, for or in respect of:

- (a) money borrowed or raised (whether or not for cash consideration) including, without limitation, any debenture, bond, note, convertible note, loan stock, commercial paper, Subordinated Indebtedness, Redeemable Share or other security and (in respect of actual or contingent reimbursement and other payment obligations only) any acceptance credit, bill discounting or note purchase facilities and receivables sold or discounted (otherwise than on a non-recourse basis) but only to the maximum extent, actual or contingent, of recourse for such receivables but excluding for the avoidance of doubt any raising of equity;
- (b) any guarantee of or indemnity in respect of any liabilities or indebtedness specified in this definition but only to the maximum extent, actual or contingent, of recourse under such guarantee, and excluding for the avoidance of doubt any guarantee of or indemnity in respect of any liabilities or indebtedness arising out of any arrangements relating to, or in connection with, the provision of goods or services, entered into in the ordinary course of business;
- (c) negotiable instruments;
- (d) recourse obligations for factored debts;
- (e) any termination amount due and payable under any currency exchange or interest rate swap, floor or collar arrangements and any other interest or currency protection, hedging or financial futures transaction or arrangement (provided that any such transaction or arrangement in respect of electricity or gas, however described and whether or not they provide for physical delivery or otherwise, or which include reference rates which relate to, or are calculated from, electricity or gas prices (whether spot, future or otherwise) shall be excluded);
- (f) rental or lease payments under any finance lease, conditional sale, hire purchase or other similar arrangement constituting a finance lease for the purposes of NZ GAAP;
- (g) the acquisition cost of property, assets or services to the extent payable before or after the time of acquisition or possession by the party liable where the advance or deferred payment was arranged primarily as a method of raising finance or financing the acquisition of the property, assets or services acquired but excluding any such liabilities or indebtedness incurred in the ordinary course of business on normal trade terms;
- (h) the amount payable by any member of a Group in respect of the redemption of any share capital or other securities issued by it or any other member of the that Group to the extent that entitlement to such amount would make the payee a creditor of any member of that Group in a winding-up ranking pari passu with or ahead of the ordinary creditors of that member; and
- (i) amounts raised under any similar financing transaction having the commercial effect of a borrowing or raising of money,

in each case of a Group calculated on a consolidated basis. For the purposes of any calculation of the amount of Borrowings there shall be no double-counting.

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

"Calculation Agent" means, in relation to any Series, the person appointed by the Issuer from time to time to calculate interest rates or amounts due on the Bonds and, if none is appointed, means the Registrar for the relevant Series.

"Class" has the meaning given to it in the FMC Act and **"Class of Holders"** means the Holders of Bonds of the same Class.

"Companies Act" means the Companies Act 1993.

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

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

"Date of Enforcement" means the date on which a Holder or the Supervisor makes a declaration pursuant to clause 13.1.

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

"Default Interest" has the meaning given in clause 7.6.

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

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

"EBITDA" means, in respect of a Group at any date, and in respect of the 12 month period ending on that date, the aggregate amount on a consolidated basis of the net profit of that Group before charging or providing for Interest and Financing Costs and before charging or providing for income tax or any other tax, depreciation and amortisation, in each case in relation to that period and calculated in accordance with NZ GAAP, and excludes:

- (a) abnormal items;
- (b) profits and losses derived on the sale of fixed assets or investments; and
- (c) equity accounted profits and losses.

"Event of Default" means any of the events specified in clause 13.1.

"Financial Markets Supervisors Act" means the Financial Markets Supervisors Act 2011.

"Financial Statements" means, at any date in respect of the Consolidated Group, consolidated financial statements of the Consolidated Group as at that date which comply with NZ GAAP and are consistent with the most recent published audited consolidated financial statements of the Consolidated Group, except to the extent (if any) expressly disclosed in notes to such financial statements.

"First Interest Accrual Date" means the first date from which interest will accrue in respect of a particular Tranche as set out in the Supplemental Trust Deed for that Tranche.

"**Fixed Establishment**" has the meaning given to that term in the Income Tax Act 2007.

"**Fixed Rate Bond**" means a Bond bearing a fixed rate of interest.

"**Floating Rate Bond**" means a Bond bearing interest at a margin over the Base Rate.

"**FMA**" means the Financial Markets Authority established pursuant to the Financial Markets Authority Act 2011.

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

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

"**Group**" means, at any date, the Consolidated Group or the Guaranteeing Group, as the case may be.

"**Guaranteeing Group**" means, at any date, the Issuer and those Guaranteeing Subsidiaries which guarantee the due compliance, observance and performance by the Issuer of the Issuer's obligations in respect of all the Bonds at that date.

"**Guaranteeing Subsidiary**" means any Subsidiary of the Issuer which guarantees the due compliance, observance and performance by the Issuer of the Issuer's obligations in respect of any Bonds.

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

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

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

"**Interest and Financing Costs**" means, in respect of a Group at any date, and in respect of a 12 month period ending on that date, the aggregate amount on a consolidated basis of the interest charged or provided on an accruals basis on Borrowings of that Group (and which, notwithstanding any specific items deemed to be included below, will be calculated in accordance with NZ GAAP) in respect of that period. For this purpose "interest" includes:

- (a) discounts on the issue of debt securities;
- (b) the interest element of rental payments under leases;
- (c) any amount of interest on any convertible notes, issued by any member of that Group;
- (d) dividends and distributions of a revenue nature paid in respect of Redeemable Shares; and
- (e) fees and other charges incurred in establishing or maintaining debt financing arrangements (including without limitation redeemable shares and Subordinated Indebtedness) or debt related risk management products, but specifically excluding normal banking transactional charges and energy trading risk management products,

and takes into account realised gains or losses resulting from foreign exchange, swaps, futures, options or similar transactions entered into in order to manage debt related risks in relation to interest payment obligations in connection with transactions for Borrowings.

"Interest Payment Date" means:

- (a) in relation to a Floating Rate Bond, the last day of each Interest Period for that Floating Rate Bond or such other date as is specified in the Supplemental Trust Deed in relation to the Tranche of which that Floating Rate Bond forms part, or in Offer Documentation applicable to that Bond, and recorded as such in the Register in respect of that Floating Rate Bond;
- (b) in relation to a Fixed Rate Bond, the quarterly, semi-annual or annual dates (or such other dates) specified in the Supplemental Trust Deed in relation to the Tranche of which that Fixed Rate Bond forms part, or in Offer Documentation applicable to that Bond, and recorded as such in the Register in respect of that Fixed Rate Bond; and
- (c) in relation to any other Bond, the dates specified in the Supplemental Trust Deed in relation to the Tranche of which that Bond forms part, or in Offer Documentation applicable to that Bond, and recorded as such in the Register in respect of that Bond.

"Interest Period" means, in relation to a Floating Rate Bond, a period determined in accordance with clause 8.1(a) in respect of that Bond.

"Interest Rate" means, in relation to a Bond, the rate of interest (if any) payable in respect of that Bond (which may be a fixed rate or a margin over the Base Rate) specified in the relevant Supplemental Trust Deed, or in the Offer Documentation applicable to that Bond, and recorded as such in the Register in respect of that Bond.

"Issue Date" means, in relation to a Bond, the date on which that Bond is issued, being the date specified in the relevant Supplemental Trust Deed, or in the Offer Documentation applicable to that Bond, and recorded as such in the Register in respect of that Bond.

"Issue Price" in relation to a Bond, has the meaning given in the relevant Supplemental Trust Deed.

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

"Listing Rules" means in relation to a Bond the listing rules applicable to the NZDX or any other market where the Bond is to be (or is) quoted for trading in force from time to time.

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

"Maturity Date" means, in relation to a Bond, the date for the repayment of that Bond, being the date specified in the relevant Supplemental Trust Deed and recorded as such in the Register in respect of that Bond.

"Minimum Principal Amount" means, in relation to a Tranche, the minimum Principal Amount for subscription, transfer and/or holding of the Bonds forming part of that Tranche, being the amount specified as such in the relevant Supplemental Trust Deed for that Tranche.

"Negative Pledge Deed" means the negative pledge deed dated 12 August 2004 (as amended on 5 October 2006) between Genesis Energy Limited and the initial guaranteeing subsidiaries.

"NZClear" means the securities clearing and settlement facility operated by the Reserve Bank of New Zealand and 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 market operated by NZX and known as the NZDX or NZX Debt Market and any successor market.

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

"NZX" means NZX Limited.

"Offer Documentation" means in relation to any Series:

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

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

"Potential Event of Default" means an event which, with the passing of time or the giving of notice or both, would constitute an Event of Default.

"PPSA" means the Personal Property Securities Act 1999.

"Principal Amount" means, in relation to a Bond, the amount (other than interest or an amount in the nature of interest) payable on redemption or repayment of that Bond, being the amount recorded as such in the Register in respect of that Bond, or, as the context may require:

- (a) in relation to an Amortising Bond, the principal amount thereof for the time being outstanding, as reduced in accordance with clause 7.3; or
- (b) in relation to an Index-linked Bond, the principal amount thereof for the time being outstanding, as increased or reduced in accordance with clause 8.3.

"QFP Offer" means an offer of financial products made pursuant to the quoted financial products exclusion in clause 19 of Schedule 1 to the FMC Act.

"Record Date" means, in relation to a payment due on a Bond, 5.00pm on the tenth day before (or, in the case of a Zero Coupon Bond, the day before) the due date for that payment, or if that day is not a Business Day, then 5.00pm on the immediately preceding Business Day, or such other date provided for in the Supplemental Trust Deed for the relevant Bonds.

"Redeemable Shares" means:

- (a) shares in a Consolidated Group member 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 a trustee or manager of that trust is a Consolidated Group member, or if a Consolidated Group member is responsible for the redemption of those units.

"Reference Banks" means ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand and Westpac New Zealand Limited or any successor of any of the same or any replacement Reference Bank reasonably selected by the Issuer in consultation with the Supervisor.

"Register" means, in relation to a Series, the register of Bonds to be established and maintained in accordance with this Deed, the relevant Agency Agreement and (where applicable for a Retail Series) section 214 of the FMC Act.

"Registrar" means, in respect of any Series, the person named in the relevant Agency Agreement and specified in the Supplemental Trust Deed for that Series as the registrar and/or Calculation Agent and/or paying agent for that Series (as the case may be), or any successor agent appointed under the relevant Agency Agreement in relation to that Series.

"Retail Series" means a Series of Bonds which may, in accordance with the relevant Conditions, be offered or sold under a regulated offer or under a QFP Offer, and includes any Series where the Offer Documentation expressly confirms that Series is a Retail Series for the purposes of this deed and **"Retail Bond"** means a Bond which is part of a Retail Series and **"Retail Holder"** means a Holder of a Retail Bond.

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

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

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

"Series" means a Tranche of Bonds together with any further Tranche or Tranches of Bonds which are:

- (a) expressed to be consolidated and form a single series; and
- (b) identical in all respects except for the respective Issue Dates, First Interest Accrual Dates, Issue Prices, Maturity Date and/or denominations.

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

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

"Subordinated Indebtedness" means a liability (whether actual or contingent) which, to the satisfaction of the auditors of the Issuer for the time being, is in a liquidation of a Consolidated Group member either to be deferred in point of payment to all other liabilities (not being liabilities which are similarly deferred) whether secured or

unsecured, present or future, of that company ("**preferred liabilities**") or in respect of which any distribution to the creditor on account thereof will be subject to an express trust to account to all of the creditors to whom preferred liabilities are owed.

"**Subsidiary**" means, in relation to any person, a subsidiary of that person within the meaning of section 5 of the Companies Act and includes any other person the financial statements of which are required to be consolidated with the financial statements of the Issuer in accordance with NZ GAAP.

"**Supervisor**" means Trustees Executors Limited or any replacement supervisor appointed under this deed or pursuant to the FMC Act or FMC Regulations.

"**Supervisor Powers**" means, in relation to a Bond, the trusts, powers, authorities and discretions vested in the Supervisor by this Deed, or by law, in relation to that Bond.

"**Supplemental Trust Deed**" means a deed supplemental to this deed entered into by the Issuer and the Supervisor pursuant to clause 2.4 constituting and setting out the terms and conditions of a Tranche.

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

"**Tranche**" means an issue of Bonds which, pursuant to the relevant Supplemental Trust Deed, have the same Issue Date and Conditions.

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

"**Undated Subordinated Bond**" means a Bond which, in accordance with its Conditions, is Subordinated Indebtedness of the Issuer and which is identified in the Supplemental Trust Deed constituting it and in the Register in respect of that Bond as an Undated Subordinated Bond and which has no Maturity Date. An Undated Subordinated Bond may be a Fixed Rate Bond, a Floating Rate Bond or an Index-linked Bond.

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

"**Wholesale Series**" means a Series of Bonds which is not a Retail Series and "**Wholesale Bond**" means a Bond which is part of a Wholesale Series and "**Wholesale Holder**" means a Holder of a Wholesale Bond.

"**Winding-Up**" means any procedure, whether brought or instigated by a Holder or any other person, for the winding up, liquidation or dissolution of the Issuer otherwise than for the purposes of, and followed by, an amalgamation or solvent reconstruction on terms previously approved by a Special Resolution of each Class of Holders.

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

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

an "**authorisation**" includes:

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

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

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

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

"**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

a person being "**insolvent**" has the meaning given to that term in the FMC Act;

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

something having a "**material adverse effect**" on a person is a reference to it having a material adverse effect on the consolidated financial condition or operations of that person and its Subsidiaries taken together which materially adversely affects the ability of that person to perform or comply with its obligations under this Deed or any Bond;

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

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

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

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

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

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

a "**security**" includes a security interest (as construed and defined in section 17(1)(a) of the PPSA), mortgage, lien, pledge, any interest in land of a security nature, any other security arrangement creating in effect security for the payment of a monetary obligation or the observance of any other obligation, and any other arrangement having like economic effect over any property, assets or revenues, and "**unsecured**" means not subject to a security;

"**supervisor**" has the meaning given to it in the FMC Act;

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

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

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

1.4 **Miscellaneous:**

- (a) **Headings:** The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) **Plural, singular and gender references:** Unless the context otherwise requires, words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders.
- (c) **References to legislation:** References to any legislation or to any provision of any legislation shall be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless the context otherwise requires, shall also include any legislative instruments issued under any such legislation or provision.
- (d) **Modified, novated, supplemented, varied and replaced document:** References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) **Schedules:** Each schedule has the same form and effect as if set out in the body of this Deed and references to this Deed include the schedules and the Conditions.
- (f) **References to any party:** References to any party to this deed or any other document or any Holder shall include its successors or permitted assigns.
- (g) **References to time of day:** References to a time of day are references to New Zealand time unless otherwise stated.
- (h) **References to time:** Anything which may be done at any time may also be done from time to time.

- (i) **Non-Business Days:** Unless expressly provided otherwise or the context otherwise requires, anything which is required by this Deed to be done on, or as at, a day which is not a Business Day is to be done on, or as at, the next Business Day.

1.5 **Retail Provisions:** The FMC Act imposes certain obligations on the Issuer, and requires this deed to include certain terms and conditions for the benefit of Holders of Retail Bonds. To the extent that any provision of this deed or the applicable Supplemental Trust Deed expressly or impliedly indicates that a Holder of Retail Bonds would not have the full benefit of the provisions of the FMC Act and FMC Regulations that are for the benefit of holders of debt securities issued under a regulated offer ("**Retail Provisions**"), those provisions must be read in a manner consistent with the relevant obligations of the Issuer under the FMC Act and the FMC Regulations. Unless expressly provided otherwise in this deed or the Supplemental Trust Deed, the Holders of Wholesale Bonds are not intended to have the benefit of the Retail Provisions and the terms of this deed and the Supplemental Trust deed should be read accordingly.

2. ISSUE AND FORM OF BONDS

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

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

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

- (a) may be offered or sold under a regulated offer or a QFP Offer (which are Retail Bonds); or
- (b) may not be offered or sold to retail investors (as that term is defined in the FMC Act) (which are Wholesale Bonds),

in each case, as specified in the selling restrictions in the relevant Supplemental Trust Deed and/or Offer Documentation.

2.4 **Supplemental Trust Deed:**

- (a) Bonds shall be constituted and issued in Series. Each Tranche which forms part of a Series shall be subject to the terms and conditions set out in a Supplemental Trust Deed for that Tranche and (as modified by that Supplemental Trust Deed) this deed.
- (b) In respect of a Series comprising two or more Tranches, the Supplemental Trust Deeds relating to that Series will be substantially identical except for the respective Issue Dates, First Interest Accrual Dates, Issue Prices, Maturity Date and/or denominations.

- (c) To the extent that the Supplemental Trust Deed for a Tranche modifies this deed, or in the event of any conflict between the provisions of that Supplemental Trust Deed and those of this deed, that Supplemental Trust Deed shall prevail over this deed in relation to that Tranche.
- (d) The provisions of the relevant Supplemental Trust Deed and this deed read together in accordance with this clause 2.4 shall constitute the Conditions for the Bonds of the relevant Tranche.

2.5 **Creation and issue:** Bonds of a Tranche are constituted when the Supplemental Trust Deed for that Tranche has been signed by the Issuer and the Supervisor. Bonds are issued and created by the Registrar entering in the Register for the relevant Tranche the particulars of that Bond, substantially as specified in schedule 3.

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

2.7 **Enforcement of Holders' rights:**

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

2.8 **Form of Bonds:** Each Bond shall:

- (a) be in uncertificated book entry form; and
- (b) in respect of each Tranche, have a Minimum Principal Amount for holdings of Bonds of that Tranche and also may have a minimum multiple for such holdings, in each case as specified in the relevant Supplemental Trust Deed for that Tranche.

3. STATUS OF BONDS

3.1 **Status of Bonds generally:**

- (a) The Bonds are and will at all times be direct, unsecured and (except in relation to Subordinated Bonds) unconditional indebtedness of the Issuer.
- (b) Except where the Bonds are expressed in the Supplemental Trust Deed for the relevant Tranche to be Term Subordinated Bonds or Undated Subordinated Bonds, the Bonds shall be Unsubordinated Bonds and nothing in clause 6 shall apply in respect of them.

3.2 **Status of Unsubordinated Bonds:** Unsubordinated Bonds rank and will at all times rank equally without any preference or priority among themselves and at least equally

with all present and future unsubordinated and unsecured indebtedness of the Issuer (except indebtedness preferred solely by operation of law and subject to laws affecting creditors' rights generally and equitable principles of general application).

- 3.3 **Status of Term Subordinated Bonds:** Term Subordinated Bonds rank and will at all times rank equally without any preference or priority among themselves and otherwise in accordance with the status and ranking recorded in the relevant Supplemental Trust Deed.
- 3.4 **Status of Undated Subordinated Bonds:** Undated Subordinated Bonds rank and will at all times rank equally without any preference or priority among themselves and otherwise in accordance with the status and ranking recorded in the relevant Supplemental Trust Deed.

4. TITLE AND TRANSFER

- 4.1 **Certificates:** At the request of a Holder, or otherwise as required by the FMC Act or any other applicable law, the Issuer shall procure the Registrar of the relevant Bonds to issue to that Holder a certificate or notice of registration in relation to the Bonds held by that Holder, such certificate or notice to be in the form agreed between the Issuer and the Registrar of the relevant Bonds. A 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 Register for the relevant Series and, in the case of the beneficial interest in Bonds lodged in NZClear, the records of NZClear.
- 4.2 **Transfer:** Title to a Bond may be transferred by a transfer in any commonly used form which complies with the standard form and procedures of the Registrar of the relevant Bonds and which is produced to the Registrar of the relevant Bonds.
- 4.3 **Partial transfers:** A Holder may transfer part of its interest in a Bond. However, no transfer of any part of its interest may be effected if such transfer would result in the transferor or the transferee holding or continuing to hold a Bond with a Principal Amount of less than the applicable Minimum Principal Amount (or minimum multiple thereof).
- 4.4 **Fees:** The Issuer shall, and shall procure each Registrar will, make no service charge to the Holders for:
- (a) the registration of any holding of Bonds; or
 - (b) the transfer of registered title to any Bonds.

The Issuer and each Registrar may, however, require the payment of any taxes and other governmental charges payable as a result of any transfer.

- 4.5 **Selling restrictions:**
- (a) Each Holder shall only offer for sale or sell any Bond in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
 - (b) Without limitation to the generality of clause 4.5(a), Bonds which are expressed in the relevant Supplemental Trust Deed to be part of a Wholesale Series shall not be offered or sold by the Issuer or any Wholesale Holder to any investors where the offer or sale to at least one of those investors would require disclosure under Part 3 of the FMC Act.

- (c) No Offer Documentation or any advertisement or other offering material in respect of any Bond may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.

4.6 **Indemnity for breach of selling restrictions:** Subject to clause 19.1, each Holder indemnifies the Issuer, the Supervisor and any arranger, lead manager, dealer, organising participant or other primary market participant invited by the lead manager to participate in the offer as part of the selling syndicate (other than in respect of itself) in respect of any Tranche of Bonds, for any loss suffered by any one or more of them by reason of any breach of the selling restrictions set out in clause 4.5.

5. REGISTER

5.1 **Register:** The Issuer shall at all times while Bonds are outstanding cause the Registrar for each Series to maintain the Register for that Series, which must record in respect of each Bond the information specified in schedule 3.

5.2 **Disclosure and Inspection:** The Registrar of the relevant Bonds must disclose to a Holder of Bonds of a Series who so requests, any information held on the Register of that Series. The Issuer and the Supervisor may, at all reasonable times during the office hours of the relevant Registrar and subject to any applicable laws, inspect and take extracts from each Register without payment of any fee.

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

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

5.5 Co-ownership Bonds:

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

(b) If two or more persons apply (on an application for any Bonds or by memorandum of transfer or other instrument), to be registered as Holders as tenants in common, the Registrar for the relevant Series may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share. If the Bonds cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amounts (and any minimum multiples thereof), the Registrar of the relevant Bonds may refuse to accept the application, memorandum of transfer or other instrument (as the case may be).

- 5.6 **Acquisition of Bonds by operation of law:** When the right to any Bond is acquired by any person in any manner other than by way of a transfer under this Deed (whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or otherwise) the Registrar of the relevant Bonds, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Bond, will enter that person's name in the Register as the Holder of that Bond accordingly.
- 5.7 **Notification by Holders:** Any change of name or address of any Holder or any change in any other information required to be inserted in any Register in respect of any Holder shall immediately be notified to the Registrar of the relevant Bonds in writing by the Holder, or if a joint holding by all the joint Holders.
- 5.8 **Register compliance:** The Issuer shall comply with, and shall use all reasonable endeavours to ensure that each Registrar complies with all statutory requirements and the requirements of this Deed relating to the keeping of each Register and the details entered in each Register. Without limitation to the generality of the foregoing, the Register in respect of any Series shall be audited by the Auditors or another firm annually within four months of the end of each financial year of the Issuer and at such other times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements of this clause 5.8 are not being complied with in relation to the Register for any Series. If a firm other than the Auditors audit the Register, the Issuer must ensure that other firm provides a confirmation that the Register has been duly maintained, such confirmation to be provided at the same time as the latest Audited Financial Statements are provided in accordance with clause 12.3(a).
- 5.9 **Reliance on documents:** The Issuer and the Registrar shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer or the Registrar had actual notice of such forgery or defect at the time of registration of such instrument of transfer.
- 5.10 **No liability:** No Registrar will be liable for any breach by the Issuer of any representation, obligation, undertaking, including the non-payment of any money due, nor will any Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.

6. SUBORDINATED BONDS

- 6.1 **Issue of Subordinated Bonds:** The Issuer may, if it expressly so provides in the Supplemental Trust Deed for any Tranche, issue Bonds which are subordinated in the event of the Winding-Up of the Issuer to the claims of Senior Creditors of the Issuer, in which case this clause 6 (as it may be modified by the relevant Supplemental Trust Deed) shall apply to that Tranche.
- 6.2 **Term Subordinated Bonds:** The rights and claims of Holders of Term Subordinated Bonds are, in a Winding-Up of the Issuer, subordinated to the claims of the Senior Creditors of the Issuer (with the intent that all claims of Senior Creditors shall be paid in full before any claims of the Holders of the Term Subordinated Bonds are paid), and prior to the commencement of a Winding-Up of the Issuer:
- (a) the obligation of the Issuer to make any payment in respect of the Term Subordinated Bonds is conditional upon the Issuer being solvent at the time

the relevant payment falls due and, in the event that the Issuer is not solvent at that time, such obligation shall remain conditional until such time as the Issuer becomes solvent; and

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

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

- (a) the obligation of the Issuer to make any payment in respect of the Undated Subordinated Bonds is conditional upon the Issuer being solvent at the time the payments and other amounts owing fall due and, in the event that the Issuer is not solvent at that time, such obligation shall remain conditional until such time as the Issuer becomes solvent; and
- (b) no payment shall be made in respect of the Undated Subordinated Bonds except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.

6.4 Solvency:

- (a) For the purposes of clauses 6.2 and 6.3, the Issuer shall be considered to be solvent at any time if at that time it is able to meet the solvency test in section 4 of the Companies Act (or would be able to do so if it were a company registered under that Act).
- (b) A certificate as to whether the Issuer is solvent signed by two Directors or two authorised signatories of the Auditors shall be prima facie evidence of the information contained therein.

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

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

6.6 No set-off: No Holder of a Subordinated Bond shall be entitled to net or set off against any amounts due in respect of the Subordinated Bonds held by that Holder any amount held by the Holder to the credit of the Issuer or otherwise to reduce the amount due to such Holder in respect of a Subordinated Bond by merger of accounts or lien or the exercise of any other rights of like effect. To the extent any netting, set-off, merger, lien

or other right is required by law to be exercised that exercise shall be subject to clause 6.7.

- 6.7 **Trust:** Any payment, whether voluntarily or in any other circumstances, received by a Holder of Subordinated Bonds or by the Supervisor on its behalf from or on account of the Issuer (including by way of credit, netting, set-off or otherwise) or from any liquidator, receiver, manager or statutory manager of the Issuer in breach of this clause 6 will be held by the Supervisor or the relevant Holder in trust for and to the order of the Senior Creditors (and, in the case of payments received by the Holders of Undated Subordinated Bonds, payments will also be held in trust for and to the order of the Holders of Term Subordinated Bonds). Any such trust hereby created shall be for a term expiring on the earlier of the date on which all Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Bonds, the Holders of Term Subordinated Bonds) have been paid in full or eighty years from the date of this deed. Neither the Supervisor nor any Holder shall have any obligation under this clause 6.7 in respect of any payment received by anyone other than itself.
- 6.8 **Performance of trust:** Any trust mentioned in clause 6.7 may be performed by a Holder or the Supervisor by paying or repaying the amount so received or recovered, or so much thereof as shall be necessary to ensure that all of the Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Bonds, the Holders of Term Subordinated Bonds) are fully paid or repaid, on trust to the liquidator of, or other person charged with or responsible for the making of distributions on behalf of, the Issuer or, where there is no such person, the Issuer, for distribution to the appropriate Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Bonds, the Holders of Term Subordinated Bonds). The receipt of the liquidator or other such person or the Issuer, shall be a good discharge to the Holder or the Supervisor for the performance by it of the trust mentioned in clause 6.7. Any amount which becomes subject to the trust mentioned in clause 6.7 and which is paid or repaid by any Holder, as the case may be, or the Supervisor pursuant to this clause 6.8 shall thereafter be treated as between the Issuer and the Supervisor or the Holder as if it had never been received or recovered in the first place.
- 6.9 **Contracts Privity Act:** For the purposes of the Contracts (Privity) Act 1982, the provisions of this clause 6 are intended to confer a benefit upon the Senior Creditors and to be enforceable by the Senior Creditors directly, but no consent of the Senior Creditors shall be required to any modification or amendment to this clause 6.
- 6.10 **No subordination of Supervisor's entitlement:** The provisions of this clause 6 apply only to payments or repayments by way of Principal Amount or interest on the Subordinated Bonds and nothing in this clause 6 shall subordinate, defer in priority or point of payment, or otherwise affect or prejudice the payment or reimbursement of the fees, expenses, indemnities or other moneys payable to the Supervisor pursuant to this Deed, or the rights and remedies of the Supervisor in respect thereof.
- 6.11 **Exercise of Supervisor's duties:** Subject to clause 16.2, the Supervisor owes no duties to Holders of Subordinated Bonds which are issued as part of a Wholesale Series. In respect of Subordinated Bonds issued as part of a Retail Series, the duties of the Supervisor shall be construed and interpreted to recognise and take into account the subordinated nature of the Bonds including the following characteristics:
- (a) the subordination and the postponement in priority of the Subordinated Bonds to indebtedness to all Senior Creditors (and also, in the case of Undated Subordinated Bonds, to Holders of Term Subordinated Bonds);
 - (b) the Issuer may freely incur further indebtedness to Senior Creditors and further Subordinated Indebtedness; and

- (c) the Issuer may, in the circumstances set out in this Deed, suspend payment on the Bonds,

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

6.12 **Bonds paramount:** In the execution of the trusts under this Deed, the Supervisor shall at all times:

- (a) regard the interests of the Retail Holders of Unsubordinated Bonds as paramount to the interests of the Retail Holders of Subordinated Bonds; and
- (b) regard the interests of the Retail Holders of Term Subordinated Bonds as paramount to the interests of the Retail Holders of Undated Subordinated Bonds,

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

7. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST

7.1 **Determination of Principal Amount:** The Principal Amount of each Bond shall be the amount recorded as such in the Register in respect of that Bond, which may be the par or face value or the amount calculated by the Registrar for that Bond by reference to the formula recorded in the Register in respect of that Bond.

7.2 **Bonds:**

- (a) **Principal Amount of Wholesale Bonds:** The Issuer shall, on the Maturity Date of each Wholesale Bond, unconditionally pay or cause to be paid to, or to the order of, the relevant Wholesale Holder the Principal Amount of that Wholesale Bond in accordance with the Conditions applicable to that Wholesale Bond.
- (b) **Principal Amount of Retail Bonds:**
- (i) Subject to clause 7.2(b)(ii), the Issuer shall, on the Maturity Date of each Retail Bond, pay or cause to be paid to, or to the order of, the Supervisor the Principal Amount of that Retail Bond in accordance with the Conditions applicable to that Retail Bond.
- (ii) Notwithstanding clause 7.2(b)(i), the Issuer shall, on the Maturity Date of each Retail Bond, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Retail Holder the Principal Amount of that Retail Bond. Such payment shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 7.2(b)(i).
- (c) **Interest of Wholesale Bonds:** The Issuer shall, as and when due and payable in accordance with the Conditions applicable to each Wholesale Bond, unconditionally pay or cause to be paid to, or to the order of, the relevant Wholesale Holder all interest and other amounts payable in respect of

that Wholesale Bond in accordance with the Conditions applicable to that Wholesale Bond

(d) **Interest of Retail Bonds:**

- (i) Subject to clause 7.2(d)(ii), the Issuer shall, as and when due and payable in accordance with the Conditions applicable to each Retail Bond, unconditionally pay or cause to be paid to, or to the order of, the Supervisor all interest and other amounts payable in respect of that Retail Bond in accordance with the Conditions applicable to that Retail Bond.
- (ii) Notwithstanding clause 7.2(d)(i), the Issuer shall, as and when due and payable in accordance with the Conditions applicable to each Retail Bond, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Retail Holder all interest and other amounts payable in respect of that Bond in accordance with the Conditions applicable to that Retail Bond. Such payment shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 7.2(d)(i).

7.3 **Principal Amount of Amortising Bonds:** The Issuer shall, on each Amortisation Date of each Amortising Bond, unconditionally pay, or cause to be paid to, or to the order of, the relevant Holder, the portion of the Principal Amount of that Amortising Bond as set out in respect of that Amortisation Date in the Register in respect of that Amortising Bond in accordance with the Conditions applicable to that Bond.

7.4 **Interest:** Subject to the Conditions applicable to a Bond, the Issuer shall pay interest on each Interest Payment Date:

- (a) on each Floating Rate Bond for each Interest Period, at the rate per annum equal to the aggregate of the Base Rate for that Interest Period (as determined by the Calculation Agent for the relevant Series) and the Margin for that Floating Rate Bond;
- (b) on each Fixed Rate Bond, at the Interest Rate for that Fixed Rate Bond; and
- (c) on each Index-linked Bond, in accordance with the formula or at the Interest Rate (as the case may be and as determined by the Calculation Agent for the relevant Series) recorded in the Register in respect of that Index-linked Bond.

7.5 **Non-payment:** Each Bond will cease to bear interest from its Maturity Date unless payment of the Principal Amount is improperly withheld or refused. In such event, interest will continue to accrue (after, as well as before, any judgment) up to but excluding the date on which payment in full of the Principal Amount is made.

7.6 **Default interest:** If any amount payable in respect of a Bond or any other amount due to any person under this Deed is not paid on its due date, interest ("**Default Interest**") shall accrue on the unpaid amount (net of any interim or progress payments made) (after, as well as before, judgment) at the rate determined by the Calculation Agent to be (in the case of a Floating Rate Bond) the aggregate of 2%, the Base Rate and the Margin or (in the case of a Fixed Rate Bond) the aggregate of 2% and the relevant fixed rate or (in the case of an Index-linked Bond) the aggregate of 2%, the one month Base Rate and the Margin, as the case may be, which on the due date would apply to an Interest Period of one month, shall be determined at monthly intervals thereafter until the unpaid amount (net of any interim or progress payments) is paid and shall be

compounded monthly until paid. For the avoidance of doubt, this clause 7.6 shall not apply in relation to payments of interest on any Bonds which have been suspended in accordance with the Conditions of those Bonds.

8. CALCULATION OF INTEREST

8.1 Floating Rate Bonds:

- (a) **Interest Periods:** Each Interest Period in relation to a Floating Rate Bond shall be a period of one, two, three, four, five or six months' duration (as specified by the Issuer at the time of issue of that Bond and entered in the Register for the relevant Series) and:
- (i) the first Interest Period will commence on (and include) the First Interest Accrual Date and end on (but exclude) the next Interest Payment Date and each subsequent Interest Period will commence on (and include) the Interest Payment Date of the previous Interest Period and end on (but exclude) the next Interest Payment Date;
 - (ii) if an Interest Period would otherwise end on a day which is not a Business Day, it will be extended to the next Business Day; and
 - (iii) if the final Interest Period would otherwise extend beyond the Maturity Date, it will end on the Maturity Date.
- (b) **Basis for calculation:** Interest shall be calculated on the Principal Amount of the Floating Rate Bond, on the basis of the number of days in the relevant Interest Period and a year of 365 days. Interest shall accrue from day to day and shall be paid to the Holder in arrear on the Interest Payment Date for that Interest Period, subject to any provisions relating to suspension of interest payments which are contained in the Conditions of the relevant Series.

8.2 **Fixed Rate Bonds:** Interest shall be calculated on the Principal Amount of each Fixed Rate Bond and shall be payable in arrear in equal quarterly, semi-annual, annual or other instalments on each Interest Payment Date for that Fixed Rate Bond, subject to any provisions relating to suspension of interest payment which are contained in the Conditions of the relevant Series.

8.3 Index-linked Bonds:

- (a) In the case of an Index-linked Bond for which the Principal Amount is calculated by reference to an Index, the Principal Amount on each Interest Payment Date (for the purposes of calculating the amount of interest payable by the Issuer on that Interest Payment Date) shall be determined in accordance with the formula recorded in the Register in respect of that Index-linked Bond.
- (b) If the amount of interest payable on an Index-linked Bond on an Interest Payment Date is a negative amount, no amount by way of interest shall be payable by the Issuer on that Interest Payment Date and the positive equivalent of that amount will be deducted from the Principal Amount of that Index-linked Bond for the balance of the term of that Bond. Nothing in this clause 8.3 obliges the Holder of that Index-linked Bond to make any payment to the Issuer by reason of the interest payable on the relevant Interest Payment Date being a negative amount.

- (c) If a deduction made pursuant to this clause 8.3 results in the Principal Amount of the Index-linked Bond being equal to or less than zero, the Issuer shall not be required to make any further payments of interest or principal in respect of that Bond and that Bond shall be cancelled. The Issuer shall procure that the Registrar promptly notifies the relevant Holders of such cancellation.

9. PAYMENTS

- 9.1 **Payment to Holder:** Payment of the Principal Amount of, and interest (if any) on, a Bond (less any amount required to be deducted in accordance with clause 10) shall be made to the person whose name appears in the Register for the relevant Series as the Holder of the Bond on the Record Date in respect of the relevant payment. If more than one person is so named in the relevant Register, payment will be made to the first person so named.

9.2 Method of payment:

- (a) If the Issuer pays the Principal Amount of any Bond in accordance with clause 7.2(b)(ii), all payments in respect of that Bond held by a Holder shall be paid by the Registrar by direct credit to a bank account specified by that Holder by written notice from time to time or, in the absence of such specification, by cheque sent to the address of the Holder as recorded in the Register for the relevant Series, unless the Conditions of any Bond specify otherwise. A Holder may at any time amend any notice so given, provided that no amendment of a notice shall have effect unless another address or bank account is specified by that Holder.
- (b) No notice or amendment of a notice given under clause 9.2(a) will have effect in respect of any payment unless received by the Registrar on or before the Record Date for that payment. Any notice given under clause 9.2(a) will be deemed to be automatically cancelled upon transfer of all of a Bond or, in the case of transfer of part of a Bond, in respect of the part transferred. A notice from one of several Holders of the same Bonds shall be deemed to be given by all such Holders.
- (c) If, for whatever reason, at any time a Holder has provided neither a current address nor current details of a bank account to the Registrar, any payments in respect of any Bond to that Holder shall be deemed to be unclaimed money for the purpose of clause 9.4.

- 9.3 **Business Day:** If any Interest Payment Date or the Maturity Date of a Bond is not a Business Day for that Bond, the due date for the payment to be made on that date will be the next following Business Day, and all other provisions of this Deed and the Agency Agreement will be read and construed accordingly.

9.4 Unclaimed payments:

- (a) **Retail Bonds:** In respect of any Retail Bonds, if any payment made by the Issuer to a Retail Holder to the address, or into the bank account, last specified by that Retail Holder to the Issuer or the Registrar is returned unclaimed, the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the Register for the relevant Series) be retained by the Registrar for the relevant Series to be held by it for the Retail Holder concerned without any liability to invest or pay interest on that amount. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer

without limiting the rights of the Retail Holder entitled to the unclaimed amount. The Issuer will have no liability in respect of the unclaimed amount if it remains unclaimed five years after the original date of payment. If the unclaimed amount concerned is not claimed within five years after the original date of payment, then the unclaimed amount is taken to be forfeited to the Issuer for the Issuer's benefit and shall no longer be treated as being an unclaimed amount.

- (b) **Wholesale Bonds:** In respect of any Wholesale Bonds, if any payment made by the Issuer to a Wholesale Holder to the address, or into the bank account, last specified by that Wholesale Holder to the Issuer or the Registrar is returned unclaimed, the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the Register for the relevant Series) be returned to the Issuer. The Issuer will have no liability in respect of the unclaimed amount if it remains unclaimed five years after the original date of payment.

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

10. TAXES

- 10.1 **Deductions or withholdings:** All sums payable under a Bond or under this Deed must be paid:

- (a) free of any restriction or condition;
- (b) free and clear of, and (except to the extent required by law or as provided in this clause 10) without any deduction or withholding on account of, any taxes; and
- (c) (except to the extent required by law or as provided in this clause 10) without deduction or withholding on account of any other amount whether by way of set-off or otherwise.

- 10.2 **Non-resident Withholding Tax and Approved Issuer Levy:** Where New Zealand non-resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to Holders, unless otherwise stated in the relevant Offer Documentation or unless the relevant Holder notifies the Issuer that it elects that non-resident withholding tax be deducted from payments to it instead of Approved Issuer Levy, if the Issuer is lawfully able to pay Approved Issuer Levy in respect of any payment of interest (or deemed interest) to Holders, and elects to do so in respect of any Series, the Issuer, or the Registrar for the relevant Series on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the interest (or deemed interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment. If the Bonds qualify (under section 86IB of the Stamp and Cheque Duties Act 1971) for the zero rate of Approved Issuer Levy, the Issuer (or the Registrar on its behalf) will apply the zero rate to the extent it is lawfully able.

- 10.3 **Resident Withholding Tax:** Where New Zealand resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to

Holders, the Issuer, or the Registrar for the relevant Series on its behalf, will deduct resident withholding tax, unless an appropriate exemption certificate is produced to the Registrar for the relevant Series on or before the Record Date for the relevant payment.

- 10.4 **No gross-up:** The Issuer will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds under clauses 10.2 or 10.3. If, in respect of any Bond, the Registrar for the relevant Series or the Issuer becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives interest or deemed interest under the relevant Bond), then the Registrar for the relevant Series and the Issuer shall be indemnified by the relevant Holder (or other person) in respect of such liability. Any moneys paid by the Registrar for the relevant Series or the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Registrar for the relevant Series or the Issuer and may be withheld from any further payments to that Holder. Nothing in this clause 10.4 will prejudice or affect any other right or remedy of the Registrar for the relevant Series or the Issuer.
- 10.5 **Maximum rate:** Deductions of non-resident withholding tax or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder (or, if applicable, any person who derives interest under the relevant Bond) provides evidence to the Issuer or the Registrar for the relevant Series (acceptable to it) that a lesser rate is applicable.
- 10.6 **Information:** A Holder must, no later than two Business Days prior to the first Record Date, notify the Registrar of its country of residence for tax purposes and, if the Holder is not tax resident in New Zealand, whether the Holder is engaged in business in New Zealand through a Fixed Establishment in New Zealand and whether the Notes are held in connection with such Fixed Establishment. A Holder must notify the Registrar prior to any subsequent Record Date of any change in circumstances from those previously notified, or provide any other information requested, that could affect the payment or withholding obligations of the Issuer.
- 10.7 **Tax status:** The Issuer and the Registrar for the relevant Series shall be entitled for the purposes of this clause 10 to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Holder in relation to that Holder's tax status or tax residency, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who derive interest under, the relevant Bonds.

11. REPRESENTATIONS AND WARRANTIES

- 11.1 **Representations and warranties:** The Issuer represents and warrants to the Supervisor (in respect of Retail Series only) and the Holders that:
- (a) **Status:** it is a company duly incorporated and validly existing under the laws of New Zealand;
 - (b) **Power and corporate authority:** it has power to enter into and perform its obligations under this Deed and to issue the Bonds;
 - (c) **Authorisations:** it has all necessary authorisations and has taken all necessary corporate and other action to authorise the execution and performance by it of this Deed and the issue of Bonds;
 - (d) **Binding obligations:** its obligations under this Deed and the Bonds (once issued) are legal, valid, binding and enforceable against it, in each case in

accordance with its terms, subject to applicable bankruptcy, re-organisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject also (as to enforceability) to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law; and

- (e) **No violation:** the execution and performance by it of its obligations under this Deed and the Bonds do not violate any applicable law or its constitution or any agreement, security document or other instrument to which it is a party or which is binding on it or any material part of its assets.

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

11.3 **Repetition:**

- (a) The representations and warranties contained in clause 11.1 shall be deemed to be repeated for the benefit of the Supervisor in respect of Retail Series only and the Holders on the Issue Date of each Bond.
- (b) In respect of a Series, the representations and warranties referred to in clause 11.2 shall be deemed to be repeated for the benefit of the Supervisor and the Holders of that Series on the Issue Date and each Interest Payment Date of each Bond forming part of that Series.

12. UNDERTAKINGS

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

- (a) **Notify Event of Default:**
 - (i) promptly notify the Supervisor and the Wholesale Holders of the occurrence of any Event of Default or Potential Event of Default; and
 - (ii) if it has reasonable grounds to believe that it has breached, may have breached or is likely to breach in any material respect, any of its Issuer Obligations or the terms of this Deed relating to Retail Bonds or the terms of an offer of Retail Bonds, as soon as practicable, notify the Supervisor in writing of the breach or possible breach and the steps (if any) that it has taken or intends to take in light of the breach or possible breach, and the date by which the steps were taken or are to be taken;
- (b) **Corporate existence:** maintain its corporate existence and will not amalgamate, merge or consolidate with any person unless the resulting or surviving entity assumes, to the satisfaction of the Supervisor, the obligations of the Issuer under the relevant Bonds and each Transaction Document;
- (c) **Send notices:** in respect of each Series, send copies to the Supervisor of all notices or other information given by it to Holders of that Series generally;
- (d) **FMC Act:** in respect of each Retail Series, comply with the provisions of the FMC Act and the FMC Regulations, all other laws and the Listing Rules applicable to that Series;

- (e) **Information:** provide the Supervisor upon written request with such information relating to the Consolidated Group or the Consolidated Group's business or financial condition as may reasonably be required by the Supervisor for the purposes of the discharge of the duties, trusts and powers vested in the Supervisor under this Deed or imposed on it by law;
- (f) **Offer documentation:** not issue Offer Documentation in respect of the issue of Retail Bonds without prior notice to the Supervisor, and not include any statement in any such Offer Documentation, or any advertisement (as defined in the FMC Act) for any Bonds, concerning the Supervisor, without the prior consent of the Supervisor;
- (g) **Negative Pledge Deed:** extend the benefit of the Negative Pledge Deed to each Holder of the Bonds in accordance with clause 11.1 of the Negative Pledge Deed.

12.2 **Supplemental Trust Deed:** In respect of each Series, the Issuer undertakes to the Holders of that Series and (in respect of Retail Series only) the Supervisor that it will, and in relation to paragraphs (a) and (e) below will procure that each relevant Guaranteeing Subsidiary will, for so long as any Bonds of that Series are outstanding:

- (a) **Supplemental Trust Deed:** comply in all material respects with and perform its obligations under each Transaction Document for that Series to which it is a party;
- (b) **Agency Agreement:** comply in all material respects with and perform its obligations under the Agency Agreement for that Series and use all reasonable endeavours to ensure that the Registrar for that Series also does so;
- (c) **Registrar:** give notice to the Holders of that Series and (in respect of Retail Series only) the Supervisor of any resignation or removal of the Registrar for that Series and the appointment of any replacement Registrar promptly following such event, provided that so long as any Bond is outstanding, any resignation or removal of the Registrar shall not be effective until the new Registrar is duly appointed;
- (d) **Register:** ensure that a Register for that Series is maintained and cause the Registrar for that Series to keep the Register for that Series pursuant to the Agency Agreement for that Series; and
- (e) **Authorisations:** obtain, effect and promptly renew from time to time all material authorisations required under any applicable law to enable it to perform and comply fully with the Conditions for that Series or required on its part for the validity or enforceability of this Deed or any Transaction Document to which it is a party.

12.3 **Reports of Directors and Financial Statements:** The Issuer covenants with the Holders of each Series and (in respect of Retail Series only) the Supervisor that it will, so long as any Bonds are outstanding, deliver to each Wholesale Holder and the Supervisor:

- (a) not later than four months after the end of its financial year, a copy of the latest consolidated Financial Statements of the Consolidated Group made up as at the last day of that financial year and duly audited;

- (b) not later than three months after the end of its financial half-year, a copy of the latest consolidated Financial Statements of the Consolidated Group for the preceding half-year, made up as at the last day of that half-year;
- (c) for so long as any Retail Bonds are outstanding, not later than the times of delivery of the latest Financial Statements for the Issuer pursuant to clauses 12.3(a) or 12.3(b), a separate report in relation to each Series signed by two Directors in the form set out in schedule 2, or such other form as the Issuer and the Supervisor may agree or, if applicable, as set out in the Supplemental Trust Deed stating the matters referred to therein as at the end of and in respect of such year or half-year, as the case may be; and
- (d) within the timeframe specified by the Supervisor by written notice (provided that such timeframe is reasonable in the circumstances), any report required by the Supervisor in respect of any Retail Bonds signed by at least 2 Directors on behalf of the board of the Issuer.

12.4 **Accounting principles:** The Issuer undertakes to the Holders of each Series and (in respect of Retail Series only) the Supervisor that it will, so long as any Bonds are outstanding ensure that all Financial Statements delivered to each Wholesale Holder and the Supervisor under clauses 12.3(a) and (b):

- (a) are prepared in accordance with NZ GAAP, consistently applied except to the extent disclosed in those Financial Statements;
- (b) give a true and fair view in accordance with NZ GAAP of the financial position of the Issuer and (if applicable) the Consolidated Group and the result of the operations of the Consolidated Group as at the date, and for the period ending on the date, to which those Financial Statements are prepared; and
- (c) are signed by two of the directors of the Issuer, and are accompanied by all documents and reports required by law to be annexed to or to accompany them.

12.5 **Auditors' report:** The Issuer shall, so long as any Retail Bonds are outstanding, provide to the Supervisor, at the same time as the audited latest Financial Statements for the Issuer are provided in accordance with clause 12.3(a), a separate report by the Auditors stating:

- (a) whether, in the course of performing their duties as Auditors, they have become aware of:
 - (i) any non-payment of interest (including any suspension of interest) or any breach of the provisions of this Deed, and if so giving particulars thereof; or
 - (ii) any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by this Deed, by law or by the FMC Act, and if so giving particulars thereof;
- (b) whether they, as Auditors, have audited the Register for each Retail Series, and if not whether another firm (and which firm if any) audited the Register for each Retail Series, and to the extent that the Auditors have audited the Register for a Retail Series, whether the Register for that Retail Series has been duly maintained;

- (c) whether their audit has disclosed any matter, and if so giving particulars thereof, calling in their opinion for further investigation by the Supervisor in the interests of the Retail Holders;
- (d) that they have perused the report(s) of the Directors provided in accordance with clause 12.3(c) ("**Directors' Report**") given since the last report by the Auditors (or the date of this deed, whichever is the later), and that, so far as matters which they have observed in the performance of their duties as auditors are concerned, nothing has come to their attention to show that the statements made in the Directors' Report are not correct; and
- (e) the aggregate Principal Amount of Bonds in each Series on issue and outstanding.

12.6 **Other:** For so long as any Retail Series is outstanding, the Issuer must:

- (a) **Requested information and reports:** if requested by the Supervisor (or a person authorised by the Supervisor to exercise its powers), within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor:
 - (i) make available to the Supervisor all documents and records relating to the Issuer; and
 - (ii) provide the Supervisor with any other reports (which have been, if requested by the Supervisor, signed by at least two Directors), information, confirmations or Financial Statements required by the Supervisor (or other authorised person).

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

- (b) **Contravention or possible contravention of Issuer Obligations:** if it has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its Issuer Obligations in a material respect, as soon as practicable:
 - (i) deliver to the Supervisor a report of the contravention or possible contravention to the Supervisor; and
 - (ii) advise the Supervisor of the steps (if any) that the Issuer has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken; and
- (c) **Serious financial problems:** if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent, as soon as practicable:
 - (i) deliver to the Supervisor a report to the Supervisor containing all information relevant to that matter that is in the possession or under the control of the Issuer and that was obtained in the course of, or in connection with, the performance of its functions as Issuer; and
 - (ii) advise the Supervisor of the steps (if any) that the Issuer intends to take in respect of that matter and the date by which the steps are to be taken.

- 12.7 **Consultation with Supervisor:** For so long as any Retail Series is outstanding, the Issuer must:
- (i) before recommending the appointment or reappointment of a person as an Auditor:
 - (aa) consult with the Supervisor on the appointment or reappointment; and
 - (bb) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
 - (ii) notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
 - (iii) not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.
- (b) **Specified Engagement:** For so long as any Retail Series is outstanding, the Issuer must, before recommending the appointment or reappointment of a person as the Auditor:
- (i) give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to the Issuer's compliance with this Deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) consult with the Supervisor on the nature and scope of any such engagement.
- (c) **Terms of Appointment:** For so long as any Retail Series is outstanding, the Issuer must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:
- (i) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement.
- 12.8 **EBITDA Coverage Ratio:** The Issuer shall ensure that EBITDA of the Guaranteeing Group exceeds 85% of EBITDA of the Consolidated Group in respect of each 12 month

period ending on 30 June and 31 December in each year during which any indebtedness remains outstanding.

13. DEFAULT

13.1 **Events of Default:** If any of the following occurs, whether or not within the control of the Issuer:

- (a) **Non-payment:** subject to any provisions of the Supplemental Trust Deed applicable to any Bond relating to suspension of interest payments:
 - (i) any amount of, or in respect of, the Principal Amount payable in respect of any Bond is not paid in the manner specified in this Deed within two Business Days after its due date; or
 - (ii) any interest payable in respect of any Bond is not paid in the manner specified in this Deed within two Business Days of its due date (for the avoidance of doubt, in the event that interest is suspended in accordance with the relevant Supplemental Trust Deed the due date for payment of that interest shall not have occurred for the purposes of this Deed and this clause 13.1(a) until such interest becomes payable in accordance with the relevant Supplemental Trust Deed); or
 - (iii) any other amount payable under this Deed is not paid in the manner specified in this Deed within 30 Business Days of its due date; or
- (b) **Breach of financial covenant:** the Issuer commits any breach of clause 12.8;
- (c) **Other breach:** the Issuer or any Guaranteeing Subsidiary commits any breach of, or omits to observe, any of its material undertakings or obligations under this deed (other than those referred to in clause 13.1(a)) or the Negative Pledge Deed and, in respect of any such breach or omission which is capable of being remedied, such breach or omission is not remedied within 30 days of the Issuer or that Guaranteeing Subsidiary (as the case may be) becoming aware of that breach or omission; or
- (d) **Misrepresentation:** any representation, warranty or statement made or deemed to be repeated by or in respect of the Issuer in this Deed is or was untrue or incorrect in a material respect when made, deemed repeated or delivered and this has a material adverse effect on the Issuer and, in respect of any such misrepresentation which is capable of being remedied, such misrepresentation is not remedied within 30 days of the Issuer or that Guaranteeing Subsidiary (as the case may be) becoming aware of that misrepresentation;
- (e) **Dissolution:** an application (other than an application which is being contested in good faith by appropriate proceedings) or an order is made, or a resolution is passed or proposed by or on behalf of the Issuer for the dissolution of the Issuer or any Guaranteeing Subsidiary, except for the purpose of and followed by an amalgamation or solvent reconstruction:
 - (i) where a Guaranteeing Subsidiary's assets are acquired by or vested in any other Guaranteeing Subsidiary or the Issuer; or
 - (ii) on terms previously approved by a Special Resolution of Holders; or

- (f) **Receiver:** a receiver, liquidator, provisional liquidator is appointed of, or an encumbrancer takes possession of, or exercises its power of sale in respect of, the whole or any material part of the assets of the Issuer or any Guaranteeing Subsidiary; or
- (g) **Statutory management:** a statutory manager is appointed under the Corporations (Investigation and Management) Act 1989 in respect of the Issuer or any Guaranteeing Subsidiary; or
- (h) **Insolvency:** the Issuer or any Guaranteeing Subsidiary is declared or becomes insolvent or is or is deemed under any applicable law to be unable to pay its debts when they fall due; or
- (i) **Cross-acceleration:** any creditor(s) of the Issuer in respect of indebtedness in excess in aggregate of \$10,000,000 require repayment of such indebtedness prior to its stated maturity by reason of a default (however described) by the Issuer; or
- (j) **Cessation of Business:** the Issuer ceases or threatens to cease to carry on all or substantially all of its business or operations (except for the purpose of, and followed by, an amalgamation or solvent reconstruction on terms previously approved by a Special Resolution of all Holders); or
- (k) **Supplemental Trust Deed:** (in relation to any Bond) any event occurs which is specified in the Conditions for that Bond as an event of default,

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

- (A) **Wholesale Series:** if the Series is a Wholesale Series, a Holder of Bonds that are part of the Wholesale Series may, without prejudice to any other remedies which that Holder may have:
 - (1) where that Event of Default occurs under any of clauses 13.1(a) or (e) to (h) in relation to a Bond held by that Holder; or
 - (2) where that Event of Default occurs under any other paragraph of this clause 13.1 and the Holders of Bonds of the relevant Series resolve by Special Resolution to do so,

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

whereupon the Issuer, or the other Guaranteeing Subsidiaries, as the case may be, shall prepay immediately the Principal Amount of the Bonds of that Series together with accrued interest thereon and all other outstanding money in respect of those Bonds.

- 13.2 **Distribution of funds in respect of Retail Bonds:** All moneys received by the Supervisor in respect of Retail Bonds from the Issuer or any Guaranteeing Subsidiary on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Bonds) be held and applied:

- (a) first, subject to any direction made by any court, in payment of all amounts due to the Supervisor under this Deed (including all expenses, losses and liabilities sustained or incurred by the Supervisor under this Deed, all fees payable to the Supervisor under this Deed, and any Default Interest on each such amount);
- (b) secondly, in or towards payment to the Retail Holders of Unsubordinated Bonds in respect of which a declaration has been made in accordance with clause 13.1, rateably in proportion to the Bond Moneys owing to them in respect of the Unsubordinated Bonds held by them;
- (c) thirdly, in or towards payment to the Retail Holders of Term Subordinated Bonds in respect of which a declaration has been made in accordance with clause 13.1 (if any), rateably in proportion to the Bond Moneys owing to them in respect of the Term Subordinated Bonds held by them;
- (d) fourthly, in or towards payment to the Retail Holders of Undated Subordinated Bonds in respect of which a declaration has been made in accordance with clause 13.1 (if any) rateably in proportion to the Bond Moneys owing to them in respect of the Undated Subordinated Bonds held by them; and
- (e) fifthly, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

13.3 Distribution of funds in respect of Wholesale Bonds: All moneys payable by the Issuer in respect of Wholesale Bonds on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Bonds) be held and applied:

- (a) first, in or towards payment to the Wholesale Holders of Unsubordinated Bonds in respect of which a declaration has been made in accordance with clause 13.1, rateably in proportion to the Bond Moneys actually or contingently owing to them in respect of the Unsubordinated Bonds held by them; and
- (b) secondly, in or towards payment to the Wholesale Holders of Term Subordinated Notes (if any) in respect of which a declaration has been made in accordance with clause 13.1, rateably in proportion to the amounts actually or contingently owing to them in respect of the Term Subordinated Notes held by them;
- (c) thirdly, in or towards payment to the Wholesale Holders of Undated Subordinated Notes (if any) in respect of which a declaration has been made in accordance with clause 13.1, rateably in proportion to the amounts actually or contingently owing to them in respect of the Undated Subordinated Notes held by them; and
- (d) fourthly, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

14. APPOINTMENT OF SUPERVISOR

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

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

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

- (a) the right to enforce the Issuer's duty to repay, or to pay interest, under the terms of the Retail Bonds;
- (b) any charge or security for repayment of the Retail Bonds; and
- (c) the right to enforce any other duties that any Guaranteeing Subsidiary and any other person have under:
 - (i) the terms of the Retail Bonds; or
 - (ii) the provisions of this Deed or the FMC Act in relation to the Retail Bonds.

14.3 **Duties of Supervisor:** The Supervisor:

- (a) must:
 - (i) act honestly in acting as supervisor under this Deed;
 - (ii) in exercising its powers and performing its duties as supervisor, act in the best interest of the Retail Holders;
 - (iii) exercise reasonable diligence in carrying out its functions as supervisor;
- (b) must do all things it has the power to do to cause any contravention or alleged contravention of the Issuer Obligations in respect of the Bonds to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Retail Holders;

- (c) subject to any court order made under section 210 of the FMC Act, must act in accordance with any direction given by a Special Resolution of Retail Holders that is not inconsistent with any enactment, rule of law or this Deed in relation to:
 - (i) seeking a remedy to a contravention or alleged contravention of the Issuer Obligations in respect of the Bonds; and
 - (ii) any other matter connected with the Supervisor's functions; and
- (d) in exercising its powers and performing its duties as supervisor, must exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMC Act) would exercise in the same circumstances.

15. SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES

- 15.1 **Fees:** The Issuer shall pay to the Supervisor such fees as may from time to time be agreed between them in writing.
- 15.2 **Expenses:** The Issuer shall pay all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with:
- (a) the preparation, signing and (if applicable) registration of this deed, each Supplemental Trust Deed and the Offer Documentation;
 - (b) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders in accordance with the terms and conditions of this Deed; or
 - (c) any waiver, consent or other action requested by the Issuer.
- 15.3 **Enforcement:** The Issuer shall pay all expenses (including legal fees on a full indemnity basis and travelling expenses) properly incurred by the Supervisor in connection with the enforcement or preservation of, or attempted enforcement or preservation of, any right under a Transaction Document or the exercise of any Supervisor Power, including taking of any expert advice deemed reasonably necessary or expedient by the Supervisor.
- 15.4 **Indemnity by Issuer:** Subject to clause 19.1 and without prejudice to the right of indemnity by law given to supervisors, the Supervisor or any of its officers, directors, employees or agents shall be indemnified by the Issuer for all expenses, losses and liabilities reasonably sustained or incurred in carrying out the Supervisor Powers or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this Deed, other than:
- (a) in the case of a Wholesale Series, a claim arising out of a wilful default, gross negligence or wilful breach of trust; and
 - (b) in the case of a Retail Series, a claim for indemnification that is not permitted by clause 19.1.
- 15.5 **Indemnity by Holders:** Subject to clause 19.1, the Supervisor is not required to take any action or exercise any Supervisor Power or comply with any request or direction pursuant to this Deed (whether or not it is expressed to be bound to do so) unless it has

first been indemnified to its satisfaction against all expenses, losses and liabilities it may reasonably sustain or incur by so doing.

- 15.6 **Payments:** The fees, expenses, indemnities and other amounts payable under this Deed to the Supervisor shall be payable by the Issuer at the times agreed (or, in the absence of agreement, on demand) and, if not paid when due, shall carry Default Interest in accordance with clause 7.6 until paid.

16. SUPERVISOR'S POWERS

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

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

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

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

- (a) **Monitoring role:** The Supervisor must exercise reasonable diligence to ascertain whether or not the Issuer has breached the Conditions of any Retail Bonds but, until it has received notice to the contrary from the Issuer, the Auditors or any Holder, is entitled to assume that no such breach has occurred. The Supervisor shall exercise reasonable diligence to ascertain whether or not the assets of the Issuer that are or may be available, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of the Retail Bonds as they become due, subject, in the case of any Subordinated Bonds issued as part of a Retail Series, to clause 6.11.
- (b) **Applications to court:** Having regard to any other powers or remedies available to it under this Deed or at law for the protection of the interests of Retail Holders and to all other circumstances relevant to the general interests of such Holders, the Supervisor may apply to the court for an order:
 - (i) under section 208 of the FMC Act, if the Supervisor is satisfied that:
 - (aa) the Issuer and any Guaranteeing Subsidiary are unlikely to be able to pay all money owing in respect of one or more Retail Series as and when due;
 - (bb) the Issuer is insolvent (as defined in the FMC Act) or the financial position or management of the Issuer is otherwise inadequate;

- (cc) there is a significant risk that the interests of Retail Holders will be materially prejudiced for any other reason; or
 - (dd) the provisions of this Deed are no longer adequate to give proper protection to the interests of the Retail Holders; or
- (ii) under section 210 of the FMC Act and within 20 working days (or, with leave of the court, within any longer period) after the passing of a Special Resolution of Retail Holders, directing it not to comply with a Special Resolution of Retail Holders,

and it may support or oppose any application to the court under those sections made by or at the instance of the FMA or any Retail Holder (where applicable). The Supervisor shall, subject to clause 19.1, be indemnified by the Issuer against all expenses incurred in relation to any such application or proceedings, provided that the Supervisor must consult with the Issuer prior to making any such application before the Date of Enforcement.

- (c) **Material breach:** If any breach of this Deed occurs or any circumstances occur which may result in such a breach which the Supervisor reasonably considers may have a material adverse effect on any Retail Holders, the Supervisor shall be entitled in its absolute discretion to require the Issuer to report to the Retail Holders the circumstances and the nature of such breach and any other relevant information concerning the Issuer which the Supervisor has received in relation to this Deed and which it reasonably considers to be material to those Retail Holders, and invite those Retail Holders to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Supervisor Powers under this Deed. If the Issuer fails to give that report the Supervisor shall be entitled to do so itself.
- (d) **Represent Holders:** The Supervisor may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Retail Holders, represent and act on behalf of those Retail Holders in any matter concerning them generally.
- (e) **Investment:** Any moneys held by the Supervisor which are subject to the trusts created by this Deed may, at the discretion of the Supervisor, be invested in the name of the Supervisor or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income (less any commissions properly payable to the Supervisor) arising from all such investments made by the Supervisor will belong to the person in respect of whom such moneys are held by the Supervisor.
- (f) **Power to Remedy Breach:** The Supervisor's powers to remedy any breach of this Deed are subject to any other provision of this Deed which is inconsistent with the exercise of such powers.
- (g) **Power to engage expert:** In respect of any Retail Bonds, engage from time to time an expert (for example, an auditor, investigating accountant, valuer or actuary) if it considers, on reasonable grounds, that it requires the assistance of the expert to assist the Supervisor to:
- (i) determine the financial position of the Issuer; or
 - (ii) review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 16.2(g), 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, shall be paid by the Issuer.

17. EXERCISE OF SUPERVISOR'S POWERS

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

- (a) has absolute discretion as to the exercise of the Supervisor Powers and as to the conduct of any action, proceeding or claim (provided it has acted with reasonable care and diligence); and
- (b) may refrain from exercising any Supervisor Power until directed by Special Resolution of Holders or of the affected Class of Holders to do so.

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

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

17.3 **Delegation:**

- (a) Subject to sub-clause (b) below, the Supervisor, whenever it thinks it expedient in the interests of the relevant Holders to do so, may:
 - (i) delegate at any time to any person any of the Supervisor Powers which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit provided that any such delegation shall not relieve the Supervisor of its responsibilities under this Deed; and
 - (ii) authorise any person as it thinks fit to act as its representative at any meeting.
- (b) Notwithstanding any provision of this deed, the Supervisor shall not delegate any of its functions set out in clause 14.1, except as expressly permitted by the

FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act.

- 17.4 **Supervisor's consent:** Any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor thinks fit.
- 17.5 **Subscribers' money:** The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by subscribers for the Bonds.
- 17.6 **Safe custody:** The Supervisor may hold or place this Deed and any other documents with any bank or any person whose business includes the undertaking of safe custody of documents or with any lawyer or firm of lawyers (in each case reasonably considered by the Supervisor to be of good repute) and the Supervisor is not responsible for or required to insure against any loss incurred in connection with that deposit.
- 17.7 **Fiduciary relationship:** The Supervisor and any of its related companies and officers may (without having to account to the Issuer or any Holder) engage in any kind of business with the Issuer and its Subsidiaries and may accept fees or other consideration for services without having to account to the Holders.
- 17.8 **Confidentiality:** Unless ordered to do so by law, court order or the Conditions, the Supervisor shall not be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by the Issuer.
- 17.9 **Listing Rules:** Subject to compliance by the Supervisor with its obligations under the FMC Act and FMC Regulations, the Supervisor shall not be required to monitor compliance by the Issuer or any other party with the Listing Rules and, in the absence of notice to the contrary from the Issuer of NZX, shall be entitled to assume that the Issuer is so complying. In the event of non-compliance with the Listing Rules, the Supervisor, in determining the action to be taken or not taken by it, shall be entitled to have regard to the actions of NZX, as relevant, in relation to that non-compliance by the Issuer.

18. REPLACEMENT OF SUPERVISOR

- 18.1 **Resignation or removal of Supervisor:** Subject, in the case of retirement or removal under paragraphs (a), (b) or (c) below, to clause 18.2:
- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice to the Issuer;
 - (b) the Issuer may remove the Supervisor from office by giving not less than 90 days' written notice to the Supervisor;
 - (c) the Retail Holders may remove the Supervisor from office by giving not less than 90 days' written notice to the Issuer and Supervisor upon the passing of a Special Resolution of Retail Holders to that effect; or
 - (d) the Supervisor may be removed by the FMA or the Issuer under Part 2 of the Financial Markets Supervisors Act.
- 18.2 **Requirements for Retirement and Removal:** The Supervisor may not:
- (a) be removed or retire under clauses 18.1(a), (b) or (c) unless:
 - (i) all functions and duties of the position have been performed;

- (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
 - (iii) the court consents;
 - (b) be removed by the Issuer under clause 18.1(b) without the FMA's consent.
- 18.3 **Appointment of new Supervisor:** If any of the circumstances described in clause 18.1 occur, subject to clauses 18.2 and 18.4, the Issuer will have the right to appoint a successor Supervisor, which must be a person who is licensed to act as a supervisor under the Financial Markets Supervisors Act.
- 18.4 **Approval by Special Resolution:** Where at any time there are Bonds outstanding under this Deed, then the removal of the Supervisor pursuant to clause 18.1(b), and the appointment of any successor Supervisor pursuant to clause 18.3, shall be subject to approval by a Special Resolution of Retail Holders.
- 18.5 **Failure to appoint Supervisor:** Other than where the successor Supervisor requires approval pursuant to clause 18.4, if a successor Supervisor has not been appointed by the Issuer or has not accepted an appointment within 60 days after any such notice, then the retiring Supervisor may, on behalf of the Issuer, appoint a successor Supervisor. In circumstances where the successor Supervisor requires approval by a Special Resolution of the Retail Holders, any failure of the Issuer to appoint or have approved a successor Supervisor will entitle the Retail Holders, by a Special Resolution, to appoint a new Supervisor.
- 18.6 **Successor Supervisor:** Upon the acceptance of any appointment under this clause 18 by a successor Supervisor:
- (a) the successor Supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under the Transaction Documents and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations; and
 - (b) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this Deed.
- 18.7 **Execution of documents:** Upon the acceptance of any appointment under this clause 18 by a successor Supervisor, the successor Supervisor shall execute all such documents which are necessary or appropriate and in such form as may be required by the other parties to the Transaction Documents, such that the successor Supervisor is bound by all the covenants on the part of the Supervisor under the Transaction Documents from the date of such appointment. Any appointment of a successor Supervisor has no effect until such documents are executed by the successor Supervisor.
- 18.8 **Notice:** The Issuer shall notify all Holders of the appointment of any new supervisor as soon as reasonably practicable following such appointment.
- 18.9 **Appointment on continuing basis:** Notwithstanding anything to the contrary in clause 18.3, if a person has been appointed by the FMA as supervisor under this Deed pursuant to section 22(2)(b) of the Financial Markets Supervisors Act, the Issuer may, before the end of the person's six month appointment period, appoint that person:
- (a) on a permanent basis; or
 - (b)

- (i) until a quorate meeting of Retail Holders can be convened to approve the appointment of a replacement supervisor, on an interim basis; and
- (ii) if at such meeting of Retail Holders the Retail Holders fail to pass a Special Resolution approving the appointment of a replacement supervisor, thereafter on a permanent basis,

as the supervisor for the Holders without any requirement for Holder approval provided that as soon as reasonably practicable following the appointment the Issuer gives notice to Holders of:

- (c) the appointment of that supervisor pursuant to this clause; and
- (d) the right of Holders to appoint an alternative supervisor pursuant to clause 18.1.

19. LIABILITY OF SUPERVISOR

19.1 **Supervisor not indemnified:** No provision of this Deed shall have the effect of exempting the Supervisor from, or indemnifying the Supervisor against:

- (a) in relation to a Wholesale Series, liability for wilful breach of trust where the Supervisor fails to show the degree of care and diligence required of the Supervisor having regard to the Supervisor Powers and the provisions of this Deed; and
- (b) in relation to a Retail Series, liability where the Supervisor fails to comply with the duties set out in clauses 14.3(a) and (d).

19.2 **No assumption of duty:** Notwithstanding any other provision of this deed but subject to the provisions of any Supplemental Trust Deed, the Supervisor does not assume any duty of care to the Issuer, any creditors of the Issuer, the Wholesale Holders or any other person other than the Retail Holders (subject to and in accordance with this Deed) in exercising the Supervisor Powers, and shall not, subject to clause 19.1, be liable:

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

20. BENEFIT OF DEED

20.1 The Issuer acknowledges, in relation to each Series and the Holders of the Bonds of that Series, that this Deed (including, for the avoidance of doubt, the Supplemental Trust Deeds for that Series) is made for the benefit of, and subject to clause 2.7 is intended to be enforceable by, any person who is from time to time a Holder of the Bonds of that Series, the Registrar for that Series, and the Supervisor.

21. AMENDMENTS

21.1 **Limited right to amend:** Except as provided in this clause 21, the Issuer may not cancel, vary or amend any provision of this Deed while any Bonds are outstanding. Any amendment to this Deed must be in writing signed by the Issuer and the Supervisor.

21.2 Amendments affecting Retail Holders:

- (a) **Right to amend:** In the case of an amendment affecting Retail Holders, the provisions of this Deed may not be amended or replaced unless the amendment or replacements is made:
- (i) with the consent of the Supervisor; or
 - (ii) (despite anything to the contrary in this Deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this Deed) under section 109 of the FMC Act, sections 22(7) or 37(6) of the Financial Markets Supervisors Act or any other power to amend or replace this Deed under an enactment.
- (b) **Supervisor consent:** The Supervisor must not consent to an amendment to, or a replacement of, this Deed unless:
- (i) either:
 - (aa) the amendment or replacement is approved by, or is contingent on approval by, the Retail Holders; or
 - (bb) the Issuer and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Retail Holders; and
 - (ii) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this Deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.
- (c) **Retail Holder consent:** The approval of the Retail Holders for the purposes of clause 21.2(b)(i)(aa) must be the approval of a Special Resolution of:
- (i) the Retail Holders; or
 - (ii) each Class of Retail Holders that is or may be adversely affected by the amendment or replacement.
- (d) Notice of any modification or addition to this Deed relating to or affecting any Retail Bonds or to the terms and conditions of any Retail Bonds shall be provided to the Retail Holders of such Retail Bonds affected by the amendment within 10 Business Days of the amendment being made, unless the Supervisor notifies the Issuer that such notification is not required to be provided to the Retail Holders of such Retail Bonds.

21.3 Amendments affecting Wholesale Holders:

- (a) **Limited right to amend:** In the case of an amendment affecting Wholesale Holders, except as provided in clauses 21.3(b) and (c) the Issuer may not

cancel, vary or amend any provision of this Deed or of any Supplemental Trust Deed while any Wholesale Bonds are outstanding. Any amendment to this Deed or any Supplemental trust Deed must be in writing signed by the Issuer and the Supervisor.

(b) **Amendment without consent:**

(i) The provisions of this Deed and any Supplemental Trust Deed may be amended without the consent of the Wholesale Holders where such amendment (in the opinion of the Issuer):

(aa) is of a minor or technical nature;

(bb) is to correct a manifest error; or

(cc) is to comply with the requirements or a modification of the requirements of any applicable law or the Listing Rules,

and, in any such case, the directors of the Issuer have resolved that such amendment will not be materially prejudicial to the interests of Wholesale Holders.

(ii) Notice of any such amendment or addition to this Deed relating to or affecting any Wholesale Bonds or to the terms and conditions of any Wholesale Bonds shall be provided to the Wholesale Holders of such Wholesale Bonds affected by the amendment within 10 Business Days of the amendment being made, unless the Supervisor notifies the Issuer that such notification is not required to be provided to the Wholesale Holders of such Wholesale Bonds.

(c) **Amendment approved by Special Resolution:** Without limiting clause 21.3(b) but subject to clause 21.5, the provisions of this Deed and any Supplemental Trust Deed may be amended if the amendment has been approved by a Special Resolution of the Wholesale Holders or the relevant Class of Wholesale Holders and notified in accordance with this Deed.

21.4 **Single Meeting:** Where an amendment requiring approval of the Holders pursuant to clause 21.2(b)(i)(aa) relates to or arises from any general change in the constitution, affairs or business of the Issuer, such approval shall not be required to be dealt with by way of separate meetings of each such Class of Holders.

21.5 **Notice:** Notice of any proposed variation requiring approval of the Holders pursuant to clause 21.2(b)(i)(aa) shall be given by the Issuer to each Holder or if it affects one or more Classes of Holders but not all Classes of Holders, to the Holders of each affected Class of Holders not less than 14 days before the date on which it is intended that such variation take effect, but the non-receipt of notice by any such Holder shall not affect the validity of any such variation.

22. WAIVER

22.1 **Temporary Variation:** In addition to and subject to, and not in abrogation of or substitution for, clause 21 (but subject to any applicable law and except to the extent expressly provided otherwise in the Conditions applicable to any Bond) the Supervisor may, in respect of any Retail Series, temporarily vary the provisions of this Deed applicable to the relevant Bonds, for such period and on such terms as:

- (a) may be deemed appropriate provided that the Supervisor shall be satisfied that such a temporary variation will not have a material adverse effect on the Retail Holders; or
- (b) may be agreed by the Supervisor pursuant to and in accordance with clause 22.3.

22.2 **Waivers:** Subject to clause 21 (if applicable) and any applicable law and except to the extent expressly provided otherwise in the Conditions for any Retail Bonds, the Supervisor may if it is satisfied that there will not be a resulting material adverse effect on Retail Holders, and shall if so directed by a Special Resolution of Retail Holders, waive, in whole or in part for a specified period or indefinitely and on such terms and conditions (if any) as may be deemed expedient, any breach or anticipated breach by the Issuer of this Deed or any Conditions of any Retail Bonds.

22.3 **Exemptions:** Except to the extent expressly provided otherwise in the Conditions for any Bonds and subject to clause 21 (if applicable), if:

- (a) the Issuer is granted an exemption, or an exemption is applicable to the Issuer, in relation to any obligation imposed upon the Issuer by or pursuant to the FMC Act, the Companies Act or the Financial Reporting Act 2013 which is materially the same as or analogous to any obligation of the Issuer under this Deed or any Retail Bonds; and
- (b) two Authorised Officers (at least one of whom is a Director) certify that such amendment, temporary variation or waiver will not have a material adverse effect on the Issuer or be or become materially and adversely prejudicial to the general interests of Retail Holders,

then the Supervisor may, in respect of any Retail Series, agree to amend or temporarily vary this Deed or the Conditions for the relevant Bonds or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

23. MEETINGS AND RESOLUTIONS OF BONDHOLDERS

23.1 **Meetings:** Meetings of Holders and any Class of Holders are to be convened and held in accordance with the provisions of schedule 1.

23.2 **Notify Supervisor:** The Issuer must ensure that the Supervisor receives the notices and communications that any Holder is entitled to receive in relation to a meeting of Holders.

23.3 **FMC Regulations:** Regulation 78 and Schedule 11 of the FMC Regulations (other than clauses 2 and 5 of Schedule 11 of the FMC Regulations) do not apply to this Deed.

24. NOTICES

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

- (a) **Writing:** be given or made in writing by fax, by email or letter and be signed by the sender or an authorised officer of the sender;

- (b) **Address:** be given or made to the recipient at the address, email address or fax number, and marked for the attention of the person (if any), from time to time designated by the recipient to the other for the purposes of this Deed or the Bonds;
- (c) **Deemed delivery:** not be effective until received by the recipient, and any such notice or communication shall be deemed to be received:
- (i) (if given or made by letter) when left at the address of the recipient or 5 Business Days after being put in the post (by airmail if to another country), postage prepaid, and addressed to the recipient at that address; or
 - (ii) (if given or made by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient,

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

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

(a) **The Issuer:**

Genesis Energy Limited
 The Genesis Energy Building
 660 Great South Road
 PO Box 17188
 Greenlane
 Auckland 1546
 New Zealand

Telephone: (09) 580 2094

Facsimile: (09) 580 4894

Attention: General Counsel

(b) **The Supervisor:**

Address:
 Trustees Executors Limited
 PO Box 3222
 L5 10 Customhouse Quay
 Wellington

Email: reporting@trustees.co.nz

Attention: The Monitoring Manager

(c) **The Holders:**

The address of each Holder last entered in the Register.

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

25. GENERAL

25.1 **Registration of deed:** If the Issuer proposes to issue a Retail Series, it shall promptly, at its own cost, register this deed, the relevant Supplemental Trust Deed(s) in respect of that Series and any amendment to this deed or such Supplemental Trust Deed as required by the FMC Act and shall pay all costs and expenses incidental to doing so.

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

25.3 **Partial invalidity:** An invalid provision in this Deed shall not affect the enforceability of the remaining provisions of this Deed.

25.4 **Further issues:** The Issuer may from time to time, without the consent of the Holders, issue Bonds or other debt obligations on such other terms and conditions as the Issuer may think fit.

25.5 **Documents:** Copies of this deed, the relevant Supplemental Trust Deed, the Offer Documentation relating to Bonds held by the relevant Holder and the Agency Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series will be made available by the Issuer for inspection during usual business hours by any Holder at the office of the Issuer (or such other office as the Issuer may notify the Holders from time to time) which, at the date of this deed, is as specified in clause 24.2(a). Each Holder will be deemed to have notice of the provisions of this Deed and each other Transaction Document in relation to the relevant Series.

25.6 **Survival:** The indemnities given in this Deed will survive the repayment of all the Bonds and the termination of this Deed.

25.7 **Remedies cumulative:** The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided by law.

25.8 **Counterparts:** This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart (by fax or otherwise).

26. GOVERNING LAW

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

26.2 **Submission to 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.

SIGNED AS A DEED

[Execution blocks omitted]

SCHEDULE 1

MEETINGS OF HOLDERS

1. DEFINITIONS

1.1 In these provisions:

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

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

"**regulation**" means a clause of this schedule.

"**Representative**" means:

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

"**Special Resolution**" means a resolution approved:

- (a) at a meeting of Holders, properly convened and held in accordance with the provisions of this schedule by Holders holding Bonds with a Principal Amount of no less than 75% of the Principal Amount of Bonds held by those persons who are entitled to vote and who vote on the question; or
- (b) in accordance with regulation 16.

"**working day**" has the meaning it has in the FMC Regulations.

- 1.2. **Classes:** In this schedule, references to "**Bonds**" and "**Holders**" are references to the Bonds of the relevant Class of Bonds only and the Holders of the Bonds of the relevant Class of Bonds only.

2. CONVENING

- 2.1 **Meeting required by law:** The Issuer shall, whenever required to do so pursuant to the Companies Act or the FMC Act or any other applicable law, convene a meeting of the Holders.

- 2.2 **By Holders:** The Issuer shall, at the request in writing of Holders holding not less than 5% of the aggregate Principal Amount of the Bonds on issue in that Class, convene a

meeting of that Class of Holders. The request must state the nature of the business proposed to be dealt with at the meeting concerned.

- 2.3 **By Issuer:** The Issuer may at any time of its own volition convene a meeting of the Holders.
- 2.4 **By Supervisor:** In relation to any Class of Retail Bonds, the Supervisor may at any time of its own volition (after such consultation with the Issuer which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting) convene a meeting of Holders of that Class. Subject to clause 19.1, the Supervisor shall not be obliged to convene a meeting of the relevant Retail Holders pursuant to this regulation until it has been indemnified to its satisfaction (acting reasonably) against all costs and expenses to be incurred in relation to that meeting.
- 2.5 **Place of meeting:** Each meeting will be held in the city or town in which the registered office of the Issuer is situated or at such other place as designated by the Issuer.
- 2.6 **Regulations:** Meetings of Holders shall be convened and held in accordance with the provisions of this schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this schedule, as the Supervisor and the Issuer may agree from time to time.

3. NOTICE OF MEETINGS

- 3.1 The Issuer must ensure that written notice of the time and place of a meeting is sent to the following at least 15 working days before the meeting:
- (a) every Holder entitled to receive notice of the meeting;
 - (b) the Supervisor; and
 - (c) every director and an Auditor of the Issuer.
- 3.2 The notice must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;
 - (b) the text of any Special Resolution to be submitted to the meeting; and
 - (c) the right of a Holder to appoint a Representative.
- 3.3 If a Special Resolution is to be submitted to the meeting:
- (a) a draft of the proposed notice of the meeting must be given to the Supervisor at least 10 working days before the notice is given under regulation 3.1 (or any lesser period approved by the Supervisor); and
 - (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Issuer at least 5 working days before the notice is given under regulation 3.1).
- 3.4 An irregularity in a notice of a meeting is waived if:

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

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

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

4. QUORUM

4.1 No business may be transacted at a meeting of Holders if a quorum is not present.

4.2 A quorum for a meeting of Holders at which a Special Resolution is to be submitted is present if Holders or their proxies are present who hold Bonds with a Principal Amount of no less than 25% of the Principal Amount of Bonds held by those Holders who are entitled to vote on the business to be transacted at the meeting.

4.3 A quorum for any other business at a meeting of Holders is present if at least 2 Holders or their proxies are present.

4.4 Despite regulations 4.1 to 4.3, if a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called under section 120(1)(b) of the FMC Act, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their proxies present are a quorum.

4.5 To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

5. CHAIRMAN

5.1 **Wholesale Series:** At a meeting of Wholesale Holders a person appointed, by a resolution of Holders, from the Holders or any Representatives present will preside as chairman at a meeting.

5.2 **Retail Series:** A person nominated by the Supervisor shall preside at every meeting of Retail Holders. If no such person is nominated or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders or Representatives present shall appoint a person to be chairman of the meeting.

6. RIGHT TO ATTEND AND SPEAK

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

7. ADJOURNMENT

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

8. ONLY PERSONS ON REGISTER RECOGNISED BY COMPANY

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

9. AUTHORITY TO VOTE

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

10. PROXIES

- 10.1 **In writing:** The instrument appointing a proxy must be in writing signed by the appointer or his attorney or, if the appointer is a corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.
- 10.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder. A holder of a proxy will have the right to speak at the meeting.
- 10.3 **Deposit of proxy:** The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a solicitor or in any other manner approved by the Issuer, must be deposited at the place appointed by the Issuer in the notice convening the meeting (or, if no such place is appointed, then at the registered office of the Issuer) not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless the Issuer, in its absolute discretion, elects to accept any instrument of

proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.

- 10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form approved by the Issuer and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- 10.5 **Proxy valid for meeting:** An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.
- 10.6 **Proxy in favour of chairman:** An instrument of proxy in favour of:
- (a) the chairman of the Issuer;
 - (b) the chairman; or
 - (c) the chairman of the meeting,

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

11. HOLDER MAY APPOINT ATTORNEY

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

12. CORPORATE REPRESENTATIVES

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

13. VOTING PROCEDURE AND POLLS

13.1 **Show of hands:** A resolution put to the vote of a meeting will be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by:

- (a) the chairman of the meeting; or
- (b) the Issuer or any representative of the Issuer; or
- (c) one or more Holders holding or representing not less than 5% in aggregate Principal Amount of the Bonds.

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

13.2 **Number of votes:** On a show of hands each person present at the meeting and entitled to vote (whether personally or as a Representative) will have one vote only. On a poll every Holder who is present in person or by a Representative will have one vote for every \$1 of Principal Amount of the Bonds of which that person is the Holder, provided that where a Holder holds Zero Coupon Bonds, for the purposes of calculating that Holder's voting entitlement in this regulation 13.2, the Principal Amount of those Zero Coupon Bonds is to be construed as a reference to the net present value of those Zero Coupon Bonds (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Bond by a proportion of any discount to that Principal Amount applicable to such Bond on its Issue Date) as at the date of the meeting. On a poll votes may be given either personally or by Representative and a person entitled to more than one vote need not use all their votes or cast all the votes they use in the same way.

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

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

13.5 **Election of chairman:** A poll demanded on the election of a chairman of the meeting or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and in a place appointed by the chairman. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

13.6 **No disturbance:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.

13.7 **Joint Holders:** In the case of joint Holders the vote of the senior who tenders a vote whether in person or by Representative will be accepted to the exclusion of the vote of the other joint Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.

- 13.8 **Disqualification:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.
- 13.9 **Voting by Issuer:** Notwithstanding any other regulation, any Bonds held by or on behalf of the Issuer or any of its Subsidiaries shall not confer any right to vote for the period that they are so held.

14. SPECIAL RESOLUTIONS

- 14.1 **Powers:** A meeting of Holders will, in addition to all other powers which by this Deed are specified as exercisable by Special Resolution, have the following powers exercisable by Special Resolution namely power to:
- (a) sanction either unconditionally or upon any conditions the release of the Issuer or any Guaranteeing Subsidiary from the payment of all or any part of the moneys payable pursuant to this Deed or the Bonds;
 - (b) sanction any request from the Issuer for the exchange of the Bonds for, or the conversion of the Bonds into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
 - (c) postpone or, with the concurrence of the Issuer, to accelerate the day when the Principal Amount of any Bonds becomes payable and to suspend or postpone for a time the payment of interest on any Bonds;
 - (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against the Issuer or any Guaranteeing Subsidiary or its assets however those rights arise;
 - (e) assent to any amendment to the terms of this deed or the relevant Supplemental Trust Deed proposed or agreed to by the Issuer (and, where required, the Supervisor) and to authorise the Supervisor to execute any Supplemental Trust Deed embodying any such amendment;
 - (f) give any sanction, assent, release or waiver of any breach or default by the Issuer or any Guaranteeing Subsidiary or the Supervisor under any of the provisions of this deed or the relevant Supplemental Trust Deed;
 - (g) sanction any scheme for the reconstruction of the Issuer or any Guaranteeing Subsidiary or for the amalgamation of the Issuer or any Guaranteeing Subsidiary with any other corporation where such sanction is necessary;
 - (h) subject to section 113 of the FMC Act, discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under this Deed;
 - (i) subject to the provisions of this Deed, remove any Supervisor and to approve the appointment of or appoint a new Supervisor;

- (j) consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in any of the foregoing paragraphs of this regulation 14.1, or as to any other matter which may be necessary to carry out and give effect to any Special Resolution;
- (k) authorise or direct the Supervisor and if required, the Issuer to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.

14.2 **Binding on Holders:** A Special Resolution passed by Holders in accordance with this schedule will be binding upon all the Holders whether or not they were present or entitled to be present at the relevant meeting, or signed the relevant resolution pursuant to regulation 16, as the case may be, and all Holders will be bound to give effect to that resolution. The passing of any such resolution will, as between the Issuer and the Holders, be conclusive evidence that the circumstances justify the passing thereof. Notwithstanding the foregoing:

- (a) a resolution which affects a particular Holder only, rather than the rights of all Holders generally, or of a particular Class of Holders generally, will not be binding on such Holder unless such Holder agrees to be bound by the terms of such resolution;
- (b) a resolution which affects one Class only of Bonds is deemed to have been duly passed if passed at a properly convened and held meeting of the Holders of that Class or pursuant to regulation 16;
- (c) a resolution which affects more than one Class of Bonds, but does not give rise to a conflict of interest between the Holders of any of the Classes so affected, is deemed to have been duly passed if passed at a single properly convened and held meeting of the Holders of all Classes so affected or pursuant to regulation 16;
- (d) a resolution which affects more than one Class of Bonds and gives or may give rise to a conflict of interest between the Holders of any of the Classes so affected is deemed to have been duly passed if passed at separate properly convened and held meetings of the Holders of each Class so affected or pursuant to regulation 16; and
- (e) any meeting of both Wholesale Holders and Retail Holders being held in accordance with this Schedule 1 whereby any resolution 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 21), must be voted on by the Retail Holders and the Wholesale Holders separately.

14.3 **Reliance on advice:** The Issuer and the Supervisor may rely on, and the Holders and the Registrar for the relevant Class shall be bound by, a legal opinion from a leading law firm in New Zealand to the effect that a resolution affects one Class only or, if it affects more than one Class of Bonds, does not give rise to a conflict of interest, for the purposes of determining the meeting or meetings which need to be held for the purposes of regulation 14.2.

15. MINUTES TO BE KEPT

15.1 Minutes of all resolutions and proceedings at every meeting will be made by the Issuer or, if the Issuer is not present at the meeting, by a person appointed by the chairman of the meeting. Minutes must be entered in books from time to time provided for that

purpose by the Issuer. Any such minutes, if signed or apparently signed by the chairman of the meeting at which a resolution was passed or proceedings had or by the chairman of the next meeting of Holders, will be prima facie evidence of the matters recorded in those minutes. Until the contrary is proved every meeting in respect of which minutes have been made will be deemed to have been properly held and convened and all resolutions passed or proceedings had at that meeting to have been properly passed and had.

16. RESOLUTIONS IN WRITING

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

SCHEDULE 2

FORM OF DIRECTORS' REPORTING CERTIFICATE

1. This report is given by the undersigned Directors of Genesis Energy Limited ("**Issuer**") pursuant to clause 12.3(c) of the Master Trust Deed dated 25 November 2008 between the Issuer and Trustees Executors Limited, as supervisor (as amended, the "**Trust Deed**") in connection with [**specify relevant Series**].
2. Unless the context otherwise requires, terms defined in the Trust Deed have the same meaning herein.
3. We, the undersigned, hereby state that as at the last day of the financial {year} {half-year} ending on { } ("**Reporting Date**"), to the best of our knowledge and belief having made all due inquiries, and, during the immediately preceding financial {year} {half-year}:
 - 3.1 {Here state any matter, or state if there is no matter, which has arisen relating to the Issuer which would materially and adversely affect the ability of the Issuer to perform its obligations under the Trust Deed and the Bonds or which adversely affects the Holders};
 - 3.2 the Issuer has observed and complied with its Issuer Obligations and all provisions expressed to be binding upon it under the Trust Deed and any relevant Supplemental Trust Deed in respect of Retail Bonds including the payment of all interest on, and the Principal Amount in respect of, the Bonds;

{If the Issuer has not so complied and observed the provisions of the Trust Deed or any Supplemental Trust Deed set out the particulars of the contravention and proposals to remedy the same}
 - 3.3 no Event of Default has occurred;

{If any Event of Default has occurred, set out the particulars of the Event of Default and, if appropriate, details of how it has been, or is proposed to be, remedied.}
 - 3.4 the Principal Amount of Retail Bonds (if any) which have been repaid on maturity is \${ }, details of which are set out below:

{set out details of Bonds which have been repaid on maturity in the immediately preceding financial year}
 - 3.5 all interest due on the Retail Bonds has been paid;

{If any interest has been suspended in respect of Subordinated Bonds in the immediately preceding financial {year}{half year}, provide details}
 - 3.6 each Register in respect of a Series has been duly maintained in accordance with the Trust Deed;

{If any Register in respect of a Series has not been duly maintained set out the particulars of the failure to maintain}
 - 3.7 {the Guaranteeing Subsidiaries that comprise the Guaranteeing Group are { } and { } };

{If there are no Guaranteeing Subsidiaries state so.}

Insert one of the following:

{There are no Guaranteeing Subsidiaries that are not included in the Guaranteeing Group /
The following Guaranteeing Subsidiaries are not included in the Guaranteeing Group
[insert]}

- 3.8 the Issuer has observed and complied with all its banking covenants and the EBITDA Coverage Ratio in clause 12.8(a);

{Here set out computations necessary to demonstrate such compliance with the EBITDA Coverage Ratio and if the Issuer has not so complied and observed its banking covenants, set out the particulars of the contravention and proposals to remedy the same}

- 3.9 {Here state any enforcement action taken in relation to the Issuer's banking covenants};

- 3.10 {Here state any changes to the Issuer's banking covenants}.

4. As at the date of this certificate, having considered the financial position (including contingent liabilities) of the Issuer as a going concern (which the Directors are satisfied will be the case) and such budgets, reports, projections, certificates and assurances as they deem necessary and the anticipated trading transactions and sources of finance arranged or capable of being arranged during the 12 months from the Reporting Date, to the best of our knowledge and belief the Issuer will be able to meet all its liabilities (including maturing Bonds and interest on Bonds) which fall due or are anticipated to become payable during the 12 months from the Reporting Date in accordance with accepted commercial practice and the Issuer satisfies the solvency test in accordance with section 4 of the Companies Act 1993.

5. As at the Reporting Date:

- 5.1 the aggregate Principal Amount of the Bonds outstanding is \${ } ; and

- 5.2 the amount of any unpaid interest relating to the outstanding Bonds is \${ }.

This report is given on the day of 20{ }

Director

Director

SCHEDULE 3**PARTICULARS OF BONDS IN REGISTER**

1. Series number
2. Type of Bond
3. Issue Date
4. First Interest Accrual Date
5. Early repayment date
6. Maturity Date
7. Principal Amount
8. Name, address and (where known) tax residency of Holder
9. Minimum Principal Amount
10. Interest Rate
11. Interest Payment Dates
12. Details of the account to which payments in respect of the Bond are to be made
13. Transfers of the Bond
14. Cancellation of the Bond
15. Details of any resident withholding tax exemption certificates held by Holder
16. Any other information required by law