

THE WAREHOUSE GROUP LIMITED

Issuer

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED

Supervisor

MASTER TRUST DEED

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DEED dated 7 May 2015

PARTIES

THE WAREHOUSE GROUP LIMITED a company incorporated in New Zealand ("Issuer")

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED a company incorporated in New Zealand ("Supervisor")

INTRODUCTION

- A. This Deed provides for the establishment of a bond programme ("**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, this Deed as supplemented by 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 Supervisor has agreed, at the request of the Issuer, to act as Supervisor for the Holders of each Retail Series and, to the limited extent expressly provided in this Deed, for the Holders of each Wholesale Series, on the terms and conditions of this Deed applicable to that Series.

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, 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 the levy referred to in section 86J of the Stamp and Cheque Duties Act 1971.

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

"**Authorised Officers**" means, in relation to the Issuer, any person who is a Director, chief executive officer, chief financial officer or company secretary of the Issuer (or such officer of the Issuer howsoever designated as may from time to time replace or succeed such officer), and any other officer of the Issuer formally appointed by the Directors or their duly authorised delegates and notified in writing to the Supervisor.

"Balance Sheet" or "Profit and Loss Statement" means, in relation to a group, a consolidated statement of financial position or statement of financial performance (as the case may be) of the group, prepared as at any date or in respect of any period which complies with the Financial Reporting Act.

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

(a) **Bill rate:**

- (i) if the Interest Period is one, two, three, four, five, or six months, the reference rate specified in the relevant Supplemental Trust Deed or Offer Document for a Tranche ("**Reference Rate**") (rounded, if necessary, to the nearest two decimal places) as displayed at or about 10.45am or such other time as specified in the relevant Supplemental Trust Deed or Offer Document for a Tranche ("**Specified Time**") on the first day of that Interest Period on the Reuters, Bloomberg or other screen page as specified in the relevant Supplemental Trust Deed or Offer Document for a Tranche ("**Screen Page**") 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 Reference Rates as displayed at or about the Specified Time on the first day of that Interest Period on the Screen Page 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 Reference Rates displayed for bank bills having the relevant term; or
 - (bb) fewer than four persons are displayed on the Screen Page as quoting such a rate,

then the average (rounded, if necessary, to the nearest two decimal places) 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 or Offer Document for a Tranche.

"Bond" means a bond, note or other instrument by whatever name called and whether secured or unsecured constituted by, and subject to the terms and conditions set out in, this Deed (as supplemented by the relevant Supplemental Trust Deed for a Tranche), and includes an Amortising Bond, a Fixed Rate Bond, a Floating Rate Bond, or a Zero Coupon Bond or combination thereof.

"Bond Monies" 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 Monies"** includes any part of them.

"Borrowing Group" means the Issuer and all Guarantors.

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

"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.

"Change of Control" means each of the following:

- (a) an offer is made to acquire all or some of the Ordinary Shares and the offer is, or becomes, unconditional and the offeror together with the offeror's associates (as that term is defined in the Takeovers Code) hold or control more than 50% of the voting rights (as that term is defined in the Takeovers Code) of the Issuer; or
- (b) a court approves a scheme of arrangement which, when implemented, will involve a non-pro-rata change in holdings of Ordinary Shares and will result in a person together with that person's associates (as that term is defined in the Takeovers Code) holding or controlling more than 50% of the voting rights (as that term is defined in the Takeovers Code) of the Issuer; or
- (c) an amalgamation occurs between the Issuer and another party which results in a person together with that person's associates (as that term is defined in the Takeovers Code) holding or controlling more than 50% of the voting rights (as that term is defined in the Takeovers Code) of the surviving entity; or
- (d) any other circumstance or event occurs which results in a person together with that person's associates (as that term is defined in the Takeovers Code) holding or controlling more than 50% of the voting rights (as that term is defined in the Takeovers Code) of the Issuer.

"Change of Control Notice" has the meaning given to it in clause 5.9.

"Change of Control Premium" means:

- (a) in respect of Bonds redeemed more than 3 years prior to the Maturity Date for those Bonds, \$0.03 per Bond;
- (b) in respect of Bonds redeemed more than 2 years but no more than 3 years prior to the Maturity Date for those Bonds, \$0.02 per Bond;
- (c) in respect of Bonds redeemed more than 1 year but no more than 2 years prior to the Maturity Date for those Bonds, \$0.01 per Bond; and
- (d) in respect of Bonds redeemed no more than 1 year prior to the Maturity Date for those Bonds, \$0.00 per Bond.

"**Class**" means Bonds which constitute a separate category of Bonds with such categories being:

- (a) in relation to matters affecting a Series only, that Series; or
- (b) any category of Bonds having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of the Issuer (in consultation with the Supervisor) at any particular time, for any particular purpose, constitutes a separate class of Bonds,

and "**Class of Holders**" means the Holders of those Bonds.

"**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 the Issuer and its Subsidiaries, but excluding any Financial Services Entities.

"**Convertible Notes**" means loans which any member of the Consolidated Group has covenanted to convert into shares in the capital of the relevant company (without any right or option on the part of the relevant member of the Consolidated Group or the holder to repay or require repayment of such loans in cash) other than any such loans owing solely to another member of the Consolidated Group.

"**Corporations Law**" means the Corporations Law as in force in any relevant state or territory of Australia.

"**Date of Enforcement**" means the date on which a Holder or the Supervisor makes a declaration pursuant to clause 12.1.

"**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**" in all other contexts means this deed alone.

"**Default Interest**" has the meaning given in clause 5.8.

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

"**Directors' Report**" means a report signed by two Directors in the form set out in schedule 2, or such other form as the Issuer and the Supervisor may agree (whether in any relevant Supplemental Trust Deed or otherwise).

"**Distribution**" has the meaning given to that term in the Companies Act.

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

"**Early Redemption Date**" means the date specified by the Issuer in the Change of Control Notice.

"**EBIT**" means, in relation to the Consolidated Group for any period, the aggregate amount on a consolidated basis of the net operating profit of the Consolidated Group in

that period (as would be disclosed if a Profit and Loss Statement of the Consolidated Group were prepared for that period) before:

- (a) charging or providing for income tax;
- (b) charging Interest and Financing Costs,

after excluding:

- (c) unusual items;
- (d) equity accounted gains and losses;
- (e) other unrealised gains and losses; and
- (f) Interest Income; and

adding back an amount equal to any property rent amount deducted at sub-paragraph (f) of the definition of "Interest and Financing Costs".

For the avoidance of doubt, EBIT includes property rents (as defined under NZ IFRS as at the date of this Deed) in respect of operating leases. This inclusion relating to such property leases shall continue to apply in the event of any future changes in accounting standards relating to the treatment of operating leases.

"Event of Default" means any of the events specified in clause 12.1.

"Financial Reporting Act" means the Financial Reporting Act 2013.

"Financial Services Entity" means any Subsidiary of the Issuer whose principal business comprises the provision of one or more financial service (as defined in the Financial Services (Registration and Dispute Resolution) Act 2008) and includes as of the date of this Deed, each of TWP No.6 Limited, Diners Club (NZ) Limited, TW Financial Services Operations Limited and TW Money Limited.

"Financial Statements" means, at any date:

- (a) in respect of a group, consolidated financial statements of the group as at that date which comply with NZ IFRS; and
- (b) in respect of the Issuer, consolidated financial statements of the Issuer and all its Subsidiaries as at that date which comply with NZ IFRS.

"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 or Offer Document for that Tranche and, if no such date is specified, means the Issue Date.

"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.

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

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

"Group" means the Consolidated Group or the Borrowing Group.

"Guarantee" means the deed of guarantee and indemnity dated on or about the date of this Deed between the Guarantors and the Supervisor.

"Guarantor" means any person which is a guarantor under the Guarantee.

"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.

"Interest and Financing Costs" means, in relation to the Consolidated Group for any period, the aggregate amount on a consolidated basis of all interest and other financing costs in that period calculated on an accruals basis in accordance with NZ IFRS; including (without limitation):

- (a) discounts and similar allowances on the issue or disposal of debt securities;
- (b) dividends and distributions of a revenue nature on redeemable preference shares;
- (c) interest which has been capitalised and/or debited to any asset or asset account; and
- (d) all other expenses and amounts that are required to be treated as interest or financing costs under NZ IFRS;

and takes into account:

- (e) realised gains or losses resulting from Treasury Products entered into in order to manage risks in relation to interest payment obligations,

and excludes:

- (f) any interest or finance costs attributed to property rents as currently defined under NZ IFRS (as at the date of this Deed) in respect of operating leases. This exclusion relating to such property leases shall continue to apply in the event of any future changes in accounting standards relating to the treatment of operating leases.

"Interest Income" means, in relation to the Consolidated Group for any period, the aggregate amount on a consolidated basis of all interest derived by the Consolidated Group in that period.

"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 or Offer Document in relation to the Tranche of which that Floating Rate Bond forms part 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 or Offer Document in relation to the Tranche of which that Fixed Rate Bond forms part 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 or Offer Document in relation to the Tranche of which that Bond forms part 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 6.1(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 Offer Document and recorded as such in the Register in respect of that Bond.

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

"Issue Price" in relation to a Bond, has the meaning given in the relevant Supplemental Trust Deed or Offer Document or, if no such meaning is specified, means the face value of the Bond.

"Issuer" means The Warehouse Group Limited.

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

"Liabilities" means all liabilities and provisions, including without limitation:

- (a) provisions for income and other taxes (other than provisions for deferred taxes to the extent that the payment of such taxes is contingent on the earning of future profits); and
- (b) dividends recommended, declared or accrued but unpaid,

but does not include contingent liabilities, Subordinated Debt or Convertible Notes.

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

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

"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.

"Material Guarantor" means a Guarantor:

- (a) the earnings of which before interest and tax (calculated on the same basis as EBIT, and on a consolidated basis where it has Subsidiaries) for the 12 month period ending on the last annual balance date of the Issuer are (or would, if the Guarantor had then been a Guarantor, have been) not less than 5% of EBIT for that period; or
- (b) the total assets of which (including intangibles, and calculated on a consolidated basis where it has Subsidiaries) are at least 5% of Total Tangible Assets of the Consolidated Group.

"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 or Offer Document 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 (and, if so specified in the relevant Supplemental Trust Deed or Offer Document for that Tranche, for transfer and/or holding) of the Bonds forming part of that Tranche, being the amount specified as such in the relevant Supplemental Trust Deed or Offer Document for that Tranche.

"Negative Pledge" means the Negative Pledge Deed entered into between The Warehouse Group Limited and the companies listed in schedule 1 to the Negative Pledge Deed on 5 October 2000.

"Net Interest" means, in relation to the Consolidated Group for any period:

- (a) Interest and Financing Costs for that period; less
- (b) Interest Income for that period.

"Non Borrowing Group EBIT" means earnings before interest and tax of Subsidiaries of the Issuer which are not Guarantors (but excluding Financial Services Entities) (calculated on the same basis as EBIT, and on a consolidated basis where any such Subsidiary itself has Subsidiaries).

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

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

"NZ IFRS" means, at any time, generally accepted accounting practice as such term is defined in section 8 of the Financial Reporting Act which, as at the date of this Deed, means the New Zealand Equivalents to International Financial Reporting Standards, as approved from time to time by the Accounting Standards Review Board.

"NZX" means NZX Limited.

"Obligor" means any Guarantor or the Issuer.

"Offer Document" 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, prospectus or other offering document (if any) relating 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, and all supplements or amendments to, the relevant document.

"Ordinary Shares" means ordinary shares in the Issuer.

"PPSA" means the Personal Property Securities Act 1999.

"Prior Charges" means:

- (a) security interests over assets of Wholly Owned Subsidiaries which are not Obligor; and
- (b) security interests over assets of Obligor.

"Primary Market Participant" has the meaning given to it in the Listing Rules.

"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, in relation to an Amortising Bond, the principal amount thereof for the time being outstanding, as reduced in accordance with clause 5.5.

"Record Date" means, in relation to a payment due on a Bond, 5.00pm on the tenth calendar day before (or, in the case of a Zero Coupon Bond, the day before) the due date for that payment.

"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 maintained by the Registrar for that Series in accordance with the provisions of this Deed and the relevant Agency Agreement.

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

"Related Person" means any of the following, unless they are members of the Borrowing Group:

- (a) any related company (as defined in section 2(3) of the Companies Act, but as if the word "subsidiary" in that section had the same meaning as "Subsidiary" in this Deed) of a member of the Consolidated Group;
- (b) any related entity (for the purposes of the Corporations Law) of a member of the Consolidated Group;
- (c) any person which is treated as an associated company of any member of the Consolidated Group in terms of any applicable financial reporting standard (as defined in the Financial Reporting Act) or in terms of any financial reporting standard from time to time adopted by the Institute of Chartered Accountants of New Zealand;
- (d) any person which beneficially owns (or together with its related companies or related entities, determined on the same basis as set out, in paragraphs (a) and (b) above, beneficially owns) whether directly or indirectly 20% or more of the equity share capital of any member of the Consolidated Group; and
- (e) any related company or related entity (determined on the same basis as set out in paragraphs (a) and (b) above) or associated company (determined on

the same basis as set out in paragraphs (c) above) of any person referred to in paragraph (d) above.

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

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

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

"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 and/or denominations.

"Shareholders' Funds" means, at any date, the amount by which Total Assets of the Consolidated Group exceeds Total Liabilities at that date.

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

"Subordinated Debt" means a liability which on the winding up of the debtor company concerned and to the extent permitted by law, is deferred in point of payment to all other liabilities (not being liabilities which are similarly deferred) whether secured or unsecured, present or future of the debtor company.

"Subsidiary" includes, in respect of a person:

- (a) a subsidiary (within the meaning of the Companies Act) of that person; and
- (b) any other person which is classified as a subsidiary of that person in terms of any applicable financial reporting standard (as defined in the Financial Reporting Act) or in terms of any financial reporting standard from time to time adopted by the Institute of Chartered Accountants of New Zealand.

"Substantial Subsidiary" means a Subsidiary of the Issuer (but excluding Financial Services Entities):

- (a) the earnings of which before interest and tax (calculated on the same basis as EBIT, and on a consolidated basis where it has Subsidiaries) for the 12 month period ending on the last annual balance date of the Issuer are (or would, if the Subsidiary had then been a Subsidiary, have been) not less than 1% of EBIT for that period; or
- (b) the total assets of which (including intangibles, and calculated on a consolidated basis where it has Subsidiaries) are at least 1% of Total Tangible Assets of the Consolidated Group.

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

"Supervisor Powers" means, in relation to a Bond, the trusts, powers, authorities and discretions vested in the Supervisor by this Deed 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 2.5 constituting and setting out the terms and conditions of a Tranche, substantially in the form set out in schedule 4.

"Takeovers Code" means the New Zealand Takeovers Code as set out in the Schedule to the Takeovers Code Approval Order 2000, as amended from time to time.

"Temporary Prior Ranking Debt" means, at any time, the aggregate principal amount on a consolidated basis of all indebtedness (including the face value of all contingent liabilities) of the Consolidated Group secured at that time by any Prior Charge over the assets of a company (the **"relevant company"**) which becomes a Guarantor after the date of this Deed, if:

- (a) that Prior Charge was in existence, or the relevant company was contractually obliged to create that Prior Charge, at the time the relevant company became a Guarantor; and
- (b) that Prior Charge or contractual obligation was not entered into in contemplation of the relevant company becoming a Guarantor,

provided that:

- (c) no indebtedness of the relevant company shall be taken into account under this definition more than three months after the relevant company becomes a Guarantor; and
- (d) an increase in the principal amount of indebtedness after the relevant company becomes Guarantor shall not be taken into account under this definition.

"Total Assets" means, at any date in relation to a Group, the aggregate amount on a consolidated basis of all assets of the Group which would be disclosed by a Balance Sheet of the Group if one were prepared as at that date, excluding any investment in any Financial Services Entity.

"Total Debt" means, at any date, the aggregate principal amount on a consolidated basis of all borrowed money, net of "cash in transit" and "cash on hand" of the Consolidated Group (including Total Prior Ranking Debt to the extent applicable but excluding Subordinated Debt) which would be disclosed by a Balance Sheet of the Consolidated Group if one were prepared as at that date. For the avoidance of doubt, Total Debt excludes property finance leases which under NZ IFRS (as at the date of this Deed) are treated as operating leases. This exclusion relating to such property finance leases shall continue to apply in the event of any future changes in accounting standards relating to the treatment of operating leases.

"Total Liabilities" means, at any date, the aggregate amount on a consolidated basis of all Liabilities of the Consolidated Group which would be disclosed by a Balance Sheet of the Consolidated Group if one were prepared as at that date.

"Total Prior Ranking Debt" means, at any time, the aggregate principal amount on a consolidated basis of all indebtedness of the Consolidated Group secured by Prior Charges at that time, determined as follows:

- (a) where the Prior Charge is limited to securing a fixed principal amount or stated maximum principal amount, that principal amount together with all interest, costs and other amounts payable on it; and
- (b) in any other case the full amount actually or contingently secured (including the face value of all contingent liabilities).

"Total Tangible Assets" means, at any date in relation to a Group, the Total Assets of the Group, excluding all assets which, according to NZ IFRS, are considered to be intangible assets other than deferred taxation assets.

"Tranche" means Bonds issued pursuant to a particular Supplemental Trust Deed and forming part of a Series.

"Transaction Documents" means, in relation to a Tranche:

- (a) this Deed;
- (b) unless specified otherwise in the relevant Supplemental Trust Deed for a Tranche, the Guarantee and the Agency Agreement; and
- (c) any other documents specified as such in the relevant Supplemental Trust Deed.

"Treasury Product" means a currency or interest rate swap, interest cap collar or floor agreement, currency or interest rate option, foreign currency dealing line, or any combination of the above or any similar or substitute hedging, currency or interest rate risk management or other treasury product.

"Wholesale Series" means a Series of Bonds which is expressed in the relevant Supplemental Trust Deed to be "Wholesale Bonds" and therefore must not, in accordance with the relevant Conditions, be offered to any retail investors, and **"Wholesale Bond"** means a Bond which is part of a Wholesale Series and **"Wholesale Holder"** means a Holder of a Wholesale Bond.

"Wholly Owned Subsidiary" means a Subsidiary of the Issuer, other than a Subsidiary that is a Financial Services Entity, all of the share capital of which carrying the right to vote generally at general meetings of the Subsidiary is owned beneficially by the Issuer or a Guarantor (whether directly or indirectly).

"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:

amendment includes any replacement, waiver or temporary variation.

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.

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 present or future, actual or contingent, secured or unsecured, as principal, surety or otherwise) relating to the payment or repayment of money.

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

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 payment obligations under this Deed or any Bond.

"**outstanding**" means, in relation to Bonds issued by the Issuer, 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,

provided that, for the purposes of (1) ascertaining the right to attend and vote at any meeting of the Holders, and (2) the exercise of any discretion, power or authority which the Supervisor is required, expressly or impliedly, to exercise in or by reference to the interests of the Holders, those Bonds which are beneficially held by or on behalf of the Issuer or any of its Subsidiaries and not cancelled shall (unless no longer so held) be deemed not to remain outstanding.

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

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

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

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

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

a "**security interest**" includes a security interest (as construed and defined in the PPSA, but does not include a "security interest" as defined in section 17(1)(b) 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 interest.

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

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

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

1.3 **Cross-references:** In relation to any 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) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) Unless the context otherwise requires, words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders.
- (c) References to any legislation or to any provision of any legislation 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 statutory instruments issued under any such legislation or provision.
- (d) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to any party to this deed or any other document or any Holder shall include its successors or permitted assigns.
- (f) References to a time of day are references to New Zealand time unless otherwise stated.
- (g) Anything which may be done at any time may also be done from time to time.

- (h) Unless 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.

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 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). In addition, Bonds may be secured or unsecured as specified in, and shall in any event be subject to, 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 under a regulated offer or in accordance with clause 19 of schedule 1 of the FMC Act (being Retail Bonds); or
- (b) is not permitted to be offered to any retail investors (being Wholesale Bonds),

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

2.4 **Listing:** Bonds may be Listed or unlisted as specified in the relevant Supplemental Trust Deed or Offer Document or as otherwise provided in respect of any Series.

2.5 **Supplemental Trust Deed:**

- (a) Bonds shall be constituted by this deed as supplemented by the relevant Supplemental Trust Deed and issued in a Series. Each Tranche which forms part of a Series shall be subject to the terms and conditions set out in the 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 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 2.5, shall constitute the Conditions for the Bonds of the relevant Tranche.

2.6 **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.

2.7 **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.

2.8 **Enforcement of Holders' rights:**

(a) The Supervisor holds the following in trust for, and for the benefit of, the Retail Holders and, only to the extent expressly set out in this Deed and in the relevant Supplemental Trust Deed for a Wholesale Series, the Wholesale Holders of a Wholesale Series:

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

(b) No Retail Holder or such Wholesale Holder shall be entitled to enforce any of those 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 (other than those referred to in paragraph (a)) may enforce any of their rights or remedies under this Deed directly against the Issuer.

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

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

2.10 **Minimum Principal Amount:** Each Tranche shall 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.

2.11 **Status of Bonds:** The Bonds are and will at all times be direct, unsecured or secured, unsubordinated and unconditional indebtedness of the Issuer.

3. TITLE AND TRANSFER

3.1 **Confirmation and Title:** If required by the FMC Act or any other applicable law, the Issuer shall procure the Registrar of the relevant Bonds to issue a confirmation which complies with the FMC Act and any other applicable law and is in the form agreed between the Issuer and the Registrar of the relevant Bonds or, in respect of any Listed Bonds, a statement complying with the Listing Rules. A confirmation or statement 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.

3.2 **Form of transfer:** A Holder may transfer any Bond held by it by:

- (a) a written instrument of transfer in any commonly used form that complies with the standard form and procedures of the Registrar; or
- (b) means of the settlement system operated by NZX (in respect of any Series of Bond that is listed on any exchange operated or owned by NZX); or
- (c) instructing the Registrar to transfer the Bond into the name(s) of the transferee(s) through NZClear; or
- (d) any other method of transfer of marketable securities that is not contrary to any law and that may be operated in accordance with any Listing Rules (if applicable) and that is approved by the Issuer.

3.3 **Evidence:** Each instrument of transfer as referred to in clause 3.2 must be accompanied by:

- (a) any evidence (including legal opinions) that the Issuer or the Registrar reasonably require to prove the title of the transferor, the transferor's right to transfer the Bonds or the identity of the transferor and/or the transferee; and
- (b) if the form of the transfer is executed by some other person on behalf of the transferor or, in the case of the execution of the form of transfer on behalf of a corporation by its officers, the authority of that person to so execute that transfer,

subject, in each case, to clause 4.10 of this Deed.

3.4 **Partial transfers:** A Holder may transfer part of its interest in a Bond. However, no transfer of any part of its interest may be effected if such transfer would result in the transferor or the transferee holding or continuing to hold Bonds with an aggregate Principal Amount of less than the applicable Minimum Principal Amount (or minimum multiple thereafter).

3.5 **Fees:** The Issuer shall, and shall procure that 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.

3.6 **Selling restrictions:**

- (a) Each Holder shall only offer for sale or sell any Bond in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) Without limiting the generality of clause 3.6(a), Bonds which are expressed in the relevant Supplemental Trust Deed to be part of a Wholesale Series shall not be offered to any investors where the offer to at least one of those investors would require disclosure under the FMC Act.
- (c) No Offer Document or any advertisement 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.

3.7 **Indemnity for breach of selling restrictions:** Subject to clause 18.1, 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 3.6.

4. **REGISTER**

4.1 **Register:** The Issuer shall, at all times while Bonds are outstanding, cause the Registrar for each Series to maintain the Register for that Series in New Zealand, which must record, in respect of each Bond, the information specified in schedule 3 or such other information agreed between the Issuer and the Registrar for the relevant Bonds.

4.2 **Disclosure and Inspection:** The Issuer shall, in relation to each Series, ensure that, if a Holder of Bonds of a Series so requests, the Registrar of the relevant Bonds makes available for inspection, and provides copies of or extracts from, the Register of that Series which relates to the Bonds registered in the name of that Holder and all other information and matters required by the FMC Act and other applicable laws. The Issuer and the Supervisor may, at all reasonable times during the office hours of the relevant Registrar and subject to any applicable laws, inspect and take extracts (including electronic copies) from each Register without payment of any fee.

4.3 **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 interest or other adverse interest to which any Bond may be subject. No recognition of any trust (express, implied or constructive), encumbrance, security interest 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.

4.4 **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.

4.5 **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 Bonds 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 thereafter), the Registrar of the relevant Bonds may refuse to accept the application, memorandum of transfer or other instrument (as the case may be).

- 4.6 **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 (including without limitation, whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution) 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.
- 4.7 **Tax details:** Each Holder shall give written notice to the Registrar of its country of residency for taxation purposes and, if not resident in New Zealand for taxation purposes, of whether the Holder is engaged in business in New Zealand through a branch or other fixed establishment (as that term is defined in the Income Tax Act 2007) in New Zealand.
- 4.8 **Notification by Holders:** Any change of name or address of any Holder or any change in any other information required to be inserted in any Register in respect of any Holder shall immediately be notified by the Holder to the Registrar of the relevant Bonds in writing by the Holder, or if a joint holding by all the joint Holders (and, for the avoidance of doubt, this clause does not place any obligations on the Issuer).
- 4.9 **Register compliance:** The Issuer shall comply with, and shall use all reasonable endeavours to ensure that the Registrar for each Series complies with, all statutory requirements and the requirements of this Deed relating to the keeping of the Register and the details entered in the Register. Without limiting the generality of the foregoing, the Register in respect of any Retail Series outstanding shall be audited in accordance with applicable auditing and assurance standards by the Auditors annually within 4 months of the Issuer's balance date and at such other times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements of this clause 4 are not being complied with in relation to the Register for any Retail Series.
- 4.10 **Reliance on documents:** The Issuer and the Registrar shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer or the Registrar had actual notice of such forgery or defect at the time of registration of such instrument of transfer.
- 4.11 **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.

5. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST

5.1 **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.

5.2 Payment of Principal Amount of Retail Bonds:

(a) Subject to clause 5.2(b), the Issuer shall, on the Early Repayment Date (if applicable) or 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 (or the balance thereof in respect of any Amortising Bond) in accordance with the Conditions applicable to that Retail Bond.

(b) Notwithstanding clause 5.2(a), the Issuer shall, on the Early Repayment Date (if applicable) or 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 5.2(a).

5.3 Payment of interest and other amounts on Retail Bonds:

(a) Subject to clause 5.3(b), 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.

(b) Notwithstanding clause 5.3(a), 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 Retail 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 5.3(a).

5.4 Payments in respect of Wholesale Bonds: The Issuer shall:

(a) 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; and

(b) 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.

5.5 **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 for that Amortising Bond in accordance with the Conditions applicable to that Bond.

- 5.6 **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; and
 - (b) on each Fixed Rate Bond, at the Interest Rate for that Fixed Rate Bond.
- 5.7 **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.
- 5.8 **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 specified in the applicable Supplemental Trust Deed or, if no rate is specified, 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, 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.
- 5.9 **Change of Control:**
- (a) If a Change of Control occurs, the Issuer may elect to redeem all (but not only some) outstanding Bonds in accordance with this clause 5.9. If a Change of Control occurs and the Issuer does not elect to redeem all outstanding Bonds, a Holder may elect to require the Issuer to redeem all (but not only some) of the Bonds held by that Holder in accordance with this clause 5.9.
 - (b) If a Change of Control occurs, the Issuer shall, within 10 days after that Change of Control occurs, give notice (a "**Change of Control Notice**") to Holders and the Supervisor. The Change of Control Notice shall contain the following information:
 - (i) that a Change of Control has occurred (and the nature of that Change of Control);
 - (ii) if the Issuer has elected to redeem all (but not only some) outstanding Bonds, that the Issuer has elected to redeem all of the Bonds held by each Holder on the Early Redemption Date; or
 - (iii) if the Issuer has elected not to redeem all outstanding Bonds, that each Holder may elect that the Issuer is to redeem all (but not only some) of the Bonds held by that Holder on the Early Redemption Date by completing and returning the accompanying election form to the Issuer within 20 days after the date of receipt of the Change of Control Notice; and
 - (iv) if applicable, the rights of the Issuer to redeem remaining outstanding Bonds under clause 5.9(c).
 - (c) If, after the 20 day period referred to in clause 5.9(b)(iii) has elapsed, the completed election forms returned to the Issuer in accordance with clause

5.9(b)(iii) means that subsequent to the redemption of the relevant Bonds fewer than 25% of the Bonds originally issued will remain outstanding, the Issuer may elect to redeem on the Early Redemption Date all remaining outstanding Bonds by providing notice within 10 days after the date on which the period referred to in clause 5.9(b)(iii) to those Holders who did not elect to have their Bonds redeemed has elapsed.

- (d) If the Issuer elects to redeem all outstanding Bonds pursuant to clause 5.9(b)(ii), the Issuer shall redeem each such Bond on the Early Redemption Date by payment of the Principal Amount, all accrued but unpaid interest, plus the applicable Change of Control Premium (if any).
- (e) If a Holder elects to have that Holder's Bonds redeemed by completing and returning the election form to the Issuer in accordance with clause 5.9(b)(iii) or the Issuer elects to redeem all remaining outstanding Bonds under clause 5.9(c), the Issuer shall redeem each such Bond on the Early Redemption Date by payment of the Principal Amount and all accrued but unpaid interest.

6. CALCULATION OF INTEREST

6.1 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 unless the result of that extension would be to carry the Interest Period over into another calendar month, in which event the Interest Period shall end on the immediately preceding Business Day;
 - (iii) where an Interest Period commences on the last day of a calendar month or on a day for which there is no numerically corresponding day in the month in which that Interest Period would otherwise end, the Interest Period shall (subject to paragraphs (ii) and (iv)) end on the last day of that last mentioned month; and
 - (iv) if the final Interest Period would otherwise extend beyond the Maturity Date or Early Redemption Date, it will end on the Maturity Date or Early Redemption Date (as applicable).
- (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 payable in arrear on the Interest Payment Date for that Interest Period.

6.2 Fixed Rate Bonds:

- (a) Subject to paragraph (b), 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 (as specified in the relevant Supplemental Trust Deed or Offer Document for the Series of which the Bond forms part) on each Interest Payment Date and on the Early Redemption Date.
- (b) In respect of any Fixed Rate Bond having a short or long first interest period or that is redeemed on an Early Redemption Date that is not an Interest Payment Date, the interest payable on the Bond on the first Interest Payment Date or the Early Redemption Date (as applicable) shall be calculated on the Principal Amount of that Bond on the basis of the number of days elapsed from, and including, the previous Interest Payment Date (or the First Interest Accrual Date in the case of the first interest period) to, but excluding, the first Interest Payment Date or the Early Redemption Date (as applicable), and a year of 365 days.

7. PAYMENTS

7.1 **Payment to Holder:** Payment of the Principal Amount of, and interest (if any) on, a Bond (less any amount required to be deducted in accordance with clause 8) 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 except as specified in the Conditions of the Bond.

7.2 Method of payment:

- (a) If the Issuer pays the Principal Amount of any Bond in accordance with clause 5.2(b), 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 7.2(a) will have effect in respect of any payment unless received by the Registrar on or before the Record Date for that payment. Any notice given under clause 7.2(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 7.4.

7.3 **Business Day:** Subject to clause 6.1 in the case of a Floating Rate Bond, if any Interest Payment Date or the Maturity Date of a Bond is not a Business Day for that Bond:

- (a) the due date for the payment to be made on that date will be the next following Business Day;
- (b) no additional interest is payable in respect of that delay in payment; and
- (c) all other provisions of this Deed and the relevant Agency Agreement will be read and construed accordingly.

7.4 **Unclaimed payments:**

- (a) **Retail Bonds:** In respect of any Retail Bonds, if any payment made by the Issuer to any Retail Holder of that Retail Bond to the address, or into the bank account, last specified by that Retail Holder to the Issuer or the Registrar is returned unclaimed, 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 Retail Series) be retained by the Registrar for the relevant Retail Series to be held by it for the Retail Holder concerned without any liability to invest or pay interest on that amount. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer. The Issuer will have no liability in respect of the unclaimed amount if it remains unclaimed five years after the original date of payment.
- (b) **Wholesale Bonds:** In respect of any Wholesale Bonds, if any payment made by the Issuer to any Wholesale Holder 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 Wholesale Series) be returned to the Issuer unless it is otherwise agreed between the Issuer and the Registrar for the relevant Wholesale Bonds that such unclaimed monies are to be retained by the Registrar. The Issuer will have no liability in respect of the unclaimed amount if it remains unclaimed five years after the original date of payment.

7.5 **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 under any applicable law (including any law relating to preferences or insolvency), that payment will be deemed not to have discharged or affected the liability of the Issuer in respect of which that payment was made. In that event the relevant Holder and Issuer will be restored to the position in which each would have been, and be entitled to exercise all the rights which each would have had, if such payment had not been made.

8. TAXES

8.1 **Deductions or withholdings:** 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 8) 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 8) without deduction or withholding on account of any other amount whether by way of set-off or otherwise.

8.2 **Non-resident withholding tax:** Where the Approved Issuer Levy regime is not applied, New Zealand non-resident withholding tax will be deducted from payments of interest or payments deemed by law to be interest to any Holder (including, if applicable, any person who beneficially derives interest under the relevant Bond) who is non-tax resident. Unless otherwise stated in the relevant Offer Document or the relevant non-tax resident Holder notifies the Issuer that it elects that non-resident withholding tax be deducted from payments to it instead of Approved Issuer Levy (and has not, at least five Business Days prior to the relevant payment, revoked such notice), if the Issuer is lawfully able to apply the Approved Issuer Levy regime to a payment of interest (or deemed interest) to non-tax resident Holders, and elects to do so in respect of any Series, then:

- (a) if the relevant Bonds meet the requirements of section 86IB of the Stamp and Cheque Duties Act 1971, the Issuer, or the Registrar for the relevant Series on its behalf, shall make the payment of interest (or deemed interest) without deduction or payment of non-resident withholding tax or Approved Issuer Levy; or
- (b) if the relevant Bonds do not meet the requirements of section 86IB of the Stamp and Cheque Duties Act 1971, the Issuer, or the Registrar for the relevant Series on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct and retain for its own benefit an amount equal to the amount so paid from the interest (or deemed interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment at the rate otherwise applicable.

8.3 **Resident withholding tax:** New Zealand resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond) who is tax resident unless the Holder is able to establish to the satisfaction of the Issuer, or the Registrar for the relevant Series on its behalf, either by means of an appropriate exemption certificate or otherwise before the Record Date for the relevant payment that no such tax need be deducted.

8.4 **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 8.2 or 8.3 or on account of any deduction it is required to make under FATCA (contained in section 1471 to 1474 of the US Internal Revenue Business Code of 1986 and the Intergovernmental Agreement between New Zealand and the US signed on 12 June 2014) and any payment required in connection with that deduction. 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 under the relevant Bond), or to make any deduction under FATCA, then the Registrar for the relevant Series and the Issuer shall be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Registrar for the relevant Series or the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Registrar for the relevant Series or the Issuer and may be withheld from any further payments to that Holder. Nothing in this

clause 8.4 will prejudice or affect any other right or remedy of the Registrar for the relevant Series or the Issuer.

8.5 **Maximum rate:** Deductions or withholdings in respect of taxes will be made at the maximum rates from time to time applicable unless a Holder (or, if applicable, any person who beneficially derives interest under the relevant Bond) provides evidence to the Issuer or the Registrar for the relevant Series (acceptable to it) that a lesser rate or an exemption is applicable.

8.6 **Tax status:** The Issuer and the Registrar for the relevant Series shall be entitled for the purposes of this clause 8 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, tax residency or address, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Bonds.

9. REPRESENTATIONS AND WARRANTIES

9.1 **Representations and warranties:** The Issuer represents and warrants to the Supervisor 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;
- (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;
- (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;
- (e) **No violation:** the execution and performance by it of its obligations under this Deed do not (and the Bonds when issued, will 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; and
- (f) **Power to issue Bonds:** in relation to each issue of Bonds, it has the power, all necessary authorisations and has taken all necessary corporate and other action to authorise the relevant issue of Bonds.

9.2 **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.

9.3 Repetition:

- (a) The representations and warranties contained in clause 9.1 (except clause 9.1(f)) shall be deemed to be repeated for the benefit of the Supervisor and the Holders on the Issue Date and each Interest Payment Date of each Bond.
- (b) The representation and warranty contained in clause 9.1(f) shall be deemed to be repeated for the benefit of the Supervisor and the Holders on the Issue Date for the relevant Bonds only.
- (c) In respect of a Series, the representations and warranties referred to in clause 9.2 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.

10. UNDERTAKINGS

10.1 **General undertakings:** The Issuer undertakes to the Holders and the Supervisor that it will, for so long as any Bonds are outstanding:

- (a) **Notify Event of Default:** promptly upon becoming aware of the occurrence of any Event of Default notify the Supervisor and, in the case of any Wholesale Series, the Wholesale Holders (via the Registrar) of the Event of Default;
- (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 and, in the case of any Wholesale Series, the Wholesale Holders, 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) **Business:** not make any change in its business or operations (excluding, for the avoidance of doubt, acting as a holding company for any Financial Services Entity) which would constitute a material change to the business or operations of the Consolidated Group taken as a whole;
- (e) **Compliance with laws:** in respect of each Retail Series issued by the Issuer, comply with the provisions of the FMC Act, the FMC Regulations and all other laws applicable to that Series and (other than where failure to do so would not have a material adverse effect) with all other applicable laws;
- (f) **Authorisations:** obtain, effect and promptly renew from time to time all authorisations required under any applicable law to enable it to perform and comply fully with the conditions for that series or required on its part for the validity or enforceability of this Deed or any Transaction Document;
- (g) **Offer Document:** not issue an Offer Document in respect of the issue of Bonds without prior notice to the Supervisor, and not include any statement in any such Offer Document, or any advertisement (as defined in the FMC Act) for any Bonds, concerning the Supervisor, without the prior consent of the Supervisor; and

- (h) **Transactions with Related Persons:** not, and will ensure that each other member of the Borrowing Group will not:
- (i) dispose of any assets to, or enter into any contract or arrangement for the provision of any services or assets to, a Related Person, other than in a bona fide transaction for proper value and on reasonable commercial terms which would apply between persons dealing on an arm's length basis;
 - (ii) purchase any assets from, or enter into any contract or arrangement for the provision of any assets or services by, a Related Person, other than in a bona fide transaction for proper value and on reasonable commercial terms which would apply between persons dealing on an arm's length basis; or
 - (iii) make any loan to or investment in, give any guarantee or indemnity to or in respect of the obligations of, purchase or subscribe for any shares in, or otherwise provide any financial assistance to or for the benefit of, any Related Person, other than:
 - (aa) in connection with any bona fide employee share purchase scheme, and to or for the benefit of an employee or to or for the benefit of the trustee, supervisor, manager or administrator of that scheme;
 - (bb) where the aggregate amount of all such loans, investments, guarantees, indemnities, shares and assistance (the amount in respect of any guarantee or indemnity being the face amount thereof), excluding those referred to in paragraph (aa), does not exceed 5% of Total Tangible Assets of the Consolidated Group; or
 - (cc) provided no Event of Default (nor any other event or circumstance which with the lapse of time, giving of notice or fulfilment of any other condition would constitute an Event of Default) has occurred and is continuing, by way of investment in any Subsidiary that is a Financial Services Entity.

10.2 **Financial Covenants:** The Issuer undertakes to the Holders and the Supervisor that, for as long as the Bonds are outstanding, it will:

- (a) **Borrowing Group Cover:** procure that:
- (i) Total Tangible Assets of the Borrowing Group are, at all times, not less than 90% of the Total Tangible Assets of the Consolidated Group; and
 - (ii) when calculated for the 12 month period ending on an annual or semi-annual balance date of the Issuer, Non Borrowing Group EBIT does not exceed 10% of EBIT;

- (b) **Negative Pledge:** not, unless the Supervisor has consented otherwise, create or permit to exist a security interest over or affecting any of the assets of an Obligor, if:
- (i) Total Prior Ranking Debt (including Temporary Prior Ranking Debt) exceeds 10% of Total Tangible Assets of the Consolidated Group; or
 - (ii) Total Prior Ranking Debt (excluding Temporary Prior Ranking Debt) exceeds 5% of Total Tangible Assets of the Consolidated Group;
- (c) **Total Debt to Total Debt Plus Equity Ratio:** will ensure that, unless the Supervisor has consented otherwise, the ratio (expressed as a percentage) borne by Total Debt to Total Debt plus Shareholders' Funds shall not exceed the following at any time during the following periods:
- (i) financial year ending 31 July (or thereabout, being the Sunday closest to the July period end), 50%,
- provided that the ratio not to be exceeded during the following periods shall be as set out below:
- (ii) quarter ending 31 October (or thereabout, being the Sunday closest to the October period end), 60%; and
 - (iii) month ending 30 November (or thereabout, being the Sunday closest to the November period end), 60%; and
- (d) **Interest Cover:** will ensure that, unless the Supervisor has consented otherwise, when calculated for the 12 month period ending on an annual or semi-annual balance date of the Issuer, EBIT is at least 200% of Net Interest.

10.3 **Undertakings in respect of each Series:** In respect of each Series, the Issuer undertakes to the Holders of that Series, and where that Series is a Retail Series the Supervisor, that it 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 reasonable endeavours to ensure that the Registrar for that Series also does so;
- (c) **Registrar:** give notice to the Holders of that Series, and where that Series is a Retail Series 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 a 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) **Quotation:** if the Offer Document for any series of Bonds indicates that those Bonds are intended to be Listed, use its best endeavours to ensure that those Bonds are, within a reasonable time, quoted on the NZX Debt Market or any

alternative or successor recognised stock exchange and that such quotation is maintained.

10.4 **Reports and information:** The Issuer undertakes to the Supervisor that, so long as any Retail Bonds of the Issuer are outstanding, the Issuer will deliver or cause to be delivered to the Supervisor:

- (a) **Annual financial statements:** not later than 120 days (or such other time as is prescribed under the Listing Rules) after the end of each of its financial years, a copy of the latest Financial Statements for the Issuer (including Balance Sheet and Profit and Loss Statement) as at the end of and for that financial year and duly audited;
- (b) **Interim financial statements:** not later than 90 days (or such other time as is prescribed under the Listing Rules) after the end of each of its financial half-years, a copy of the latest Financial Statements for the Issuer (including Balance Sheet and Profit and Loss Statement) as at the end of and for that financial half-year;
- (c) **Directors' Report:** not later than the times of delivery of the latest Financial Statements for the Issuer pursuant to clauses 10.4(a) or 10.4(b), a separate Directors' Report signed by two Directors, or one Director and the Chief Financial Officer of the Issuer, stating the matters referred to therein as at the end of and in respect of such year or half-year, as the case may be;
- (d) **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) all documents and records relating to the Issuer; and
 - (ii) any other reports or information required by the Supervisor (or other authorised person).

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

- (e) **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) 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;
- (f) **Serious financial problems:** if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent, as soon as practicable:
 - (i) 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;
- (g) **Auditors' report:** at the same time as the audited latest Financial Statements for the Issuer are provided in accordance with clause 10.4(a), a separate report by the Auditors in respect of each Retail Series stating:
- (i) whether, in the course of performing their duties as Auditors, they have become aware of:
 - (aa) any non-payment of interest or any breach of the provisions of this Deed, and if so giving particulars thereof; or
 - (bb) 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;
 - (ii) whether they, as Auditors, have audited the Register for each Retail Series issued by the Issuer for whom they act as auditors, 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;
 - (iii) whether their audit has disclosed any matter, and if so giving particulars thereof, calling in their opinion for further investigation by the Supervisor in the interests of the Retail Holders;
 - (iv) that they have read paragraphs 3.8 and 3.9 of the Director's Report for the relevant reporting period and:
 - (aa) in relation to each such report delivered in respect of a full financial year of the Issuer, the statements made in paragraphs 3.8 and 3.9 of the Director's Report are fairly stated based on information that has been correctly extracted from the most recent audited Financial Statements for the Issuer ; or
 - (bb) in relation to each such report delivered in respect of a financial half year of the Issuer, they have observed nothing in the course of performing their review engagement in relation to the unaudited interim Financial Statements that leads them to believe that the statements made in paragraphs 3.8 and 3.9 of the Director's Report are not fairly stated based on information correctly extracted from the most recent unaudited interim Financial Statements for the Issuer;
 - (v) that they have perused the 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 reasonable and the statement as to facts made in the Directors' Report are not fairly stated; and

- (vi) the aggregate Principal Amount of Bonds in each Retail Series on issue and outstanding.

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

- (h) **Negative Pledge certificate:** within 45 days after the end of the quarters ending on or about 30 April and 31 October in accordance with the merchandising calendar adopted by the Issuer, a copy of each certificate delivered by the Issuer pursuant to clause 6.4(c) of the Negative Pledge in respect of those quarters.

11. APPOINTMENT OF AUDITOR

11.1 Consultation with Supervisor: The Issuer must:

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

11.2 Specified Engagement: The Issuer must, before recommending the appointment or reappointment of a person as the Auditor:

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

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

- (a) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, in order to allow the Supervisor an

opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and

- (b) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement.

12. DEFAULT

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

- (a) **Non-payment:** default is made by an Obligor in the payment when due of:
- (i) the Principal Amount of any Bonds on the Maturity Date or other scheduled date for repayment and the default continues for a period of 3 Business Days after the date when due; or
 - (ii) any interest on the relevant Interest Payment Date and the default continues for a period of 3 Business Days after the date when due; or
 - (iii) any other amount due in respect of any Bond and the default continues for a period of 10 Business Days after the date when due; or
- (b) **Other breach:** default is made by an Obligor in the performance or observance of any material undertaking contained in any Transaction Document to which that Obligor is a party applicable to any Bond and:
- (i) in respect of any such default which is capable of being remedied, is not performed or observed within the period of 30 days after the Issuer becoming aware of that default; and
 - (ii) such default has or is likely to have, in the reasonable opinion of the Supervisor, a material adverse effect; or
- (c) **Misrepresentation:** any representation, warranty or statement made or deemed to be repeated by an Obligor in any Transaction Document to which that Obligor is a party is or was untrue or incorrect in a material respect when made or deemed to be repeated and, in respect of any such misrepresentation which is capable of being remedied, such misrepresentation is not remedied within 60 days of the Issuer becoming aware of that misrepresentation; or
- (d) **Cross Default:** any indebtedness for or in respect of borrowed money of an Obligor of or in excess of \$5,000,000 in aggregate (or its equivalent in other currencies):
- (i) is not paid within any applicable grace period or (if no grace period applies) when due; or
 - (ii) becomes due before it would otherwise have been due by reason of any default or event of default (howsoever described); or

- (e) **Enforcement of Security:** a security interest over or affecting an asset of an Obligor and securing an amount of or in excess of \$5,000,000 in aggregate (or its equivalent in other currencies) is enforced; or
- (f) **Cessation of business or dissolution:** the Issuer or a Material Guarantor ceases or threatens to cease to carry on all or substantially all of its business or operations, or an application or an order is made, or a resolution is passed or proposed, for the dissolution of the Issuer or a Material Guarantor except:
 - (i) in the case of a Material Guarantor, where all or substantially all of the assets of the Material Guarantor are distributed to the Issuer or another Guarantor;
 - (ii) in any case, for the purpose of, and followed by:
 - (aa) an amalgamation between the Issuer and one or more Guarantors or between Guarantors; or
 - (bb) an amalgamation or solvent reconstruction on terms previously approved in writing by the Supervisor; or
 - (iii) in any case, if the application or order is:
 - (aa) being made by a person other than the Issuer or the Material Guarantor (as applicable) or any officer of the Issuer or the Material Guarantor (as applicable); and
 - (bb) being challenged by the Issuer or the Material Guarantor (as applicable); and
 - (cc) discharged within 30 days; or
- (g) **Receiver:** a receiver, liquidator, provisional liquidator or administrator 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 a Material Guarantor; or
- (h) **Insolvency:** the Issuer or a Material Guarantor is unable or admits inability to pay its debts as they fall due or suspends making payments on any of its debts, is declared or becomes insolvent or is deemed under any applicable law to be unable to pay its debts when they fall due; or
- (i) **Statutory management:** a statutory manager is appointed to the Issuer or a Material Guarantor pursuant to the Corporations (Investigation and Management) Act 1989, or a recommendation is made by the Financial Markets Authority to the Minister of Commerce and Consumer Affairs supporting such an appointment; or
- (j) **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 by the Issuer:

- (A) **Wholesale Series:** a Wholesale Holder may, without prejudice to any other remedies which that Holder may have:
- (1) where that Event of Default occurs under clause 12.1(a) in relation to a Bond held by that Holder, declare all (but not some only) of the Bonds held by that Holder to be immediately due and payable by notice in writing to the Issuer; or
 - (2) where that Event of Default occurs under any other paragraph of this clause 12.1, subject to any negotiation provisions (including any negotiation period) contained in the relevant Supplemental Trust Deed, if the Holders of all Series of Wholesale Bonds (or in the case of clause 12.1(j), the Holders of the Bonds of the relevant Wholesale Series) resolve by Special Resolution to do so, declare all (but not some only) of the Bonds held by that Holder to be immediately due and payable by notice in writing to the Issuer; and/or
 - (3) in any case, and without limiting the Holder's ability to make demand under the Guarantee and exercise all its rights under the Guarantee at any other time, make demand under the Guarantee and exercise all the Holder's rights under the Guarantee; and
- (B) **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 a Series of Retail Bonds issued by the Issuer:
- (1) declare the Principal Amount of the Bonds of that Series, together with accrued interest thereon to be immediately due and payable by notice in writing to the Issuer; and/or
 - (2) without limiting clause 15.3(g), make demand under the Guarantee and exercise all its rights under the Guarantee.

12.2 **Distribution of funds in respect of Bonds:** All moneys received by the Supervisor from or on behalf of the Issuer in respect of 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, 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 Holders of Bonds, rateably in proportion to the Bond Monies owing to them in respect of the Bonds held by them; and
- (c) thirdly, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

13. APPOINTMENT OF SUPERVISOR

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

- (a) acting on behalf of the Holders in relation to:
 - (i) the Issuer;
 - (ii) any matter connected with this Deed; and
 - (iii) any contravention or alleged contravention of the Issuer Obligations; and
- (b) supervising the Issuer's performance:
 - (i) of its Issuer Obligations; and
 - (ii) in order to ascertain whether the assets of the Issuer are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the Principal Amount, interest and other monies payable on, or in relation to the 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 2011, this Deed and the other Transaction Documents.

14. SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES

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

14.2 **Expenses:**

- (a) The Issuer shall pay or cause to be paid 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 the preparation, signing and (if applicable) registration of this Deed.
- (b) 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:
 - (i) the preparation, signing and (if applicable) registration of each Supplemental Trust Deed and each Offer Document relating to Bonds to be issued by the Issuer;
 - (ii) 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 in respect of the Bonds issued by the Issuer; or
 - (iii) any waiver, consent or other action requested by the Issuer.

- 14.3 **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 otherwise in the exercise of any Supervisor Power in relation to Bonds issued by the Issuer, including taking of any expert advice deemed reasonably necessary or expedient by the Supervisor.
- 14.4 **Indemnity by Issuer:** Subject to clause 18.1, without prejudice to the right of indemnity by law given to supervisors or trustees, 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 in relation to Bonds issued by the Issuer.
- 14.5 **Indemnity by Holders:** The Supervisor is not required to take any action or exercise any Trust Power or comply with any request or direction pursuant to this Deed (whether or not it is expressed to be bound to do so) unless it has first been indemnified to its satisfaction by the Holders against all expenses, losses and liabilities it may reasonably sustain or incur by so doing.
- 14.6 **Payments:** The fees, expenses, indemnities and other amounts payable under this Deed to the Supervisor form part of the Bond Monies and 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 under clause 5.8 until paid.

15. SUPERVISOR'S POWERS

- 15.1 **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 or trustees by law in relation to Bonds and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the Holder of any Bond or the security for any Bond.
- 15.2 **Wholesale issues:**
- (a) The Supervisor shall have no duties or obligations in relation to any Wholesale Series or to any Holder of Wholesale Bonds except the duties and obligations expressly set out in the Conditions for any Wholesale Bonds and accepted in writing by the Supervisor.
 - (b) Where any authorisation or direction in respect of the taking of any action or other matter may, under the provisions of this Deed, be given to the Supervisor by a resolution of the Holders of Wholesale Bonds, the Supervisor may act in reliance upon such authorisation or (as the case may be) shall act in accordance with any such direction, and shall not be responsible for any costs, damages, expenses, liabilities or inconvenience that may result from the action so taken in reliance thereon, provided that the Supervisor shall not be so bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, damages, expenses and liabilities which it may incur by so doing.
- 15.3 **Retail Series:** In relation to each Retail Series the Supervisor shall, in addition to any powers provided by law or by the security for any Bonds which are secured, have the following powers and duties, subject to the terms of the Supplemental Trust Deed in relation to the 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.
- (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 Guarantor 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 18.1, 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 the Issuer breaches any Issuer Obligation in respect of a Retail Series, the Supervisor shall, unless it is satisfied that such breach will not have a material adverse effect on the Holders of that Retail Series, be entitled in its absolute discretion to require the Issuer to report to those 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 Holders, and invite those 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 within 30 days 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 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) **Deed of Guarantee:** The Supervisor has the power to make demand under the Guarantee and to exercise all other rights under the Guarantee.
- (h) **Engage experts:**
 - (i) The Supervisor may engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:
 - (aa) determine the financial position of the Issuer; or
 - (bb) review the business, operation, or management systems, or the governance, of the Issuer,
 - (ii) If the Supervisor engages an expert under this clause 15.3(h):
 - (aa) the Issuer must provide reasonable assistance to the expert to allow the expert to provide the assistance under subsection 15.3(h)(i); and
 - (bb) the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the Issuer.

16. EXERCISE OF SUPERVISOR'S POWERS

- 16.1 **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 in accordance with sections 112 and 113 of the FMC Act); and
 - (b) may refrain from exercising any Trust Power until directed by Special Resolution of Holders or of the affected Class of Holders to do so.
- 16.2 **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 reasonably 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.

16.3 **Delegation:** The Supervisor, whenever it reasonably believes it expedient in the interests of the relevant Holders to do so, may:

- (a) where permitted to do so by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011, delegate at any time to any person any of the 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
- (b) authorise any person as it thinks fit to act as its representative at any meeting.

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

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

16.6 **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.

16.7 **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 their Subsidiaries and may accept fees or other consideration for services without having to account to the Holders.

16.8 **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.

16.9 **Listing Rules:** The Supervisor shall not be required to monitor compliance by the Issuer or any other party with the Listing Rules and, in the absence of notice to the contrary from the Issuer or NZX, shall be entitled to assume that the Issuer is so complying. In the event of non-compliance with 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.

17. REPLACEMENT OF SUPERVISOR

17.1 **Resignation or removal of Supervisor:** Subject, in the case of resignation or removal under paragraphs (a), (b) or (d) below, to clause 17.2 below:

- (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 Supervisor may be removed by the Financial Markets Authority or the Issuer under Part 2 of the Financial Markets Supervisors Act 2011; or
- (d) the Holders may remove the Supervisor from office upon the passing of a Special Resolution of Holders to that effect.

17.2 **Requirements for Retirement and Removal:** The Supervisor may not:

- (a) be removed or resign under subsections 17.1(a), (b) or (d) unless:
 - (i) all functions and duties of the position have been performed;
 - (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
 - (iii) the court consents; and
- (b) be removed by the Issuer under clause 17.1(b) without:
 - (i) the Financial Market Authority's consent; and
 - (ii) the approval by a Special Resolution of Holders.

17.3 **Appointment of new Supervisor:** If any of the circumstances described in clause 17.1(a) to (d) occur, the Issuer will, subject to clauses 17.2(a)(i) and (iii) and 17.2(b) (where applicable), have the right to appoint a successor Supervisor, which must be a person who is authorised to act as a supervisor under the Financial Markets Supervisors Act 2011.

17.4 **Approval by Special Resolution:** Where at any time there are Bonds outstanding under this Deed, then the appointment of any successor Supervisor pursuant to clause 17.3, shall be subject to approval by a Special Resolution of Holders.

17.5 **Failure to appoint Supervisor:** If the Issuer fails to call a meeting of Holders in accordance with this clause 17, or to exercise the power vested in it by this clause of appointing a new Supervisor, within 60 days after:

- (a) receiving notice of the Supervisor's intention to resign in accordance with clause 17.1(a), the resigning Supervisor may, subject to approval by Special Resolution, exercise such power to the exclusion of the Issuer; or
- (b) the Supervisor is removed in accordance with clause 17.1(b), (c) or (d), the Holders may by Special Resolution, exercise such power to the exclusion of the Issuer.

- 17.6 **Successor Supervisor:** Upon the acceptance of any appointment under this clause 17 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.
- 17.7 **Execution of documents:** Upon the acceptance of any appointment under this clause 17 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.
- 17.8 **Notice:** The Issuer shall notify all Holders, of the appointment of any new supervisor as soon as reasonably practicable following such appointment.

18. LIABILITY OF SUPERVISOR

- 18.1 **Supervisor not indemnified:** No provision of this Deed shall have the effect of indemnifying the Supervisor against liability where the Supervisor fails to:
- (a) act honestly in acting as a supervisor;
 - (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Holders;
 - (c) exercise reasonable diligence in carrying out its functions as a supervisor; or
 - (d) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.
- 18.2 **Duty of care:** 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 or any other person other than the Holders (subject to and in accordance with this Deed) in exercising the Supervisor Powers, and shall not be liable 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.

19. BENEFIT OF DEED

- 19.1 **Benefit:** 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 Deed for that Series) is made for the benefit of, and subject to clause 2.8 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.

20. AMENDMENTS

20.1 **Limited right to amend:** Any amendment to this Deed or the Guarantee must be in writing signed by the Issuer and the Supervisor. While any Bonds are outstanding, the provisions of this Deed or the Guarantee may not be amended or replaced unless the amendment or replacement is made:

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

20.2 **Supervisor consent:** The Supervisor must not consent to an amendment to, or a replacement of, this Deed or the Guarantee unless:

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

20.3 **Holder consent:** The approval of the Holders for the purposes of clause 20.2(a)(i) must be the approval of a Special Resolution of:

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

20.4 **Single Meeting:** Where an amendment requiring approval of the Holders pursuant to clause 20.2(a)(i) 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.

20.5 **Notice:** Notice of any:

- (a) proposed variation under clause 20.2(a)(i) 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; and
- (b) amendment under clause 20.2(a)(ii) shall be provided to the relevant Holders within 30 days of the amendment being made.

21. WAIVER

21.1 **Temporary Variation:** Subject to clause 20 (if applicable) and any applicable law and except to the extent expressly provided otherwise in the Conditions applicable to any Bond, the Supervisor in respect of any Retail Series, or the Wholesale Holders by Special Resolution in respect any Wholesale Series, may, with the consent of the Issuer, 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 the interests of the affected Retail Holders generally will not be materially and adversely prejudiced thereby; or
- (b) may be agreed by the Trustee pursuant to and in accordance with clause 21.3.

21.2 **Waivers:** Subject to clause 20 (if applicable) and any applicable law and except to the extent expressly provided otherwise in the Conditions for any Bonds, the Supervisor in respect of Retail Series if it is satisfied that the interests of the Retail Holders generally will not be materially prejudiced thereby, and shall if so directed by a Special Resolution of Retail Holders, or the Wholesale Holders by Special Resolution in respect any Wholesale Series, may 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, or either of them, of this Deed or any Conditions of any Bonds.

21.3 **Exemptions:** Subject to clause 20 (if applicable) and any applicable laws and except to the extent expressly provided otherwise in the Conditions for any Bonds, 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 FMC Regulations, the Companies Act, the Financial Reporting Act, or any other applicable law which is materially the same as or analogous to any obligation of the Issuer under this Deed or any Bonds; and
- (b) two Authorised Officers 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 Holders,

then the Supervisor in respect of any Retail Series, or the Wholesale Holders by Special Resolution in respect any Wholesale Series, may 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.

22. MEETINGS AND RESOLUTIONS OF BONDHOLDERS

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

22.2 **Resolutions of Holders:** Regulation 78 of the FMC Regulations does not apply to this Deed. Any matter relating to this Deed or the Bonds may be agreed or approved by the relevant Class of Holders by signing (in any number of counterparts) a memorandum in writing, recording the matter so agreed or approved in accordance with regulation 16 of schedule 1.

23. NOTICES

23.1 **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 email, letter or by public notice (including, but not limited to, a leading daily newspaper of general circulation in New Zealand) and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to the recipient at the address (if not via public notice), and marked for the attention of the person (if any), from time to time designated by the recipient to the other for the purposes of this Deed or the Bonds;
- (c) **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;
 - (ii) (if given or made by email) when dispatched in tangible, readable form by the sender to the email address advised by the recipient from time to time; or
 - (iii) (if given or made by public notice) upon the release, circulation or publishing of that notice,

provided that any notice or communication received or deemed received after 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.

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

(a) **The Warehouse Group Limited:**

26 The Warehouse Way
 Northcote, Auckland 0627
 PO Box 33470, Takapuna
 Auckland 0740, New Zealand

Telephone: +64 9 489 7000
 Email: bmoors@twl.co.nz
 Attention: Kerry Nickels

(b) The New Zealand Guardian Trust Company Limited:

Level 15
191 Queen Street
Auckland

Telephone: +64 9 909 5100
Email: ct-auckland@nzgt.co.nz
Attention: General Manager, Corporate Trusts

(c) The Holders:

The address of each Holder last entered in the Register.

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

24. GENERAL

24.1 **Registration of deed:** If the Issuer proposes to issue a Series, it shall promptly, at its own cost, lodge this Deed, the relevant Supplemental Trust Deed in respect of that Series and any amendment to this Deed or such Supplemental Trust Deed as required by the FMC Act and/or any other applicable law and shall pay all costs and expenses incidental to doing so.

24.2 **Waivers and remedies:** A provision of this Deed has no effect to the extent that it contravenes, or is inconsistent with, the FMC Act, the FMC Regulations or any term implied into this Deed by the FMC Act or the FMC Regulations. 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.

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

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

24.5 **Documents:** The Issuer must:

- (a) make copies of this deed, the relevant Supplemental Trust Deed, the Offer Documents relating to Bonds held by the relevant Holder and the Agency Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series available for inspection during usual business hours by any Holder at the 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 23.2(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; and

- (b) in relation to a Retail Series, retain, make available for inspection, provide and deliver copies of any document or information as required by, and in accordance with, the FMC Act for such fee as permitted by the FMC Act.

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

24.7 **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.

24.8 **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).

25. GOVERNING LAW

25.1 **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.

25.2 **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.

26. RELEASE


26.1 Upon being indemnified to its satisfaction pursuant to clause 14 and upon proof being given to the reasonable satisfaction of the Supervisor that all sums owing or outstanding in respect of the Bonds or otherwise under this Deed have been paid or satisfied or that provision for such payment or satisfaction has been made and upon payment or retention of all costs, charges and expenses incurred by, or payable to, the Supervisor in relation to this Deed and the remuneration of the Supervisor and all other money payable hereunder the Supervisor shall, at the request and cost of the Issuer, execute a deed of release of this Deed and shall thereupon retire.

SIGNED AS A DEED

The Issuer

THE WAREHOUSE GROUP LIMITED

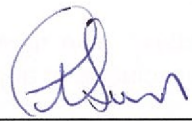
by:



Signature of director

(Deano) Keith Van Allen

Name of director

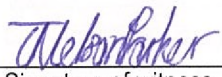


Signature of director/authorised signatory

Keith Raymond Smith

Name of director/authorised signatory

and witnessed by:



Signature of witness

Tim Nelson-Parker

Name of witness

Auckland

City/town of residence

Solicitor

Occupation

The Supervisor

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



Signature of authorised signatory

HRVOJE KOPRIVCIC

Name of authorised signatory



Signature of authorised signatory

ASIF SALEEM

Name of authorised signatory

and witnessed by:



Signature of witness

Alice Smith

Name of witness

ACT 308

Auckland

City/town of residence

Solicitor

Occupation

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.

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

"**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.

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, convene a meeting of the Holders of the Bonds. 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 of Bonds.

2.4 **By Supervisor:** The Issuer shall, at the request in writing of the Supervisor, in relation to any Class of Retail Bonds, convene a meeting of Holders of that 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 of Retail Bonds. The Supervisor shall not be obliged to request 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 Auckland or at such other place or in such manner (including, but not limited to, use of video conferencing technology) 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 of Holders is sent to the following at least 15 Business Days before the meeting:

- (a) every Holder entitled to receive notice of the meeting;
- (b) the Supervisor; 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 Business 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 Business 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 of Holders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

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 Representatives are present who hold Bonds with a combined Principal Amount of no less than 25% of the Principal Amount of the Bonds held by those persons who are entitled to vote on the business to be transacted by the meeting.

4.3 A quorum for any other business at a meeting of Holders is present if Holders holding at least 10% of the Principal Amount of the Bonds are present in person or by Representative and in any case at least 2 Holders or their Representatives must be present.

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

(a) in the case of a meeting called under section 120(1)(b) or (c) or 161(1)(b) or (c) of the FMC Act, the meeting is dissolved; and

(b) in the case of any other meeting, the meeting is adjourned to the day that is 10 Business Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor or may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their Representatives present are a quorum.

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 **Series:** A person nominated by the Supervisor (or by the Issuer in respect of a Wholesale Series) shall preside at every meeting of 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:

(a) director, officer or solicitor, auditor or accountant of the Issuer;

(b) person appropriately authorised by the Issuer;

(c) director, officer or solicitor of the Supervisor;

- (d) person appropriately authorised by the Supervisor;
- (e) Holder; or
- (f) the Registrar,

may attend any meeting and all such persons will have the right to speak at the meeting.

For the avoidance of doubt, a director, officer or solicitor of the Supervisor or a person appropriately authorised by the Supervisor has the right to speak at a meeting in regards to any part of the business of the meeting that concerns the Supervisor's functions or the Holders for whom the Supervisor is acting.

7. 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 the Supervisor 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 from the payment of all or any part of the moneys payable pursuant to this Deed or the Bonds;
 - (b) sanction any request from the Issuer for the exchange of the Bonds for, or the conversion of the Bonds into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
 - (c) postpone or, with the concurrence of the Issuer, to accelerate the day when the Principal Amount of any Bonds becomes payable and to suspend or postpone for a time the payment of interest on any Bonds;
 - (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against the Issuer or its assets however those rights arise;
 - (e) assent to any amendment to the terms of this deed or the relevant Supplemental 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 the Supervisor under any of the provisions of this deed or the relevant Supplemental Trust Deed;
 - (g) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation where such sanction is necessary;

- (h) 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; and
- (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; and
- (d) a resolution which affects more than one Class of Bonds and gives or may give rise to a conflict of interest between the Holders of any of the Classes so affected is deemed to have been duly passed if passed at separate properly convened and held meetings of the Holders of each Class so affected or pursuant to regulation 16.

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' REPORT

1. This report is given by the undersigned Directors of, **THE WAREHOUSE GROUP LIMITED** ("**Issuer**") pursuant to clause 10.4(c) of the Master Trust Deed dated 7 May 2015 between the Issuer and The New Zealand Guardian Trust Company as supervisor ("**Trust Deed**") in connection with [**specify relevant Retail 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 payment obligations under the Trust Deed and the Bonds or which adversely affects the Holders};
 - 3.2 the Issuer has observed and complied with all payment obligations under the Trust Deed and any relevant Supplemental Trust Deed in respect of 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 all of its payment obligations under 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 Issuer is in compliance with all of its Issuer Obligations;

{If any such matter has occurred, set out the particulars of the matter and, if appropriate, details of how it has been, or is proposed to be, remedied.}
 - 3.5 the Principal Amount of 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}
 - 3.6 all interest due on the Bonds has been paid;
 - 3.7 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}
 - 3.8 each financial covenant set out in clause 10.1 of the Trust Deed relating to the Bonds has been complied with in accordance with its terms, and that the following are correct:

- (i) as at [●] Total Tangible Assets of the Borrowing Group (being \$[●]) were [●]% of the Total Tangible Assets of the Consolidated Group (being \$[●]), which is not less than 90%;
- (ii) Non Borrowing Group EBIT for the 12 month period ending on [●] (being \$[●]) was [●]% of EBIT (being \$[●]) for the 12 month period ending on [●], which does not exceed 10%;
- (iii) as at [●] Total Prior Ranking Debt (including Temporary Prior Ranking Debt) (being \$[●]) was [●]% of Total Tangible Assets of the Consolidated Group (being \$[●]), which does not exceed 10%;
- (iv) as at [●] Total Prior Ranking Debt (excluding Temporary Prior Ranking Debt) (being \$[●]) was [●]% of Total Tangible Assets of the Consolidated Group (being \$[●]), which does not exceed 5%;
- (v) as at [●] Total Debt (being \$[●]) was [●]% of Total Debt plus Shareholders' Funds (being \$[●]), which does not exceed 50%;
- (vi) as at [●] EBIT (being \$[●]) was [●]% of Net Interest, which is at least 200%,

along with all financial information and calculations necessary to demonstrate the above.

- 3.9 that the Subsidiaries of the Issuer that are not Guarantors ("Non-Guarantors") are:

[insert name and details of each Non-Guarantor below]

	Total Debt	Total Tangible Assets	Shareholders' Funds	EBIT	Interest and Financing Costs
Retail Group Total Retail Group – Consolidated Group	<i>[Insert Total Debt of Retail Group]</i>	<i>[Insert Total Tangible Assets of Retail Group]</i>	<i>[Insert Total Shareholders' Funds of Retail Group]</i>	<i>[Insert Total EBIT of Retail Group]</i>	<i>[Insert Total Interest and Financing Costs of Retail Group]</i>
Financial Services Group¹ <i>[Financial Services Entity]</i>	<i>[Insert Total Debt of Financial Services Entity]</i>	<i>[Insert Total Tangible Assets of Financial Services Entity]</i>	<i>[Insert Total Shareholders' Funds of Financial Services Entity]</i>	<i>[Insert Total EBIT of Financial Services Entity]</i>	<i>[Insert Total Interest and Financing Costs of Financial Services Entity]</i>
Total Group – The Warehouse Group Limited	<i>[Insert Total Debt of Group]</i>	<i>[Insert Total Tangible Assets of Group]</i>	<i>[Insert Total Shareholders' Funds of Group]</i>	<i>[Insert Total EBIT of Group]</i>	<i>[Insert Total Interest and Financing Costs of Group]</i>

For the avoidance of doubt, Total Group represents the sum of Retail Group plus Financial Services Group.

that the figures contained in the table set out in this paragraph 3.9 have been extracted from the [audited/unaudited] accounts for the period ended [●].

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.
5. As at the Reporting Date:
- 5.1 the aggregate Principal Amount of the Bonds outstanding is \$ { }; and
- 5.2 the amount of any accrued but unpaid interest relating to the outstanding Bonds is \$ { }.

This report is given on the day of 20{ }

Director

Director / Chief Financial Officer

¹ The ratios will be calculated as if the defined terms referred to the relevant Financial Services Entity or group of such entities.

SCHEDULE 3**PARTICULARS OF BONDS IN REGISTER**

1. Series number and Tranche number
2. Type of Bond
3. Issue Date
4. First Interest Accrual Date
5. Early repayment date (if applicable)
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 Period (if relevant)
12. Interest Payment Dates
13. Details of the account to which payments in respect of the Bond are to be made
14. Transfers of the Bond
15. Cancellation of the Bond
16. Details of any resident withholding tax exemption certificates held by Holder
17. Any other information required or permitted by law

SCHEDULE 4
FORM OF SUPPLEMENTAL TRUST DEED

THE WAREHOUSE GROUP LIMITED

Issuer

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED

Trustee

**SUPPLEMENTAL TRUST DEED
IN RESPECT OF TRANCHE [•]
[FIXED/FLOATING] RATE BONDS**

RUSSELL McVEAGH

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DEED dated [•]

PARTIES

THE WAREHOUSE GROUP LIMITED a company incorporated in New Zealand ("Issuer")

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED a company incorporated in New Zealand ("Supervisor")

INTRODUCTION

This deed is a supplemental trust deed entered into pursuant to clause 2 of the Master Trust Deed to provide for the constitution and issue of the Bonds described in this Supplemental Deed.

COVENANTS

1. INTERPRETATION

1.1 **Master Trust Deed:** The terms of the Master Trust Deed (including, without limitation, the definitions, rules of construction and the miscellaneous provisions of clauses 1.1, 1.2 and 1.4 respectively of the Master Trust Deed) shall apply in this Supplemental Deed and to the Bonds constituted by this Supplemental Deed except to the extent modified in this Supplemental Deed. To that extent, or in the event of any conflict between the provisions of this Supplemental Deed and those of the Master Trust Deed, the provisions of this Supplemental Deed shall prevail over those of the Master Trust Deed.

1.2 **Additional or modified defined terms:** In this Supplemental Deed, unless the context otherwise requires:

"**Agency Agreement**" means the registry services agreement dated [•] between the Issuer and the Registrar under which the Registrar is appointed as the registrar, paying agent and, if applicable, Calculation Agent for the Bonds.

"**Bonds**" mean unsubordinated, unsecured bonds to be issued pursuant to this Supplemental Deed.

"**Interest Rate Set Date**" means the date on which the Interest Rate is determined by the Issuer [in accordance with the Offer Document].

"**Master Trust Deed**" means the master trust deed dated 7 May 2015 between the Issuer and the Supervisor.

"**Registrar**" means [•] or any successor agent appointed under the Agency Agreement.

"**this Supplemental Deed**" means this supplemental trust deed and, for the avoidance of doubt, includes the terms of the Master Trust Deed as applied herein in accordance with, and subject to, clause 1.1.

"**this Tranche**" means the Tranche of Bonds constituted by this Supplemental Deed, such Tranche to be referred to as [●].

1.3 **Modification of other terms in Master Trust Deed:** In this Supplemental Deed, the terms "**Holder**" and "**Register**" have the meanings given in the Master Trust Deed but, in this Supplemental Deed, refer only to the Holders of the Bonds and to the Register in relation to this Tranche.

2. TERMS OF BONDS

2.1 **Issue Price:** the Issue Price of each Bond is [\$1.00].

2.2 **Maximum Principal Amount:** The maximum aggregate Principal Amount of Bonds which may be issued under this Supplemental Deed is \$[●].

2.3 **Minimum Principal Amount:** The Minimum Principal Amount for each Holder is \$[●] and thereafter multiples of \$[●].

2.4 **Terms of Bonds:** The Bonds are:

- (a) [Fixed/Floating] Rate Bonds; and
- (b) [Retail/Wholesale] Bonds which will [not] be Listed.

2.5 **Term:**

- (a) The **Issue Date** of the Bonds is [●].
- (b) The **Maturity Date** of the Bonds is [●].

2.6 **Guarantee:** The Bond Monies under this Tranche are [not] guaranteed under the Guarantee.

2.7 **Interest terms:**

- (a) The **First Interest Accrual Date** in respect of a Bond is [the date on which the initial Holder's subscription moneys for that Bond have been banked into the trust account which is operating in respect of the offer of this Tranche].
- (b) **Interest Payment Dates** are [●] of each year until and including the Maturity Date, commencing on [●].
- (c) The **Interest Rate** will be the rate determined by the Issuer in the manner specified in the Offer Document, on the Interest Rate Set Date, which will be announced by notice on www.thewarehouse.co.nz and by press release to NZX on the Interest Rate Set Date.

2.8 **[First Interest Payment Date:** Clause 6.2(b) of the Master Trust Deed applies.]

- 2.9 **[Subsequent Interest Payment Dates:** Clause 6.2(a) of the Master Trust Deed applies and interest shall be payable in arrear in equal [quarterly/semi-annually/annual/[•]] instalments.]
- 2.10 **Interest to Original Subscriber:** [The first interest payment for each Bond will be paid to the original subscriber of that Bond irrespective of any subsequent transfer before the first Interest Payment Date. After the first Interest Payment Date interest will be payable on each Interest Payment Date to the Holder as at the Record Date immediately preceding the relevant Interest Payment Date.]
- 2.11 **Method of Payment:** For the purposes of clauses 5.2(b) and 5.3(b) of the Master Trust Deed, all payments in respect of a Bond held by a Holder shall be paid by the Registrar by direct credit to a bank account specified by that Holder from time to time. If, for whatever reason, at any time a Holder has not provided current details of a bank account to the Registrar, any such payments in respect of any Bond to that Holder shall be deemed to be unclaimed money for the purposes of clause 7.4 of the Master Trust Deed.
- 2.12 **[Insert Others]**

3. CONDITIONS PRECEDENT

- 3.1 **Conditions precedent:** The Issuer is not entitled to issue any Bonds until the Supervisor has confirmed to the Issuer in writing that it has received the following in form and substance satisfactory to it:
- (a) a duly executed original of the following documents ("**Transaction Documents**"):
 - (i) this Supplemental Deed;
 - (ii) the Master Trust Deed;
 - (iii) the Guarantee; and
 - (iv) the Agency Agreement;
 - (b) a copy of the Offer Document in relation to the Bonds that has been lodged with the Registrar of Financial Service Providers;
 - (c) a copy of the certificate of lodgement given by the Registrar of Financial Service Providers under the FMC Act in respect of the Offer Document by the Issuer in relation to the issue of the Bonds;
 - (d) evidence that this Supplemental Deed and the Master Trust Deed have been lodged with the Registrar of Financial Service Providers under the FMC Act;
 - (e) confirmation from the solicitors to the Issuer that the Transaction Documents listed in clause 3.1(a) and the Offer Document comply with the FMC Act, the FMC Regulations and all other applicable laws; and
 - (f) a legal opinion from the solicitors to the Issuer as to the enforceability and due execution of the Transaction Documents listed in clause 3.1(a).

3.2 **Conditions precedent on issuance:** In addition to the requirements set out in clause 4.1, the Issuer shall not issue any Bonds unless the representations and warranties contained in clause 9 of the Master Trust Deed are true and correct in all material respects by reference to the facts and circumstances existing as at the Issue Date for the Bonds.

4. REPRESENTATIONS AND WARRANTIES

4.1 **Representations and warranties:** Pursuant to clause 9.2 of the Master Trust Deed, the Issuer represents and warrants to the Holders and the Supervisor that:

- (a) no Event of Default in relation to this Tranche has occurred and is continuing; and
- (b) ***[Insert others]***.

5. GENERAL

5.1 **Counterparts:** This Supplemental 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 Supplemental Deed by signing any such counterpart.

5.2 **Property Law Act:** For the purposes of section 14 of the Property Law Act 2007, the parties to this Supplemental Deed acknowledge that this Supplemental Deed is supplemental to the Master Trust Deed.

5.3 **Governing law:** This Supplemental Deed shall be governed by and construed in accordance with New Zealand law.

SIGNED AS A DEED

THE WAREHOUSE GROUP LIMITED

by:

Signature of director

Signature of director/authorised signatory

Name of director

Name of director/authorised signatory

and witnessed by:

Signature of witness

Name of witness

Occupation

City/town of residence

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

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

and witnessed by:

Signature of witness

Name of witness

Occupation

City/town of residence