

**Anthony
Harper**

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Trust deed

Gold Band Finance Limited

and

Covenant Trustee Services Limited

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Trust deed

Date 10 DECEMBER 2024

Parties

- 1 **Gold Band Finance Limited** a company having its registered office at Christchurch (New Zealand company number 321896) (**Company**)
- 2 **Covenant Trustee Services Limited** a company having its registered office at Auckland (New Zealand company number 2194946) (**Supervisor**)

Background

- A The Company and the Supervisor are parties to an existing debenture trust deed dated 30 June 1993 by the Company in favour of the Supervisor as amended from time to time (**Existing Trust Deed**).
- B There are no "Charging Subsidiaries" for the purposes of the Existing Trust Deed.
- C The Existing Trust Deed provides for the issue of unsecured deposits (referred to in the Existing Trust Deed as Deposits) and secured deposits (referred to in the Existing Trust Deed as Stock). However, the only deposits on issue under the Existing Trust Deed are secured deposits.
- D The Company wishes to amend the Existing Trust Deed in order to:
 - (a) take preparatory steps in anticipation of the Deposit Takers Act 2023 and associated regulations applying to the Company's activities, including those relating to the proposed depositor compensation scheme under that Act; and
 - (b) modernise and simplify the Existing Trust Deed, including by aligning the financial and other covenants applying to the Company more closely with current market practice, and by removing the ability to issue unsecured deposits and other redundant provisions.
- E At a special meeting held on 10 December 2024, Stockholders (as that term is defined in the Existing Trust Deed) passed an Extraordinary Resolution approving the variations contained in this deed.
- F The Company and the Supervisor wish to enter into this deed to record the variation of the Existing Trust Deed.

Operative provisions

- 1 The Company and the Supervisor agree that with effect on and from 13 December 2024 (**Effective Date**) the Existing Trust Deed is amended and restated by rescinding each of the existing clauses of the Existing Trust Deed and by substituting the clauses of this deed so that the Existing Trust Deed is replaced by the terms of this deed.
- 2 All Stock (as that term was defined in the Existing Trust Deed) on issue as at the Effective Date is deemed to be a Deposit under this deed, and the Company's obligations in respect of those Deposits continue on the terms set out in this deed.

Agreed terms

1 Interpretation

Definitions

1.1 In this deed, unless the context requires otherwise:

Aggregate Related Party Exposures means the aggregate of exposures of the Charging Group to Related Parties calculated in accordance with NBDT Regulations 24 to 27.

Appropriate Rate means a rate of interest 5% above the then current official cash rate (OCR) in New Zealand.

Auditors means the person or persons for the time being holding the office of auditor of the Company.

Business Day means any day other than Saturday, Sunday, statutory holidays or on which Registered Banks in New Zealand are not open for general banking business in Auckland and Christchurch.

Capital means the capital of the Company calculated in accordance with NBDT Regulation 10.

Capital Ratio is the ratio, expressed as a percentage, of the Company's Capital to an amount representing the degree of the risk to which the Charging Group is exposed calculated in accordance with NBDT Regulations 9 to 21.

Charging Group means the Company and the Charging Subsidiaries or any one or more of them as the context requires.

Charging Group Member means each member of the Charging Group.

Charging Subsidiary means any Subsidiary which shall at any time hereafter become a Charging Subsidiary pursuant to clause 7.1 and in each case remains a Charging Subsidiary.

Companies Act means the Companies Act 1993.

Credit Rating means a rating of the Company's creditworthiness that complies with section 23 of the NBDT Act, the NBDT Regulations, the DT Act, and the DT Regulations (as applicable).

Date of Enforcement means the date on which the security created by this deed is enforced.

Deferred Liabilities mean liabilities which on a liquidation of the debtor company concerned is to the satisfaction of the Supervisor either to be deferred in point of payment to all other liabilities (not being liabilities which are similarly deferred) whether secured or unsecured, present or future of the debtor company.

Deposit means all secured indebtedness by whatever name called, constituted and issued by the Company pursuant to this deed from time to time and for the time being outstanding and uncanceled and includes the Principal represented thereby.

Deposit Holders means the persons from time to time entered in the Register as the holders of Deposits and includes their personal representatives.

Development Loan means a loan or other financial accommodation made, or to be made, available by a Charging Group Member for the purpose of financing the development of Real Property and, for the avoidance of doubt, a loan or other financial accommodation for the purpose of financing the acquisition, or both the acquisition and development, of a property which is intended to be developed, shall not be classified as a Development Loan for the purposes of this deed for so long as:

- (a) the property is not under development; and
- (b) the aggregate of the principal amount of the loan or other financial accommodation actually owing to the relevant Charging Group Member and to any other prior or equal

ranking financier by the relevant debtor and secured over the property does not exceed 80% of the market value of the land at the time the loan or the other financial accommodation is first made available by the relevant Charging Group Member;

Directors means a director or the directors of the Company for the time being.

Directors' Reporting Certificate means a certificate of the Directors furnished to the Supervisor in accordance with clause 6.1(h).

DT Act means the Deposit Takers Act 2023.

DT Regulations means any regulations published under the DT Act.

Electronic Communication means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videophone or other electronic medium approved by the Company subject to such conditions as the Company considers appropriate as to identification of the person making the communication or verification of the content of the communication.

Event of Default means any of the events specified in clause 8.1.

FMA means the Financial Markets Authority.

FMC Act means the Financial Markets Conduct Act 2013.

FMC Regulations means the Financial Markets Conduct Regulations 2014.

Issuer Obligation means an obligation imposed on the Company by or under any of the following:

- (a) this deed;
- (b) the terms of any regulated offer (as that term is defined in the FMC Act) of the Deposits;
- (c) a Court Order relating to the Deposits;
- (d) the FMC Act and FMC Regulations;
- (e) the NBDT Act and NBDT Regulations; and
- (f) the DT Act and the DT Regulations.

Liabilities mean liabilities which should be classified as such by NZ GAAP but does not include contingent liabilities.

Liquidity Position means the position as disclosed in the liquidity report in a form agreed between the Supervisor and the Company from time to time.

Liquidity Report means a liquidity report delivered to the Supervisor under clause 6.1(i)(i).

Majority of Deposit Holders means:

- (a) when the total number of Deposit Holders is not more than five, all Deposit Holders; and
- (b) when the total number of Deposit Holders is more than five, Deposit Holders not being less than five in number (including every Major Security Deposit Holder) and holding more than one-half in Principal amount of the Deposits.

Major Security Deposit Holder means a holder for the time being of Security Deposits where the Principal amount thereof is equal to or greater than 2.5% of the aggregate Principal amount of all Deposits outstanding for the time being.

Market Valuation means:

- (a) in relation to Real Property, the amount of a valuation thereof made at any time within twelve months (or such shorter period as the Supervisor directs pursuant to clause 5.3(e)) of the date at which the same falls to be determined hereunder by a member of the New Zealand Institute of Valuers chosen by the Company and approved by the Supervisor; and

- (b) in relation to shares or other equity securities or units in any company, unit trust or other person which are listed on a recognised securities exchange, the weighted average sale price over the previous five days on which the shares were traded, and in relation to unlisted shares or other equity securities or units in any company, unit trust or other person, the net tangible asset backing of those shares, equity securities or units.

NBDT Act means the Non-bank Deposit Takers Act 2013.

NBDT Regulations means the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010.

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

Ordinary Resolution means a resolution passed by a majority of Deposit Holders in a meeting convened in accordance with Schedule 1 of this deed.

Other Property means, in relation to any company, all of its Real Property and all other present and after-acquired property that is not Personal Property.

Personal Property means, in relation to any company, all of its present and after-acquired personal property.

PPSA means the Personal Property Securities Act 1999.

Principal means:

- (a) in relation to Security Deposits, the amount (other than interest) actually or contingently owing to the holder; and
- (b) in relation to any other Deposit, the amount (other than interest) inclusive of the premium (if any) payable on the redemption of the Deposit.

Prior Security Interest means any security interest on the Secured Property or any part thereof ranking in priority to the security interests in favour of the Supervisor created by or pursuant to this deed or, as the case requires, the principal moneys secured by such security interests.

Qualifying Interest, in relation to a specified security, means:

- (a) the legal or beneficial ownership of the specified security;
- (b) the power to exercise, or control the exercise of, any voting right attached to the specified security;
- (c) the power to acquire or dispose of the specified security;
- (d) the power to control the acquisition or disposition of the specified security by another person; or
- (e) the powers referred to in sub-clauses (b) to (d) above under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the specified security.

Real Property means, in relation to any company, all of its present and after-acquired freehold and leasehold land, all estates and interests in land and all buildings, structures and fixtures (including trade fixtures) for the time being on that land.

Receiver means a receiver or receivers of all or any part of the Secured Property appointed under this deed and includes a receiver and manager or receivers and managers.

Redeemable Shares means all shares issued by any Charging Group Member which are either compulsorily redeemable in cash by the issuer or are optionally redeemable in cash and may be so redeemed in cash at the option of the holder and without any prior consent from the Supervisor other than any such shares held by another Charging Group Member.

Register means the register of the Deposits to be kept pursuant to this deed.

Registered Address in respect of a Deposit Holder means their address for the time being recorded in the Register.

Registered Bank means a bank registered under the Banking (Prudential Supervision) Act 1989.

Relative means, in relation to any person:

- (a) that person's spouse, civil union partner, or de facto partner;
- (b) any parent (including step-parent), brother, sister, or child (including stepchild) of that person; and
- (c) any parent (including step-parent), brother, sister, or child (including stepchild) of that person's spouse, civil union partner, or de facto partner.

Secured Indebtedness means all moneys payable on the Deposits and all other moneys (including, for the purposes of sections 71 and 72 of the PPSA, future advances) payable to or at the direction of the Supervisor or to any Deposit Holder under or pursuant to this deed or the terms of issue of any Deposits.

Secured Property means, in relation to any company, all of its Personal Property and Other Property, wherever situated.

Security Deposit means a Deposit issued by the Company as a Security Deposit in accordance with clause 2.2.

Senior Office Holder means in relation to the Company:

- (a) a person occupying a position that allows the person to exercise significant influence over the management or administration of the Company (for example, a chief executive or a chief financial officer); and
- (b) includes any class or classes of persons declared to be senior managers for the purposes of section 4 of the NBDT Act; but
- (c) does not include any class or classes of persons declared not to be senior officers for the purposes of section 4 of the NBDT Act.

Special Resolution means a resolution approved by Deposit Holders holding Deposits with a combined nominal value of no less than 75% of the nominal value of the Deposits held by those Deposit Holders who are entitled to vote and who vote on the question and is passed in the manner provided in Schedule 1 of this deed.

Statement of Financial Position means a consolidated statement of financial position of the Charging Group prepared as at any date in accordance with NZ GAAP and accounting principles and practices of New Zealand consistent with those applied in the most recent annual audited consolidated statement of financial position of the Company and its Subsidiaries, provided always that:

- (a) if at any time when preparing any Statement of Financial Position the Company desires to make any material change in any accounting principle or practice applied in the most recent annual audited consolidated statement of financial position as aforesaid such change shall only be made if the same is approved in writing by the Auditors; and
- (b) in the case of all Statements of Financial Position other than those prepared as at an annual balance date of the Charging Group, normal year-end adjustments need not be made and those items normally included by way of note need not be included.

Subordinated Debt means a liability which:

- (a) is a Deferred Liability;
- (b) cannot be repaid, if repayment would cause the debtor company concerned to be in breach of this deed; and

- (c) in respect of which any distribution to the creditor on account thereof will be subject to an express or implied trust to account to any one or more creditors in respect of Liabilities that are not Deferred Liabilities.

Subsidiary means a company which is for the time being a subsidiary of the Company within the meaning of section 5 of the Companies Act and any other person to be treated as a subsidiary in terms of NZ IFRS 10 (or any substitute standard) as amended from time to time.

Supervisor means the supervisor licensed under the Financial Markets Supervisors Act 2011 for the time being which is appointed as the supervisor under this deed.

Tangible Assets means all assets except deferred tax assets and assets which according to NZ GAAP are considered to be intangible assets.

Total Tangible Assets means, at any time, the aggregate of:

- (a) 80% of the market value, as determined by the latest Market Valuation, of any Real Property and shares or other equity securities or units in any company, unit trust or other person; and
- (b) the book values of all other Tangible Assets of the Charging Group as would be disclosed in a Statement of Financial Position if a Statement of Financial Position was then prepared,

adjusted by excluding:

- (c) the book values of any Tangible Assets situated outside New Zealand in respect of which the Supervisor is not satisfied that there is a valid and effective security interest in favour of the Supervisor enforceable in accordance with the laws of the place where the relevant assets are situated; and
- (d) 15% of the principal amount of all Development Loans outstanding at that time.

Construction of certain references

- 1.2 In this deed, unless the context otherwise requires, any reference to:

company means any body corporate wherever incorporated or domiciled and where the context so admits shall include a person.

confirmation information shall have the meaning given to that term in the FMC Act.

contingent liability means the contingent liability of any Charging Group Member under any guarantee, indemnity, letter of credit or suretyship, or any other obligation whatever called and of whatever nature to pay, to purchase, to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of, or to indemnify against the consequences of default in the payment of, any obligation or indebtedness, any dividend or other payment in respect of shares or stock, or on the insolvency or because of the financial condition, of any other person which is for the benefit of a person other than a Charging Group Member.

control means the ownership of more than 50% of the share capital or voting rights or otherwise possessing (directly or indirectly) the power to direct, or cause the direction of, the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

deed means this deed inclusive of its Schedules as amended from time to time and, except where clearly inconsistent with the context, includes each deed executed pursuant to clause 7.1 and each deed supplemental to or varying the same or any of them respectively and includes any deed to which this deed may be supplemental.

guarantee means any guarantee, indemnity or other obligation (whatever called) to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment of,

indemnify against the consequences of default in the payment of, or otherwise be responsible for, any liability of any other person.

month means calendar month.

owing includes unpaid.

person includes an individual, a company or any association of persons whether incorporated or not, any government or department or agency thereof or any legislative body authority or agency.

A person **(A)** is a **Related Party** of the Company if:

- (a) A is a director of the Company or of a Charging Group Member;
- (b) A is a Senior Office Holder of the Company or of a Charging Group Member;
- (c) A is a Relative of a director or Senior Office Holder of the Company or of a Charging Group Member;
- (d) A is a subsidiary of the Company or of a Charging Group Member;
- (e) A has a substantial interest in the Company or in a Charging Group Member;
- (f) the Company or a Charging Group Member has a substantial interest in A;
- (g) another person with a substantial interest in the Company or a Charging Group Member has a substantial interest in A; or
- (h) 40% or more of A's governing body are the same persons as 40% or more of the governing body of the Company or of a Charging Group Member (or of another person that has a substantial interest in the Company or in a Charging Group Member).

redemption includes repayment and redeem includes repay and vice versa.

a **security interest** includes:

- (a) a mortgage, pledge, security interest, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement and any other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (b) a security interest as defined in section 17(1)(a) of the PPSA,

but does not include:

- (c) a lien arising solely by operation of law;
- (d) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the collateral's purchase price, where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid within 60 days of supply; or
- (e) a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances.

A person **(X)** has a **substantial interest** in another person (an **entity**) if:

- (a) the entity is a company and X:
 - (i) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the ordinary shares of the entity;
 - (ii) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the voting rights of the entity; or
 - (iii) has, by any other means, 10% or more of the control of the entity;
- (b) the entity is not a company and X:
 - (i) is in a position to control (whether directly or indirectly) 10% or more of the voting rights in relation to the entity; or

- (ii) has, by any other means, 10% or more of the control of the entity; or
- (c) X has control (whether directly or indirectly) or significant influence over 25% or more of the composition of the governing body of the entity.

written and **in writing** include words written, printed, typewritten, lithographed or otherwise represented or reproduced in visible form by any other means.

The singular includes the plural and vice versa.

Currency

- 1.3 All references to money in this deed shall unless the contrary is stated be deemed to be references to New Zealand currency.

PPSA

- 1.4 The terms **attach**, **collateral**, **future advance** and **personal property** have the respective meanings given to them in the PPSA.

References to clauses

- 1.5 References in this deed and the Schedules to clause numbers are to the clause numbers in this deed and the Schedules and references to Schedules are references to the Schedules hereto.

References to statutes

- 1.6 References to any statute shall refer also to any regulations, orders, notices, or other legislative instruments made thereunder and, in all cases, include any statutory modification, amendment or re-enactment thereof or provisions substituted therefore, for the time being in force.

Clause headings

- 1.7 The clause headings appear as a matter of convenience and shall not affect the construction of this deed.

Schedules

- 1.8 The Schedules and the covenants, powers, obligations, conditions and provisions contained in the Schedules shall have the same force and effect as if set out in the body of this deed.

No postponement of attachment or subordination

- 1.9 Nothing in this deed is to be construed as:
 - (a) an agreement that a security interest under this deed attaches at a later time than the time specified in section 40(1) of the PPSA; or
 - (b) an agreement to subordinate a security interest under this deed in favour of any person.

Companies Act terms

- 1.10 Unless otherwise defined in this deed, words defined in the Companies Act shall have the same meanings in this deed.

Conflicting clauses

- 1.11 Where there is a conflict between any clauses contained in this deed and the FMC Act and/or FMC Regulations, then the FMC Act and/or FMC Regulations shall prevail.

Application of the Trusts Act

- 1.12 Section 110A of the FMC Act applies to the trust constituted by this deed, it being intended that this deed will be lodged under section 103 of the FMC Act. The provisions of the Trusts Act 2019 listed in section 110A(2) of the FMC Act will accordingly not apply to the trust constituted by this deed. The remaining provisions of the Trusts Act 2019 that may be excluded from applying to this deed are so excluded to the maximum extent permitted by sections 5(4) and 5(5) of the Trusts Act 2019 and each provision of the Trusts Act 2019 that may be modified (to the extent it is not otherwise excluded) is so modified to the extent any term of this deed is inconsistent with that provision of the Trusts Act 2019.

2 Constitution and issue of Deposits

Creation of Deposits

- 2.1 The Company shall be at liberty to create Deposits at any time and to issue such Deposits to such persons as the Company shall determine and on such terms and conditions (not being inconsistent with the provisions of this deed, including, for the avoidance of doubt, the conditions applicable to all Deposits as set out in clause 2.18) and in such currencies and whether securing obligations of the Company or any other Charging Group Member for borrowed money or securing other obligations of the Company or any other Charging Group Member in all cases as the Company may from time to time determine provided that:
- (a) no Deposit may be issued by the Company as security for fluctuating amounts of present or future liabilities, debts or advances (whether by way of indemnity, guarantee or otherwise) of any Charging Group Member other than Security Deposits (to avoid doubt, this does not prevent the payment of interest on Deposits at a variable rate); and
 - (b) no Deposit may be issued by the Company if the Company is in breach or would as a result of such issue be in breach of any of the limitations contained in clause 5.1 or any other provision of this deed.

Security Deposits

- 2.2 Deposits issued pursuant to this deed may be issued to any person as Security Deposits and such Security Deposit may be issued as continuing security for the payment of any present or future liabilities (whether by way of indemnity, guarantee or otherwise), loans, credits, advances, discounts and other accommodation of, to, for on account of or at the request of the Company or any other Charging Group Member together with interest and other moneys so provided.
- 2.3 Security Deposits shall at all times be held upon and subject to the express condition that upon a distribution of the moneys available for payment to Deposit Holders pursuant to the provisions of clause 8.17 every holder of Security Deposits shall be entitled to payment *pari passu* with the other Deposit Holders as to Principal in respect only of the Principal of the Security Deposits held by that Deposit Holder as the case may be and as to interest, only to interest calculated in accordance with the provisions of the respective Deposits issued in accordance with this deed.

Ranking of Deposits

- 2.4 Inter se the Deposits shall rank *pari passu* as to payment of Principal and interest notwithstanding that they are created or issued at different dates or on different terms.

Purchase by Charging Group

- 2.5 The Company may at any time purchase any of the Deposits (other than Security Deposits) either on the market or by private treaty at a purchase price which (unless the Supervisor has been satisfied that the interests of the Deposit Holders shall not be prejudiced thereby) shall not in either case exceed the lesser of the par value thereof plus accrued interest or the then current market price thereof on any recognised securities exchange in New Zealand or elsewhere or (if there is no such market price) the value approved by the Supervisor.

Cancellation

- 2.6 All Deposits purchased by the Company or the Supervisor in its capacity as such under the provisions of this deed or otherwise and all Deposits redeemed whether upon maturity or otherwise shall be cancelled and the Company shall not be at liberty to keep the same alive for the purpose of re-issue or to re-issue the same.

Covenant to repay Deposits

- 2.7 The Company acknowledges its indebtedness to the Supervisor in respect of the Principal outstanding from time to time in respect of the Deposits and interest thereon whenever such Deposits are issued and covenants with the Supervisor to pay to the Supervisor when due, in the currency and manner in which the same is payable, at such place as the Supervisor shall by notice in writing direct, the Principal of such Deposits and that until such payment the Company

will pay to the Supervisor as aforesaid interest on such Deposits in the currency and manner in which such interest is payable in accordance with the terms and conditions of issue of such Deposits.

- 2.8 Notwithstanding clause 2.7, the Company shall, unless and until otherwise requested by the Supervisor or prevented by law, pay all Principal and interest in respect of the Deposits issued by it to the Deposit Holder in accordance with the terms and conditions of issue of such Deposits and each such payment shall operate as payment to the Supervisor in satisfaction, to the extent of the payment, of the indebtedness acknowledged by this clause.

Right to deduct withholding and other taxes

- 2.9 The Company shall be entitled to deduct from any amount payable to a Deposit Holder the amount of any withholding or other tax or duty required to be deducted in respect of such amount under the laws of New Zealand and where any such deduction is or has been made and the amount thereof accounted for by the Company to the Commissioner of Inland Revenue or other appropriate authority and the balance of the amount payable has been paid to the Deposit Holder concerned the full amount payable to such Deposit Holder shall (subject to any agreement to the contrary with the Deposit Holder) be deemed to have been duly paid and satisfied by the Company.

Unclaimed payments to Deposit Holders

- 2.10 If any payment made to any Deposit Holder pursuant to this deed shall be returned unclaimed the amount thereof shall (unless notice of a change of Registered Address has in the meantime been received by the Company) be retained by the Company and held for such Deposit Holder (as the case may be) without liability to invest the same or pay interest thereon. Any money unclaimed for six years or longer shall be forfeited in accordance with the Unclaimed Money Act 1971.

Validity of Deposits

- 2.11 No Deposit Holder shall be concerned or obliged to enquire whether any Deposit has been issued or any borrowing made or liabilities (actual or contingent) incurred in contravention of any provision of this deed. All Deposits issued for valuable consideration shall be deemed to be validly issued and constituted by this deed and entitled to the benefit of the provisions of this deed notwithstanding that it may subsequently be determined that the issue of such Deposits or any borrowing made or liabilities (actual or contingent) incurred in respect of such Deposits, was in breach of any provision of this deed but without prejudice nevertheless to the Supervisor's rights under or pursuant to this deed against the Company and the other Charging Group Members in relation to such breach.

Enforcement of Deposit Holder rights

- 2.12 No Deposit Holder shall be entitled to proceed directly against the Company or any other Charging Group Member unless the Supervisor fails to enforce any rights and remedies against the Company or any other Charging Group Member within a reasonable period after having become bound to do so in accordance with the provisions of this deed.

Deposit confirmation information

- 2.13 The Company shall provide to each Deposit Holder such confirmation information (including, as relevant, any further conditions relating to the Deposits) as is required under the FMC Act and FMC Regulations.

Terms and conditions of issue

- 2.14 The Deposits shall be held with the benefit of and subject to the provisions of this deed (including, for the avoidance of doubt, the conditions applicable to all Deposits as set out in clause 2.18), the conditions (if any) referred to in any confirmation information and any further special conditions not inconsistent with this deed as may be required by the terms of issue of the Deposit or as may be required by or approved by the Supervisor and the aforesaid provisions.

Conditions and special conditions shall be binding on the Company and the Deposit Holders and all persons claiming through them respectively.

Register

2.15 The Company shall establish and maintain a Register of the Deposits issued by it, such Register to be kept at the registered office of the Company or at such other place in New Zealand as the Company may from time to time by notice in writing to the Supervisor determine. The following provisions shall apply in respect of the Register:

- (a) the Company shall comply with all statutory requirements and all requirements of the Supervisor applicable to the Register;
- (b) The Register shall contain:
 - (i) the name and address of the Deposit Holder;
 - (ii) the date on which the Deposit Holder acquired the Deposits;
 - (iii) the nature of the Deposit;
 - (iv) the amount of the Deposit;
 - (v) the due date of the Deposit (if any); and
 - (vi) any other prescribed particulars under the FMC Act;
- (c) the Company shall notify the Registrar of relevant changes to keep the Register up to date;
- (d) the Supervisor, any Receiver, any Deposit Holder and any person authorised in writing by any of such persons may at all reasonable times inspect the Register and take copies of and extracts from the same in accordance with section 223 of the FMC Act;
- (e) any person who makes a request under (d) above (other than a request for information about that person) must include in the request a statement of the person's reasons for the request (including the purpose for which the person intends to use the copy of, or extract from, the Register), and the Company may provide a copy of that statement to the FMA if it thinks fit to do so;
- (f) the Register may be closed for periods not exceeding thirty days in total in anyone year;
- (g) if the Register or particulars to be entered thereon shall be kept by a digital system, the system shall be that which has been approved by the Supervisor and the Auditors, such approval not to be unreasonably withheld; and
- (h) the Register shall be audited by or to the satisfaction of the Auditors at regular intervals of not more than twelve months and within four months after the Company's balance date in accordance with regulation 109 of the FMC Regulations, or upon request in writing by the Supervisor.

Brokerage

2.16 The Company shall be entitled to pay commission, procurement fees or brokerage to any person for subscribing for, underwriting the subscription of, or obtaining the subscriptions of, Deposits.

Alteration of terms and conditions of issue

2.17 The Company may at any time and by prior arrangement with the Deposit Holder or group of Deposit Holders concerned alter any of the terms or conditions attached to any Deposit but such alteration shall not be inconsistent with any of the provisions of this deed. Details of any such alteration shall be recorded in the Register in respect of the Deposits affected and the Company may (and shall if required by the FMC Act) issue a replacement confirmation information in respect of such Deposits embodying the terms and conditions of any such alteration.

Conditions applicable to all Deposits

2.18 The following conditions are applicable to all Deposits:

- (a) Subject to the provisions of this deed and except as ordered by a Court of competent jurisdiction or required by statute:
 - (i) the Company will only recognise the registered holder of the Deposits, the Deposit Holder's executors or administrators as the absolute owner thereof;
 - (ii) the Company shall not be bound to take notice or see to the execution of any trust (whether express, implied or constructive) to which any Deposit may be subject; and
 - (iii) the receipt by such Deposit Holder of the amount payable to it shall be a good discharge to the Company notwithstanding any notice it may have of the right, title and interest or claim of any other person to such Deposit or in respect of the amount so payable under that Deposit. No notice of any trust express, implied, or constructive shall be entered on the Register in respect of any Deposit.
- (b) Any person becoming entitled to a Deposit in consequence of the death or bankruptcy of any Deposit Holder may upon producing such evidence that that person sustains the character in respect of which that person proposes to act under this Condition or of that person's title as the Directors shall think sufficient, be registered himself/herself as the holder of such Deposit. This Condition shall include any case in which a person becomes entitled as a survivor of persons registered as joint holder.
- (c) Any Principal and interest payable in respect of the Deposit may be paid by direct credit to the bank account nominated by the Deposit Holder.
- (d) If several persons are entered in the Register as joint holders of any Deposit then without prejudice to the last preceding Condition the receipt of any one of such persons for any Principal or interest from time to time payable on or in respect of such Deposit shall be as effective a discharge to the Company as if the person signing such receipt were the sole registered holder of such Deposit.
- (e) Subject to the terms of issue of a Deposit or any subsequent agreement between the Company and a Deposit Holder, every Deposit Holder will be recognised by the Company as entitled to the Principal and interest payable on its Deposit free from any equity set off or cross claim between the Company and Deposit Holder.

Transferability restricted

2.19 A Deposit issued pursuant to this deed shall not be transferable except where transfer occurs by operation of law.

3 Guarantee by Charging Group

Guarantee

3.1 Each of the Charging Group Members jointly and severally unconditionally guarantees the due and punctual payment by the Company and the other Charging Group Members in accordance with the provisions of this deed of the Secured Indebtedness as and when the same shall become due and payable hereunder and the due observance and performance by the Company and each of the other Charging Group Members of all of their obligations under this deed.

Payment

3.2 Whenever any default has been made by the Company or any other Charging Group Member in the payment of all or any of the Secured Indebtedness each other Charging Group Member will forthwith, whether or not demand therefor shall be made, pay such moneys to the Supervisor to the intent that the same may be applied by the Supervisor pursuant to this deed.

No discharge

- 3.3 The liability of each Charging Group Member under this guarantee shall not be abrogated, prejudiced or affected by any of the following:
- (a) the granting of time, credit or any indulgence or other concession to the Company or to any other guarantor (including any Charging Group Member) by the Deposit Holders or any of them or by the Supervisor or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any securities, documents of title, assets or of any of the rights of the Deposit Holders or any of them or of the Supervisor against the Company or any Charging Group Member or by anything done or omitted or neglected to be done by the Supervisor or the Deposit;
 - (b) Deposit Holders or any of them in exercise of the authorities, powers and discretions vested in them by this deed or by any other dealing matter or thing which but for this provision might operate to abrogate, prejudice or affect their respective guarantees;
 - (c) the liability of any other guarantor (including any Charging Group Member) ceasing from any cause whatsoever (including the release or discharge by the Deposit Holders or any of them or by the Supervisor);
 - (d) any other person joining in this or giving any similar guarantee;
 - (e) the liquidation of the Company or any guarantor (including any Charging Group Member);
 - (f) any guarantor (including any Charging Group Member) being incompetent to give this guarantee or any other guarantee or any security or any collateral security or failing to become legally bound in whole or in part under any of them respectively;
 - (g) any security (including any security given by or pursuant to this deed) held or taken being void, defective or informal;
 - (h) failure by the Company or any guarantor (including any Charging Group Member) to provide any security which ought to be provided under or pursuant to this deed; or
 - (i) any modification or addition to this deed made pursuant to the provisions of this deed.

Principal obligation

- 3.4 This guarantee shall be a principal obligation and shall be treated as in addition to and not in substitution for or collateral to any other security or right which the Supervisor may have under or by virtue of this deed and in particular shall be independent of any other security to the intent that this guarantee may be enforced against each Charging Group Member without first having recourse to any such securities or rights and without taking steps or proceedings against the Company or any other guarantor (including any Charging Group Member) and notwithstanding that any other security may be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Supervisor of any other security or any acts or omissions on the part of the Supervisor.

Continuing guarantee

- 3.5 Subject to clauses 3.6 and 4.8, this guarantee is to be a continuing guarantee and accordingly shall be irrevocable and shall remain in full force and effect until the whole of the Secured Indebtedness have been paid or satisfied.

Enforcement

- 3.6 The Supervisor may as regards all or any of the Charging Group Members (unless otherwise directed in writing by a holder of a Security Deposit, or by a resolution of Deposit Holders in general meeting) determine from time to time whether it shall enforce or refrain from enforcing this guarantee and unless otherwise directed as aforesaid may from time to time make any arrangement or compromise with any Charging Group Member which the Supervisor may think expedient in the interests of the Deposit Holders.

Payments in gross

- 3.7 All moneys from time to time received by the Supervisor in reduction of the Secured Indebtedness from or on account of the Company or any Charging Group Member including any dividends upon the liquidation of the Company or any other Charging Group Member or any other guarantor from any other person or from the realisation of any security and capable of being applied by the Supervisor in reduction of the Secured Indebtedness shall be regarded as payments in gross without any right on the part of any Charging Group Member to stand in the place of the Supervisor in respect of or to claim the benefit of any moneys so received as against the Company or any other Charging Group Member until the whole of the Secured Indebtedness have been paid or satisfied so that in the event of any Charging Group Member or other guarantor going into liquidation the Supervisor shall be entitled to prove against it for the total indebtedness of the Company in relation to the Secured Indebtedness.

Suspense account

- 3.8 In the event of the liquidation of any Charging Group Member or any other guarantor, no Charging Group Member shall prove in such liquidation in competition with the Supervisor and each Charging Group Member authorises the Supervisor to prove for all moneys which such Charging Group Member has paid hereunder or are otherwise owing to it and have not been repaid to it by any other Charging Group Member and to retain and to carry to a suspense account and appropriate at the discretion of the Supervisor any amount received until the Supervisor shall have received one hundred cents in the dollar in respect of the indebtedness of the Company and each other Charging Group Member in relation to the Secured Indebtedness. Each Charging Group Member waives in favour of the Supervisor all rights whatever against the Supervisor and the Company and any other guarantor or other person or their or its estate and assets so far as necessary to give effect to anything in this guarantee contained.

Other security collateral

- 3.9 This guarantee shall not prejudicially affect or be prejudicially affected by any other security or guarantee now or hereafter held by the Supervisor for the Secured Indebtedness but such other security or guarantee shall be deemed to be collateral herewith and no Charging Group Member will as against the Supervisor in any way claim the benefit or seek the transfer of any such security or any part thereof or any right of recourse.

Payments avoided

- 3.10 If any payment made to the Supervisor or to any Receiver appointed by the Supervisor or to any Deposit Holder by or on behalf of any Charging Group Member is voided by law such payment shall be deemed not to have discharged or affected the liability of each Charging Group Member therefor or any security interest by any Charging Group Member in favour of the Supervisor in respect thereof and, in that event, the Supervisor and each Charging Group Member shall 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.

Rights suspended

- 3.11 Each Charging Group Member shall in respect of any sums paid by it hereunder and in respect of any other rights which may accrue howsoever to it in respect of any sum so paid rank and be entitled to enforce the same only after the Secured Indebtedness shall have been duly paid and satisfied.

Principal debtor

- 3.12 Although as between the Company on the one hand and each other Charging Group Member on the other hand, the joint and several liability of each other Charging Group Member to the Supervisor may be that of sureties only, nevertheless, as between each other Charging Group Member on the one hand and the Supervisor on the other hand, the liability of each other Charging Group Member shall be deemed to be the liability of a principal debtor and the security interests given by each Charging Group Member to the Supervisor by or pursuant to this deed shall constitute security for the Secured Indebtedness and such liability shall not be affected or

diminished nor shall such security interests over the Secured Property be released or discharged by any of the matters referred to above or by any other act indulgence or omission which but for this present provision would have operated to release any Charging Group Member wholly or partly from its liability hereunder to the Supervisor.

4 Security interests and dealings with assets

Security interests by Company

- 4.1 As a continuing security for the payment of the Secured Indebtedness, the Company grants to the Supervisor:

- (a) a security interest in the Personal Property; and
- (b) a charge over the Other Property.

Nature of charge over Other Property

- 4.2 The charge created by this deed in respect of Other Property is:

- (a) a floating charge over Other Property in respect of which a fixed charge is not legally and fully effective; and
- (b) a fixed charge over all other Other Property.

Crystallisation of floating charge

- 4.3 To the extent that the charge over Other Property is a floating charge in accordance with clause 4.2(a), that charge will become a fixed charge automatically and with immediate effect:

- (a) without the need for notice by the Supervisor, on the occurrence of an Event of Default; or
- (b) on notice by the Supervisor to the Company at any time, if the Supervisor believes that any of that Other Property is at risk of being seized, becoming subject to a security interest, or otherwise being dealt with in contravention of this deed.

Security interests over assets situated outside New Zealand

- 4.4 Where any of the Secured Property comprise assets outside New Zealand, the company concerned shall at its own cost do all such things, including registering or recording the security interest in such manner as may be required by the laws in force in the place where the assets are situated, to ensure that the security interest is a valid and effective first ranking security interest to the satisfaction of the Supervisor subject only to any Prior Security Interests permitted by this deed.

Negative pledge

- 4.5 The Company and each of the other Charging Group Members covenants with the Supervisor that, except as permitted in clause 4.6, none of them will create or permit to subsist any security interest over its Secured Property, ranking:
- (a) in priority to or pari passu with the security interests in favour of the Supervisor created by or pursuant to this deed; or
 - (b) after the security interests in favour of the Supervisor created by or pursuant to this deed, unless by the specific provisions of such security interest the priority thereover of the said security interests in favour of the Supervisor as a continuing security is expressly reserved to the satisfaction of the Supervisor.

Permitted security interests

- 4.6 Subject always to the provisions of clause 5.1, the Company or any other Charging Group Member may:
- (a) create a Prior Security Interest over any asset to secure any moneys to be borrowed, raised or otherwise owing in purchasing or acquiring such asset if at the time of such borrowing the aggregate of all moneys secured by existing Prior Security Interests together with the money so proposed to be borrowed or raised or to be otherwise owing and secured would not exceed 7.5% of Total Tangible Assets; and
 - (b) permit to subsist any security interest existing over the assets of a company immediately prior to that company becoming a Charging Subsidiary provided that:
 - (i) such security interests were not created in contemplation of that company becoming a Charging Subsidiary; and
 - (ii) such security interests are discharged within six months after that company becomes a Charging Subsidiary.

Ranking of Prior Security Interests

- 4.7 All such Prior Security Interests raised or taken over shall rank as security interests upon the assets subject thereto in priority to the security interests thereover created by or pursuant to this deed, and:
- (a) whenever it may be necessary to give effect to such intended priority the Supervisor at the request and expense of the Company or any other Charging Group Member shall join in the execution of any memorandum of priority or other relevant document; and
 - (b) no vendor, lender or other person shall be concerned or obliged to enquire whether any loan to or liability assumed by the Company or any other Charging Group Member is in contravention of the provisions of clause 5.1 or of this clause nor shall the validity and priority of any security interest given to or held by any vendor, lender or other person be affected by knowledge on the part of any vendor, lender or other person of any such contravention.

Partial releases of Charging Group Members or Secured Property

- 4.8 At any time before the Date of Enforcement, upon the request in writing and at the cost of the Company and without approval by the Deposit Holders (unless in the opinion of the Supervisor the interests of the Deposit Holders would be materially prejudiced) and upon being satisfied as a result of receiving such valuations or other evidence as the Supervisor shall specify that full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release and upon and subject to such terms and conditions as in its discretion the Supervisor may specify, the Supervisor may:
- (a) release any Charging Group Member from its guarantee and other obligations under or pursuant to this deed;
 - (b) release any part of the Secured Property from the operation of any security interest thereover created by or pursuant to this deed; and/or
 - (c) execute all documents which may be necessary to effect any such release or discharge, provided always that:
 - (d) the Supervisor shall not concur in the sale and subsequent release of the whole or a major part of the business or undertaking of the Charging Group (viewing the Charging Group as a single entity) without the sanction of a Special Resolution; and
 - (e) in any other case, where the Supervisor is not satisfied that full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release, the Supervisor may nevertheless concur in the release or discharge with the consent of a Majority of Deposit Holders.

Proceeds of sale of released assets

- 4.9 The proceeds of sale of any part of the Secured Property may until the Date of Enforcement, but subject to any terms and conditions imposed by the Supervisor, be applied by the Company or the other Charging Group Member concerned for the purpose of carrying on its business.

Further assurance

- 4.10 The Company and each other Charging Group Member respectively shall execute and do all such transfers, assurances and things as the Supervisor may reasonably require for perfecting the security intended to be created by this deed and, after the Date of Enforcement, for facilitating the realisation of the Secured Property and for exercising all the trusts and powers conferred on the Supervisor or any Receiver, and for the purposes of this clause a certificate in writing signed by the Supervisor to the effect that any particular transfer, assurance or thing required by it is reasonably required by it shall be conclusive evidence of the fact.

Appointment of Supervisor as attorney

- 4.11 The Company and each other Charging Group Member irrevocably appoints the Supervisor, any Receiver appointed by the Supervisor and all persons authorised by the Supervisor severally to be its attorney or attorneys and in its name and on its behalf to enter into, execute and do all assurances, deeds, instruments, acts and things whatsoever which shall in the opinion of any such attorney be necessary or expedient or that it ought to execute and do for the purposes of carrying out any trust or obligation declared or imposed upon it or for giving to the Deposit Holders or to the Supervisor on their behalf the full benefit of any of the provisions of this deed and generally to use its name in the exercise of all or any of the powers by this deed conferred on the Supervisor or any Receiver appointed by the Supervisor as the case may be.

Quiet enjoyment

- 4.12 Notwithstanding the security interests upon the Secured Property created by or pursuant to this deed the Supervisor shall permit the Company and the other Charging Group Members to hold and enjoy the Secured Property and to receive and apply as they think fit all rents and income arising from the Secured Property and to carry on in and with the Secured Property any of the businesses for the time being authorised by law until the security constituted by this deed becomes enforceable and the Supervisor determines or becomes bound to enforce the same.

5 Financial limitations and covenants

Financial limitations and other requirements of the NBDT Act

- 5.1 The Company and each of the other Charging Group Members covenant with the Supervisor that, at all times:

(a) **Prior Security Interests**

none of them will borrow or raise any money on the security of any Prior Security Interest when the aggregate of all principal moneys then secured by existing Prior Security Interests plus the moneys so proposed to be borrowed or raised and secured would exceed 7.5% of Total Tangible Assets;

(b) **Minimum Capital Ratio**

the Company will maintain a Capital Ratio of not less than 12%;

(c) **Aggregate Related Party Exposures**

the Company will ensure that the Aggregate Related Party Exposures of the Charging Group do not exceed 15% of Capital;

(d) **Liquidity**

the Company will manage its liquidity to ensure that, for each of the first three months of each monthly Liquidity Report, the Company's projected Liquidity Position is positive. A breach of this clause is an event of review under clause 8.2;

(e) **Risk management programme**

the Company will maintain and comply with a risk management programme in accordance with section 27 of the NBDT Act; and

(f) **Governance**

the Company will advise the Supervisor if at any time the Board does not include at least two independent Directors or the chairperson of the board is an employee of either the Company or a Related Party of the Company. For the purposes of this clause, an **independent director** means a director that:

- (i) is not an employee of either the Company or a Related Party of the Company;
- (ii) is not a director of a Related Party of the Company; and
- (iii) does not, directly or indirectly, have a Qualifying Interest in more than 10% of the voting securities of the Company or a Related Party of the Company.

Negative covenants

5.2 The Company and each of the other Charging Group Members covenants with the Supervisor that none of them will, without the prior written consent of the Supervisor:

(a) **Restriction on assets**

own any Real Property or shares or other equity securities or units in any company, unit trust or other person except:

- (i) Real Property or shares which are:
 - (A) held as security for the provision of financial accommodation;
 - (B) held as a result of enforcing any such security pending realisation; or
 - (C) held as a result of the Company taking prudent recovery action other than by way of the enforcement of security, again pending realisation;
- (ii) premises leased and occupied by the Company or any Charging Group Member for the purposes of its business; or
- (iii) shares in any other Charging Group Member;

(b) **Restrictions on business**

carry on any business other than the provision of financial accommodation and financial services or acquire any assets other than assets used in such business;

(c) **Exposure limits**

allow the amount owing to the Charging Group under financing receivables by any one debtor or related group of debtors to exceed 10% of Total Tangible Assets;

(d) **Disposal of undertaking**

sell or transfer as a going concern, whether by a single transaction, or any series of transactions whether related or not, the whole of its undertaking, or any part or parts thereof comprising more than 25% of Total Tangible Assets;

(e) **Writing up of assets**

write up the value of any asset in its books of account beyond the fair market value thereof as approved by the Auditors at the time of such writing up;

- (f) **Compromise or amalgamation**
enter into or make any proposal for a compromise or amalgamation (other than any amalgamation with another Charging Group Member, prior written notice of which has been given to the Supervisor); or

(g) **Distributions**

make any distribution other than:

- (i) from a Charging Group Member to the Company;
- (ii) by way of redemption of Redeemable Shares; or
- (iii) by way of dividend out of profits,

and in any event no distributions of any kind are to be made at any time after an Event of Default has occurred and is continuing.

General covenants

- 5.3 Each of the Company and the other Charging Group Members covenants with the Supervisor that it will:

(a) **Attend shareholders' meetings of the Company**

permit the Supervisor through its agent, attorney or representative to attend any shareholders' meeting of the Company and to be heard on any part of the business of the meeting which concerns the Supervisor or the Deposit Holders;

(b) **Carry on business**

carry on and conduct its business in an efficient, prudent and businesslike manner;

(c) **Meet obligations**

duly pay all liabilities and comply with all obligations binding on it by law, contract or otherwise;

(d) **Information**

whenever requested, to give to the Supervisor or any chartered accountant or Receiver or other person appointed by the Supervisor such information as they shall reasonably require with respect to all matters relating to its affairs and all matters relating to the Deposit Holders and ensure that all such information is true and accurate in all material respects as at the date when that information is provided and will not omit to state any fact or circumstance which would make that information untrue, inaccurate or misleading in any material respect;

(e) **Obtain valuation of Real Property**

if reasonably requested to do so at any time by the Supervisor, obtain, at the Company's expense, a valuation of any Real Property owned by a Charging Group Member for the purpose of determining the Market Valuation thereof, provided that the Supervisor shall not request such valuations at lesser intervals than three months;

(f) **Report breaches**

If:

- (i) the Company has reasonable grounds to believe that it or any Charging Group Member has contravened, may have contravened, or is likely to contravene any of its Issuer Obligations; or
- (ii) the Company becomes aware of any event or circumstance which with the lapse of time, giving of notice or fulfilment of any other requirement would constitute an Event of Default or which may have a material adverse effect on the Company or any Charging Group Member,

as soon as practicable,

- (iii) report in writing giving full details of the contravention or possible contravention, event or circumstance to the Supervisor; and
- (iv) advise the Supervisor of the steps (if any) that the Company has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken;

(g) **Report serious financial problems**

If the Company becomes aware of information on the basis of which it could reasonably form the opinion that the Company is, or is likely to become, insolvent, as soon as practicable:

- (i) disclose to the Supervisor all information relevant to that matter that is in the possession or under the control of the Company 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 Company intends to take in respect of that matter and the date by which the steps are to be taken;

(h) **Maintain consents and required licences**

maintain in full effect all consents and licences required to enable it to perform or comply with its material obligations under this deed and at law, including without limitation, its NBDT licence under the NBDT Act (for so long as that Act applies), any licence required under the DT Act, and any licence required under the FMC Act;

(i) **Compliance with laws, etc.**

duly and promptly comply with all laws, directives and consents the non-compliance with which might give rise to a security interest or have a material adverse effect on the Company or may adversely and materially affect the rights or security of the Supervisor or any Deposit Holder under this deed; and

(j) **Accounting records**

whenever requested, make available for inspection by the Supervisor or any chartered accountant or Receiver or other person appointed by the Supervisor, the whole of the accounting and other records of the Charging Group and give to the Supervisor or any chartered accountant or Receiver or other person appointed by the Supervisor, the information required by the Supervisor with respect to all matters relating to those records.

Duty concerning appointment, etc., of Auditors

- 5.4 The Company must, before recommending the appointment or reappointment of a person as an Auditor of the Company:

- (a) consult with the Supervisor on the appointment or reappointment; and
- (b) 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.

- 5.5 The Company must notify the Supervisor if an 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.

- 5.6 The Company must not attempt to prevent a person who has resigned from appointment as an Auditor, or declined to accept appointment or reappointment as an Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

Duty concerning giving opportunity for Auditor reporting to Supervisor

- 5.7 The Company must, before recommending the appointment or reappointment of a person as an Auditor of the Company:
- (a) give the Supervisor an opportunity to be a party to a specified engagement 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 the specified engagement (if any).

In this clause, **specified engagement** means an assurance engagement carried out by an Auditor in relation to the Company's compliance with this deed.

Terms of appointment of Auditor

- 5.8 The Company must ensure that the following terms are included in the terms of appointment of an Auditor in its capacity as an auditor, whether the Auditor is conducting an audit, a review, or any other engagement:
- (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 Company 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;
 - (b) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Company 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;
 - (c) that the Auditors will report separately to the Supervisor on any matter, immediately upon becoming aware of it, that is (in the opinion of the Auditors) relevant to the exercise of the powers or performance of the duties of the Supervisor or likely to call for further investigation by the Supervisor in the interests of Deposit Holders;
 - (d) that the Auditors will report separately to the Supervisor if, in the conduct of the audit or review, the Auditors form the opinion that any reports or certificates given by the Company to the Supervisor, in respect of the period covered by the audit or review, are inaccurate or incorrect or any Directors' opinions expressed to the Supervisor during, or in respect of, that period are unreasonable;
 - (e) that the Auditors will confirm their audit opinion for the benefit of the Supervisor; and
 - (f) that the Auditors will provide the Supervisor with a copy of the management letter, setting out the material findings of the audit or review, that is provided to the board of the Company.

6 Reports and information for Supervisor

Reports and information

- 6.1 The Company covenants with the Supervisor that it will:

(a) **Furnish annual accounts**

furnish or cause to be furnished directly by the Auditors to the Supervisor within four months after the close of each financial year the annual financial statements of the issuing group, each duly audited and signed by two Directors on behalf of all of the Directors together with all documents and reports required by the Financial Reporting Act 2013 to be annexed to or to accompany such statements;

(b) **Furnish semi-annual accounts**

furnish or cause to be furnished to the Supervisor within three months (or such further time as the Supervisor agrees in writing) after the close of each financial half year of the Company:

- (i) the half-yearly financial statements of the issuing group at the end of and in respect of that half year; and
- (ii) if there are any other Charging Group Members, a separate consolidated statement of financial position and statement of financial performance of the Charging Group at the end of and in respect of that half year,

each duly reviewed by the Auditors (unless the Supervisor requires that these financial statements are audited by the Auditors) and each signed by two Directors on behalf of all of the Directors;

(c) **Furnish further accounts at Supervisor's request**

at the request of the Supervisor by not less than 14 days' notice in writing (which request shall only be made when the Supervisor considers that special circumstances warrant such request and so certifies in writing to the Company specifying such special circumstances) furnish to the Supervisor:

- (i) copies of the financial statements referred to in clause 6.1(a) each duly audited and signed and made up as at the next monthly management accounting date of the Company occurring after the expiry of the said notice, or as at such other date as the Supervisor and the Company agree, together with all documents and reports required by the Financial Reporting Act 2013 to be annexed to or to accompany such statements; and
- (ii) a report by the Auditors setting out the information referred to in clause 6.1(g) in respect of the financial statements so requested with such adaptations as may be necessary or such of that information as may be required by the Supervisor,

such financial statements and Auditors report to be provided within two months after the relevant accounting date, or within such longer period as the Supervisor may in its discretion agree;

(d) **Furnish notices etc. of Company**

furnish or cause to be furnished to the Supervisor any accounts, report, notice or circular and any other communication issued by the Company to any of its shareholders at or in relation to any shareholders' meeting of the Company or to the Deposit Holders at the time of such issue;

(e) **Furnish accounts of Subsidiaries**

at the request of the Supervisor furnish or cause to be furnished to the Supervisor the latest accounts (including consolidated accounts) of any of its Subsidiaries;

(f) **Balance date and financial year of Company and its Subsidiaries**

ensure that the Company and each of its Subsidiaries will, unless the Supervisor otherwise approves in any particular case, continue to have the same balance date and financial year for the purposes of their respective audited annual financial accounts;

(g) **Auditors' annual report**

furnish to the Supervisor at the same time as there is furnished to the Supervisor the Company's annual financial statements a separate report by the Auditors stating:

- (i) whether or not in the performance of their duties as auditors they have become aware of any matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by the FMC Act or by this deed or by law and if so, giving particulars thereof;

- (ii) whether or not their audit of the Company's annual financial statements and the Register has disclosed any matter (and if so particulars thereof) calling in their opinion for further investigation by the Supervisor in the interests of Deposit Holders;
- (iii) that they have perused the quarterly Directors' Reporting Certificates given since the last report by the Auditors and that so far as matters which they have observed in the performance of their duties as auditors are concerned the statements made in paragraphs 2 and 3 of each such certificate are fairly stated and that, in their opinion, the statement made in paragraph 1 of each such certificate is reasonable;

(h) **Directors' reporting certificates**

within four weeks (or such further time as the Supervisor agrees in writing) after the end of each quarter of each financial year and if so required by the Supervisor on or before the last day of the month following any month during which the Supervisor shall request the same (which request shall only be made if the Supervisor considers that special circumstances warrant such request and so certifies in writing to the Company specifying such special circumstances) furnish to the Supervisor a certificate signed by not less than two Directors on behalf of the Directors in or to the effect of the form the Supervisor and the Company shall agree from time to time outside of this deed;

(i) **Monthly accounts and reports**

within 30 days after the end of each calendar month in each year (or within such further time in any case as the Supervisor may in writing permit) provide to the Supervisor:

- (i) a liquidity report of the Charging Group for that month in such form as the Supervisor may reasonably require;
- (ii) a capital adequacy report as at the end of that month in such form as the Supervisor may reasonably require;
- (iii) a trust deed financial ratio compliance report as at the end of that month in such form as the Supervisor may reasonably require;
- (iv) a copy of the management report of the Charging Group for that month prepared for the Directors except to the extent that the requirement for the management report to contain any particular information has been waived by the Supervisor; and
- (v) a report of the Charging Group for that month in, or to the effect of, a form to be agreed by the Company and the Supervisor outside of this deed;

(j) **Supervisor requested reports**

in addition to the specific reports required by this clause 6.1, provide any reports that the Supervisor, by written notice, requires the Company to provide relating to any matter relevant to the performance of the Supervisor's duties, including forward looking reports. Reports required under this clause 6.1(j) must be provided within the time (which must be reasonable in the circumstances) specified by the Supervisor and signed by not less than two Directors on behalf of all of the Directors and in accordance with section 115 of the FMC Act;

(k) **Changes in shareholding, Directors, management, major transactions**

advise the Supervisor, in advance or as soon as it is known, of:

- (i) every change in a person's level of influence over the Company in terms of section 43 of the NBDT Act;
- (ii) every change of Director;
- (iii) every change in a Senior Office Holder; and

- (iv) each major transaction (as defined in the Companies Act), or any related series of transactions that have the effect of a major transaction, entered into or to be entered into by the Company;
- (l) **Change in Subsidiaries**
forthwith give notice in writing to the Supervisor of:
 - (i) the acquisition or formation by the Company or any other Charging Group Member of any Subsidiary including the name thereof and furnish to the Supervisor a copy of the most recent statement of financial position and statement of financial performance of any Subsidiary so acquired; and
 - (ii) any change in the shareholding of a Charging Group Member;
- (m) **Give notice if financial limits exceeded**
forthwith give notice in writing to the Supervisor if any of the financial limits imposed by clause 5.1 have been or are about to be exceeded;
- (n) **Notice of proceedings**
forthwith give notice to the Supervisor of the service of any material notice affecting the Secured Property or any part of them (and not being in connection with the normal conduct of its business) or of the commencement of any proceedings which materially and adversely affect the same;
- (o) **Reserve Bank report**
not later than one Business Day after it has been made, provide to the Supervisor a copy of any reports (other than monthly reports) made by the Company to the Reserve Bank of New Zealand under the NBDT Act or the DT Act (as applicable);
- (p) **Risk management programme review**
ensure that its risk management programme complies with the NBDT Act and furnish to the Supervisor documents and information relating to its risk management programme for review:
 - (i) no less than every 12 months;
 - (ii) at any time there is a material change to such programme; and
 - (iii) within three months after the close of each financial year of the Company;
- (q) **Disclose register entry**
ensure that each PDS and *Disclose* register entry complies with the FMC Act at the time, and otherwise be in a form provided to the Supervisor for its review at least ten Business Days (or such shorter period as the Supervisor may agree) in advance of lodgement for a PDS and five Business Days (or such shorter period as the Supervisor may agree) in advance of lodgement for other *Disclose* register entries provided that the Company's obligation to provide the Supervisor with the PDS and *Disclose* register entry in advance of lodgement or supply will not apply to the extent that the Company reasonably believes that it is subject to an obligation or requirement under relevant law which would prevent it from complying with this requirement; and
- (r) **Other reports**
to the extent not detailed above, furnish reports required by the FMC Regulations, in each case in such form as the Supervisor may reasonably require.

7 Charging Subsidiaries

Further Charging Subsidiaries

- 7.1 The Company shall procure each Subsidiary, promptly upon it becoming a Subsidiary, becomes a Charging Subsidiary by executing registering and delivering to the Supervisor a deed in the form or substantially in the form prescribed in Schedule 2 guaranteeing and securing the Secured Indebtedness and thereby agreeing to become bound by this deed as a Charging Subsidiary.

Compliance by Charging Subsidiaries

- 7.2 The Company covenants with the Supervisor that it will use its voting powers in and representation on the board of directors of each Charging Subsidiary in such manner as to ensure full compliance and observance by each Charging Subsidiary at all times with the provisions of this deed.

8 Enforcement of security on default

When security is enforceable

- 8.1 Subject to clauses 8.5 and 9.3, the security constituted by this deed shall become enforceable on the happening of any one or more of the following events:
- (a) **Non-payment**

a member of the Charging Group fails to pay any amount of the Secured Indebtedness on its due date for payment (except where the delay is caused solely by a malfunction of the banking system used by the Charging Group Member);
 - (b) **Breach of undertaking**

a Charging Group Member does not perform or comply with any of its obligations under clause 5.1(a), 5.1(b), 5.2, or a default notice is served under clause 8.3;
 - (c) **Breach of other obligations**

a Charging Group Member fails to perform or comply with any of its other obligations under this deed in a material respect and, in the case of a failure that is capable of remedy, that failure is not remedied within 14 days of the date that a Charging Group Member first became aware of it;
 - (d) **Avoidance or repudiation**

either:

 - (i) this deed ceases to have effect (in whole or in any material part) or is or becomes void, voidable, illegal, invalid or unenforceable in any material respect (other than by reason of any waiver); or
 - (ii) a Charging Group Member repudiates or does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate this deed;
 - (e) **Insolvency**

any Charging Group Member:

 - (i) is unable to pay its indebtedness as it falls due or is presumed to be so under any law;
 - (ii) stops or suspends payment of any of its indebtedness generally or begins negotiations or takes any proceedings to reschedule any of its indebtedness; or
 - (iii) makes, or proposes to make, a general assignment, arrangement, compromise or composition with, or for the benefit of, its creditors in respect of its indebtedness generally;

(f) **Enforcement**

either:

- (i) a distress, attachment, execution or other legal process for an amount of or in excess of \$25,000 in aggregate (or its equivalent in other currencies) is levied or enforced on or against assets of a Charging Group Member and is not discharged or stayed within 14 days; or
- (ii) a receiver, trustee, manager, administrator or similar officer is appointed in respect of a Charging Group Member or the whole or any material part of its assets;

(g) **Liquidation**

an order is made or any resolution passed for the liquidation of a Charging Group Member, except;

- (i) for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Supervisor before that step is taken; or
- (ii) where its assets available for distribution are distributed to another Charging Group Member;

(h) **Amalgamation**

the board of a Charging Group Member passes any resolution not previously approved by the Supervisor for or in contemplation of any amalgamation with or involving another company then existing or yet to be formed (unless such amalgamation is of a Charging Group Member with another Charging Group Member);

(i) **Corporations (Investigation and Management) Act 1989**

a Charging Group Member is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, a statutory manager is appointed to it or any step is taken with a view to any such appointment in respect of it under that Act (including a recommendation by the FMA supporting such an appointment);

(j) **Cessation of business**

a Charging Group Member ceases or threatens to cease to conduct all or a substantial part of its business (except where the business of the relevant person is transferred to another Charging Group Member or for the purposes of and followed by an amalgamation or solvent reconstruction on terms approved by the Supervisor);

(k) **Enforcement of Prior Security Interest**

a Prior Security Interest is enforced;

(l) **Cross default**

any indebtedness for borrowed money of a Charging Group Member of or in excess of \$25,000 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 any facility for financial accommodation or any underwriting facility available to a Charging Group Member is cancelled or suspended by any person providing it by reason of any default or event of default (howsoever described); or

(m) **Change in control**

there is a change in the control of the Company without the prior written consent of the Supervisor (which may not be unreasonably withheld provided the Company and the

persons who control the Company following such change have, if required by the Supervisor, entered into arrangements to the satisfaction of the Supervisor for the protection of the interests of the Deposit Holders).

Events of review

8.2 If at any time:

- (a) the Company's Capital Ratio is within 2% of the minimum percentage in clause 5.1(b) (for example if the Capital Ratio in clause 5.1(b) is 12% and the Company's Capital Ratio for that period is 13%) and the Supervisor has reasonable grounds to believe that the Company is likely to breach the covenant within the next six months; or
- (b) a Liquidity Report delivered under clause 6.1(i)(i) discloses that the Company's projected Liquidity Position for any of the first three months of that Liquidity Report is negative,

then the Supervisor shall promptly notify the Company. The Company shall consult with the Supervisor for the period of not less than 10 and not more than 20 Business Days immediately following the receipt of such notification with a view to agreeing on any action to be taken by the Company to avoid the breach described in clause 8.2(a) occurring or to avoid the Company's actual Liquidity Position for any monthly period described in clause 8.2(b) being negative.

8.3 If at the end of the 20 Business Day period, the Supervisor is not satisfied with the action which the Company has agreed to take to avoid the breach described in clause 8.2(a) occurring or to avoid the Company's actual Liquidity Position for any monthly period described in clause 8.2(b) being negative, the Supervisor may serve a default notice on the Company. If a default notice is served by the Supervisor on the Company pursuant to this clause, then an Event of Default shall be deemed to have occurred under clause 8.1(b) on the date of service of such notice.

Supervisor's powers on enforcement of security

8.4 At any time after the security constituted by this deed shall have become enforceable the Supervisor may in its discretion and shall forthwith (subject to the provisions of clause 9.15) upon the request in writing of any holder of a Security Deposit, the request in writing of Deposit Holders holding not less than 20% in combined nominal amount of the Deposits, or upon being directed to do so by a Special Resolution take one or more of the following steps:

- (a) declare the whole of the Secured Indebtedness to have become immediately due and payable whereupon the Secured Indebtedness shall forthwith become due and payable;
- (b) exercise all the rights of a natural person in relation to the Secured Property;
- (c) exercise all other rights conferred by law (including under Part 9 of the PPSA) in relation to the Secured Property; and
- (d) in the name of the relevant Charging Group Member or otherwise, at any time, do anything that the Charging Group Member could do in relation to the Secured Property.

Notice of exercise of Supervisor's powers

8.5 The powers conferred by the preceding clause (the powers of enforcement) shall be exercisable by the Supervisor without notice to the Company or any other Charging Group Member but before exercising any powers of enforcement the Supervisor shall, except where it shall certify in writing to the Company that in its opinion delay would imperil the interests of the Deposit Holders or where in its opinion the event is not capable of being remedied within 14 days, give written notice of its intention to the Company (which may be in general terms and which shall be deemed to be notice also to the other Charging Group Members) and shall not exercise the powers of enforcement until the expiration of 14 days after the giving of such notice.

8.6 If within such period of 14 days the relevant breach or default is remedied to the satisfaction of the Supervisor or the Supervisor notifies the Company in writing that the particular breach or event relied upon no longer in the opinion of the Supervisor detrimentally affects the security created by or pursuant to this deed, the Supervisor shall not exercise the powers of enforcement. Notwithstanding anything contained in clauses 8.5 to 8.7, if the Supervisor has appointed a

Receiver no further notice shall, subject to sections 99 and 119 of the Property Law Act 2007, be required before exercising the powers of enforcement.

- 8.7 The Supervisor shall not be under any obligation to advise any Deposit Holder of any occurrence of the nature specified in clause 8.1, or to convene any meeting of Deposit Holders, unless in the Supervisor's opinion the occurrence has, or may have, a material adverse effect on the interests of the Deposit Holders generally.

Supervisor's borrowing powers

- 8.8 The Supervisor may, for the purpose of exercising any of its powers under clause 8.4 and for the purpose of payment to the Supervisor of any moneys owing to it in terms of this deed, borrow or raise money on the security of the Secured Property or any part thereof in priority to the Secured Indebtedness on such terms as the Supervisor may think fit.

Events in which a Receiver may be appointed

- 8.9 The Supervisor may (in addition to and without prejudice to any of its other rights), at any time, appoint in writing (and remove, replace and fix the terms of appointment of) one or more Receivers (jointly and severally) on terms considered necessary or expedient by the Supervisor if:
- (a) an Event of Default occurs;
 - (b) the Company so requests; or
 - (c) the Supervisor, in its sole discretion, believes that any Secured Property is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in contravention of this deed.

Powers, rights and duties of Receiver

- 8.10 Subject to any restriction imposed by the Supervisor, a Receiver is to have:
- (a) all the rights of the Supervisor under clause 8.4; and
 - (b) all the rights conferred on receivers and managers by law (including under the Receiverships Act 1993).

Receiver agent of debtor

- 8.11 A Receiver is to be the agent of the Charging Group Member in respect of whose Secured Property they are appointed. The Charging Group Member is to be solely responsible for the acts and defaults of a Receiver.

Receiver's remuneration

- 8.12 The remuneration of a Receiver may be fixed by the Supervisor (and may be or include a commission calculated by reference to the gross amount of all money received). However, this remuneration is payable by the Charging Group and forms part of the Secured Indebtedness, secured by the Secured Property.

No liability as mortgagee in possession

- 8.13 The Supervisor shall not nor shall any Receiver be liable by reason of any entry into possession of the Secured Property or any part thereof to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

Protection of persons dealing with Supervisor and Receiver

- 8.14 No person dealing with the Supervisor or any Receiver or the Receiver's agents shall be concerned to enquire whether the security constituted by this deed has become enforceable or whether the power exercised or purported to be exercised has become exercisable or whether any moneys remain due upon the security of this deed or as to the necessity or expediency of the conditions subject to which any sale shall be made or otherwise as to the propriety or regularity of any exercise of the powers of enforcement or to see to the application of any moneys paid to the Supervisor or to any Receiver and in the absence of fraud on the part of such person such

dealing shall be deemed with respect to such person to be within the powers conferred by this deed and to be valid and effectual accordingly and the remedy of the Charging Group in respect of any irregularity or impropriety whatsoever in exercise of such powers shall be in damages only.

Receipt of Supervisor or Receiver

- 8.15 Upon any exercise of the powers of enforcement and upon any other dealing or transaction under this deed the receipt of the Supervisor or the Receiver for any other moneys paid to it or the Supervisor or the Receiver shall effectively discharge the person paying the same therefrom and from being concerned to see to the application or being answerable for the loss or misapplication thereof.

Concurrent sale or receivership

- 8.16 The Supervisor may, upon such terms as it thinks proper, join in exercising its powers hereunder with any other secured creditor of the Company or any other Charging Group Member and in particular may, upon such terms as it thinks proper, join in appointing a common Receiver of the Secured Property or any part thereof subject to the Supervisor retaining such priority as is enjoyed by it in respect of the Secured Property but with liberty for the Supervisor to make any arrangement it thinks proper for the purpose of ensuring the respective priorities.

Application of proceeds of enforcement

- 8.17 All moneys received by the Supervisor and any Receiver after the Date of Enforcement shall (subject to payment of or provision for any debts or liabilities having priority to the Deposits) be held and applied:
- (a) firstly (subject to any order made by any Court) in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor or any Receiver under this deed or any collateral security and of all remuneration payable to the Supervisor or any Receiver hereunder with interest thereon as herein provided;
 - (b) secondly in or towards payment to the Deposit Holders *pari passu* in proportion to the amounts owing whether actually or contingently to them of the Principal in respect of their Deposits and interest thereon, provided always that:
 - (i) before making any such payment the Supervisor shall, in the case of each holder of Security Deposits but subject as hereinafter provided, set aside an amount (or the proper proportion thereof in the event of the amount available for distribution and application as aforesaid in respect of the amounts owing to the Deposit Holders respectively as aforesaid being less than one hundred cents in the dollar) equal to the aggregate of the contingent liabilities (if any) forming part of the Security Deposits;
 - (ii) in the event of a contingent liability or any part thereof being indeterminate or unlimited in amount then the Supervisor shall subject as hereinafter provided set aside as aforesaid such amount as shall be nominated by the holder of the relevant Security Deposits as its reasonable estimate of that contingent liability or the proper proportion thereof (in the event of the amounts available for distribution and application as aforesaid in respect of the amounts owing to the Deposit Holders respectively as aforesaid being less than one hundred cents in the dollar) as the case requires; and
 - (iii) any amount set aside in accordance with these provisos shall be held by the Supervisor and applied in the following manner:
 - (A) when and so often as a contingent liability in whole or in part shall become an absolute ascertained liability the Supervisor shall pay to the holder of the relevant Security Deposits the amount of such absolute and ascertained liability or a proportionate part thereof as aforesaid as if the same had been a debt presently payable to such holder at the Date of the Enforcement; and

- (B) when and so often as any portion of the amount set aside pursuant to these provisos is no longer required for the purposes of the immediately preceding sub-clause (A) then the same shall become available for distribution and payment as otherwise provided in this clause; and
- (c) thirdly subject to the rights of any subsequent encumbrancers, in payment of the surplus (if any) of such moneys to the Company or such other person or persons as the High Court of New Zealand on the application of the Supervisor may direct.

Order of payment of Principal and interest

- 8.18 All monies available for payment to Deposit Holders under clause 8.17 shall be applied first on account of Principal and secondly on account of interest provided that if the Supervisor considers it expedient in the interests of Deposit Holders generally to do so or the Deposit Holders by Special Resolution so direct, the whole or any part of the interest may be paid before any payment is made on account of Principal.

Supervisor's powers to postpone distribution

- 8.19 If the amount of the money at any time available under clause 8.17 for payment of Principal of the Deposits is less than 10% of the amount of the Deposits the Supervisor may invest those moneys in any investments hereinafter authorised until such investments and income therefrom together with any other funds for the time being under the control of the Supervisor and applicable for the purpose amount to a sum sufficient to pay 10% of the amount of such Deposits.

Notice of distribution

- 8.20 The Supervisor shall give not less than 14 days' notice to the Deposit Holders of the day, place and time fixed for any payment to them under clause 8.17 and after the day so fixed (unless the Supervisor fails to make payment in which case interest shall run until payment is actually made or effected) the Deposit Holders shall be entitled to interest on the balance only (if any) of the Principal owing on the Deposits held by them after deducting the amount (if any) payable in respect thereof on the day so fixed.

Currency of proceeds

- 8.21 The Supervisor shall distribute moneys in the currency in which it holds or receives them (the **Currency of Proceeds**), unless the Supervisor and any Deposit Holder agree otherwise.

Currency of Proceeds different from Currency of Indebtedness

- 8.22 Where, in respect of any Deposit Holder and any distribution to be made under clause 8.17, the Currency of Proceeds is different from the currency in which that Deposit Holder's Deposits (or any part thereof) are denominated (the **Currency of Indebtedness**):
 - (a) any part of a Deposit Holder's Deposits denominated in a currency other than the Currency of Proceeds shall be notionally converted into the Currency of Proceeds on the date of distribution at the current exchange rates (as determined by the Supervisor in its sole discretion);
 - (b) the amounts owing to each Deposit Holder in the Currency of Proceeds (either actually or notionally converted in accordance with sub-clause (a)) shall be utilised in determining the pari passu entitlement of each Deposit Holder;
 - (c) in any distribution the Supervisor shall distribute to each Deposit Holder its entitlement in the Currency of Proceeds; and
 - (d) for the purpose of determining by what amount the indebtedness due under any Deposit denominated in a currency other than the Currency of Proceeds has been reduced, the amount distributed shall be deemed to be the amount in the Currency of Indebtedness equivalent to the amount distributed in the Currency of Proceeds converted at the rate of exchange referred to in sub-clause (a) above.

Waiver of rights

8.23 Each Charging Group Member:

- (a) has no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) waives its rights to:
 - (i) receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Supervisor in respect of any Personal Property;
 - (ii) receive a statement of account under section 116 of the PPSA;
 - (iii) receive notice of any proposal of the Supervisor to retain collateral under section 120(2) of the PPSA;
 - (iv) object to any proposal of the Supervisor to retain collateral under section 121 of the PPSA;
 - (v) not have goods damaged if the Supervisor removes an accession under section 125 of the PPSA;
 - (vi) receive notice of the removal of an accession under section 129 of the PPSA;
 - (vii) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA; and
 - (viii) (without affecting clause 4.8) redeem collateral under section 132 of the PPSA.

Power to call for and rely on certificate of indebtedness

8.24 For the purposes of determining the appropriate payment to be made to any Deposit Holder pursuant to clause 8.17, or the voting entitlement of any Deposit Holder under this deed, the Supervisor may (but need not) require any Deposit Holder to provide it with a certificate giving details of all amounts of any particular kind due or alleged to be due in respect of that Deposit Holder's Deposit as at any date. The Supervisor shall be entitled to rely upon the accuracy and correctness of any such certificate. Each Deposit Holder shall also provide the Supervisor with whatever information it may require for the purpose of this clause. The Supervisor shall incur no liability in so acting or for the consequences of so acting should any such certificate or information prove to have been incorrect, or for failing to request or obtain any such certificate or information.

9 Powers and provisions relating to Supervisor

Powers of investment

9.1 Any moneys subject to the trusts hereof may at the discretion of the Supervisor be invested in the name of the Supervisor or of its nominees in any investment whatsoever or at the request of the Company in the purchase of Deposits and with power to vary, deal with, or dispose of, such investments. The income arising from such investments shall until the Date of Enforcement belong to the Company or the relevant Charging Group Member as the case may be.

Applications to Court

9.2 The Supervisor may at any time after the Date of Enforcement apply to the Court for an order that the powers and trusts hereof be exercised under the direction of the Court and for the appointment of a Receiver of the Secured Property or any part thereof and for any other order or directions in relation to the execution and administration of the powers and trusts hereof as the Supervisor shall deem expedient and it may assent to or approve of or oppose any application to the Court made by or at the instance of any Deposit Holder and shall be indemnified by the Company against all expenses incurred in relation to any such application or proceedings.

Waiver by Supervisor

- 9.3 Subject to any direction or request given by Deposit Holders pursuant to section 112(2)(b) of the FMC Act the Supervisor may at any time and from time to time by notice in writing to the Company or any other Charging Group Member as the case may be, waive in part or in whole, for a specified period or completely, on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Company or any other Charging Group Member, as the case may be of any of the provisions of this deed or of any collateral security, provided the Supervisor is satisfied that the interests of the Deposit Holders will not be materially prejudiced thereby, but such waiver shall in no way prejudice the rights of the Supervisor and the Deposit Holders in respect of any other breach.

Supplemental powers of Supervisor

- 9.4 In addition to the provisions of the law relating to trustees and to facilitate the discharge of its duties hereunder but subject always to sections 112 and 113 of the FMC Act:
- (a) the Supervisor is entitled to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to assist the Supervisor to determine the financial position of the Charging Group or review the business, operation, or management systems or the governance of the Charging Group. If the Supervisor engages an expert under this clause, the Company must provide reasonable assistance to the expert to allow the expert to provide the assistance and the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the Company;
 - (b) for the purposes of carrying out its responsibilities under this deed or otherwise pursuant to the FMC Act and FMC Regulations, the Supervisor may inspect the Company's business premises with 48 hours' written notice to the Company and with a specified date and time that is within the Company's normal working hours. The Company shall provide reasonable assistance and personnel to the Supervisor for such inspection;
 - (c) the Supervisor is entitled to appoint an independent auditor to audit the financial statements of the Charging Group if:
 - (i) the Auditors are not, or is not a partner of, an audit firm that has at least five partners and receives at least 20% of its revenue from audit or audit-related work; or
 - (ii) in the reasonable opinion of the Supervisor, the Auditors do not have sufficient experience or capacity to undertake the audit of the Company;

The fees and expenses of the independent auditor, which must be reasonable in the circumstances, must be determined by the Supervisor and paid by the Company. If an independent auditor is appointed, the Company is obliged to co-operate in permitting the auditors to carry out the audit. The Supervisor must ensure that the terms of the appointment of the auditor include the terms set out in clause 5.8;
 - (d) the Supervisor may without liability for loss obtain, accept and act on or decline and elect not to act on:
 - (i) the opinion or advice of or any information obtained from any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant, or other expert although the same shall subsequently be found to contain some error or not be authentic;
 - (ii) a certificate signed by any two directors on behalf of the directors of the company concerned as to any fact or matter prima facie within the knowledge of the Company or the other Charging Group Member concerned or that any transaction or thing is expedient or commercially desirable and not detrimental to the interests of the Deposit Holders as sufficient evidence of such fact or matter or the expediency or desirability of such transaction or thing; and

- (iii) the statements contained in any certificate or report given pursuant to the provisions of this deed as conclusive evidence of the facts stated therein;
- (e) the Supervisor shall not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Deposit Holders in respect whereof a proper record has been made and which the Supervisor believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings thereat or otherwise howsoever;
- (f) the Supervisor shall not be responsible for the money subscribed by the applicants for or subscribers of the Deposits or be bound to see to the application thereof;
- (g) the Supervisor shall not be bound to enquire into or be liable for any defects or failure in the title of the Company or any other Charging Group Member to the Secured Property whether such defects or failure might have been discovered upon an enquiry and remedied or not;
- (h) except as herein otherwise expressly provided the Supervisor shall, as regards all trusts, powers, authorities and discretions vested in it by this deed, have absolute discretion as to the exercise thereof and as to the conduct of any action, proceeding or claim and, provided it shall have acted with reasonable care and diligence, it shall not be responsible for any loss, damages or expenses that may result from the exercise or non-exercise thereof; and
- (i) the Supervisor whenever it thinks it expedient in the interests of the Deposit Holders to do so may:
 - (i) delegate at any time (at the expense of the Charging Group) to any person any of the trusts, powers, authorities or discretions vested in the Supervisor by this deed which cannot conveniently be exercised by it or through its employees upon such terms and conditions (including the power to sub-delegate) as the Supervisor may think fit and (subject to section 105 of the FMC Act) the Supervisor shall not be responsible for any loss incurred by any misconduct or default on the part of any such delegate or sub-delegate;
 - (ii) authorise such person as it thinks fit to act as its representative at any meeting; and
 - (iii) (in addition to the exercise of the powers contained in clause 9.2) apply to the Court for directions in relation to any question arising either before or after the Date of Enforcement.

Indemnity of Supervisor

- 9.5 Without prejudice to the right of indemnity by law given to trustees, supervisors and in relation only to the proper performance of the duties of the supervisor under sections 112(1) and 113 of the FMC Act, the Supervisor and every Receiver, attorney, manager, agent or other person appointed by the Supervisor under this deed, shall be indemnified out of the Secured Property in respect of all liabilities and expenses incurred in the execution or purported execution of the powers and trusts hereof and against all actions, costs and demands in respect of any matter or thing done or omitted relating hereto other than a claim arising out of a wilful default or wilful breach of trust and the Supervisor may retain and pay out of any moneys in its hand arising from the trusts of this deed all sums necessary to effect such indemnity and also the remuneration and disbursements of the Supervisor as herein provided and the Supervisor shall have a security interest on the Secured Property for all money payable to it under this clause or otherwise howsoever arising out of or in connection with this deed or the issue of the Deposits.

Limitation of liability of Supervisor

- 9.6 The Supervisor will not be under any liability to the Company or the Deposit Holders unless it is due to the Supervisor's fraud, gross negligence or wilful default where the Supervisor has failed to show the degree of care and diligence required of it having regard to the powers, authorities,

discretions or responsibilities conferred or imposed upon it by this deed or by law and the limitations contained in and implied by this deed.

- 9.7 Notwithstanding any other provision of this deed, the Supervisor does not assume any duty of care to the Company, any creditors of the Company or any person other than the Deposit Holders (subject to and in accordance with this deed) in exercising the powers under this deed or at law, and shall not be liable to any person (including the Company and any Deposit Holders) in any way except for fraud, gross negligence or wilful default where the Supervisor has failed to show the degree of care and diligence required of it having regard to the provisions of this deed.

Fiduciary relationship

- 9.8 Nothing expressed in this deed or implied by law shall prohibit the Supervisor or its holding company or any of their subsidiaries (together in this clause where the context permits being included in the expression 'the Supervisor') or the officers of the Supervisor from being a Deposit Holder, creditor, or shareholder of the Company or of any of its subsidiaries or from acting in any representative capacity for a Deposit Holder. The Supervisor may enter into any transactions with the Charging Group in the ordinary course of business and shall not be accountable to the Charging Group or the Deposit Holders for any profits arising from such transactions.

Represent Deposit Holders

- 9.9 The Supervisor may either of its own volition or pursuant to any directions or in accordance with any policy given by any meeting of Deposit Holders represent the Deposit Holders in any matter or proceedings affecting the interests of the Deposit Holders concerning them generally.

Retirement of Supervisor

- 9.10 The Supervisor may retire at any time without assigning any reason therefor upon giving 30 days' (or such lesser period as agreed between the parties in writing) notice in writing to the Company subject to compliance with section 122 of the FMC Act and the transfer to the new supervisor of the securities collateral herewith and the moneys and investments held by the Supervisor hereunder.

Appointment of new Supervisor

- 9.11 The power of appointing a new supervisor or supervisors hereof shall be vested in the Company but no supervisor shall be appointed unless such appointment is first approved by a Special Resolution of the Deposit Holders. Upon the Supervisor notifying the Company that it wishes to retire or, subject to clause 9.13, upon the Company wishing to appoint a new supervisor the Company shall promptly call a meeting of the Deposit Holders for the purpose of approving an appointment of a new supervisor and if approval is given the Company shall exercise its power of appointment. Only a body corporate licensed in accordance with the provisions of the Financial Markets Supervisors Act 2011 shall be appointed as supervisor under this deed.
- 9.12 In the event that the Company within 30 days of receiving notice of the Supervisor's intention to retire fails to call a meeting of the Deposit Holders or to exercise the power vested in it of appointing a new supervisor or new supervisors then in either case the Deposit Holders may by Special Resolution exercise such power to the exclusion of the Company.

Requirements for retirement and removal

- 9.13 The Supervisor may not:
- (a) be removed under clause 9.11 or resign under clause 9.10 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 Company under clause 9.11 without the FMA's consent.

- 9.14 Nothing in clauses 9.11 to 9.13 above shall apply to the removal or appointment of a supervisor by the FMA pursuant to section 22 of the Financial Markets Supervisors Act 2011. The Company may agree to the continued appointment of the FMA appointed supervisor.

Supervisor's indemnity by Deposit Holders

- 9.15 If the Supervisor shall receive a request or direction pursuant to clause 8.4 the Supervisor shall not be bound to comply therewith unless the Supervisor shall first be indemnified to its satisfaction against anything done or omitted to be done in good faith to give effect to such request or direction including against all actions proceedings claims and demands to which the Supervisor may be rendered liable and all expenses which it may incur by so doing.

Additional Supervisor's powers

- 9.16 The powers conferred by this deed upon the Supervisor shall be in addition to any powers which may from time to time be vested in trustees by law and to any powers which may from time to time be vested in the Supervisor as the holder of any of the Deposits.

Duties of Supervisor

- 9.17 The Supervisor must:
- (a) act honestly and in good faith in acting as supervisor;
 - (b) in exercising its powers and duties as supervisor, act in the best interests of the Deposit Holders;
 - (c) exercise reasonable diligence in carrying out its functions as a supervisor and to ascertain whether or not any breach of the terms of this deed or of the terms of the offer of the Deposits has occurred;
 - (d) do all the things that it is empowered to do to cause any breach of those terms to be remedied (except if it is satisfied that the breach will not materially prejudice the security of the Deposits or the interests of the Deposit Holders); and
 - (e) subject to any order of the Court made under section 210 of the FMC Act, act in accordance with any directions given by a Special Resolution of Deposit Holders that is not inconsistent with any relevant law or this deed in relation to seeking a remedy to a breach of the Company's obligations or any other matter connected with the Supervisor's functions.
- 9.18 The Supervisor must exercise reasonable diligence to ascertain whether or not the assets of the Charging Group that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the Deposits as they become due.
- 9.19 Without limitation to the duties in clauses 9.17 and 9.18, the Supervisor must carry out all other duties imposed on it by this deed or by law.

Rights held in trust by Supervisor

- 9.20 Each Deposit Holder will have the benefit of, and be bound by and will be deemed to have notice of all of the provisions of, this deed, and each other document relating to the Deposits held by that Deposit Holder and all those provisions shall be binding on the Company, the Supervisor, each Deposit Holder, and all persons claiming through them respectively, including the following rights:
- (a) the right to enforce the Company's duty to repay, or to pay interest, under the terms of the Deposits;
 - (b) the charges and security interest created under clause 4.1; and
 - (c) the right to enforce any other duties that the Company and the Charging Subsidiaries have under the terms of issue of the Deposits or the provisions of this deed.

Benefit and enforceability of this deed

9.21 This deed and each document relating to it or to the Deposits:

- (a) is legally enforceable between the Supervisor, the Company and the Deposit Holders;
- (b) shall be enforceable for the benefit of every Deposit Holder from time to time except that, for the purposes of the proviso to section 12 of the Contract and Commercial Law Act 2017, the benefit so extended to Deposit Holders is intended to be limited by, and enforceable subject to, the terms of this deed including:
 - (i) for the purposes of section 15 of the Contract and Commercial Law Act 2017, the rights of the parties to this deed to vary or discharge benefits or obligations as provided in this deed without the consent of any Deposit Holder, other than as so provided; and
 - (ii) the restrictions in this deed on a Deposit Holder taking action other than through the Supervisor.

This clause does not prevent a Deposit Holder from enforcing the Company's duty to repay, or to pay interest, or any other duties that the Company, any guarantor, or any other person owes to the Deposit Holder.

10 Remuneration of Supervisor

Remuneration

10.1 The Company shall pay to the Supervisor by way of remuneration for its services as Supervisor such remuneration as shall from time to time be agreed between the Company and the Supervisor provided always that if the Company and the Supervisor fail to agree on any amount payable to the Supervisor under this clause the dispute shall be referred to a single arbitrator if the parties can agree on one and otherwise to two arbitrators, one to be appointed by the Company and one by the Supervisor, in accordance with the Arbitration Act 1996.

Expenses

10.2 The Company will also pay all expenses including travelling expenses reasonably incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation, execution and registration of this deed;
- (b) the exercise by the Supervisor of any power conferred on the Supervisor by this deed or upon any Deposit Holder including the taking of any expert advice deemed necessary or expedient by the Supervisor;
- (c) any breach or default in the observance or performance by the Company or any of the other Charging Group Members of the covenants, obligations and conditions of this deed;
- (d) the convening and holding and carrying out of any directions or resolutions of any meeting of Deposit Holders; and
- (e) any application under the trusts and provisions hereof for its consent to or approval of any act or matter.

Payments continuing

10.3 The said remuneration and payments shall continue to be payable until the trusts hereof shall be finally wound up and whether or not a Receiver shall have been appointed or the trusts hereof be in course of administration by or under the direction of the Court.

Payments to be secured by security interest on Secured Property

10.4 All expenses incurred by, all payments made in the lawful exercise of the powers conferred upon and all remuneration payable to, the Supervisor or to any Receiver shall be payable by the

Company on demand and shall be secured by an additional security interest on the Secured Property and form part of the Secured Indebtedness and shall be satisfied before any payment is made thereout to the Deposit Holders and until payment shall carry interest at the Appropriate Rate from the date on which they have become payable.

11 Meetings of Deposit Holders

The provisions of Schedule 1 shall govern any meeting convened under this deed.

12 Miscellaneous provisions

Notice to Deposit Holders

- 12.1 Any notice to be given to any Deposit Holders may be given either personally or by sending it by post to the address of the Deposit Holders shown in the Register or by Electronic Communication. A notice may be given to joint holders of a Deposit by giving the notice to the Deposit Holder whose name stands first in the Register in respect of such holding. Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and the notice if posted to an address in New Zealand will be deemed to be served on the fifth day following the day of posting and if posted to an address outside New Zealand the notice will be deemed to be served on the tenth day after the date of its posting.

Other notices

- 12.2 Any other notice, requisition, demand or request under this deed may be signed by or on behalf of the Company, any other Charging Group Member or the Supervisor by an officer, agent or attorney or by its, his or her respective solicitors and may be given:
- (a) to the Company or a Charging Group Member by delivering it, or posting it as aforesaid, to their respective registered offices; and
 - (b) in the case of the Supervisor, by delivering it or posting it as aforesaid to the office of the branch of the Supervisor which normally undertakes and performs the administration of the trusts hereof, or to its registered office or to its principal place of business.

In proving the giving of such notice by post it shall be sufficient to prove that the person signing has signed for or on behalf of the person giving the notice and that the envelope containing the notice was properly addressed, stamped and dispatched in the ordinary course of post, and the notice if posted to an address in New Zealand shall be deemed to be served on the fifth day following the day of posting and if posted to an address outside New Zealand the notice shall be deemed to be served on the tenth day after the date of its posting.

Registration of deed

- 12.3 The Company shall forthwith at its own cost register and shall all pay costs and expenses incidental to this deed including the cost of preparation thereof.

Release upon payment

- 12.4 Upon proof being given to the reasonable satisfaction of the Supervisor that the Secured Indebtedness has been paid or satisfied in full or that provision for such payment and satisfaction has been made in accordance with the provisions of this deed or to the satisfaction of the Supervisor, the Supervisor shall at the request and cost of the Company, release this deed and surrender and release the Secured Property or such part thereof as may remain subject to a security interest in the Supervisor's favour, free from the security interests created by or pursuant to this deed.

Governing law

- 12.5 This deed is governed by the laws of New Zealand. The courts in New Zealand have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed).

13 Alterations to deed

Supervisor may concur in deed amendments or replacements

- 13.1 The Supervisor may concur with the Company in making any amendment or replacement of this deed if either:
- (a) the amendment or replacement is approved by, or is contingent on approval by, a Special Resolution of Deposit Holders that are or may be adversely affected by the amendment or replacement; or
 - (b) the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on the Deposit Holders and the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that the deed, as amended or replaced, will comply with the requirements of the FMC Act on the basis set out in the certificate, provided always that no modification or addition shall be made in the terms and conditions of issue of any Security Deposit or the rights, powers or privileges of the holders of any Security Deposit without the consent in writing of the holders thereof insofar as these rights, powers or privileges differ materially from the rights, powers or privileges of the holders of other Deposit.

Registration of amendment

- 13.2 The Company must within five Business Days after an amending deed is executed under clause 13.1, register a deed of amendment in accordance with section 110 of the FMC Act.

Advice of alteration to Deposit Holders


- 13.3 Unless the Supervisor agrees otherwise, the Company must, within 10 Business Days after an amending deed is executed under clause 13.1, send a notice that contains a description of the amendment to every Deposit Holder.

Signing


Executed and delivered as a deed on the date specified at the beginning of this deed.

Signed by

Gold Band Finance Limited



Director signature



Director signature

Stephen J Tobbs.

Director name

John Philip Thompson

Director name

Signed by

Covenant Trustee Services Limited

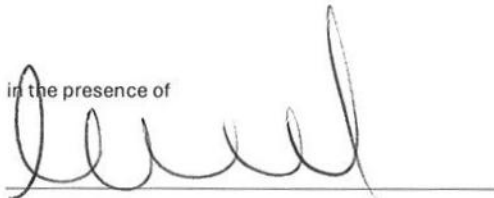

Signature

ELEANOR SMITH
Authorised signatory name


Signature

Richard Spang
Authorised signatory name

in the presence of


Witness signature

Witness signature

NICHOLAS PETER SUMMERFIELD

Full Name

AUCKLAND

Address

SOLICITOR

Occupation



Schedule 1 – Proceedings at meetings of Deposit Holders

1 Meetings of Deposit Holders

- 1.1 Meetings can be convened for any of the purposes of this deed at any time but unless convened, the Company is not required to hold an annual or other periodic meetings of the Deposit Holders.
- 1.2 The Company may at any time of its own volition convene a meeting of the Deposit Holders and shall convene if required to so by law.
- 1.3 The Company must summon a meeting of the Deposit Holders upon request in writing of the Supervisor or Deposit Holders holding not less than 5% in combined nominal amount of the Deposits, at the day of the request.

2 Place and business of meetings

- 2.1 Each meeting shall be held in the city or town at which the registered office of the Company is situated or at such other place as the Supervisor determines or approves.
- 2.2 The business of a meeting of Deposit Holders may be any business specified by the person convening or requesting the meeting including, without limitation, consideration of any matter concerning the rights, powers, discretions or obligations conferred on the Supervisor or the Deposit Holders under this deed (including consideration of Special Resolution) or any matter concerning the rights or obligations of the Supervisor or the Deposit Holders in relation to the Deposits.

3 Chairperson

- 3.1 The Supervisor shall appoint the chairperson of any meeting called in accordance with clause 1.3 of this Schedule.
- 3.2 Subject to clause 3.1 of this Schedule, the Deposit Holders present may choose one of their number to be chairperson of the meeting if:
 - (a) the meeting was called by the Company of their own volition;
 - (b) no chairperson has been appointed by the Supervisor;
 - (c) at the meeting, the chairperson appointed by the Supervisor is not present within 15 minutes of the time appointed for the start of the meeting; or
 - (d) there is no Supervisor.

4 Notice of meetings

- 4.1 The Company must ensure that written notice of the time and place of a meeting of Deposit Holders is sent to the following at least 15 Business Days before the meeting:
 - (a) every Deposit Holder entitled to receive notice of the meeting;
 - (b) the Supervisor; and
 - (c) every director and Auditor of the Company.
- 4.2 The notice must state:
 - (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Deposit 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 Deposit Holder to appoint a proxy.

- 4.3 If a Special Resolution is to be submitted to the meeting, then:
- (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 clause 4.1 of this Schedule (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 Company at least five Business Days before the notice is given under clause 4.1 of this Schedule).
- 4.4 An irregularity in a notice of a meeting is waived if:
- (a) all the Deposit Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Deposit 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 Deposit Holders.
- 4.5 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Deposit Holder does not invalidate the proceedings at that meeting.
- 4.6 If a meeting of Deposit Holders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

5 Methods of holding meetings

A meeting of Deposit Holders may be held by a quorum of the Deposit Holders:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) by a combination of both of these methods.

6 Quorum

- 6.1 No business may be transacted at a meeting of Deposit Holders if a quorum is not present.
- 6.2 A quorum for a meeting of Deposit Holders at which a Special Resolution is to be submitted is present if Deposit Holders or their proxies are present or have cast votes under clause 13 of this Schedule who hold Deposits with a combined nominal value of no less than 25% of the nominal value of the Deposits held by those persons who are entitled to vote. In this clause **entitled to vote** means entitled to vote on the business to be transacted by the meeting.
- 6.3 A quorum for any other business at a meeting of Deposit Holders is present if at least two Deposit Holders or their proxies (or any higher quorum set by this deed) are present.
- 6.4 Despite clause 6.1 of this Schedule, if a quorum is not present within 30 minutes after the time appointed for the meeting,
- (a) in the case of a meeting called at request in writing of the Deposit Holders under clause 1.3 of this Schedule, the meeting is dissolved;
 - (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 may appoint, and, subject to this deed, if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Deposit Holders or their proxies present are a quorum.

- 6.5 To avoid doubt, a Deposit 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.

7 Adjournment

- 7.1 The chairman may, at any meeting at which a quorum is present, and where the majority of those present has voted to adjourn, adjourn the meeting from time to time and from place to place.
- 7.2 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

8 Deposit Holder participation by electronic means

- 8.1 For the purposes of this part, a Deposit Holder, or the Deposit Holder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if:
- (a) the Supervisor approves those means; and
 - (b) the Deposit Holder, proxy, or representative complies with any conditions imposed by the Supervisor in relation to the use of those means (including, for example, conditions relating to the identity of the Deposit Holder, proxy, or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means)).
- 8.2 To avoid doubt, participation in a meeting includes participation in any manner specified in this part or permitted by this deed.

9 Only persons on Register recognised by Company

The persons registered as Deposit Holders in the Register and no other person or persons shall be recognised and treated as the legal holders of the Deposits therein mentioned whether such persons are or are not in fact the owners thereof.

10 Voting

- 10.1 In the case of a meeting of Deposit Holders held under clause 5(a), unless a poll is demanded, voting at the meeting must be by whichever of the following methods is determined by the chairperson of the meeting:
- (a) voting by voice; or
 - (b) voting by show of hands.
- 10.2 In the case of a meeting of Deposit Holders held under clause 5(b) or 5(c) of this Schedule, unless a poll is demanded, voting at the meeting must be by any method permitted by the chairperson of the meeting.
- 10.3 However, in the case of a vote on a Special Resolution, a poll must be taken.
- 10.4 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 11 of this Schedule.
- 10.5 The chairperson of a Deposit Holders' meeting is not entitled to a casting vote.
- 10.6 For a vote by voice or show of hands each Deposit Holder shall, subject to clause 21 of this Schedule, have one vote.

11 Who may demand poll and how poll is taken

- 11.1 At a meeting of Deposit Holders, a poll may be demanded by:
- (a) the Supervisor; or
 - (b) Deposit Holders who are entitled to request a meeting to be called under section 120 or 161 of the FMC Act; or
 - (c) the chairperson of the meeting.
- 11.2 A poll may be demanded either before or after the vote is taken on a resolution.
- 11.3 For the purposes of this clause 11, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Deposit Holder has the same effect as a demand by the Deposit Holder.
- 11.4 If a poll is taken, votes must be counted according to the proportion of value or nominal value of the Deposits held by each Deposit Holder present and voting or casting a vote under clause 15 of this Schedule.

12 When entitlement to receive notice of meeting and to vote is determined

- 12.1 A Deposit Holder's entitlement to receive a notice of meeting and to vote under this part must be determined by reference to the Deposit Holder's holdings as recorded in the register kept under subpart 4 of Part 4 of the FMC Act as at the close of the record date for the purposes of the meeting.
- 12.2 The record date for the purposes of a meeting is:
- (a) a date determined in accordance with the governing document; or
 - (b) if no date is determined under sub-clause (a), the day immediately preceding the day on which the notice of meeting is sent under clause 4.1 of this Schedule.

13 Proxies

- 13.1 A Deposit Holder may exercise the right to vote either by being present in person or by proxy.
- 13.2 A proxy for a Deposit Holder is entitled to attend and be heard at a meeting of Deposit Holders as if the proxy were the Deposit Holder.
- 13.3 A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the Deposit Holder and the notice must state whether the appointment is for a particular meeting or a specified term.
- 13.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at an address specified in the Company's proxy appointment form (or otherwise as permitted by that form) by the time specified in that form before the start of the meeting (which must not be earlier than 48 hours before the start of the meeting).
- 13.5 However, a proxy is effective despite a failure to comply with a requirement in clause 13.4 of this Schedule if the person who is authorised to receive and count the votes at the meeting waives the requirement.

14 Deposit Holder may appoint attorney

Any Deposit Holder may by power of attorney appoint an attorney (who need not be a Deposit Holder) to vote and act on the Deposit Holder's behalf at any meeting. Any attorney shall be entitled to produce evidence of the attorney's appointment at any time before the time appointed for the holding of or at the meeting or adjourned meeting or for the taking of a poll at which they

propose to vote. An attorney if so empowered may appoint a proxy for the Deposit Holder granting the power of attorney and in doing so is subject to those requirements set out in clause 13 of this Schedule.

15 Votes sent by post, email, or other electronic means

- 15.1 A Deposit Holder may, in accordance with this clause 15, exercise the right to vote at a meeting by casting a postal vote, a vote by email, or a vote using any other electronic means permitted by the Supervisor.
- 15.2 The notice of a meeting at which Deposit Holders are entitled to cast a vote under this clause 15 must state the name of the person authorised by the Supervisor to receive and count those votes at that meeting.
- 15.3 If no person has been authorised to receive and count those votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, the Supervisor is deemed to be so authorised.
- 15.4 A Deposit Holder may cast a vote under this clause 15 on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the Deposit Holder's interests are to be voted to a person authorised to receive and count those votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 15.5 It is the duty of a person authorised to receive and count votes under this clause 15 at a meeting:
- (a) to collect together all of those votes received by him or her or by the Company;
 - (b) in relation to each resolution to be voted on at the meeting, to count:
 - (i) the number of Deposit Holders voting in favour of the resolution and the number of votes cast by each Deposit Holder in favour of the resolution; and
 - (ii) the number of Deposit Holders voting against the resolution and the number of votes cast by each Deposit Holder against the resolution;
 - (c) to sign a certificate that he or she has carried out the duties set out in sub-clause (b) and that sets out the results of the counts required by sub-clause (b)(ii); and
 - (d) to ensure that the certificate required by sub-clause (c) is presented to the chairperson of the meeting.
- 15.6 If a vote is taken at a meeting on a resolution on which votes under this clause 15 have been cast, the chairperson of the meeting must:
- (a) on a vote by show of hands, count each Deposit Holder who has submitted a vote under this clause for or against the resolution;
 - (b) on a poll, count the votes cast by each Deposit Holder who has submitted a vote under this clause for or against the resolution.
- 15.7 The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient votes under this clause that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- 15.8 The chairperson of a meeting must ensure that a certificate of votes under this clause held by him or her is attached to the minutes of the meeting.

16 Resolutions in writing

- 16.1 Anything that may be done by Deposit Holders by an Ordinary Resolution or a Special Resolution passed at a meeting of Deposit Holders may be done by a resolution in writing signed by at least 75% of the Deposit Holders having the right to vote on that resolution, holding in the aggregate Deposits conferring the right to vote not less than 75% of the votes which could be cast on that resolution.

- 16.2 Any such resolution may consist of several documents in similar form, each signed by one or more Deposit Holders.
- 16.3 Any such resolution may be signed by a Deposit Holder, or an agent or attorney of the Deposit Holder duly authorised in writing, or if the Deposit Holder is a company, either under its seal or signed by an officer or attorney so authorised or by an director, secretary, general manager, investment manager or other person who appears to the Supervisor to have authority to sign the resolution on behalf of the company.

17 Minutes

- 17.1 The Company must ensure that minutes are kept of all proceedings at meetings of Deposit Holders.
- 17.2 Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

18 Deposit Holder proposals

- 18.1 A Deposit Holder may give written notice to the Company of a matter the Deposit Holder proposes to raise for discussion or resolution at the next meeting of Deposit Holders which the Deposit Holder is entitled to vote.
- 18.2 If the notice is received by the Company not less than 20 Business Days before the last day on which notice of the relevant meeting of Deposit Holders is required to be given by the Company, the Company must, at the expense of the Company, give notice of the Deposit Holder proposal and the text of any proposed resolution to all Deposit Holders entitled to receive notice of the meeting.
- 18.3 If the notice is received by the Company not less than five Business Days and not more than 20 Business Days before the last day on which notice of the relevant meeting of Deposit Holders is required to be given by the Company, the Company must, at the expense of the Deposit Holder, give notice of the Deposit Holder proposal and the text of any proposed resolution to all Deposit Holders entitled to receive notice of the meeting.
- 18.4 If the notice is received by the Company less than five Business Days before the last day on which notice of the relevant meeting of Deposit Holders is required to be given by the Company, the Company must, if practicable, and at the expense of the Deposit Holder, give notice of the Deposit Holder proposal and the text of any proposed resolution to all Deposit Holders entitled to receive notice of the meeting.
- 18.5 If the Company intends that Deposit Holders may vote on the proposal by proxy or by a vote under clause 12 of this Schedule, the Company must give the proposing Deposit Holder the right to include in or with the notice given by the Company a statement of not more than 1,000 words prepared by the proposing Deposit Holder in support of the proposal, together with the name and address of the proposing Deposit Holder.
- 18.6 The Company is not required to include in or with the notice given by the Company-
- (a) any part of a statement prepared by a Deposit Holder that the Company considers to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - (b) any part of a proposal or resolution prepared by a Deposit Holder that the Company considers to be defamatory (within the meaning of the Defamation Act 1992).
- 18.7 If the costs of giving notice of the Deposit Holder proposal and the text of any proposed resolution are required to be met by the proposing Deposit Holder, the proposing Deposit Holder must, on giving notice to the Company, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

19 Corporations may act by representatives

A body corporate that is a Deposit Holder may appoint a representative to attend a meeting of Deposit Holders on its behalf in the same manner as that in which it could appoint a proxy.

20 Right to attend and speak

Any director, officer or solicitor of, or any other person authorised by, the Supervisor or the Company may attend any meeting and all such persons shall have the right to speak to speak at the meeting.

21 Votes of joint holders

If two or more persons are registered as the holder of a financial product, the vote of the person named first in the register kept under subpart 4 of Part 4 of the FMC Act and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

22 Loss of voting right if Deposit unpaid

If a sum due to a Company in respect of a Deposit has not been paid, the interest in that Deposit may not be voted at a Deposit Holders' meeting.

23 Other proceedings

Except as provided in this part, a meeting of Deposit Holders may regulate its own procedure.

24 Rights exercisable by Special Resolution

Without limiting the rights, powers and discretions conferred on the Supervisor by this deed and subject always to the proviso to this clause a meeting of the Deposit Holders shall 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:

- (a) power to sanction either unconditionally or upon any conditions:
 - (i) the release of the Company from the payment of all or any part of the moneys secured by this deed; or
 - (ii) the release of any Charging Subsidiary from its guarantee and any charge created by or pursuant to this deed; or
 - (iii) the surrender or release of the whole or any part of the Secured Property;
- (b) power to sanction the exchange of Deposits for or the conversion of Deposits into shares, stock, debentures, debenture stock or other obligations or securities of the Company or any other company formed or to be formed;
- (c) power to postpone or with the concurrence of the Company to accelerate the date when the Principal of the Deposits shall become payable and to suspend or postpone for a time the payment of interest on Deposits;
- (d) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Deposit Holders against the Company and/or the Charging Subsidiaries or against their respective properties howsoever such rights shall arise;
- (e) subject to this deed and the FMC Act, power to assent to any alteration, modification, waiver, variation of addition to the provisions contained in this deed or the conditions attaching to the Deposits proposed or agreed to by the Company and to direct the

Supervisor to concur in and execute any supplemental trust deed embodying any such alteration, modification, variation or addition;

- (f) power to give any sanction, assent, release or waiver of any breach or default by the Company or any Charging Subsidiary under any of the provisions of this deed;
- (g) power to authorise the Supervisor or any Receiver appointed by it where they have entered into possession of the Secured Property or any part thereof to give up possession of the same to the Company or the Charging Subsidiaries either unconditionally or upon any condition;
- (h) subject to the Companies Act 1993, the FMC Act and the Financial Markets Supervisors Act 2011 power to 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) power to sanction any scheme for the reconstruction of the Company or any Charging Subsidiary or for the amalgamation of the Company or any Charging Subsidiary with any other corporation where such sanction is necessary; and
- (j) power to authorise or direct the Supervisor to concur in and execute any supplemental deed or other document embodying such sanction authority or approval, assent, release, waiver, direction or request,

provided always that no alteration, modification, variation or addition shall be made in the terms and conditions of issue of any Security Deposit or the rights or privileges of any holder of a Security Deposit without the consent in writing of the holder thereof.

Schedule 2 – Supplemental trust deed

Date

Parties

- 1 **[Subsidiary Limited]** a company having its registered office at [city] (New Zealand company number [number]) (**Subsidiary**)
- 2 **Covenant Trustee Services Limited** a company having its registered office at Auckland (New Zealand company number 2194646) (**Supervisor**)

Background

- A The Subsidiary is a subsidiary within the meaning of the Companies Act 1993 of Gold Band Finance Limited, a company having its registered office at Christchurch (New Zealand company number 321896) (**Company**).
- B The Company entered into a trust deed dated [date] (**Trust Deed**) to secure the principal and interest moneys and premium (if any) from time to time payable in respect of the Deposits and all other moneys from time to time owing on the security of the Trust Deed.
- C At the request of the Company the Subsidiary wishes to execute this deed (being a deed supplemental to the Trust Deed and in the form prescribed in Schedule 2 to the Trust Deed) in order to become a Charging Subsidiary as defined in and pursuant to the provisions of the Trust Deed.
- D The Directors of the Subsidiary resolved on [date] that the Subsidiary:
 - (a) guarantee the due payment by the Company of all moneys from time to time owing on the security of the Trust Deed; and
 - (b) execute, register and deliver to the Supervisor security over its undertaking and assets in support of its said guarantee,and that this deed be accordingly executed.

Agreed terms

- 1 To the extent to which the same are applicable the definitions and provisions contained in clause 1.1 of the Trust Deed shall apply to and be incorporated in this deed.
- 2 The Subsidiary jointly and severally with all other Charging Group Members unconditionally guarantees the due and punctual payment by the Company and each other Charging Group Member, in accordance with the provisions of the Trust Deed, of the Secured Indebtedness as and when the same shall become due and payable thereunder and the due observance and performance by each other Charging Group Member of all of its obligations under the Trust Deed and the provisions set out in clauses 3.2 to 3.12 (inclusive) of the Trust Deed shall apply to the unconditional guarantee given by the Subsidiary in the same manner and to the same extent as if the same had been mutatis mutandis set out in full in this deed and made applicable to this guarantee.
- 3 As a continuing security for the payment of the Secured Indebtedness, the Subsidiary grants to the Supervisor:
 - (a) a security interest in its Personal Property; and
 - (b) a charge over its Other Property.
- 4 The charge created by this deed in respect of Other Property is:
 - (a) a floating charge over Other Property in respect of which a fixed charge is not legally and fully effective; and

- (b) a fixed charge over all other Other Property.
- 5 To the extent that the charge over Other Property is a floating charge in accordance with clause 4(a), that charge will become a fixed charge automatically and with immediate effect:
- (a) without the need for notice by the Supervisor, on the occurrence of an Event of Default; or
- (b) on notice by the Supervisor to the Company at any time, if the Supervisor believes that any of that Other Property is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in contravention of this deed.
- 6 The Subsidiary shall forthwith at its own cost and expense register and record this deed and the security interests created by this deed and shall pay all stamp and other duties and expenses incidental thereto.
- 7 There shall be deemed to be incorporated in this deed all of the covenants, powers, obligations, conditions and provisions of the Trust Deed and the Schedules thereto relating to or affecting the other Charging Group Members or the security interests and guarantees given by the other Charging Group Members thereunder or pursuant thereto in the same manner and to the same extent as if the same had been mutatis mutandis set out in full herein and made applicable to the Subsidiary and the Subsidiary accordingly covenants with the Supervisor duly and punctually to observe, fulfil and perform and to be bound by all the covenants, powers, conditions and provisions imposed on relating to or affecting it by or under this deed or the Trust Deed including the Schedules thereto or by the terms of issue of any Deposit.
- 8 If the security constituted by the Trust Deed shall become enforceable then the security constituted by this deed in relation to the Secured Property of the Subsidiary shall also become immediately enforceable and should the Supervisor notify the Company of its intention to enforce the security constituted by the Trust Deed then the whole of the Secured Indebtedness shall become immediately due and payable.
- 9 The Subsidiary irrevocably appoints the Supervisor, any Receiver appointed by the Supervisor and all persons authorised by the Supervisor severally, to be its attorney and in its name and on its behalf, to enter into, execute, sign and do all assurances, deeds, instruments, acts and things whatsoever which shall in the opinion of the attorney be necessary or expedient or that it ought to execute sign and do for the purpose of carrying out any trust or obligation declared or imposed upon it or for giving to the Deposit Holders or to the Supervisor on their behalf the full benefit of any of the provisions of the Trust Deed or this deed and generally to use its name in the exercise of all or any of the powers conferred on the Supervisor or any Receiver appointed by the Supervisor as the case may be.
- 10 The Subsidiary covenants with the Supervisor duly to perform and observe the obligations imposed on the Subsidiary by this deed and the Trust Deed.

Signing

Executed and delivered as a deed on the date specified at the beginning of this deed.

[Execution]