

# Deed of Amendment and Restatement

relating to

the Vector Capital Bonds Trust Deed

**Vector Limited**

Company

and

**The New Zealand Guardian Trust Company Limited**

Supervisor

**Date** 29 September 2016

***Note: This Deed of Amendment and Restatement amends and restates the trust deed between the Company and Supervisor dated 25 September 2002, as amended by deeds dated 3 November 2006, 20 October 2011, 2 May 2012 and 6 September 2012. The conditions of the Vector Capital Bonds set out in Schedule 1 (Conditions) of the Amended and Restated Trust Deed are to be read together with the Election Notice and Explanatory Notes sent to Capital Bondholders on 3 May 2017.***

**BELL GULLY**

AUCKLAND VERO CENTRE 48 SHORTLAND STREET

PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND

TEL 64 9 916 8800 FAX 64 9 916 8801

**Contents**

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1. **Interpretation** ..... 1

2. **Amendment and restatement**..... 1

3. **Miscellaneous** ..... 2

**The Schedule: Amended and Restated Trust Deed**..... 4

This **Deed** is made on 29 September 2016

**between** (1) **Vector Limited (Company)**

**and** (2) **The New Zealand Guardian Trust Company Limited (Supervisor)**

## Introduction

- A. The Company and the Supervisor are parties to a Trust Deed dated 25 September 2002, as amended by deeds dated 3 November 2006, 20 October 2011, 2 May 2012 and 6 September 2012 (the **Trust Deed**).
- B. The Company and the Supervisor have agreed to amend and restate the Trust Deed in the form set out in the Schedule to this Deed, to comply with and to reflect the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014.
- C. For the purposes of clause 8.5 of the Trust Deed, the Supervisor has concurred with the Company to amending and restating the Trust Deed on the basis that:
- (i) the amendments are, in the opinion of the Supervisor, made to comply with law and are of a formal or technical nature; and
  - (ii) the amendments contemplated by this Deed do not have a material adverse effect on the Bondholders.
- D. The Supervisor has obtained a certificate from Bell Gully confirming that the Trust Deed, as amended and restated by this Deed, will comply with sections 104 to 106 of the Financial Markets Conduct Act 2016.

## It is declared

### 1. Interpretation

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#### 1.1 Adoption of Agreement terms

Unless the context otherwise requires, terms defined or construed in the Trust Deed (as amended by this Deed) have the same definition or construction when used in this Deed.

#### 1.2 Definitions

In this Deed, **Effective Date** means 31 October 2016.

Headings and the table of contents are to be ignored in construing this Deed.

### 2. Amendment and restatement

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With effect from the Effective Date:

- (a) the Trust Deed is amended and restated in the form set out in the Schedule to this Deed; and

- (b) references in the Trust Deed to “this Deed” shall be references to the Trust Deed as amended and restated by this Deed.

### **3. Miscellaneous**

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#### **3.1 Counterparts**

This Deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

#### **3.2 Delivery**

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

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

#### **3.3 Entire agreement**

This Deed, together with each other agreement made in writing signed by all the parties, constitutes the entire agreement between the parties in relation to the amendment and restatement referred to in clause 2.

#### **3.4 Governing law**

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

### Execution

Executed and delivered as a Deed.

#### The Company

Vector Limited by:

Director

Director

Print Name

Print Name

*[Handwritten signature]*  
*M. Stinson*

#### The Supervisor

Executed by The New Zealand  
Guardian Trust Company Limited  
by:

Authorised Signatory

Authorised Signatory

**VANJA NADINE THOMAS**

**SIMON SHERPA**

Print Name

Print Name

*[Handwritten signature]*  
*Thomas*

*[Handwritten signature]*  
*S. Sherpa*

Witness to both signatures BOTH SIGNATURES

Full Name: Debra Gail Morton

Residential Address: Auckland

Print Name

Occupation: Corporate Trusts Administrator

Signature:

*[Handwritten signature]*

Occupation

*ACT 932*

Address

## Execution

Executed and delivered as a Deed.

### The Company

Vector Limited by:

Jonathan P. Mear  
Director

Jonathan Mason  
Print Name

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

### The Supervisor

Executed by The New Zealand  
Guardian Trust Company Limited  
by:

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness to both signatures

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

## The Schedule: Amended and Restated Trust Deed

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# **Trust Deed**

**Vector Limited**

Company

**and**

**The New Zealand Guardian Trust Company Limited**

Supervisor

**BELL GULLY**

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET  
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND  
TEL 64 9 916 8800 FAX 64 9 916 8801

## Contents

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1.	<b>Interpretation .....</b>	<b>1</b>
2.	<b>Non-business days.....</b>	<b>5</b>
3.	<b>Issue and constitution of Capital Bonds.....</b>	<b>5</b>
4.	<b>Subordination and status of Capital Bonds.....</b>	<b>8</b>
5.	<b>The Register .....</b>	<b>12</b>
6.	<b>Warranties and Covenants.....</b>	<b>14</b>
7.	<b>Supervisor’s power to waive.....</b>	<b>19</b>
8.	<b>Appointment of and powers and discretions of Supervisor .....</b>	<b>19</b>
9.	<b>Meetings of bondholders .....</b>	<b>25</b>
10.	<b>Indemnity of Supervisor .....</b>	<b>25</b>
11.	<b>Retirement, removal and new appointment of Supervisor .....</b>	<b>26</b>
12.	<b>Supervisor’s remuneration and expenses .....</b>	<b>27</b>
13.	<b>Disclosure of information .....</b>	<b>27</b>
14.	<b>Notices .....</b>	<b>28</b>
15.	<b>Governing law .....</b>	<b>28</b>
16.	<b>Discharge of deed.....</b>	<b>28</b>
17.	<b>Invalidity.....</b>	<b>28</b>
	<b>Schedule 1: Conditions of the Capital Bonds.....</b>	<b>30</b>
	<b>Schedule 2: Meetings of Bondholders .....</b>	<b>40</b>

This **Trust Deed** was originally made on 25 September 2002 and has been amended by deeds dated 3 November 2006, 20 October 2011, 2 May 2012 and 6 September 2012 and is amended and restated by the deed of amendment dated 29 September 2017 to which this deed is attached as a schedule.

The parties to this Trust Deed are:

(1) **Vector Limited (Company)**

and (2) **The New Zealand Guardian Trust Company Limited (Supervisor)**

## Introduction

- A. The Company wishes to issue Unsecured Subordinated Capital Bonds to be constituted under this Deed.
- B. The Financial Markets Conduct Act 2013 requires the appointment of a supervisor in respect of the Capital Bonds and the execution by the Company and the Supervisor of a trust deed.
- C. The Supervisor has accepted appointment to act as Supervisor on behalf of the Bondholders in accordance with this Deed.
- D. The Capital Bonds are unsecured subordinated indebtedness of the Company. The claims of the Bondholders will, in liquidation of the Company, rank ahead of shareholders of the Company, but behind the claims of all other creditors of the Company.

## It is agreed

### 1. Interpretation

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#### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**Accrued Interest** has the meaning set out in the Conditions.

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

**Auditor** means the Qualified Auditor for the time being appointed by the Company.

**Authorised Person** means, in respect of a meeting involving Bondholders, the person authorised by the Supervisor to receive and count votes at that meeting cast in accordance with Schedule 2 or, if no such person is so authorised, the Supervisor.

**Board** means the board of directors of the Company.

**Bondholder** means, in relation to a Capital Bond, and, at any time, the person whose name is entered into the Register as the holder of the Capital Bond.

**Business Day** means a “working day” as that term is used in the FMCA and the FMC Regulations.

**Cancelled Interest** has the meaning set out in the Conditions.

**Capital Bonds** means the unsecured, subordinated Capital Bonds in an aggregate Principal Amount not exceeding \$350,000,000, constituted by this Deed and which are for the time being outstanding and includes the relevant Conditions applicable to such Capital Bonds but, unless the context requires otherwise, does not include any Further Capital Bonds.

**Certificate** means a certificate (if any) issued by the Company pursuant to clause 3.5 of this Deed.

**Commencement of Liquidation** means the commencement of Liquidation under section 241(5) or section 317 of the Companies Act 1993, as the case may be, or under any similar legislation under which the Company will cease to be duly incorporated or to validly exist in New Zealand, or the date on which a statutory manager is appointed to the Company under the Corporations (Investigations and Management) Act 1989.

**Conditions** means the terms and conditions (including, where appropriate, New Conditions) from time to time applicable to the Capital Bonds in the form set out in Schedule 1 (as modified from time to time in accordance with this Deed).

**Credit Rating** has the meaning set out in the Conditions.

**Election Date** has the meaning set out in the Conditions.

**Extraordinary Resolution** means a resolution passed at a meeting of the Bondholders duly convened and held by a majority consisting of not less than three-quarters of the votes cast (and entitled to be cast) on that resolution or, if a poll is required, by not less than three-quarters of the votes cast (and entitled to be cast) on the poll.

**FMA** means the Financial Markets Authority.

**FMCA** means the Financial Markets Conduct Act 2013.

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

**FMSA** means the Financial Markets Supervisors Act 2011.

**Further Capital Bonds** means capital bonds evidencing indebtedness of the Company constituted by a Supplemental Deed in accordance with clause 3.2 or the amount of such capital bonds for the time being outstanding or, as the context may require, a specific number of such capital bonds.

**Interest Payment Date** has the meaning set out in the Conditions.

**Interest Rate** has the meaning set out in the Conditions.

**Issue Price** means, in relation to a Capital Bond and from time to time, the price determined by the Company for the issue of that Capital Bond which may be set at a premium or discount to the Principal Amount of the Capital Bond and may differ in respect of different Capital Bonds.

**Issuer Obligation** has the meaning set out in the FMCA, being an obligation imposed on the Company under this Deed, the Conditions, the terms of offer of any Capital Bonds, or by the FMCA or any court order relating to the relevant Capital Bonds.

**Liquidation** means, in relation to the Company, either:

- (a) the process of liquidation provided for in Part XVI of the Companies Act 1993; or
- (b) any analogous procedure following which the Company will cease to validly exist, or be duly incorporated, except for the purposes of, and followed by, a reconstruction or an amalgamation (not including or arising out of insolvency) of the Company provided that, upon such reconstruction or amalgamation, the successor to the Company assumes the obligations of the Company under this Deed and the terms of the Capital Bonds, and that (except in the case of an amalgamation under Part XIII of the Companies Act 1993) the form of the restructuring or amalgamation has been approved by Extraordinary Resolution; or
- (c) its becoming subject to statutory management under the Corporations (Investigation and Management) Act 1989.

**Liquidation Amount** has the meaning set out in the Conditions.

**Liquidator** means, in relation to the Company, any official (including a statutory manager) in whom management of the Company may become vested for the purposes of liquidating its assets and repaying its debts and administering to the eventual cessation of its business.

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

**New Conditions** has the meaning set out in the Conditions.

**Ordinary Shares** means fully paid ordinary shares in the Company of the class quoted on the Stock Exchange (when ordinary shares are quoted on the Stock Exchange) or the shares which result, if such ordinary shares in the Company are, at any time subdivided, consolidated or reclassified after the date of this Deed.

**Principal Amount** means, in relation to a Capital Bond, the principal amount of such Capital Bond as recorded in the Register.

**Proxy Closing Time** means 48 hours before the time appointed for commencement of the relevant meeting of Bondholders or the taking of a poll of Bondholders.

**Qualified Auditor** has the meaning set out in the FMCA.

**Register** means the register of Capital Bonds to be established and maintained in accordance with this Deed.

**Registrar** means the registrar from time to time appointed by the Company in respect of its Ordinary Shares in New Zealand, or such other person as may be appointed by the Company to maintain the Register.

**Regulated Offer** has the meaning set out in the FMCA.

**Representative** means:

- (a) in the case of a Bondholder being an individual person appointed by an instrument by way of proxy or by power of attorney (in either case, in a form satisfactory to the Supervisor);
- (b) in the case of a Bondholder being a corporation, either:
  - (i) a person appointed by an instrument by way of proxy or by power of attorney; or

- (ii) a person authorised pursuant to clause 10 of the First Schedule to the Companies Act 1993 or in the case of a corporation sole, a person authorised pursuant to its constitution; or
- (c) a person upon whom the ownership of a Bondholder's Capital Bond has devolved by reason of his being a representative or an assignee in bankruptcy or liquidator of the Bondholder, or such person's Representative appointed or authorised under (i) or (ii) above.

**Senior Creditors** has the meaning set out in the Conditions.

**Stock Exchange** means, as the context requires, the securities market operated by NZX Limited or any alternative or substitute market for Ordinary Shares or other arrangement in New Zealand on or through which Ordinary Shares may be freely traded and which is generally regarded as the principal such market or arrangement for the trading of Ordinary Shares in New Zealand.

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

**Supplemental Deed** means a deed supplemental to this Deed under which any Further Capital Bonds are constituted.

## 1.2 Interpretation

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

- (a) a clause or schedule is a reference to a clause of, or the schedule to, this Deed;
- (b) a company means any company or body corporate wherever incorporated or domiciled and, where the context so permits, includes an individual;
- (c) law means all laws, statutes, regulations and ordinances of New Zealand and all judgments, decrees, injunctions, writs and orders of any New Zealand court;
- (d) financial statements includes statements of financial position, financial performance, movements in equity and cashflows, and the notes relating to any such statements, and consolidated financial statements has a corresponding meaning;
- (e) month means calendar month;
- (f) those which have been redeemed or purchased and surrendered for cancellation and in respect of which notice of cancellation has been given to the Registrar;
- (g) person includes an individual, firm, company, corporation or unincorporated body of persons, organisation or trust, and any state or government agency, in each case whether or not having a separate legal personality;
- (h) tax includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any government or governmental agency; and
- (i) written and in writing includes all means of reproducing words in a tangible and permanently visible form.

### 1.3 Miscellaneous

- (a) **Definitions in Companies Act 1993 and FMCA:** Except where otherwise expressly provided in this Deed, words defined in the Companies Act 1993 or the FMCA have the same meanings in this Deed.
- (b) **Headings:** The introduction to and headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed.
- (c) **Plural, singular and gender references:** Unless the context otherwise requires, words denoting the singular number only are to include the plural and vice versa and words denoting any gender are to include all genders.
- (d) **References to legislation:** References to any legislation or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted.
- (e) **Modified, novated, supplemented, varied and replaced document:** References to any document (however described) will include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (f) **Schedules:** Each schedule has the same form and effect as if set out in the body of this Deed.
- (g) **References to time:** Anything which may be done at any time may also be done from time to time.

### 1.4 Definitions in Conditions

Words and expressions defined in the Conditions and not otherwise defined in this Deed have the same meanings where used in this Deed unless the context otherwise requires.

### 1.5 No effect

The parties agree that this Deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA, the FMC Regulations (together the **Applicable Laws**) or any term implied in this Deed by the Applicable Laws.

## 2. Non-business days

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Anything which is required by this Deed or the Conditions to be done on, or as of, a day which is not a Business Day is to be done on, or as of, the next Business Day.

## 3. Issue and constitution of Capital Bonds

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### 3.1 Constitution of Capital Bonds

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

### 3.2 Further issue

Subject to, and in accordance with, the Listing Rules and the Constitution, the Company may at any time without the consent of the Bondholders, create and issue Further Capital Bonds subject to this Deed either:

- (a) **Ranking pari passu with Capital Bonds:** ranking pari passu with the Capital Bonds in all respects (or in all respects except for the Interest Rate, Interest Payment Dates and the Election Date) so as to form a single issue with the Capital Bonds; or
- (b) **On other terms:** upon such other terms as to interest rates or payment dates, conversion, ranking (whether in Liquidation or otherwise), premium, discount and otherwise as the Company may determine at the time of issue.

Any Further Capital Bonds are to be constituted by a Supplemental Deed executed by the Company and the Supervisor in a form agreed by them. The consent of the Supervisor shall not be required in relation to any issues of Capital Bonds which are not subject to this Deed.

### 3.3 Conditions of issue

Each Capital Bond is to be issued subject to the Conditions in accordance with this Deed. The conditions applicable to Further Capital Bonds are to be in, or substantially in, the form set out or referred to in the relevant Supplemental Deed.

### 3.4 Deed and Conditions binding

This Deed and the Conditions are binding on the Company, the Supervisor, the Bondholders and all persons claiming through or under them respectively and the Capital Bonds are to be held subject to this Deed and the Conditions.

### 3.5 Form of Capital Bonds and Certificates

Capital Bonds will be issued in denominations of \$1.00 and in minimum initial parcels of \$5,000 (and thereafter in multiples of \$1,000) by entry of the details specified in clause 5.2 on the Register. If required by the FMCA, FMC Regulations or any other Applicable Law, the Company will, or will procure the Registrar to issue a confirmation or Certificate in relation to the Capital Bonds, such confirmation or Certificate to include all information required under, and which otherwise complies with the FMCA, FMC Regulations and any other Applicable Law and is in a form approved by the Supervisor. Subject to the Conditions, the Company may, upon such terms (if any) that it determines, issue to a Bondholder:

- (a) **Substitute Certificate:** a new Certificate in substitution for one issued in an incorrect form, or for an incorrect number of Capital Bonds, or otherwise containing incorrect terms or Conditions;
- (b) **Multiple Certificates:** several new Certificates in substitution for a single Certificate and vice versa;
- (c) **Substitution in part:** a new Certificate in part substitution for a Certificate where some (but not all) of the Capital Bonds represented by the latter Certificate are cancelled, or transferred, or the subject of a transmission, in accordance with this Deed; and
- (d) **New Conditions:** a new Certificate where the Bondholder of a Capital Bond has, or is deemed to have, accepted the New Conditions offered by the Company in relation to that Capital Bond as soon as practicable following the relevant Election Date.

### 3.6 Payment of Issue Price

Each applicant for Capital Bonds must pay to the Company, upon application, the Issue Price for the Capital Bonds set out in his or her application for Capital Bonds following which, subject to acceptance of that application by the Company in full or in part, the Company must issue that Bondholder with the appropriate number of Capital Bonds for which the application is accepted. The Company may determine the Issue Price for a Capital Bond in

its sole discretion and may apply a different Issue Price to Capital Bonds issued at any other time.

### 3.7 Covenant to observe the Deed and Conditions

- (a) **Indebtedness:** The Company acknowledges its indebtedness to each Bondholder, and to the Supervisor on behalf of the Bondholders, in relation to the payment of the Principal Amount of, and interest and any other amount payable under, each Capital Bond upon and subject to this Deed.
- (b) **Payment:** The Company covenants with the Supervisor that it will:
  - (i) pay all amounts payable in relation to the Capital Bonds to, or as directed by the Supervisor; and
  - (ii) comply with, perform and observe all the provisions of this Deed and the Conditions.
- (c) **Payment in satisfaction of obligations:** Each payment in respect of the Capital Bonds duly made to the Bondholders or the Supervisor will be in satisfaction of the relevant obligation of the Company to the Bondholders and the Supervisor under this Deed.
- (d) **Benefit of covenants:** The Supervisor is to take and hold the benefit of the covenants given to it by the Company under this Deed in respect of the Capital Bonds (other than those covenants intended to be for the benefit of the Supervisor for its own account) for the Bondholders generally.

### 3.8 Bondholder absolute owner

Each of the Company and the Supervisor is, notwithstanding any notice to the contrary, entitled to treat the Bondholder of any Capital Bond as its absolute and beneficial owner and is not required to recognise any trust or equity or security interest affecting such ownership (except as required by law or order of any competent court).

### 3.9 Cancellation on purchase or redemption

- (a) Each Capital Bond which is redeemed in accordance with this Deed is and will be deemed to be cancelled, and neither the Company nor the Supervisor will have any further liabilities or obligations in respect of that Capital Bond or the relevant Bondholder.
- (b) Each of the Company and its subsidiaries may subject to and in accordance with the Listing Rules and the Constitution, at any time purchase a Capital Bond for its own account. Each Capital Bond purchased by the Company or a wholly owned subsidiary may, at the option of the Company or wholly owned subsidiary, as the case may be, be held for resale or cancelled and, if cancelled, neither the Company nor the Supervisor will have any further liabilities or obligations in respect of that Capital Bond or the relevant Bondholder. Capital Bonds purchased and held by the Company or a wholly owned subsidiary of the Company shall not entitle the holder to vote at any meeting of the Bondholders and shall not be considered for the purposes of calculating the quorum at a meeting of Bondholders.

### 3.10 Validity of issued Capital Bonds

Neither the Supervisor nor any person named as a Bondholder in any Certificate in relation to any Capital Bond need be concerned or obliged to enquire whether any Capital Bond purporting to be evidenced by the Register or a Certificate has been issued in accordance

with this Deed, the Listing Rules or the Constitution. Each Capital Bond issued for valuable consideration will be deemed to be validly issued and constituted by this Deed notwithstanding that the issue of such Capital Bond was in breach of any provision of this Deed, but without prejudice to the Supervisor's rights under or in accordance with this Deed against the Company in respect of any such breach.

### 3.11 **Payment of brokerage or commission - issue at discount or premium**

The Company may pay a commission, procuration, application or issue fee or brokerage to any person or company in respect of subscribing for, underwriting the issue of, or obtaining issues of, or arranging the sale through the Resale Facility of, the Capital Bonds, and may issue any Capital Bond or Further Capital Bond at par or at a discount or premium to its Principal Amount.

### 3.12 **Unclaimed payments**

Any payment made by the Company or the Supervisor to any Bondholder at its address last entered in the Register which is returned unclaimed and remains unclaimed by the person entitled to it during the 12 month period thereafter, must be paid to the Company to be held by it for the Bondholder concerned without any liability to invest or pay interest on that amount. Unless otherwise required by law, any money not so claimed within a period of six years from the original date of payment may be applied by the Company for its own purposes, and the Company and the Supervisor will have no further liability in respect of the amount concerned.

### 3.13 **Reinstatement**

If any payment made to the Supervisor or to any Bondholder by or on behalf of the Company is avoided by law, such payment will be deemed not to have discharged or affected the liability of the Company in respect of which that payment was made. In this circumstance, the Supervisor, the Bondholder and the Company will each be restored to the position in which it would have been, and will be entitled to exercise all the rights which each would have had, if such payment had not been made.

### 3.14 **No Guarantee**

The Capital Bonds and the Company's obligations under this Deed and the Conditions and in respect of the Capital Bonds are not guaranteed by any of the Company's directors, the Company's subsidiaries or their directors, the Supervisor, the Auckland Energy Consumer Trust or any other person.

## 4. **Subordination and status of Capital Bonds**

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### 4.1 **Status and subordination**

Each Capital Bond is the direct, unsecured, subordinated obligation of the Company and ranks equally without any preference with all other Capital Bonds. In any distribution of assets by the Company in Liquidation (including by way of exercise of rights of set-off) the rights of the Supervisor and the Bondholders to the Principal Amounts of, and interest on, the Capital Bonds, are to be subordinated to all moneys payable by the Company to Senior Creditors, so that in any such distribution no payment will be made on account of the Principal Amount of or interest on the Capital Bonds to the Supervisor or the Bondholders until the Senior Creditors have been paid in full. The Supervisor agrees, and, by purchasing a Capital Bond each Bondholder will be deemed to agree, that:

- (a) *Agreement to accept lower priority*: in accordance with section 313(3) of the Companies Act 1993, the Bondholder is accepting a lower priority in respect of the

debt represented by such Capital Bond than that which it would otherwise have under section 313; and

- (b) *Deed to take effect in accordance with its terms*: nothing in section 313 of the Companies Act 1993 will prevent this Deed from having effect in accordance with its terms.

#### 4.2 **Subordinated contingent debt**

In the Liquidation of the Company, neither the Supervisor nor any Bondholder is entitled to prove for the Principal Amount of nor interest on any Capital Bond except as a debt which is subject to, and contingent upon, prior payment of the Senior Creditors in full.

#### 4.3 **Other indebtedness permitted**

Nothing in this Deed, prior to the Commencement of Liquidation, in any way restricts the right of the Company to incur indebtedness or issue obligations or securities ranking in priority to, or pari passu with, or subordinate to, the indebtedness and obligations of the Company in respect of any Capital Bonds.

#### 4.4 **No subordination of Supervisor's entitlement**

Nothing in this Deed or the Conditions subordinates or otherwise affects or prejudices, or defers in priority of payment, the payment of the costs, charges, expenses, liabilities, indemnified amounts, remuneration or other moneys payable to the Supervisor (or any officer, employee or agent of the Supervisor) as provided for, or referred to, in this Deed, all of which will be payable to the Supervisor at the time and in the manner provided by this Deed.

#### 4.5 **Trust**

Any payment, whether voluntarily or in any other circumstances, received by a Bondholder from or on account of the Company (including by way of credit, set off or otherwise) or from the Liquidator or any receiver, manager or statutory manager of the Company in breach of this clause 4 is to be held by the relevant Bondholder in trust for and to the order of the Senior Creditors. The trust hereby created will, subject to clause 4.10, be for a term expiring on the earlier of the date on which all Senior Creditors have been paid in full or the date on which the Liquidator determines that the Company has no further assets with which to satisfy the claims of the creditors.

#### 4.6 **Contracts (Privity) Act 1982**

- (a) For the purposes of the Contracts (Privity) Act 1982, but subject to (b) below, this clause 4 is intended to confer a benefit upon the Senior Creditors and to be enforceable by the Senior Creditors directly.
- (b) For the purposes of section 6 of the Contracts (Privity) Act 1982, it is agreed that any amendments made to this Deed in accordance with clause 8.5 of this Deed shall be binding upon the Senior Creditors whether or not they have consented to such amendment.
- (c) The Company acknowledges that this Deed is made for the benefit of and is intended to be enforceable by any person who is from time to time a Bondholder and the Supervisor.

## 4.7 Enforcement

(a) **Limited rights of Enforcement:**

- (i) Subject to clause 4.12, the Supervisor shall not be entitled to claim, demand, sue, prove for, compel or enforce payment or repayment from the Company of the Principal Amount of or interest on the Capital Bonds or other sum due or payable in respect of the Capital Bonds except following the commencement of the Liquidation of the Company, and then, only by way of a claim, demand, suit or proof as may be necessary to preserve the claim thereto of any Bondholder(s) in the Liquidation of the Company;
- (ii) except as permitted by clause 4.11, the Supervisor shall not be entitled to take or receive directly or indirectly (including by way of set-off or counterclaim or in any other manner) from the Company the Principal Amount of or interest on the Capital Bonds or any other sum due or payable in respect of the Capital Bonds, and the Supervisor shall not be entitled to pay, or procure the payment, to or to the order of or for the benefit of, any Bondholder, or any other person on behalf of any Bondholder, any sums for the time being held by or under the control of the Supervisor being by way of the Principal Amount of or interest on the Capital Bonds or other sum due or payable in respect of the Capital Bonds;
- (iii) no Bondholder shall be entitled to take or receive, directly or indirectly (including by way of set off or counterclaim or in any other manner) except a payment received as permitted by clause 4.11, nor be entitled to claim, demand, sue, prove for, compel or enforce payment or repayment from the Company or the Supervisor or any other person of the Principal Amount of or interest on the Capital Bonds or other sum due or payable in respect of the Capital Bonds (except in the circumstances provided for in clause 4.7(b), but subject always to the restrictions as would have been applicable to the Supervisor in respect thereof); and
- (iv) except for payments permitted by clause 4.11, the Company shall not make to, or to any person on behalf of, any Bondholder any payment or repayment in respect of principal or interest on any Capital Bond, or of any other sum in respect of any Capital Bond,

unless and until all amounts owing to Senior Creditors have been fully paid or repaid.

- (b) **Enforcement by Supervisor:** Subject to this clause 4, the Supervisor holds its rights and benefits under this Deed (including the right to enforce the Issuer Obligations) in trust for the Bondholders. The Supervisor may enforce the provisions of the Capital Bonds, this Deed or the FMCA in respect of the Capital Bonds. Nothing in this Deed prevents a Bondholder from enforcing the Company's duty to repay, or to pay interest, or any other duties that the Company owes to the Bondholder.
- (c) **Claims by Bondholders:** No Bondholder may claim or prove in the Liquidation of the Company for any amount owing to him or her under any Capital Bond or this Deed to the extent that the Supervisor has claimed or proved for, or has determined to claim or prove for, such amount in such Liquidation on behalf of such Bondholder, and any claim or proof made contrary to this clause must be withdrawn by such Bondholder.
- (d) **Enforcement by Bondholders:** No Bondholder may proceed against the Company or the Supervisor for the enforcement or performance of any provision of this Deed or the Conditions that is solely for the benefit of the Supervisor.

#### 4.8 Distribution on Liquidation

Any amount received by the Supervisor under or in respect of this Deed or the Capital Bonds in or upon the Commencement of Liquidation and not paid to the Liquidator must be applied, and pending such application must be held by the Supervisor upon trust to be applied, subject to any direction made by any court and except as required by law:

- (a) **Supervisor's expenses:** first, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor (or any officer, employee or agent of the Supervisor) and of all remuneration, indemnified amounts and other moneys payable to the Supervisor (or any officer, employee or agent of the Supervisor) as provided or referred to in this Deed;
- (b) **Senior Creditor's indebtedness:** secondly, in payment to the Company to be held by it upon trust to apply the same in or towards the discharge of the indebtedness of the Company to Senior Creditors according to their respective rights and interests and, pending payment of those amounts to the Company, any such amount received by the Supervisor must be held by it on trust to pay the same to the Company to be held on the trusts constituted or to be constituted under this clause;
- (c) **Bondholder's indebtedness:** thirdly, subject to the indebtedness of the Company to Senior Creditors having been paid or satisfied or provided for in full, in or towards payment to each Bondholder, *pari passu* in proportion to the Principal Amounts of the Capital Bonds held by him or her, of the aggregate Liquidation Amount and any interest payable in accordance with clause 4.14; and
- (d) **Surplus to Company:** fourthly, in payment of the surplus (if any) of such moneys to the Company, or to such other person as may otherwise be lawfully entitled to those moneys.

#### 4.9 Reliance on Liquidator

Following the Commencement of Liquidation, the Supervisor will be entitled and is authorised to call for and to accept as conclusive evidence a certificate from the Liquidator for the time being regarding the amount of indebtedness to Senior Creditors which has not been satisfied or otherwise provided for and the Supervisor shall be entitled to rely upon a statement in writing from the Liquidator to the effect that all such indebtedness has been satisfied or discharged.

#### 4.10 Termination of trusts

The trusts contained in this Deed in favour of the Senior Creditors terminate on the date which is 80 years after the date of execution of this Deed, except to the extent that any interests under such trusts have vested at that date and without affecting the contractual rights and obligations of the Company and the Supervisor under this Deed, and any amounts which would, but for this clause, have been held on trust for the Senior Creditors will be held on trust for the Company absolutely.

#### 4.11 Permitted payments and receipts

Until the Commencement of Liquidation, the Company is entitled to pay, and a Bondholder or the Supervisor or any other person on behalf of a Bondholder is entitled to receive payment from or on behalf of the Company of, any amount payable in respect of interest on the Capital Bonds or other amount payable in respect of the Capital Bonds and the Supervisor is entitled to pay any amounts to or for the benefit of the Bondholders or any other person on behalf of any Bondholders. The payment and receipt prior to the Commencement of Liquidation of any such amount will not constitute a breach of, or be subject to, clause 4.1 and such payment is to be received free of any obligation on the

recipient of that payment to refund or return the same, or to hold the same in trust, in accordance with this Deed.

#### 4.12 Permitted proceedings

Nothing in this Deed excludes limits, defers or otherwise affects:

- (a) **Proceedings seeking directions from court:** the right of the Supervisor to seek directions from a court in accordance with the FMCA or the FMC Regulations or to take any other proceedings seeking the directions of, or guidance by, any court or other authority as to the performance of its functions and duties hereunder or otherwise in relation to this Deed; or
- (b) **Proceedings seeking declaratory judgment:** any proceedings taken by the Supervisor or any Bondholder at any time seeking a judgment or order declaratory of the rights or obligations of any Bondholder or any party to this Deed; or
- (c) **Other proceedings:** the right of the Supervisor or a Bondholder, in the circumstances expressly permitted by this Deed and the Conditions, to take any action permitted by this Deed.

#### 4.13 Commencement of Liquidation

Upon the Commencement of Liquidation the Principal Amount of the Capital Bonds, together with all Accrued Interest, will become repayable and each Capital Bond will be due to be redeemed for an amount equal to the Liquidation Amount of the Capital Bond.

#### 4.14 Interest payable following Commencement of Liquidation

Upon the Commencement of Liquidation, interest on the Capital Bonds will continue to accrue at the applicable Interest Rate.

### 5. The Register

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#### 5.1 Establish and maintain Register

The Company shall appoint a Registrar and cause the Registrar to establish and maintain the Register in New Zealand in accordance with this deed and all relevant legal requirements.

#### 5.2 Details on Register

The Register must show:

- (a) **Name and address:** the name and address of each person registered as a Bondholder and the details of the account to which payments in relation to the Capital Bonds are to be made;
- (b) **Allotment date:** the allotment date of each Capital Bond;
- (c) **Other details:** the Principal Amount, Interest Rate, Interest Payment Dates and Election Date applicable to each Capital Bond;
- (d) **Transfers:** details of all transfers of the Capital Bonds, including the date of registration of each transfer;

- (e) **Nature:** the nature of the Capital Bonds;
- (f) **Cancellation:** all cancellations of Capital Bonds; and
- (g) **Other information:** such other information as may be required by law or by the Supervisor.

### 5.3 Disclosure and Inspection of Register

- (a) Each of the Company, the Supervisor and each Bondholder may at any reasonable time inspect the Register and take copies (including electronic copies) of and extracts from the Register without payment of any fee.
- (b) Without limiting sub-paragraph (a) above, the Company will ensure that the Registrar makes available for inspection, by a person who serves written notice on the Company of intention to inspect, at the place at which the register is kept between the hours of 9 am and 5 pm on each Business Day during the inspection period, and provides copies of, or extracts from, the Register to the extent required by, and in accordance with the FMCA, FMC Regulations and any other Applicable Law.

### 5.4 Recognition of transmission of Capital Bonds

Each executor or administrator of a deceased Bondholder (not being one of several joint Bondholders) and, in the case of the death of one or more of several joint Bondholders, each survivor of a joint Bondholder, is the only person recognised by the Company as having any title to the relevant Capital Bond.

### 5.5 Registration of transmission of Capital Bonds

Each person becoming entitled to a Capital Bond on the death or bankruptcy of a Bondholder, upon producing evidence to the satisfaction of the Company of his or her entitlement to that Capital Bond may be registered as the Bondholder. The Company may retain any amount payable upon the Capital Bond to which any person is so entitled until that person is so registered or duly transfers the Capital Bond.

### 5.6 Joint Bondholders

The joint Bondholders of a Capital Bond are entitled to only one Certificate in relation to their joint holding (if Certificates are issued). This Certificate is, except where the joint Bondholders otherwise direct, to be issued to the joint Bondholder whose name appears first in the Register in relation to that joint Bondholding.

### 5.7 Register conclusive

Each of the Supervisor and the Company is:

- (a) **Rely on Register:** entitled to rely upon the entries in the Register as constituting the sole and conclusive record of each Capital Bond and Certificate and as to the person entitled to the Capital Bond, notwithstanding any discrepancy between the Register and a Certificate;
- (b) **No enquiries:** not obliged to make further enquiry as to the status in relation to this Deed, or ownership, of any securities or indebtedness of the Company, or of any claim, entitlement or interest, not so entered in the Register;
- (c) **Correct Register:** to have the power, in its absolute discretion, to authorise the correction of the Register upon being satisfied that the Register or a Certificate is

incorrect, and, in the case of the Supervisor, to be deemed to have accepted Supervisorship in respect of Capital Bonds and on behalf of the Bondholders of any such Capital Bonds as shown by the Register or a Certificate so corrected as from the date of correction;

- (d) **Supervisor not liable:** in the case of the Supervisor, not liable to the Company or any Bondholder or former Bondholder for relying on the Register or for accepting in good faith as valid any detail recorded on the Register subsequently found to be forged, irregular or not authentic; and
- (e) **Company not liable:** in the case of the Company, not liable to the Supervisor or any Bondholder or former Bondholder for relying on the Register or for accepting in good faith as valid any detail recorded on the Register subsequently found to be forged, irregular or not authentic.

## 5.8 Conflict between Register and Certificates

In the event of any conflict between the Certificate for a Capital Bond and the particulars recorded in the Register in respect of that Capital Bond, the Register is to prevail.

## 5.9 Compliance with law

The Company shall comply with all statutory requirements relating to the keeping of the Register. The Company shall ensure that the Register is audited in accordance with applicable auditing and assurance standards (as defined by reference to section 6 of the FMCA) by the Auditor (or such other Qualified Auditor that is acceptable to the Supervisor) annually within 4 months of the Company's balance date and at such other times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements of this clause 5.9 are not being complied with.

## 6. Warranties and Covenants

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### 6.1 Representations and warranties

The Company represents and warrants to the Supervisor that on the date of this Deed and on the date of issue of the Capital Bonds:

- (a) **Incorporation:** it is a company duly incorporated under the laws of New Zealand;
- (b) **Power:** it has power to enter into this Deed, issue the Capital Bonds and perform its obligations under this Deed and the Capital Bonds;
- (c) **Consents and authorisation:** it has all the necessary consents and has taken all necessary corporate and other action to authorise the execution and performance of this Deed and the Capital Bonds;
- (d) **Obligations legally binding:** its obligations under this Deed and the Capital Bonds are legally binding and enforceable, subject to general equitable principles and to bankruptcy, insolvency or similar laws affecting creditors generally;
- (e) **No breach of agreement, laws etc:** the execution and performance of this Deed and the Capital Bonds will not constitute a breach under any law or regulation by which the Company is bound, including the constitutional documents of the Company and the Listing Rules; and
- (f) **No interest cancellation events:** none of the events described in Condition 3.3(b)(i), (ii) or (iii) has occurred and is continuing.

## 6.2 Company covenants

The Company covenants with the Supervisor and each Bondholder that it will:

- (a) **Notify Supervisor of non-payment:** promptly notify the Supervisor if the Company intends not to, or fails to, make a payment of interest on the Capital Bonds when due (and to the extent that the Company has determined that it will not make a payment of interest at any time before the relevant Interest Payment Date, it will notify the Supervisor promptly after making that determination);
- (b) **Give Supervisor notices:** send a copy to the Supervisor of each notice given by it to Bondholders generally and (if Ordinary Shares are quoted on the Exchange) to holders of Ordinary Shares generally;
- (c) **No payment of dividends or distributions:** not at any time while any amount of interest payable on the Capital Bonds has fallen due and remains unpaid or where interest has been cancelled in accordance with the Conditions:
  - (i) pay any dividend on, or make any other distribution in respect of, or pay any interest on, any of its shares or other securities ranking, in liquidation, pari passu or behind the Capital Bonds; or
  - (ii) without the consent of the Supervisor:
    - (A) acquire or redeem, or repay, any of its shares or other securities ranking, in liquidation, pari passu or behind Capital Bonds; or
    - (B) provide financial assistance for the acquisition of its shares or other securities ranking, in liquidation, pari passu or behind Capital Bonds,
 unless either:
    - (iii) the Company has paid in full all Accrued Interest and all Cancelled Interest which was cancelled (and has not been paid) subsequent to the last time two consecutive instalments of interest were paid in full on their respective Interest Payment Dates; or
    - (iv) the Company has paid in full the interest due on the last two Interest Payment Dates immediately preceding the date for payment of the dividend or distribution or the date for the acquisition, redemption, repayment or the provision of financial assistance under (ii) above;
- (d) **Quotation of Capital Bonds and provide information:** use reasonable endeavours to ensure that the Capital Bonds are, upon their issue, quoted on the Stock Exchange and that such quotation is maintained;
- (e) **Financial statements and annual report:** send to the Supervisor a copy of the financial statements and annual report which it sends to holders of Ordinary Shares, at the same time as those statements and annual reports are distributed to those shareholders;
- (f) **Information:** whenever so requested, give to the Supervisor such information as may reasonably be required for the purposes of the discharge of the duties, trusts and powers vested in the Supervisor under this deed or imposed upon it by law;
- (g) **Compliance with legislation etc:** at all times comply with the FMCA, FMC Regulations, Companies Act 1993, Financial Reporting Act 1993, the Listing Rules and all applicable laws;

- (h) **Offering documents:** not issue a product disclosure statement or other disclosure document required by the FMCA in respect of an issue of Capital Bonds without prior notice to the Supervisor, and not include any statement in any such document concerning the Supervisor or this Deed, without the prior consent of the Supervisor;
- (i) **Bondholder rights:** in relation to the Capital Bonds, comply with the provisions of sections 116 and 117 of the Companies Act 1993 on the basis that:
  - (i) references in those sections to “shares” are deemed to be references to the Capital Bonds, and references to “holders of shares” and “shareholders” are deemed to be modified accordingly;
  - (ii) the references to pre-emptive rights under section 45 of that Act are deemed to be deleted from those sections;
  - (iii) the reference in section 117 to a “special resolution” is deemed to be a reference to an Extraordinary Resolution;
  - (iv) the references in section 117 to the “constitution” are deemed to be references to this Deed; and
  - (v) the Company will not be required to comply with those sections in relation to actions that affect the rights attached to the Capital Bonds if this Deed or the Conditions (or, in relation to Further Capital Bonds, those Further Capital Bonds were issued on terms which) expressly permitted the action in question to be taken without the prior approval of Bondholders,

provided that section 118 of the Companies Act 1993 will not, by virtue of this clause, be deemed to apply to any Capital Bond. Further, the issue of Further Capital Bonds or other securities or indebtedness of any nature which rank behind, equally with, or in priority to, the Capital Bonds, whether as to voting rights, distributions or otherwise, or the issue of further Ordinary Shares, is deemed not to be an action affecting the rights attaching to the Capital Bonds for the purposes of this clause;

- (j) **Corporate existence:** maintain its corporate existence and not amalgamate with any person unless the resulting or surviving entity assumes, to the satisfaction of the Supervisor, the obligations of the Company under the Capital Bonds;
- (k) **Failure to give Election Notice:** give notice to the Supervisor in writing if at any time it intends not to give an Election Notice (as defined in the Conditions) on due date;
- (l) **Resale Facility:** once the Resale Facility (as defined in the Conditions) is established, give notice to the Supervisor of the appointment of each Resale Facility Agent (as defined in Condition 4.4(a)) and such other details of the Resale Facility as the Supervisor may request;
- (m) **Credit Rating:** use its best endeavours to ensure that the Company has a Credit Rating at all times while there are Capital Bonds outstanding;
- (n) **Report of contravention:** if the Company has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene, any of its Issuer Obligations in a material respect, as soon as practicable, report to the Supervisor in writing of the contravention or possible contravention and advise the Supervisor of the steps (if any) that it has taken or intends to take in light of the contravention or possible contravention, and the date by which the steps were taken or are to be taken; and

- (o) **Insolvency:** if the Company becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become insolvent (as defined in the FMCA) as soon as practicable:
  - (i) disclose to the Supervisor all information relevant to that matter that is in its possession or under its control 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 it intends to take in respect of that matter and the date by which the steps are to be taken.

### 6.3 Company's accounts and reports of directors

The Company covenants with the Supervisor that, while any Capital Bonds are outstanding, the Company will, as soon as such accounts are available to the public, but in any event no later than four months after the end of each of its financial years and within three months after the end of its financial half-years, deliver to the Supervisor:

- (a) **Confirmation report:** a report signed by two directors of the Company or one director and either the Chief Financial Officer or the Chief Executive Officer of the Company stating:
  - (i) to the best of their knowledge and belief having made due enquiry, during the immediately preceding financial year or half-year (as the case may be):
    - (A) whether any matter has arisen relating to the Company and its subsidiaries which would adversely affect the ability of the Company to perform its Issuer Obligations and, if so, details of that matter;
    - (B) whether the Company has duly observed, performed and complied in all respects with its Issuer Obligations u (and, if not, details of the contravention);
    - (C) whether any Capital Bonds have been cancelled, or purchased by the Company or any of its subsidiaries and, if so, details of the cancellation or purchase;
    - (D) whether the Register has been maintained and audited in accordance with this Deed;
    - (E) that the Company is not in material default in the payment of amounts due to Senior Creditors;
    - (F) whether all interest due on the Capital Bonds has been paid, or, if any interest has been cancelled in accordance with the provisions of this Deed, the amount of interest and the grounds on which the Company elected to do so; and
    - (G) whether the Company has remained solvent; and
  - (ii) the aggregate Principal Amount of the Capital Bonds outstanding at the end of the financial year or half-year (as the case may be);
- (b) **Company's accounts:** a copy of its financial statements for the preceding financial year or half-year (as the case may be), prepared in accordance with the Financial Reporting Act 1993, and audited in the case of financial statements for a financial year; and

- (c) **Auditor's Report:** at the same time as the latest audited annual financial statements of the Company are provided in accordance with clause 6.3(b), a separate report by the Auditor stating:
- (i) whether, in the course of performing their duties as Auditors, they have become aware of any non-payment by the Company of any interest under Capital Bonds (including any interest cancelled in accordance with the Conditions) or any breach of the provisions of this Deed and if so giving particulars thereof;
  - (ii) the aggregate Principal Amount of Capital Bonds on issue and outstanding;
  - (iii) in their opinion, there is reasonable assurance that, in all material respects, the Register has been duly maintained in accordance with the FMCA and correctly contains the information required by the FMCA;
  - (iv) whether in the performance of their duties as Auditor 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 this deed or the FMCA, and if so giving particulars thereof;
  - (v) whether their audit has disclosed any matter, and if so giving particulars thereof, calling in their opinion for further investigation by the Supervisor in the interests of the Bondholders; and
  - (vi) that they have perused the reports given by the directors of the Company pursuant to clause 6.3(a) since the last report by the Auditor (or the date of this Deed, whichever is later) and that, so far as matters which they have observed in the performance of their duties as auditors are concerned, nothing has come to their attention to show that the statements made in such reports by the directors are not correct.
- (d) **Requested Information:** The Company covenants that it will make available or provide to the Supervisor or a person authorised by it for these purposes all documents or records relating to the Company and any report or other information (which may be about any matter relevant to the Supervisor's performance of its functions and include forward-looking reports) that the Supervisor or its authorised person, by written notice, requires the Company to make available or provide within the timeframe and in the manner specified by the Supervisor or its authorised person in that notice, provided that such timeframe and manner are reasonable in the circumstances.

## 6.4 Appointment of Auditor

### (a) Appointment

The Company must, before recommending the appointment or re-appointment of a person as an auditor of the Company:

- (i) consult with the Supervisor on such appointment or re-appointment and the nature and scope of any assurance engagement in relation to the Company's compliance with this Deed;
- (ii) ensure that any comments of the Supervisor concerning the proposed Auditor are brought to the attention of the persons appointing or re-appointing the Auditor;

- (iii) give the Supervisor an opportunity to be a party to the assurance engagement for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the Supervisor's powers or duties; and
- (iv) ensure that the terms of appointment of the Auditor, whether the Auditor is conducting an audit, review or other engagement, include that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Company being present, to raise or discuss:
  - (A) at the beginning of such audit, review or other engagement, any issues or concerns relevant to the exercise or performance of the Supervisor's powers or duties; and
  - (B) matters arising in the performance of such audit, review or other engagement and to answer any questions the Supervisor may have concerning such engagement.

(b) **Resignation**

The Company must notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or re-appointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning its appointment or declining to accept appointment or re-appointment. The Company must not attempt to prevent any person who has resigned its appointment as an auditor, or declined to accept an appointment or re-appointment as an auditor, from offering an explanation, or disclosing to the Supervisor the reason for resigning or declining appointment or re-appointment.

## 7. **Supervisor's power to waive**

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Subject to clause 8.5 (to the extent any waiver operates as a temporary amendment), any Applicable Law and any direction or request given by the Bondholders, the Supervisor may from time to time by notice in writing to the Company waive in part or in whole, for a specified period or completely, and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Company of any of the provisions of this Deed or the Conditions, provided the Supervisor is satisfied that the interests of the Bondholders will not be materially prejudiced as a result. Any such waiver will not affect the rights of the Supervisor and the Bondholders in respect of any other breach, but will be binding on all Bondholders. Notwithstanding anything in this Deed or otherwise contained or implied or any rule of law to the contrary, the Supervisor will not be deemed to have given any such waiver unless the waiver is given by the Supervisor in writing.

## 8. **Appointment of and powers and discretions of Supervisor**

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### 8.1 **Appointment**

The Company hereby appoints the Supervisor, and the Supervisor accepts appointment, as Supervisor for the Bondholders in respect of the Capital Bonds, with the rights, powers, duties and obligations set out in this Deed and in the Conditions. The Supervisor shall hold in trust for the benefit of all Bondholders:

- (a) the right to enforce any obligations or duties that the Company has under this Deed and the FMCA, (including the right to enforce the Company's obligation to repay to a Bondholder the Principal Amount of the Capital Bonds held by that Bondholder, together with interest thereon, in accordance with the terms of this Deed); and

- (b) if applicable, any charge or security for repayment of the Capital Bonds.

## 8.2 Powers

In addition to the powers, authorities and discretions which may be vested in Supervisors by law relating to Supervisors, and to facilitate the discharge of its duties under this Deed, it is expressly declared that:

- (a) **General responsibilities and duties:** the Supervisor:
- (i) is responsible for acting on behalf of the Bondholders in relation to the Company, any matter connected with this Deed or the terms of the offer of the Capital Bonds and any contravention or alleged contravention of Issuer Obligations;
  - (ii) is responsible for supervising the Company's performance of its Issuer Obligations in order to ascertain whether or not the assets of the Company that are or may be available, are sufficient or likely to be sufficient to discharge the payment obligations of the Company in respect of the Capital Bonds as they become due, subject to clause 4;
  - (iii) is responsible for performing and exercising any other functions, duties and powers conferred or imposed on the Supervisor by this Deed, the FMCA and the FMSA;
  - (iv) must:
    - (A) act honestly in acting as supervisor;
    - (B) in exercising its powers and performing its duties as supervisor, act in the best interests of the Bondholders;
    - (C) exercise reasonable diligence in carrying out its functions as supervisor;
  - (v) must do all the things it has the power to do to cause any contravention or alleged contravention of the Issuer Obligations in respect of any Capital Bonds to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Bondholders;
  - (vi) subject to any court order made under section 210 of the FMCA, must act in accordance with any direction given by an Extraordinary Resolution of the Bondholders or an affected Class of Bondholders that is not inconsistent with any enactment, rule of law or this Deed in relation to:
    - (A) seeking a remedy to a contravention or alleged contravention of the Issuer Obligations in respect of any Capital Bonds; and
    - (B) any other matter connected with the Supervisor's functions; and
  - (vii) in exercising its powers and performing its duties as supervisor, must exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMCA) would exercise in the same circumstances;
- (b) **Applications to court:** having regard to any other powers or remedies available to it under this Deed or at law for the protection of the interests of Bondholders and

to all other circumstances relevant to the general interests of such Bondholders, the Supervisor may apply to the court for an order:

- (i) under section 208 of the FMCA, if the Supervisor is satisfied that:
  - (A) the Company is unlikely to be able to pay all money owing in respect of Bondholders as and when due;
  - (B) the Company is insolvent (as defined in the FMCA) or the security (if applicable), benefits, financial position or management of the Company is otherwise inadequate;
  - (C) there is a significant risk that the interests of Bondholders will be materially prejudiced for any other reason; or
  - (D) the provisions of this Deed are no longer adequate to give proper protection to the interests of Bondholders; or
- (ii) under section 210 of the FMCA and within 20 Business Days (or, with leave of the court, within any longer period) after the passing of an Extraordinary Resolution of Bondholders, directing it not to comply with an Extraordinary Resolution of Bondholders,

and it may support or oppose any such application to the court made by or at the instance of the FMA or any Bondholder (where applicable). The Supervisor shall, in accordance with clause 8.7(b), be indemnified by the Company against all expenses incurred in relation to any such application or proceedings, provided that the Supervisor must consult with the Company prior to making any such application before the Commencement of Liquidation;

- (c) **Act on advice:** the Supervisor may, subject to the provisions of this Deed, without liability for loss, obtain, accept and act on, or decline and elect not to accept and act on:
  - (i) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, financial adviser, auditor, chartered accountant or other expert, even though it may subsequently be found to contain some error or not be authentic;
  - (ii) a certificate or report signed by any two directors of the Company as to any fact or matter prima facie within their knowledge as sufficient evidence of that fact or matter; and
  - (iii) the statements contained in any certificate or report given in accordance with this Deed as conclusive evidence of the facts stated in that certificate or report;
- (d) **Resolution of Bondholders:** the Supervisor will not be liable to the Company or any Bondholder for acting or relying, in good faith, upon any resolution purporting to have been passed at any meeting of the Bondholders in respect of which 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 in the proceedings conducted at the meeting or for any other reason;
- (e) **Proceeds of Capital Bonds and delivery of Certificates and Ordinary Shares:** the Supervisor will not be liable to the Company or any Bondholder for the receipt or application by the Company of the Issue Price for the issue of Capital Bonds or be bound to see to the application of those proceeds or for the delivery of

Certificates or letters of allotment or certificates representing the Ordinary Shares (if and when issued) to the persons entitled to them;

- (f) **Breach of Deed or Capital Bonds:** to the extent permitted by law, the Supervisor will not be bound to take steps to ascertain whether or not the Company has committed any breach of the provisions of this Deed or any of the Capital Bonds and shall cease to be entitled to assume without enquiry that no such breach is occurring or has occurred, only upon:
  - (i) the Supervisor becoming aware that, or receiving specific advice that, a breach has, or appears to have, occurred or threatens to occur, from the directors of the Company or the Auditors; or
  - (ii) the Supervisor receiving notice of the Commencement of Liquidation;
- (g) **Duty of care:** the Supervisor will not be liable to the Company or the Bondholders unless the Supervisor has acted in gross negligence, fraudulently, dishonestly or in wilful breach of trust or any law or had otherwise failed to show the degree of care and diligence required of it having regard to the powers, authorities and discretions conferred or imposed upon it by this Deed or by law;
- (h) **Exercise of trusts, powers, authorities, discretions and responsibilities:** except as otherwise expressly provided in this Deed, the Supervisor as regards all trusts, powers, authorities, discretions and responsibilities vested in it by this Deed, will have absolute discretion as to their exercise or non-exercise and as to the commencement, modification, discontinuance, compromise or conduct of any action, proceeding or claim and, provided it acts in good faith, it will not be responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of such;
- (i) **Power to delegate:** the Supervisor must not delegate any of its functions under clauses 8.2(a)(i) to (iii) unless such delegation is expressly permitted by the FMCA or permitted by, and then subject to conditions imposed under, the FMSA but may, for the avoidance of doubt, delegate its other functions. Where the Supervisor may delegate its functions, it may whenever it thinks it expedient in the interests of the Bondholders to do so:
  - (i) delegate at any time to any person any of the trusts, powers, authorities, discretions or responsibilities 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 reasonably think fit (provided that the Supervisor shall remain liable for the actions of any delegate);
  - (ii) authorise such person as it thinks fit to act as its representative at any meeting; and
  - (iii) apply to the court at any time for directions in relation to any matter or for an order that the powers and trusts contained in this Deed be exercised under the direction of the court, or, subject to clause 8.4, consent to, approve or oppose any application to court by the Company or by or at the instance of any Bondholder;
- (j) **Consents:** any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor reasonably thinks fit;

- (k) **Power to remedy breach:** the Supervisor's powers to remedy any breach of this Deed are subject to any other provision of this Deed which is inconsistent with the exercise of such powers;
- (l) **Duties to Company:** the Supervisor has no duties and responsibilities under this Deed, other than under clause 4.8, to any Bondholder which is the Company or any of its subsidiaries;
- (m) **Power to invest:** any moneys held by the Supervisor and subject to the trusts constituted or to be constituted under this Deed may, at the discretion of the Supervisor, be invested in the name of the Supervisor or its nominee in any investments it considers fit with power to vary or transpose such investments for others of a like nature and deal with or dispose of such investments, and all income from such investments will belong to the person in respect of whom such moneys are held by the Supervisor;
- (n) **Attend general meetings:** any representative of the Supervisor, being a person authorised to act for the purposes of this clause by any director, general manager or secretary of the Supervisor, is entitled to attend any general meeting of the Company or meeting of Bondholders, and to be heard at any such meeting which he or she attends on any part of the business of the meeting which concerns the Supervisor as such or the Bondholders;
- (o) **Listing Rules:** the Supervisor shall not be required to monitor compliance by the Company or any other party with the Listing Rules and, in the absence of notice to the contrary from the Company or the Stock Exchange, shall be entitled to assume that the Company is so complying. In the event of noncompliance with any Listing Rule the Supervisor, in determining the action to be taken or not taken by it, shall be entitled to have regard to the actions of the Stock Exchange in relation to that non-compliance by the Company;
- (p) **Materiality:** the Supervisor may determine whether or not a failure by the Company to perform any obligation under the provisions of the Conditions or this Deed is in its opinion capable of remedy or will have a material adverse effect on the interests of the Bondholders and any such determination shall be conclusive and binding upon the Bondholders;
- (q) **Duty to consult:** unless it is impractical to do so, the Supervisor will consult with the Company before seeking the opinion or advice of any of the persons listed in clause 8.2(c)(i); and
- (r) **Engage expert:** the Supervisor may engage an expert (for example, an auditor, investigating accountant, valuer or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert:
  - (i) to determine the financial position of the Company; or
  - (ii) to review the business, operation, management systems or the governance of the Company.

Where the Supervisor engages an expert pursuant to this clause 8.2(r), the Company shall provide reasonable assistance to the expert to allow the expert to provide the assistance and the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Company.

### 8.3 Discretion to consult Bondholders

Subject to clause 13, following any breach of this Deed by the Company, the occurrence of any circumstances which may result in such a breach which the Supervisor reasonably

considers may have a material adverse effect on the interests of the Bondholders or whenever the Supervisor otherwise deems that it would be in the interests of Bondholders to do so, the Supervisor may, in its absolute discretion:

- (a) report to the Bondholders, or any of them, the circumstances and nature of such breach and any other information concerning the Company which the Supervisor has received under or in relation to this Deed or the Capital Bonds and which it reasonably considers to be material to the Bondholders or any of them; and
- (b) invite the Bondholders or any of them to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Supervisor's powers under this Deed or the Capital Bonds or as to any action or omission to act by the Supervisor in relation to the breach.

Any such report may be given in such manner as is considered by the Supervisor to be the most practicable and expedient in all the circumstances.

#### 8.4 Supervisor's right to be indemnified

The Supervisor may decline to take any action or exercise any power or discretion or comply with or implement any direction or request given in accordance with this Deed whether or not it is otherwise bound to so act unless and until the Supervisor and each of its officers, employees or agents are first indemnified by the Bondholders to its satisfaction against all actions, proceedings, claims and demands to which any of them may be rendered liable and all costs, charges, losses, damages and expenses which it or they may incur by so doing.

#### 8.5 Amendments

- (a) **Right to amend:** The provisions of this Deed may not be amended or replaced unless the amendment or replacement is made:
  - (i) with the consent of the Supervisor; or
  - (ii) (despite anything to the contrary in this Deed or in any enactment, rule of law or agreement, including anything relating to the consent of any person to the making of amendments to this Deed) under section 109 of the FMCA, sections 22(7) or 37(6) of the FMSA or any other power to amend or replace this Deed under an enactment.
- (b) **Supervisor consent:** Subject to section 112(2)(b) of the FMCA, the Supervisor must not consent to an amendment to, or a replacement of, this Deed unless:
  - (i) either:
    - (A) the amendment or replacement is approved by, or is contingent on approval by, the Bondholders; or
    - (B) the Company and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Bondholders; and
  - (ii) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this Deed, as amended or replaced, will comply with sections 104 to 106 of the FMCA on the basis set out in the certificate.
- (c) **Holder consent:** The approval of the Bondholders for the purposes of clause 8.5(b)(i)(A) must be the approval of an Extraordinary Resolution of:

- (i) the Bondholders; or
  - (ii) each class of Bondholders that is or may be adversely affected by the amendment or replacement.
- (d) **Notice of Amendment:** Within 5 Business Days after an amendment to, or replacement of, this Deed, the Company must ensure that notice of the amendment or replacement and a copy of the certificate relating to such amendment or replacement, is lodged with the Registrar of Financial Service Providers.

## 8.6 Fiduciary relationship

The Supervisor may not be a Bondholder on its own account. However, nothing in this Deed prohibits the Supervisor or its holding company or any of their subsidiaries or their officers or shareholders (all for the purposes of this clause, where the context permits, being included in the expression the Supervisor) from being a Bondholder in any Supervisor, agency, nominee or other representative capacity, or from being a creditor or shareholder of, or having any other interest in, the Company or of any of its subsidiaries or from acting in any other fiduciary, contractual, agency or representative capacity for a Bondholder or the Company or any of its subsidiaries without breach of any obligations established by this Deed or otherwise imposed or implied by law arising out of any such relationship. The Supervisor may enter into any transaction with the Company or any of its subsidiaries in the ordinary course of business and will not be accountable to the Bondholders for any profits arising from such transactions.

## 9. Meetings of bondholders

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### 9.1 Regulations of meetings

Each meeting of Bondholders is to be convened and held in accordance with Schedule 2.

### 9.2 Represent Bondholders

The Supervisor may, of its volition or in accordance with any directions or in accordance with an Extraordinary Resolution, represent Bondholders in any investigation, negotiation, action, transaction, matter or proceedings affecting the interests of Bondholders.

## 10. Indemnity of Supervisor

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### (a) Indemnity

The Supervisor and each of its officers, employees, attorneys or agents are entitled to be indemnified by the Company, on an unsubordinated basis, in respect of all liabilities and expenses incurred by it or any of them in the performance or exercise or attempted or purported performance or exercise of any of the trusts, powers, authorities or discretions conferred on the Supervisor or any of them by this Deed and against all actions, proceedings, costs, losses, claims and demands in respect of any matter or thing done or omitted in any way relating to this Deed other than liabilities, expenses, actions, proceedings, costs, losses, claims or demands arising out of:

- (i) **Fraud, bad faith or dishonesty:** fraud, gross negligence, wilful breach of trust or dishonesty on the part of the Supervisor or any of its officers, employees, attorneys or agents; or

- (ii) **Breach of duty of care: breach of trust** where the Supervisor fails to show the degree of care and diligence required of the Supervisor having regard to the powers, authorities and discretions conferred on the Supervisor by this Deed,

and the Supervisor may retain and pay out of any moneys it holds upon the trusts of this Deed, all sums necessary to effect and satisfy that indemnity, together with the remuneration and reimbursements of the Supervisor as provided for in this Deed.

(b) **Limitation on Indemnity**

The Supervisor's rights to be indemnified in relation to the performance of the Supervisor's licensee obligations (as that term is defined under section 4 of the FMSA) under this Deed shall not apply to any liability which arises from a failure by the Supervisor to properly perform its duties under clauses 8.2(a)(iv) and (vii) and no other provision of this Deed that is contrary to the foregoing shall have any effect.

## 11. Retirement, removal and new appointment of Supervisor

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### 11.1 Resignation or removal of Supervisor

Subject, in the case of resignation or removal under 11.1(a), (b) or (d) below, to clause 11.2 below, and to the appointment and acceptance of a successor Supervisor as provided in this clause 11:

- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice to the Company
- (b) the Company may remove the Supervisor from office by giving not less than 90 days' written notice to the Supervisor; or
- (c) the FMA or the Company may remove the Supervisor under Part 2 of the FMSA; or
- (d) the Bondholders may remove the Supervisor from office by written notice to the Company and Supervisor upon the passing of an Extraordinary Resolution to that effect.

### 11.2 Requirements for retirement and removal

The Supervisor may not:

- (a) be removed or resign under clause 11.1(a), (b) or (d) unless:
  - (i) all functions and duties of the position have been performed;
  - (ii) another licensed supervisor has been appointed and accepted the appointment in its place; or
  - (iii) the court consents; and
- (b) be removed by the Company under clause 11.1(b) without the FMA's consent.

### 11.3 Appointment of new Supervisor

- (a) **Appointment by the Company subject to approval by Bondholders:** The power to appoint a new Supervisor or Supervisors of this Deed is vested in the Bondholders by way of an Extraordinary Resolution and in the Company, but no new Supervisor may

be appointed by the Company unless such appointment is first approved by an Extraordinary Resolution. Upon the Supervisor notifying the Company that it wishes to retire, or upon the Company wishing to appoint a new Supervisor, the Company must promptly call a meeting of the Bondholders for the purposes of approving an appointment of a new Supervisor and, if such approval is given, the Company may exercise its power of appointment.

- (b) **Appointment by Bondholders:** If the Company, within 60 days of receiving notice of the Supervisor's intention to retire, fails to call a meeting of the Bondholders in accordance with clause 11.2(a) or to exercise the power vested in it under that clause to appoint a new Supervisor or new Supervisors, in either case, the Bondholders may by Extraordinary Resolution exercise such power to the exclusion of the Company.
- (c) **Notification of new Supervisor:** The Company must notify all Bondholders of the identity of any new Supervisor appointed as soon as reasonably possible following such appointment. Within 5 Business Days, the Company will ensure that notice of the change is logged with the Registrar.

## 12. Supervisor's remuneration and expenses

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### 12.1 Basic remuneration

The Company will pay to the Supervisor remuneration for its services as Supervisor in accordance with the terms of any current agreement contained in letters exchanged between the Company and the Supervisor.

### 12.2 Expenses

The Company will also pay all reasonable costs, charges, taxes or duties (including legal expenses) properly incurred by or on behalf of the Supervisor in connection with:

- (a) **Preparation, execution and modification of Deed:** the preparation, execution and modification (and release when applicable) of this Deed (including any Supplemental Deed);
- (b) **Exercise of powers:** any proper exercise by the Supervisor of any power or discretion conferred on the Supervisor or upon any Bondholders by this Deed or in respect of the Capital Bonds, or the performance of its duties;
- (c) **Breach by Company:** any breach, default or non-compliance by the Company of or with any obligation under this Deed or the Capital Bonds;
- (d) **Meetings of Bondholders:** the convening and holding of any meeting of Bondholders and carrying out of any directions or resolutions of such a meeting; and
- (e) **Other matters:** any other matters dealt with in the agreement referred to in clause 12.1.

### 12.3 Liability not terminated

The remuneration and payments payable under this clause 12 will continue to be payable until the trusts of this Deed are finally wound up (whether or not the Company is in Liquidation or the trusts of this Deed are in course of administration by or under the direction of the court).

## 13. Disclosure of information

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Notwithstanding any other provision of this Deed, the Company is not required to provide any information to a Bondholder where:

- (a) it would be unlawful to do so; or
- (b) the information is confidential; or
- (c) in the Company's reasonable opinion, the information is commercially sensitive,

but may be required, in accordance with this Deed, to provide such information to the Supervisor. The Company may request, in providing such information to the Supervisor, the Supervisor to undertake to keep such information confidential (including as against Bondholders) and the Supervisor shall be entitled to, and shall, give and honour that undertaking unless the Supervisor has legal advice that to do so would prevent the Supervisor fulfilling its duty to Bondholders.

## 14. Documents

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The Company must retain, make available for inspection, provide and deliver copies of any document or information as required by, and in accordance with, the FMCA.

## 15. Notices

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Each notice to be given in accordance with this Deed will be deemed effective if made in writing, delivered or posted by pre-paid mail or sent by email or facsimile addressed to:

- (a) in the case of the Company:

VECTOR Limited  
 Level 4  
 101 Carlton Gore Road  
 Newmarket  
 Auckland  
**Attention:** John Rodger  
**Fax no.:** (09) 978 7799  
**Email address:** john.rodger@vector.co.nz

- (b) in the case of the Supervisor:

The New Zealand Guardian Trust Company Limited  
 Level 6, 191 Queen Street  
 Auckland  
**Attention:** Relationship Manager, Corporate Trusts  
**Fax no.:** (09) 969 3732  
**Email:** ct-auckland@nzgt.co.nz

- (c) in the case of a Bondholder, the address of such Bondholder last entered in the Register,

or, in the case of (a) or (b) above, such other address as the Company or the Supervisor may from time to time in writing nominate to the others. Each Notice will be deemed to be given, in the case of personal delivery, when delivered, and in the case of post, two Business Days after the date of posting. If sent by email, any notice or communication will be deemed

to have been received on completion of transmission to the relevant email address. If sent by facsimile, notices will be deemed to be given when sent or, if sent on other than a Business Day or after 5 p.m. on any Business Day, the next Business Day.

A notice, request, certificate, approval, demand, consent or other communication to be given under this Deed may only be given by email where the recipient has agreed that that communication, or communications of that type, may be given by email.

## **16. Governing law**

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This Deed is governed by the laws of New Zealand.

## **17. Discharge of deed**

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The Supervisor will, upon being reasonably satisfied that no moneys are actually or contingently owing under this Deed or any Capital Bond, execute a discharge of this Deed whenever requested by the Company so to do, but any such discharge will be without prejudice to any indemnity given by the Company in favour of the Supervisor or any unremedied breach or unperformed obligation under the Deed.

## **18. Invalidity**

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If any provision of this Deed or the Capital Bonds is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired to the maximum extent permitted under law.

## Execution

**Executed** as a trust deed.

**Vector Limited** by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**EXECUTED** under the name and  
seal of **The New Zealand  
Guardian Trust Company Limited**  
by

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness to both signatures

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

## Schedule 1: Conditions of the Capital Bonds

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### 1. Deed

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#### 1.1 Deed binding

The statements in these Conditions are subject to the detailed provisions of the trust deed dated 25 September 2002 (as amended) (the **Deed**) between Vector Limited and The New Zealand Guardian Trust Company Limited as Supervisor. Words and expressions defined in the Deed and not otherwise defined in these Conditions have the same meanings where they are used in these Conditions.

#### 1.2 Notice of Deed

Bondholders are entitled to the benefit of, are bound by, and are deemed to have notice of, the Deed.

#### 1.3 Definitions

In these Conditions, terms defined in the Deed have the same meanings where used in these Conditions and, unless the context otherwise requires:

**Accrued Interest** means all interest on the Principal Amount of the Capital Bonds which has accrued and is payable in accordance with these Conditions, other than any Cancelled Interest;

**Basic Rate** means the greater of:

- (a) 7.00 per cent. per annum; and
- (b) the Swap Rate plus the Issue Margin,

or such higher rate as the Company may determine on the Rate Set Date;

**Bond Period** means a period from one Election Date until the next Election Date;

**Cancelled Interest** has the meaning given to it in Condition 3.2(c);

**Dominant Owner** means a dominant owner as defined in rule 50 of the Takeovers Code;

**Election Date** means 15 June 2017 or if an Election Date is extended under Condition 4.1(b), the relevant date determined in accordance with that Condition, and each subsequent New Election Date;

**Election Notice** has the meaning given to it in Condition 4.1;

**Election Record Date** has the meaning given to it in Condition 4.1;

**Interest Payment Date** means 15 June and 15 December in each year and including the Election Date, or such other dates determined by the Company pursuant to Condition 4.1;

**Interest Period** means each period of six months ending on an Interest Payment Date (so that the interest payable on each such Interest Payment Date will be one half of the annual interest);

**Interest Rate** means:

- (a) in respect of a Capital Bond and from the period from 15 June 2012 to the next Election Date, the Basic Rate, or if Condition 4.4(g) applies in relation to the previous election date, the Swap Rate plus 1.90 per cent. per annum; and
- (b) in respect of each subsequent Bond Period the rate determined in accordance with Condition 4; **[Note: details of the Interest Rate payable from 15 June 2017 are set out in the Explanatory Notes.]**

**Issue Margin** means 2.95 per cent. per annum; **[Note: details of the Issue Margin applicable from 15 June 2017 are set out in the Explanatory Notes.]**

**Liquidation Amount** means the Principal Amount of the Capital Bonds plus all Accrued Interest in respect of that amount;

**Minimum Holding** has the meaning given to it in Condition 5.1;

**New Conditions** has the meaning given to it in Condition 4.1;

**New Election Date** has the meaning given to it in Condition 4.1;

**Notification Date** has the meaning given to it in Condition 4.2;

**NZX** means, as the context requires, the New Zealand Stock Exchange or any alternative or substitute market for ordinary shares or other arrangement in New Zealand on or through which ordinary shares may be freely traded and which is generally regarded as the principal such market or arrangement for the trading of ordinary shares in New Zealand;

**Rate Set Date** means:

- (a) for the purposes of determining the Basic Rate as at 15 June 2012, 14 June 2012, or such other date selected by the Company;
- (b) for the purposes of determining the Swap Rate under Condition 4.1(b), the Business Day preceding the beginning of the relevant extended period; and
- (c) for the purposes of determining the Swap Rate under Condition 4.4(g), the Business Day preceding the relevant Election Date;

**Record Date** means in respect of an Interest Payment Date (including an Election Date), the day selected by the Company which is not less than 10 days prior to the relevant Interest Payment Date;

**Resale Facility** means the facility described in Condition 4.4;

**Senior Creditors** means all creditors of the Company in relation to obligations other than indebtedness owed by the Company to Bondholders in respect of Capital Bonds or obligations which are expressed to be subordinate to the obligations of the Company under or in relation to the Capital Bonds, or pari passu with such obligations;

**Specified Margin** means 1.00 per cent. per annum;

**Swap Rate** means the interpolated mid-market yield for an interest rate swap for a term equal to:

- (a) the Bond Period; or

based on Reuters Monitor Screen page FISSWAP (or its successor) at or about 3.00pm on the Rate Set Date or, if on the relevant day no such rate is displayed, the rate determined by the Company to be the nearest practicable alternative; and

**Takeovers Code** means the Takeovers Code set out in the schedule to the Takeovers Code Approval Order 2000.

## 2. Status and Subordination of the Capital Bonds

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### 2.1 Status

The Capital Bonds constitute unsecured subordinated obligations of the Company and rank pari passu and without priority or preference among themselves.

### 2.2 Subordination

The obligations of the Company to the Bondholder under, and the rights of the Bondholder (or the Supervisor on behalf of the Bondholder) against the Company in respect of the Principal Amount of, and Accrued Interest on, the Capital Bonds are subordinated to the claims of Senior Creditors of the Company in that in and upon the Commencement of Liquidation the claims of the Bondholder against the Company under and in respect of the Capital Bonds in such Liquidation are:

- (a) **Claims of Senior Creditors:** subordinated in point of priority and right of payment to, and rank behind, the claims of the Senior Creditors; and
- (b) **Limited to Liquidation Amount:** subject to clause 4.14 of the Deed, limited to the Liquidation Amount.

### 2.3 Relevant provisions of Deed

The Deed contains provisions restricting the remedies of the Supervisor and the Bondholder in relation to the Capital Bonds and providing that the Supervisor and the Bondholder must hold on trust various amounts in favour of the Supervisor and Senior Creditors. In the event of any conflict between the Deed and these Conditions, the Deed is to prevail.

## 3. Interest

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### 3.1 Interest Rate and calculation of interest

Each Capital Bond bears interest on the Principal Amount at the Interest Rate. The Interest Rate applying as at 15 June 2012 and as at each subsequent Election Date will be confirmed in writing to each Bondholder within 14 days of the relevant Election Date. Interest will be calculated on the Principal Amount of a Capital Bond and will accrue daily on the basis of a 365-day year. Interest will cease to accrue on a Capital Bond on the earliest of:

- (a) in the event of Liquidation, the date on which that Capital Bond is redeemed by payment of the Liquidation Amount; or
- (b) the date on which that Capital Bond is redeemed for cash by the Company; or
- (c) the date on which that Capital Bond is cancelled under Condition 4.8.

### 3.2 Interest

- (a) **Accrual of interest:** Interest will accrue on a daily basis on the Capital Bonds during each Interest Period and is payable on the Interest Payment Date falling at the end of that Interest Period.
- (b) **Election to cancel interest:** On any Interest Payment Date the Company may elect to cancel payment of all or any part of the interest due on any Interest Payment Date.
- (c) **Cancelled Interest:** All interest which is cancelled (**Cancelled Interest**) will be deemed never to have accrued and never to have been payable and the Company will not have any obligation to pay any Cancelled Interest at any time in the future.
- (d) **Option to pay Cancelled Interest:** The Company may, at its option and upon giving not more than 14 nor less than seven days' notice to Bondholders (which notice may be accompanied by a post-dated cheque), pay all, or part of, any Cancelled Interest in cash which, if part only, must be paid on a pro rata basis across all Capital Bonds.
- (e) **Notice to Supervisor and Bondholders:** The Company will promptly notify the Supervisor if the Company elects or intends to cancel any interest under Condition 3.2(b).

If the Company has elected to cancel payment of interest in accordance with this Condition 3.2, the Company has covenanted in the Deed not to pay any dividend on, or make any distribution in respect of, its shares (or take certain other actions) unless and until the Company has paid in full all Cancelled Interest that was cancelled since the last time two consecutive instalments of interest were paid in full or has paid in full the two consecutive interest payments immediately preceding the date of payment of the dividend or distribution. Any non-payment of interest on an Interest Payment Date (including cancellation of any interest) will not give rise to any right to accelerate payment of any amount due under a Capital Bond nor will it constitute a default by the Company for any purpose.

### 3.3 Payments

All payments in relation to a Capital Bond may be satisfied by:

- (a) **Post:** mailing cheques to the address of; or
- (b) **Direct credit:** direct credit to any bank account nominated in writing (prior to the Record Date) by,

the Bondholder entered in the Register on the Record Date. Such mailing or direct credit will occur prior to 5.00pm on the relevant Interest Payment Date (or, if that date is not a Business Day, the next Business Day after that date) or other date on which payment is required to be made.

### 3.4 Withholding tax

- (a) **Deduction for withholding:** Subject to Condition 3.4(b), all payments or credits to, or to the account of Bondholders (including payments of, and credits in respect of interest) will be made net of any tax in respect thereof required by law to be withheld, deducted or paid by the Company, except to the extent that the Company is satisfied that the Bondholder is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made. Any Bondholder claiming any such exemption or to be such a person must provide the Company with such evidence as the Company may from time to time require to satisfy itself in respect of the validity of that claim.

- (b) **Approved issuer levy:** Bondholders to whom such is relevant may in writing request the Company to advise the basis, if any, upon which the Company, at no cost to itself, is prepared from time to time to deduct and pay an approved issuer levy (within the meaning of section 86F of the Stamp and Cheque Duties Act 1971) from interest paid or credited to Bondholders as an alternative to the exercise by the Company of its rights under Condition 3.4(a).
- (c) **Taxation indemnity from Bondholder:** If, in relation to any Capital Bond, the Supervisor or the Company becomes liable to make any payment of or on account of tax payable by the Bondholder or in relation to any Capital Bonds, the Supervisor and the Company are each indemnified by the Bondholder and the personal representatives or successor of that Bondholder (and, as concerns the Supervisor, also by the Company) in respect of any such liability, and any moneys paid by the Supervisor and the Company in respect of any such liability may be recovered by action from such Bondholder and the personal representatives or successor of the Bondholder (as the case may be) as a debt due to the Supervisor or the Company. Nothing in this Condition prejudices or affects any other right or remedy of the Supervisor or the Company.

## 4. Election to Retain or Sell or Redeem Capital Bonds

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### 4.1 Election Notice

- (a) **Company to give Election Notice:** The Company must, subject to Condition 4.3, give to each Bondholder (and send a copy to the Supervisor) not later than three Business Days after the date (the **Election Record Date**) which is 33 Business Days before each Election Date, a notice (an **Election Notice**) specifying the new conditions (**New Conditions**) as to Interest Rate, Interest Payment Dates and Election Date (the **New Election Date**), and each other modification to the Conditions to apply to the Capital Bonds following the Election Date.
- (b) **Failure to give Election Notice:** If, subject to Condition 4.3, the Company fails to give an Election Notice as required by Condition 4.1(a) the Company shall be deemed to have postponed the Election Date by a period of one year and for that extended one year period up to the extended Election Date interest shall accrue in accordance with Condition 3.2(a) at a fixed rate equal to the aggregate of the Swap Rate plus the Issue Margin plus the Specified Margin. Condition 4.1(a) shall apply to each extended Election Date under this Condition 4.1(b).

### 4.2 Bondholder's election to retain or sell

- (a) Unless the Company has included with the Election Notice a redemption notice under Condition 4.3(b) each Bondholder must complete and sign the Election Notice and return it to the Company not later than the date (the **Notification Date**) which is 23 Business Days after the Election Record Date and must indicate in the Election Notice, in relation to the proportion of Capital Bonds the Bondholder holds:
  - (i) **Retain Capital Bonds:** the Capital Bonds in respect of which the Bondholder accepts the New Conditions with effect from the Election Date; and/or
  - (ii) **Sell Capital Bonds:** the Capital Bonds which the Bondholder wishes to sell through the Resale Facility on the Election Date.
- (b) If, in relation to a Capital Bond:
  - (i) **No Election Notice received:** the Company does not receive a properly completed Election Notice from the Bondholder on or before the Notification Date; or

- (ii) **No election indicated:** to the extent that the Company receives an Election Notice, the Election Notice does not indicate whether or not the Bondholder elects to sell all or part of the Capital Bonds through the Resale Facility; or
- (iii) **Minimum remaining Capital Bonds:** implementation of an election or deemed election (pursuant to this Condition 4.2) made by the Bondholder would result in him or her remaining a Bondholder of Capital Bonds with an aggregate Principal Amount of less than \$5,000; or
- (iv) **Offshore Bondholder:** the Company is of the opinion that the implementation of an election made by the Bondholder (where that Bondholder has a registered address outside New Zealand) pursuant to an Election Notice, whether express or implied, would or may result in the Company making a regulated offer of securities in any jurisdiction outside New Zealand,

then, in the case of (i) above, the Bondholder will (subject to paragraph (iv)) be deemed to have accepted the New Conditions in respect of all such Capital Bonds, in the case of (ii) above, the Bondholder will (subject to paragraph (iv)) be deemed to have accepted the New Conditions in respect of such number of Capital Bonds in respect of which no such indication has been given, in the case of (iii) above, the Bondholder will (subject to paragraph (iv) and to it holding more than the Minimum Holding) be deemed to have accepted the New Conditions in respect of the Minimum Holding and deemed to have elected to sell the remainder of its Capital Bonds through the Resale Facility, and in the case of (iv) above, the Bondholder will be deemed to have elected to sell all of the Bondholder's Capital Bonds through the Resale Facility. Where a Bondholder holds less than the Minimum Holding on the Notification Date, that Bondholder will be deemed to have elected to sell all its Capital Bonds through the Resale Facility.

#### 4.3 Company's option to redeem

- (a) **Redemption:** The Company may elect to redeem all but not some only of the Capital Bonds on any Election Date in cash for the Principal Amount plus any Accrued Interest.
- (b) **Redemption notice:** The Company must give to each Bondholder (and send a copy to the Supervisor), not later than three Business Days after the Election Record Date, notice that the Company has elected to redeem all the Capital Bonds under Condition 4.3(a).

#### 4.4 Resale Facility

- (a) **Resale Facility:** The Company will, prior to each Election Date, establish a Resale Facility which the Company may conduct itself or may involve the use of one or more investment banks, stockbrokers or other similar professional organisations as its agent (the **Resale Facility Agent**) whereby Bondholders may offer their Capital Bonds for sale for value on the Election Date.
- (b) **Offer price:** Any Capital Bond offered for sale under the Resale Facility will be offered or deemed to be offered for sale at a price equal to the Principal Amount of the Capital Bond.
- (c) **No obligation to purchase:** The Company shall use reasonable endeavours to procure the purchase of any Capital Bonds offered under the Resale Facility but the Company is not obliged to purchase or procure the purchase of any such Capital Bonds offered.
- (d) **Purchase by Company:** The Company may itself purchase any Capital Bond offered for sale under the Resale Facility. Each Capital Bond purchased through the Resale Facility may, at the option of the Company, be held for resale or cancelled and, if

cancelled, neither the Company nor the Supervisor will have any further liabilities or obligations in respect of that Capital Bond.

- (e) **Payment:** The Company shall pay, or shall procure that the Resale Facility Agent shall pay, to the relevant Bondholder the Principal Amount of all Capital Bonds sold through the Resale Facility as soon as practical after the sale date, but in any event not later than five Business Days after the Election Date. No deductions or withholdings on account of commissions, brokerage or otherwise will be made from any payment made to the relevant Bondholder other than deductions or withholdings required by law.
- (f) **Interest:** All interest due on the Capital Bonds on the Election Date will be paid to the Bondholder whose name is on the register on the Record Date relating to the Election Date, whether or not the relevant Capital Bonds are sold through the Resale Facility.
- (g) **Redemption:** If any Capital Bond offered for sale under the Resale Facility is not the subject of a binding agreement for sale and purchase (for delivery on the Election Date) by the Business Day preceding the Election Date (an **Unsold Bond**) the Company may on the Election Date redeem that Capital Bond in cash for the Principal Amount. If the Company chooses not to redeem all of the Unsold Bonds on the Election Date all the Capital Bonds will remain outstanding and will be subject to the New Conditions applicable during that Bond Period commencing on the next Election Date except that, for that Bond Period, all the Capital Bonds (including the Unsold Bonds) will bear interest at the aggregate of the Swap Rate plus the Issue Margin for the prior Bond Period plus the Specified Margin.

#### 4.5 Takeover

If, in relation to the Company a person becomes a Dominant Owner, not later than five days after the date (the **relevant date**) that the person becomes a Dominant Owner, any Bondholder may by notice to the Company, elect that all of the Capital Bonds held by that Bondholder be redeemed in cash for the Principal Amount plus Accrued Interest on the date falling 10 days after the relevant date.

#### 4.6 Extraordinary circumstances

If any of the following events occurs:

- (a) **Change in law:** the Company receives an opinion from an experienced legal counsel that, as a result of any amendment or change to, or clarification of, (including the announcement of a prospective introduction of any of these) the FMCA, the FMC Regulations or any other law regulating financial products in New Zealand, there would be additional requirements relating to the Capital Bonds with which the Company would be required to comply and which the Company, in its absolute discretion, deems unacceptable; or
- (b) **Change in tax law:** the Company receives an opinion from an experienced tax advisor that, as a result of any amendment or change to, or clarification or interpretation of, (including the announcement of a prospective introduction of any of these) the Income Tax Act 2007, the Goods and Services Tax Act 1985 or any other tax law in New Zealand, there is a material risk that the cost to the Company of maintaining the Capital Bonds would be increased or any tax deduction available to the Company in respect of the Capital Bonds would be decreased or become unavailable; or
- (c) **Minimum Bonds outstanding:** there remains outstanding Capital Bonds (excluding any Further Capital Bonds) having an aggregate Principal Amount of \$50,000,000 or less,

the Company may by notice to each Bondholder and to take effect on the date specified in that notice, being not more than 30 Business Days after the notice is given, redeem all the Capital Bonds in cash for the Principal Amount plus Accrued Interest.

#### 4.7 Capital Bonds held by subsidiaries

Notwithstanding these Conditions, this Condition 4 (other than Condition 4.8) will not apply to any Capital Bond already held by a wholly-owned subsidiary of the Company, or the Company, on the Notification Date in respect of any Election Date. The Bondholder of any such Capital Bond will be deemed to have retained the Capital Bond subject to the relevant New Conditions from that Election Date.

#### 4.8 Purchase of Capital Bonds

- (a) Each of the Company and its subsidiaries may at any time, other than during the five year period commencing 15 December 2006 or on any Election Date, purchase a Capital Bond for its own account. Each Capital Bond purchased by the Company or by a wholly-owned subsidiary of the Company may at the option of the Company or wholly-owned subsidiary, as the case may be, be held for resale or cancelled and, if cancelled, neither the Company nor the Supervisor will have any further liabilities or obligations in respect of that Capital Bond.
- (b) Capital Bonds purchased and held by the Company or a wholly-owned subsidiary of the Company (including New Condition 4.4(d)) shall not entitle the holder to vote at any meeting of the Bondholders and shall not be considered for the purposes of calculating the quorum at a meeting of Bondholders.

### 5. Transfers and Replacements of Capital Bonds

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#### 5.1 Transfers

The Capital Bonds may be transferred in minimum aggregate Principal Amounts of \$1,000 or such lesser amount as the Company may from time to time permit subject to this Condition 5, provided that, following any such transfer, the transferee holds Capital Bonds with a minimum aggregate Principal Amount of \$5,000 (the **Minimum Holding**).

#### 5.2 Form of Transfer

Subject to these Conditions and the Deed, a Bondholder may transfer any Capital Bond held by him or her by:

- (a) **Written instrument:** a written instrument of transfer in the usual or common form signed by the Transferor and the Transferee; or
- (b) **Clearing House system:** means of the Clearing House system operated by the NZX; or
- (c) **Other method:** any other method of transfer of marketable securities which is not contrary to any law and which may be operated in accordance with any Listing Rules, and which is approved by the Company.

#### 5.3 Registration process

- (a) **Transfers other than through the Clearing House:** The following provisions apply to instruments of transfer other than any transfer under Condition 5.2(b):

- (i) the instrument of transfer must be left at the Registrar accompanied by the Certificate (if any) in respect of the Capital Bonds to be transferred or such other evidence as the Registrar or the Supervisor requires to prove the transferor's title to, or right to transfer, the Capital Bonds; and
  - (ii) on registration of a transfer of a Capital Bond, the Certificate (if any) evidencing that Capital Bond will be cancelled and replaced.
- (b) **Fees:** The Company will direct the Registrar not to charge a fee to any Bondholder for:
- (i) registering transfers of Capital Bonds; or
  - (ii) splitting Certificates in relation to Capital Bonds; or
  - (iii) issuing Certificates (where bound to do so) and transmission receipts in relation to Capital Bonds; or
  - (iv) using holder or FASTER identification numbers in relation to Bondholders; or
  - (v) effecting conversions between sub-registers (if any) of the Register; or
  - (vi) noting transfer forms in relation to Capital Bonds,

except in the case where Certificates, or any information necessary to effect a transfer of Capital Bonds are issued to replace a lost or destroyed Certificate.

#### 5.4 **Transfers must be registered**

Subject to this Condition 5, the Company must direct the Registrar not to refuse to register or fail to register or give effect to, a transfer of Capital Bonds.

#### 5.5 **Refusal to register transfers**

The Company may direct the Registrar to refuse to register any transfer of Capital Bonds where these Conditions, the Deed, any Listing Rules or any applicable legislation permits, or requires the Company to do so.

#### 5.6 **Notice of refusal to register**

Where registration of a transfer of Capital Bonds is refused under Condition 5.5, the Company must direct the Registrar to give written notice of the refusal and the precise reasons for the refusal to the party lodging the transfer, if any, within five Business Days after the date on which the transfer was lodged. The failure to give such a notice will not invalidate the decision not to register.

#### 5.7 **Retention of transfers**

The Company is to direct the Registrar to retain all instruments of transfer of Capital Bonds which are registered, but any instrument of transfer of Capital Bonds the registration of which was declined or refused (except on the ground of suspected fraud) is to be returned to the party lodging the transfer.

#### 5.8 **Powers of attorney**

Any power of attorney granted by a Bondholder empowering the donee to deal with, or transfer Capital Bonds, which is lodged, produced or exhibited to the Registrar will be

deemed to continue and remain in full force and effect as between the Company, the Supervisor, the Registrar and the grantor of that power and may be acted on, until express notice in writing that it has been revoked or notice of the death of the grantor has been received at the Registry.

## 5.9 **Transmission by operation of law**

Any person becoming entitled to any Capital Bond by operation of law (including the death or bankruptcy of any Bondholder) may, upon producing such evidence of entitlement as is acceptable to the Company, obtain registration as the Bondholder of such Capital Bond or execute a transfer of such Capital Bond. This provision includes any case where a person becomes entitled as a survivor of persons registered as joint Bondholders.

## 5.10 **Replacement of Certificates**

If any Certificate is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the office of the Registrar upon payment by the claimant of the fees and expenses incurred in connection with such replacement and on such terms as to evidence and indemnity as the Company and the Registrar may require. Mutilated or defaced Certificates must be surrendered before replacements will be issued. The Registrar may decline to register any transfer unless the relevant Certificate is produced, but may in its discretion dispense with production of the Certificate subject to production instead of such indemnity or declaration of loss as it may require.

## 5.11 **Notices**

All notices given by Bondholders in accordance with these Conditions will be irrevocable.

## 5.12 **Sale of less than Minimum Holding**

The Board may at any time give notice to any Bondholder holding less than a Minimum Holding of Capital Bonds that if at the expiration of three months after the date the notice is given the Bondholder still holds Capital Bonds which are less than a Minimum Holding, the Board may exercise the power of sale of those Capital Bonds set out in this Condition 5.12. If that power of sale becomes exercisable:

- (a) the Board may arrange for the sale of those Capital Bonds through the NZX or in some other manner approved by the NZX;
- (b) the Bondholder shall be deemed to have authorised the Company to act on the Bondholder's behalf and to execute all necessary documents for the purposes of that sale;
- (c) the Company shall account to the Bondholder for the net proceeds of sale of the Capital Bonds (after deduction of reasonable sale expenses), which shall be held on trust for the Bondholder by the Company and paid to the Bondholder on surrender of any certificates for the Capital Bonds sold; and
- (d) the title of a purchaser of any Capital Bonds sold pursuant to this Condition 5.12 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

## Schedule 2: Meetings of Bondholders

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### 1. Convening

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#### 1.1 Meeting required by law

The Company shall, whenever required to do so pursuant to the Companies Act or the FMCA or any other Applicable Law, convene a meeting of the Bondholders.

#### 1.2 By Bondholders

The Company shall, at the request in writing of Bondholders holding not less than 5% of the aggregate Principal Amount of the Capital Bonds (with such requisition signed by, or on behalf of, those Bondholders), convene a meeting of the Bondholders. The request must state the nature of the business proposed to be dealt with at the meeting concerned.

#### 1.3 By Company

The Company may at any time of its own volition convene a meeting of the Bondholders and shall, at the request in writing of a person authorised by the FMCA or the FMC Regulations to call a meeting of Bondholders, convene a meeting of the Bondholders.

#### 1.4 By Supervisor

The Supervisor may at any time of its own volition (after such consultation with the Company which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting), or the Company shall, at the request in writing of the Supervisor, convene a meeting of Bondholders. The Supervisor shall not be obliged to convene a meeting of Bondholders pursuant to this section 1.4 until it has been indemnified to its reasonable satisfaction, against all costs and expenses to be incurred in relation to that meeting.

#### 1.5 Place of meeting

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

#### 1.6 Regulations

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

#### 1.7 Methods of holding meetings

A meeting of Bondholders may be held by a quorum of Bondholders or their Representatives:

- (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 provided that the Supervisor approves such means and each

Bondholder or its Representative complies with any conditions imposed by the Supervisor in relation to the use of such means; or

- (c) by a combination of both of the methods described in section 1.7(a) and (b) above.

## 2. Notice of Meetings

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### 2.1 Persons to be notified

Notice of every meeting shall be given in the manner provided in clause 14 of this Deed to:

- (a) every Bondholder entered in the Register as at the close of business five Business Days prior to the date of despatch of the notice;
- (b) every personal representative or assignee in bankruptcy of any such Bondholder who, to the actual knowledge of the Company, is deceased or insolvent as the case may be;
- (c) the Company, if the meeting is convened by the Supervisor;
- (d) the Supervisor, if the meeting is convened by the Company;
- (e) the NZX; and
- (f) the Auditor and every director of the Company.

### 2.2 Time for notification

Subject to sections 2.5 and 3.5, at least 15 Business Days' notice of every meeting will be given. The notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.

### 2.3 Contents of notice

The notice will specify:

- (a) the place and Appointed Time of the meeting;
- (b) the nature of the business to be transacted at the meeting in sufficient detail to enable a Bondholder to form a reasoned judgment in relation to it;
- (c) the right of a Bondholder to appoint a Representative; and
- (d) the Authorised Person (if any) for the meeting.

It will not be necessary to specify in the notice the terms of the resolutions to be proposed, except in the case of a resolution proposed to be passed as an Extraordinary Resolution in which case the text of the proposed resolution must be set out.

### 2.4 Prior notification of Supervisor

The Company shall, at least 10 Business Days (or any lesser period approved by the Supervisor) before the Company gives notice of a meeting, advise the Supervisor in writing of the intended place and time of the meeting and the nature of the business to be conducted and shall obtain the prior written approval of the Supervisor to any documents

(including the text of any proposed Extraordinary Resolution) it proposes to send to the relevant Bondholders (such approval not to be unreasonably withheld or delayed). If the Supervisor so requires, the documents shall include any statement or comments which the Supervisor wishes to make in relation to the meeting and the matters to be considered at the meeting provided the Supervisor provides such statement or those comments in writing to the Company 5 Business Days (or any lesser period approved by the Company) before the notice of meeting is given under section 2.2.

## 2.5 Short or irregular notice

Notwithstanding any other provision of this section 2, a meeting may be called by shorter notice than that specified in section 2.2, by notice without compliance with section 2.3 or by notice with any other irregularity or called without any formal notice, and any such meeting shall be deemed to have been duly called and any such irregularity or lack of formal notice shall be waived if:

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

## 2.6 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any person (other than the Supervisor) entitled to receive notice will not invalidate the proceedings at any meeting.

## 3. Quorum

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### 3.1 Quorum required

No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Bondholder is present at a meeting for the purposes of this schedule 2 and part of the quorum if that Bondholder is present in person or by Representative or is participating in that meeting by means of audio, audio and visual or electronic communication.

### 3.2 Quorum for Extraordinary Resolution

Subject to section 3.4, the quorum for passing an Extraordinary Resolution will be the Bondholders or their Representatives present at the meeting, or which have cast votes under section 8.9, holding or representing at least 25% of the Principal Amount of the Capital Bonds held by those Bondholders who are entitled to vote.

### 3.3 Quorum for other business

Subject to section 3.4, the quorum for the transaction of any business other than the passing of an Extraordinary Resolution will be at least two Bondholders present at the meeting holding or representing at least 10% in Principal Amount of the Capital Bonds held by those Bondholders who are entitled to vote.

### 3.4 Quorum not present

If, within 30 minutes after the Appointed Time, a quorum is not present the meeting, if convened at the request of Bondholders, will be dissolved. In any other case it will be adjourned to the day that is 10 Business Days later at the same time and same place or to such other date, time and place as may be appointed by the chairperson or by the Supervisor. At such adjourned meeting, if a quorum is not present 30 minutes after the Appointed Time, all the Bondholders or their Representatives present at the adjourned meeting will be a quorum for the transaction of business including the passing of Extraordinary Resolutions.

### 3.5 Notice of adjourned meeting

Notwithstanding section 3.1, notice of any such adjourned meeting of Bondholders at which an Extraordinary Resolution is to be submitted shall be given to the Bondholders recorded in the Register as at the day before the notice of adjourned meeting is given and otherwise will be given in the same manner as for an original meeting (except that only seven clear days' notice will be required) and such notice will state that, if a quorum is not present 30 minutes after the Appointed Time, the Bondholders present at the adjourned meeting will form a quorum whatever the Principal Amount of Capital Bonds held by them provided that, if a meeting is adjourned for less than 30 days, it will not be necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

## 4. Chairperson

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A person (who may, but need not, be a Bondholder) nominated in writing by the Supervisor will be entitled to chair every such meeting, but if no such nomination is made or there is no Supervisor, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the holding of such meeting, the Bondholders present must choose one of their number to chair the meeting.

## 5. Attendance and voting at meetings

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### 5.1 Attendance at meetings

Other than the Supervisor, the Company and their Representatives (who may attend but may not vote (except in the case of the Supervisor where it is acting on behalf of a Bondholder)), no person will be entitled to attend and vote at any meeting of the Bondholders or to join with others in requesting the convening of any such meeting unless he or she is a person registered as Bondholder on the Register or is a Representative of such person.

### 5.2 Voting at meetings

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

### 5.3 Bondholder's representations

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

#### 5.4 **Supervisor may attend meetings**

The Supervisor may be present at every meeting convened in accordance with this Schedule and is entitled to be heard on any part of the business that concerns the Supervisor's functions or the Bondholders.

### 6. **Proxies**

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#### 6.1 **In writing**

The instrument appointing a proxy must be in writing signed, or in the case of an electronic notice sent, by the appointor or the appointor's attorney, or if the appointor is a corporation either under seal or signed on its behalf by an officer, attorney, director or other person who has actual authority to appoint a proxy on behalf of such corporation.

#### 6.2 **Right to speak**

A person appointed to act as a proxy need not be a Bondholder and a proxy of a Bondholder has the right to attend and speak at the meeting.

#### 6.3 **Instrument of appointment**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified in such manner as the Supervisor approves must be deposited at such place as (or a facsimile copy of such proxy and power of attorney must be received at such facsimile number as) the Supervisor or the Company with the approval of the Supervisor may in the notice convening the meeting direct or (if no such place is appointed) at the registered office of the Company not later than the Proxy Closing Time. A proxy form shall be sent with each notice of meeting of Bondholders and:

- (a) shall, so far as the subject method and form of the resolutions reasonably result provide for 2-way voting on all resolutions, enabling the Bondholders to instruct the proxy as to the casting of the vote; and
- (b) shall not be sent with any name or office (e.g. chairperson or directors of the Company) filled in as proxy holders. So far as is practicable, resolutions shall be formed in a manner which facilitates two-way voting instructions for proxy holders.

#### 6.4 **Form of instrument of appointment**

An instrument of proxy may be in any usual common form or in such other form as the Supervisor approves and may make provision for directions to be given by the appointor to vote in favour of or against any proposed resolution. The instrument of proxy must state whether the appointment is for a particular meeting or a specified term.

#### 6.5 **Validity of proxy**

A proxy will, unless it states otherwise, be valid for any adjournment of the meeting as well as for the meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution, although this provision does not apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.

## 6.6 Appointment of chairperson

An instrument of proxy in favour of:

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

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

## 7. Rights of representatives

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

## 8. Voting procedure and polls

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### 8.1 Voting on resolutions

An Extraordinary Resolution put to the vote of a meeting must be decided by poll. Any other resolution put to the vote of a meeting will be decided on a show of hands or by voice as determined by the chairperson or, in the case of a meeting of Bondholders by any method permitted by the chairperson of the meeting unless, in any case, a poll is (before or after the vote is taken on a resolution) demanded by:

- (a) the chairperson (who must in any event call for a poll on a resolution on which the chairperson holds sufficient votes if the chairperson believes that, if a poll is taken, the result may differ from that obtained by a show of hands); or
- (b) the Supervisor; or
- (c) by one or more Bondholders or their Representatives holding or representing not less than five per cent. of the aggregate Principal Amount of the Capital Bonds.

Unless a poll is so demanded a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

### 8.2 Bondholders’ entitlement to votes

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

### 8.3 **Conduct of poll**

If a poll is required, it will be taken in such manner as the chairperson may direct and the result of such poll will be deemed to be the resolution of the meeting at which the poll was required.

### 8.4 **Casting vote**

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

### 8.5 **Timing of poll**

A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll.

### 8.6 **Continuance of meeting following poll**

The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question on which the poll has been demanded.

### 8.7 **Voting on poll**

On a poll, votes may be given either personally or by Representative, and a person entitled to more than one vote need not use all such votes or cast all such votes in the same way.

### 8.8 **Joint Bondholders**

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

### 8.9 **Validity of votes cast**

A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or the authority under which the proxy was executed or the transfer of the Capital Bonds in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Supervisor or the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### 8.10 **Resolution binding on Bondholders**

A resolution passed at a meeting of the Bondholders duly convened and held in accordance with this Deed will be binding upon all the Bondholders whether present or not at such meeting.

## 8.11 Voting by other means

A Bondholder may exercise the right to vote at any meeting by casting a postal vote, a vote by email or a vote using any other electronic means permitted by the Company or the Supervisor.

A Bondholder may cast a vote using the above means on all or any of the matters to be voted on at a meeting by sending a notice of the manner in which that Bondholder's Capital Bonds are to be voted on to the Company or the Authorised Person for that meeting. Such notice must reach that recipient 48 hours before the start of the meeting.

The Authorised Person for that meeting must:

- (a) collect together all of those votes received by it;
- (b) in relation to each resolution to be voted on at that meeting, count the number of Bondholders voting for and against the resolution and the number of votes cast for and against the resolution by each Bondholder;
- (c) sign a certificate that it has carried out the duties set out in clauses 8.11(a) and 8.11(b) above and that sets out the results of the counts required by clause 8.11(b); and
- (d) ensure that the certificate required by regulation 8.11(c) above is presented to the chairperson.

## 9. Extraordinary resolutions

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A meeting of the Bondholders, in addition to the powers expressed in this Deed, but without prejudice to any powers conferred on the Supervisor by this Deed, has the following powers exercisable by Extraordinary Resolution namely:

- (a) **Sanction proposal in respect of the Deed or Capital Bonds:** to sanction, either unconditionally or conditionally, any proposal by the Company for any modification, abrogation, novation, variation of, or arrangement in respect of, the rights of the Bondholders against it arising under this Deed or the Capital Bonds;
- (b) **Assent to modification of Certificates, the Conditions or the Deed:** to assent to any proposal for modification of the Certificates, the Conditions or this Deed which is proposed by the Company;
- (c) **Authorise execution of documents:** to authorise any person or persons to concur in and execute all such documents and do all such acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution;
- (d) **Discharge liability:** to discharge or exonerate any person or persons from any liability in respect of any act or omission for which such person or persons may have become responsible under this Deed or the Capital Bonds;
- (e) **Authorise, direct or sanction:** to give any authority, direction or sanction or approval which under the provisions of this Deed or the Capital Bonds is required to be given by Extraordinary Resolution;
- (f) **Remove Supervisor:** to request the removal of the Supervisor and to approve the appointment of a new Supervisor;

- (g) **Appoint committee of Bondholders:** to appoint any persons (whether or not Bondholders) as a committee or committees to represent the interest of the Bondholders and to confer upon such committee or committees any powers or discretions which the Bondholders could themselves exercise by Extraordinary Resolution; and
- (h) **Direct or request Supervisor:** to direct or request the Supervisor to take such action or do such things as the Supervisor may lawfully do under this Deed and to authorise the Supervisor to deduct its costs and expenses from any amount received by the Supervisor on account of Bondholders, to the extent such additional authority may be required.

An Extraordinary Resolution or ordinary resolution passed in accordance with this Schedule 3 will be binding upon all the Bondholders and each of the Bondholders and the Supervisor (subject to the provisions of the Supervisor's indemnity contained in the Trust Deed) will be bound to give effect to that resolution accordingly and the passing of any such Extraordinary Resolution or ordinary resolution will, as between the Bondholders and the Supervisor, be conclusive evidence that the circumstances justify the passing thereof.

## 10. Minutes

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Minutes of all resolutions and proceedings at every meeting of Bondholders must be made and duly entered in records to be from time to time maintained for that purpose at the expense of the Company by the Supervisor. Any such minutes signed by the chairperson of the meeting at which such resolutions were passed or proceedings transacted, or by the chairperson of the next succeeding meeting of the Bondholders, will be prima facie evidence of the matters recorded in them. Until the contrary is proved, every meeting whose proceedings have been so minuted and signed will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed and transacted. Copies of all minutes must be given by the Supervisor to the Company as soon as possible after each meeting. The chairperson must ensure that a certificate of votes under clause 8 above is attached to the minutes.

## 11. Class meetings

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If and whenever the Company has issued and has outstanding any Capital Bonds which are not identical (other than for Interest Rates, Interest Payment Dates and Election Dates) and do not form one single series then those Capital Bonds which are in all respects so identical will be deemed to constitute a separate series of the Capital Bonds and the foregoing provisions of this Schedule will have effect subject to the following modifications:

- (a) **Meetings of separate class of Bondholders:** a resolution which in the opinion of the Supervisor affects one series only of the Capital Bonds will be deemed to have been duly passed if passed at a separate meeting of the Bondholders of Capital Bonds of that series;
- (b) **Single meeting of Bondholders:** a resolution which in the opinion of the Supervisor affects more than one series of the Capital Bonds, but does not give rise to a conflict of interest between the Bondholders of Capital Bonds of any of the series so affected will be deemed to have been duly passed if passed at a single meeting of the Bondholders of the Capital Bonds of all series so affected;
- (c) **Separate meetings of each class of Bondholders:** a resolution which in the opinion of the Supervisor affects more than one series of the Capital Bonds and gives or may give rise to a conflict of interest between the Bondholders of the Capital Bonds of one series or group of series so affected and the Bondholders of the Capital Bonds of another series or group so affected will be deemed to have been duly passed only if in lieu of being passed at a single meeting of the Bondholders of the Capital Bonds of all

such series it will be duly passed at separate meetings of the Bondholders of the Capital Bonds of each series or group of series so affected; and

- (d) **Procedure at meetings:** to all such meetings under this clause all the preceding provisions of this Schedule will mutatis mutandis apply as though references therein to Capital Bonds and Bondholders were references to the Capital Bonds of the series or group of series in question and to the Bondholders of such Capital Bonds respectively.

## 12. Group meetings

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A meeting of the Bondholders in an Interest Group (as defined in the Companies Act 1993 and as modified in clause 6.2(m) of this Deed), may be called by the Supervisor or the Company at any time, and shall be called on the written request of holders of Capital Bonds carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this Deed relating to meetings of Bondholders apply, with all necessary modifications, to a meeting of an Interest Group, except that:

- (a) the necessary quorum is two or more Bondholders in the group present in person or by proxy or representative, or, if there is only one Bondholder in the group, that Bondholder present in person or by proxy or Representative;
- (b) if the Company so elects, one meeting may be held of Bondholders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any Bondholder in the group, present in person or by proxy or Representative, may demand a poll.