

Deed of Amendment and Restatement (Master Trust Deed)

relating to Auckland International Airport Limited

Dated 4 July 2016

**Mayne
Wetherell**

Parties

Auckland International Airport Limited (**Issuer**)

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

Background

Pursuant to clause 21.2 of the master trust deed dated 9 July 2004 (as amended from time to time) (**Trust Deed**), the parties to this deed have agreed to amend and restate the terms of the Trust Deed to comply with and to reflect the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014 on the terms and conditions set out in this deed.

Covenants

1. Definitions

- 1.1 Unless otherwise defined in this deed, capitalised terms shall have the meaning given to those terms in the Trust Deed.
- 1.2 In this deed, **Effective Date** means 5 August 2016.

2. Amendment and restatement

- 2.1 The Trust Deed shall, with effect on and from the Effective Date, be amended and restated in the form set out in the schedule, so that the rights and obligations assumed by the parties shall be governed by and construed in accordance with the terms set out in the schedule.

3. Confirmation

- 3.1 Except to the extent set out in this deed, the provisions of the Trust Deed, and the various covenants and obligations of each of the parties thereunder, are hereby ratified and confirmed and shall remain in full force and effect.
- 3.2 For the purposes of clause 21.2 of the Trust Deed:
 - (a) the Issuer and the Supervisor are each of the opinion that the amendments contemplated by this deed are:
 - (i) of a minor, formal, administrative or technical nature;
 - (ii) to comply with the requirements or a modification of the requirements of any applicable law; or

- (iii) in respect of provisions for reporting to the Supervisor under the Trust Deed and in respect of clause 17 of the Trust Deed;
- (b) the Issuer is of the opinion that such amendments will not be materially prejudicial to the interests of Holders generally; and
- (c) the Supervisor is of the reasonable opinion that such amendments will not be materially prejudicial to the interests of the Holders generally.


4. General

- 4.1 This deed may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. Any party may enter into this deed by signing any such counterpart.
 - 4.2 This deed is governed by and must be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
 - 4.3 The Issuer shall pay all expenses (including legal fees) reasonably incurred by or on behalf of the Supervisor in connection with the preparation and signing of this deed.
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Execution Page

Issuer

Signed by Auckland International Airport Limited
by:



Signature of director
HENRY VAN DER HEYDEN

Name of director




Signature of director
Christine Spring

Name of director

Supervisor

Signed by The New Zealand Guardian Trust
Company Limited by:



Signature of authorised signatory
Simon Sherpa

Name of authorised signatory



Signature of authorised signatory
MARK PATRICK JEPHSON

Name of authorised signatory


Signature of witness

Name of witness

Occupation

City/town of residence

WITNESS TO BOTH SIGNATURES

Full Name: Debra Gail Morton
Residential Address: Auckland
Occupation: Corporate Trusts Administrator
Signature: 

ACT 720

Schedule – Amended and Restated Master Trust Deed

AUCKLAND INTERNATIONAL AIRPORT LIMITED

Issuer

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED

Supervisor

MASTER TRUST DEED

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DEED dated 9 July 2004 (as amended and restated on 4 July 2016)

PARTIES

AUCKLAND INTERNATIONAL AIRPORT LIMITED ("Issuer")

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED ("Supervisor")

INTRODUCTION

- A. The Issuer proposes to establish a bond programme under which the Issuer may from time to time issue debt securities.
- B. Each Tranche of Bonds issued by the Issuer will be constituted by and issued on terms set out in a Supplemental Trust Deed made between the Issuer and the Supervisor. The terms of any such Supplemental Trust Deed may modify the terms of this deed in relation to the relevant Tranche of Bonds.
- C. The Supervisor has agreed, at the request of the Issuer, to act as supervisor for the Holders on the terms and conditions of this Deed.

COVENANTS

1. INTERPRETATION

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

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

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

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

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

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

"Authorised Officers" means any person who is a director, chief executive officer, chief financial officer or general counsel of the Issuer (or such officer of the Issuer howsoever designated as may from time to time replace or succeed such officer) and any other officer of the Issuer, in each case as formally appointed by the Issuer's directors or their duly authorised delegates and notified to the Supervisor.

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

(a) **Bill rate:**

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

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

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

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

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

“Bond Programme” means the bond programme pursuant to which the Issuer may issue Bonds from time to time.

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

“Calculation Agent” means, in relation to any Series, the person appointed by the Issuer from time to time as the calculation agent under the Calculation Agreement or Agency Agreement (whichever is applicable).

“Calculation Agreement” means, in relation to any Series, if applicable, the calculation agreement (however described) between the Issuer and the person appointed as the calculation agent from time to time for the purpose of determining interest rates under clauses 7.4 and 7.6 for the Bond Programme.

“Class” means Bonds which constitute a separate category of Bonds with such categories being:

- (a) in relation to matters affecting a Series only, that Series;
- (b) any Bonds which have attached to them identical rights, privileges, limitations and conditions (but which may have a different Maturity Date or Interest Rate or both); or
- (c) any category of Bonds having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of the Issuer (in consultation with the Supervisor and in the event of any dispute from a Holder as to the Bonds forming part of that category of Bonds, in consultation with the Holders of that category of Bonds) at any particular time, for any particular purpose, constitutes a separate class of Bonds,

and **“Class of Holders”** means the Holders of those Bonds.

“Companies Act” means the Companies Act 1993.

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

“Consolidated Balance Sheet” means a consolidated balance sheet of the Group prepared in accordance with NZ GAAP.

“Contingent Liabilities” means the aggregate of all contingent liabilities of the Group, as disclosed by the Latest Consolidated Balance Sheet, or which would have been disclosed if a Consolidated Balance Sheet had been prepared at the Relevant Date, in respect of uncalled capital on shares held in companies (including Subsidiaries) which are not Guaranteeing Subsidiaries or under put options, indemnities, binding letters of comfort or other similar binding obligations in respect of companies (including Subsidiaries) which are not Guaranteeing Subsidiaries, other than any such contingent liabilities:

- (a) which are secured to a member of the Group to the satisfaction of the Directors or in respect of which a member of the Group has to the satisfaction of the Directors an adequate right of subrogation to suitable security;
- (b) in respect of which the relevant member of the Group has been guaranteed or indemnified to the satisfaction of the Directors;
- (c) which are already reflected in and are less than or equal to actual liabilities included in any relevant Consolidated Balance Sheet; or
- (d) to the extent to which there is to the satisfaction of the Directors a corresponding contingent asset having the same or greater value which will be acquired by a member of the Group,

provided that:

- (e) in respect of any financial guarantee, indemnity or other binding financial obligation the contingent liability under which is joint and several or several, the amount to be included shall be limited to a proper proportionate part of such liability if in the opinion of the Directors the other parties to such obligation will be able to meet their proportionate liability thereunder; and
- (f) where, in accordance with paragraphs (a), (b), (d) or (e) of this definition, any matter is subject to the opinion or satisfaction of the Directors but the Auditor is not satisfied in respect of any such matter, then the matter will be deemed not to have been to the satisfaction of the Directors.

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

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

“Default Interest” has the meaning given in clause 7.6.

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

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

“Encumbrance”:

- (a) means any mortgage, pledge, charge, encumbrance, flawed asset arrangement, finance lease, sale and re-purchase arrangement, lien, assignment by way of security, hypothecation, and any other security arrangement or agreement of whatsoever nature, but does not include:
 - (i) any mortgage, charge, lien or other security arising only by operation of law; or
 - (ii) any such security agreement or arrangement comprising or arising in relation to a disposal by any member of the Group of any material part of its undertaking or its assets or revenues to any person which is not a member of the Group where a member of the Group (which may be the company which disposed of the undertaking, asset or revenue) obtains the use and benefit of the undertaking, asset or revenue disposed of under a lease or similar arrangement (whether directly from the counterparty who purchased the undertaking, asset or revenue or from one or more intermediate parties or otherwise); and
- (b) includes, in respect of any personal property or any rights in any personal property (in each case to which the PPSA applies), a security interest, but does not include:
 - (i) any such security interest in any such personal property or rights which is a purchase money security interest in favour of a seller securing all or part of the purchase price for any such personal property or rights which is or are acquired by the buyer in the ordinary course of its business; or

- (ii) any such security interest that is created or provided for by:
 - (aa) a lease for a term of more than one year; or
 - (bb) a commercial consignment or a bailment; or
 - (cc) a transfer of an account receivable or chattel paper,
 in each case that does not secure payment or performance of an obligation.

In this definition, the terms “account receivable”, “chattel paper”, “commercial consignment”, “lease for a term of more than one year”, “purchase money security interest” and “security interest” each have the respective meanings given to those terms in the PPSA.

“Event of Default” means any of the events specified in clause 13.1 or any event which, with the passing of time or the giving of notice or both, would constitute such an event.

“Extraordinary Resolution” has the meaning set out in schedule 1.

“Financial Reporting Act” means the Financial Reporting Act 2013.

“Financial Statements” means, at any date:

- (a) in respect of the Group, consolidated financial statements (within the meaning of “group financial statements” as defined in section 7 of the Financial Reporting Act) of the Group as at that date which comply with NZ GAAP and are consistent with the most recent published audited consolidated financial statements of the Group, except to the extent (if any) expressly disclosed in notes to such financial statements or in writing to the Supervisor; and
- (b) if applicable in respect of the Issuer, financial statements (within the meaning of section 6 of the Financial Reporting Act) of the Issuer as at that date prepared on the same basis as the financial statements referred to in paragraph (a) are required to be prepared.

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

“Fixed Rate Bond” means a Bond bearing a fixed rate of interest.

“Floating Rate Bond” means a Bond bearing interest at a margin over the Base Rate.

“FMA” means the Financial Markets Authority.

“FMCA” means the Financial Markets Conduct Act 2013.

“FMC Regulations” means the Financial Markets Conduct Regulations 2014.

“FMSA” means the Financial Markets Supervisors Act 2011.

“Group” means, at any date, the Issuer and its Subsidiaries at that date.

“Guaranteeing Subsidiary” means any Subsidiary of the Issuer which becomes a Guaranteeing Subsidiary as provided under clause 12.1(j) and guarantees the due

compliance, observance and performance by the Issuer of the Issuer's obligations under this deed.

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

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

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

"Information Memorandum" means in relation to any Series and/or Tranche:

- (a) the prospectus and the investment statement, product disclosure statement or other disclosure document required under clause 26 of Schedule 1 of the FMCA (as applicable), or such other document required by law which may replace a product disclosure statement or disclosure document required under clause 26 of Schedule 1 of the FMCA, relating to that Series and/or Tranche and, in each case, has been reviewed by the Supervisor; and
- (b) (in each case) all documents to be distributed with or which form part of the relevant document, which, in each case, has been prepared by, or on behalf and with the approval of, the Issuer in relation to the relevant Series and/or Tranche.

"Interest Payment Date" means:

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

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

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

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

“Issuer” means Auckland International Airport Limited (or, in relation to any particular Series, any other person which is or becomes an issuer of the Bonds of that Series in accordance with clause 23).

“Latest Consolidated Balance Sheet” means, as at each Relevant Date, the Consolidated Balance Sheet prepared as at such date to determine Total Tangible Assets, Total External Liabilities, Total Secured Liabilities, Redeemable Preference Share Liabilities and Contingent Liabilities for the purpose of this deed.

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

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

“Minimum Principal Amount” means, in relation to a Tranche, the minimum Principal Amount of the Bonds forming part of that Tranche, being the amount specified as such in the relevant Supplemental Trust Deed for that Tranche.

“Non-Wholly Owned Subsidiary” means a Subsidiary of the Issuer which is not a Wholly Owned Subsidiary.

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

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

“PPSA” means the Personal Property Securities Act 1999.

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

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

“Principal Subsidiary” means:

- (a) a Wholly Owned Subsidiary the Tangible Assets of which as at the date of, and as disclosed in, the most recent consolidated Financial Statements (of that Wholly Owned Subsidiary and of the Group) are greater than 10% of the Total Tangible Assets; and
- (b) a Non-Wholly Owned Subsidiary the Tangible Assets of which as at the date of, and as disclosed in, the most recent consolidated Financial Statements (of that Non-Wholly Owned Subsidiary and of the Group) are greater than 10% of the Total Tangible Assets.

“Record Date” means, in relation to a payment due on a Bond, 5.00pm on the tenth day before (or, in the case of a Zero Coupon Bond, the day before) the due date for that payment or, if that day is not a Business Day, the preceding Business Day.

“Redeemable Preference Share Liabilities” means at any time the aggregate amount of all redeemable preference shares issued by any member of the Group other than any redeemable preference shares the proceeds of redemption of which must be applied in or towards paying up ordinary shares to be issued to the holder of the redeemable preference shares by any member of the Group.

“Reference Banks” means ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand and Westpac New Zealand Limited or any successor of any of the same.

“Register” means, in relation to a Series, the register of Bonds maintained by the Registrar for that Series in accordance with the provisions of this Deed and the Agency Agreement.

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

“Relevant Date” means any date on which a calculation or determination is being made or is required to be made (being a date as at which management accounts of the Issuer are usually prepared).

“Relevant Subsidiary” has the meaning ascribed to that term in clause 16.3.

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

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

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

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

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

“Subordinated Indebtedness” means any present or future indebtedness of the Issuer for or in respect of moneys borrowed or raised which by its terms is expressed to be subordinated in the event of Winding-Up of the Issuer to the claims of Senior Creditors of the Issuer.

“Subordinated Bond” means a Term Subordinated Bond or an Undated Subordinated Bond.

“Subsidiary” means:

- (a) a subsidiary, within the meaning of section 5 of the Companies Act, of the Issuer; or
- (b) a “subsidiary”, in accordance with NZ GAAP, of the Issuer.

“Subsidiary Guarantee” means, in respect of a Guaranteeing Subsidiary, the guarantee entered into by that Guaranteeing Subsidiary substantially in the form set out in schedule 4, or such other form as the Supervisor may approve in writing from time to time (but in any event prior to the execution thereof).

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

“Supplemental Trust Deed” means a deed supplemental to this deed entered into by the Issuer and the Supervisor pursuant to clause 2.4 constituting and setting out the terms and conditions of a Tranche forming part of a Series.

“Tangible Assets” means all assets other than future tax benefits, goodwill, patents, trade marks, underwriting and formation expenses and other items of a like nature which according to NZ GAAP are regarded as intangible assets.

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

“Total External Liabilities” means at any time the aggregate amount, as disclosed by the Latest Consolidated Balance Sheet, or which would have been disclosed if a Consolidated Balance Sheet had been prepared at the Relevant Date, of all liabilities of the Group including Contingent Liabilities and Redeemable Preference Share Liabilities and including provisions for estimated liabilities for current income taxes, long-service leave and dividends declared or accrued but unpaid and for paid-up share capital, reserves of any nature or undistributed profits of any member of the Group and any subordinated loans after eliminating all inter-company balances between members of the Group.

“Total Secured Liabilities” means at any time that portion of Total External Liabilities in respect of which any member of the Group has created, assumed, permitted or caused to exist any Encumbrance.

“Total Tangible Assets” means at any time the aggregate of the book values of all Tangible Assets of the Group, as disclosed by the Latest Consolidated Balance Sheet, or which would have been disclosed if a Consolidated Balance Sheet had been prepared at the Relevant Date, after eliminating all inter-company balances between the members of the Group and after adding the amount of the share of any member of the Group in the undistributed post-acquisition reserves of any other entity arising from the application of the equity accounting method of accounting for interests in associated companies in accordance with NZ GAAP.

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

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

“Trust Powers” means, in relation to a Bond, the trusts, powers, authorities and discretions vested in the Supervisor by this Deed in relation to that Bond.

“Undated Subordinated Bond” means a Bond which, in accordance with its Conditions, is Subordinated Indebtedness of the Issuer and which is identified in the Supplemental Trust Deed constituting it and in the Register in respect of that Bond as an

Undated Subordinated Bond and which has no Maturity Date. An Undated Subordinated Bond may be a Fixed Rate Bond, a Floating Rate Bond or an Index-linked Bond.

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

“Wholly Owned Subsidiary” means each Subsidiary of the Issuer other than a Subsidiary of which the Issuer or any of its Subsidiaries (being in turn a Wholly Owned Subsidiary) either singly or jointly is not the beneficial owner of 100% of the issued shares.

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

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

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

an **“authorisation”** includes:

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

a **“clause”** or **“schedule”** is a reference to a clause of, or schedule to, this deed.

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

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

“indebtedness” includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal, surety or otherwise) relating to the payment or repayment of money.

“issuer obligation” has the meaning set out in the FMCA, being an obligation imposed on the Issuer under this Deed in respect of the relevant Series, the terms of the offer of that Series, the FMCA or any court order relating to that Series.

something having a **“material adverse effect”** on a person is a reference to it having a material adverse effect on the consolidated financial condition or operations of it and its

Subsidiaries taken together which materially adversely affects its ability to perform or comply with its obligations under this Deed or any Bond.

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

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

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

“**payment**” includes satisfaction of a monetary obligation.

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

“**qualified auditor**” has the meaning set out in the FMCA.

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

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

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

“**working day**” has the meaning set out in the Interpretation Act 1999.

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

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

1.4 **Miscellaneous:**

- (a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.

- (b) Unless the context otherwise requires, words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders.
- (c) References to any legislation or to any provision of any legislation shall be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless the context otherwise requires, shall also include any statutory instruments issued under any such legislation or provision.
- (d) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to any party to this deed or any other document or any Holder shall include its successors or permitted assigns.
- (f) References to a time of day are references to New Zealand time unless otherwise stated.
- (g) Anything which may be done at any time may also be done from time to time.

2. ISSUE AND FORM OF BONDS

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

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

2.3 **Bonds:** Bonds shall be issued in accordance with the FMCA.

2.4 **Supplemental Trust Deed:**

- (a) Bonds shall be constituted and issued in Series. Each Tranche which forms part of a Series shall be subject to the terms and conditions set out in a Supplemental Trust Deed and any security agreement for that Tranche and (as modified by that Supplemental Trust Deed and/or security agreement) this deed.
- (b) In respect of a Series comprising two or more Tranches, the Supplemental Trust Deeds relating to that Series will be identical in all respects except for the respective Issue Dates, First Interest Accrual Dates, Issue Prices and/or denominations.
- (c) To the extent that the Supplemental Trust Deed and/or security agreement for a Tranche modifies this deed, or in the event of any conflict between the provisions of that Supplemental Trust Deed and/or security agreement and those of this deed, that Supplemental Trust Deed and/or security agreement shall prevail over this deed in relation to that Tranche.

- (d) The provisions of the relevant Supplemental Trust Deed and/or security agreement and this deed read together in accordance with this clause 2.4 shall constitute the Conditions for the Bonds of the relevant Tranche.
- 2.5 **Creation and issue:** Bonds of a Tranche are constituted when the Supplemental Trust Deed for that Tranche has been signed by the Issuer and the Supervisor. Bonds are issued and created by the Registrar entering in the Register for the relevant Tranche the particulars of that Bond, substantially as specified in schedule 3.
- 2.6 **Provisions applicable to Bonds:** The Bonds shall be issued and held with the benefit of and subject to the applicable Conditions, all of which are binding upon the Issuer, the Supervisor and the Holders. The Holders shall be deemed to have notice of the applicable Conditions.
- 2.7 **Enforcement of Holders' rights:** The Supervisor holds its rights and benefits under this Deed including:
- (a) the right to enforce the Issuer's and any Guaranteeing Subsidiary's obligations and duties under this Deed, any relevant guarantee and the FMCA in relation to the Bonds; and
 - (b) if applicable, any charge or security for repayment,
- in trust for, and for the benefit of, the Holders. No Holder shall be entitled to enforce any of its rights or remedies under this Deed directly against the Issuer unless the Supervisor fails to enforce such rights or remedies after having become bound to do so in accordance with this Deed.
- 2.8 **Form of Bonds:** Each Bond shall:
- (a) be in uncertificated book entry form; and
 - (b) in respect of each Tranche, have a Minimum Principal Amount for holdings of Bonds of that Tranche and also may have a minimum multiple for such holdings, in each case as specified in the relevant Supplemental Trust Deed for that Tranche.
- 3. STATUS OF BONDS**
- 3.1 **Status of Bonds generally:**
- (a) The Bonds are and will at all times be direct, unsecured or secured and (except in relation to Subordinated Bonds) unsubordinated and unconditional indebtedness of the Issuer.
 - (b) Except where the Bonds are expressed in the Supplemental Trust Deed for the relevant Tranche to be Term Subordinated Bonds or Undated Subordinated Bonds, the Bonds shall be Unsubordinated Bonds and nothing in clause 6 shall apply in respect of them.
- 3.2 **Status of Unsubordinated Bonds:** Unsubordinated Bonds which are:
- (a) unsecured, rank and will at all times rank equally without any preference or priority among themselves and at least equally with all present and future unsubordinated and unsecured indebtedness of the Issuer (except indebtedness preferred solely by operation of law and subject to laws affecting creditors' rights generally and equitable principles of general application); and

- (b) secured, rank and will at all times rank, in accordance with the relevant provisions of the Supplemental Trust Deed for the relevant Tranche and the relevant security and/or inter-creditor agreements.

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

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

4. TITLE AND TRANSFER

4.1 **Certificates:** At the request of a Holder, or otherwise as required by the FMCA or any other applicable law, the Issuer shall procure the Registrar of the relevant Bonds to issue to that Holder a confirmation, certificate or notice of registration in relation to the Bonds held by that Holder, such confirmation, certificate or notice to include all information required under the FMCA (if applicable), be provided in the manner required by the FMCA (if applicable) and to be in the form agreed between the Issuer and the Registrar of the relevant Bonds. A confirmation, certificate or notice of registration issued in respect of a Bond will not constitute a document of title. Entitlement will be determined solely by entry in the Register for the relevant Series and, in the case of the beneficial interest in Bonds lodged in NZClear, the records of NZClear.

4.2 **Transfer:** Title to a Bond may be transferred by a transfer in any commonly used form which complies with the standard form and procedures of the Registrar of the relevant Bonds and which is produced to the Registrar of the relevant Bonds.

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

4.4 **Fees:** The Issuer shall, and shall procure each Registrar will, make no service charge to the Holders for:

- (a) the registration of any holding of Bonds; or
- (b) the transfer of registered title to any Bonds.

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

4.5 **Selling restrictions:**

- (a) Each Holder shall only offer for sale or sell any Bond in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) No Information Memorandum or any advertisement or other offering material in respect of any Bond may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.

5. REGISTER

- 5.1 **Register:** The Issuer shall at all times while Bonds are outstanding cause the Registrar for each Series to maintain the Register for that Series in New Zealand, which must record in respect of each Bond the information specified in schedule 3.
- 5.2 **Disclosure and Inspection:** The Issuer shall ensure that the Registrar of the relevant Bonds discloses to a Holder who so requests, any information held on the Register of a Series which relates to the Bond(s) registered in the name of that Holder. The Issuer and the Supervisor may, at all reasonable times during the office hours of the relevant Registrar and subject to any applicable laws, inspect and take extracts (including electronic copies) from each Register without payment of any fee. The Issuer shall also ensure that the Registrar makes available for inspection, and provides copies of or extracts from, the Register as required by, and in accordance with, the FMCA.
- 5.3 **Register shall prevail:** Except as ordered by a court of competent jurisdiction, the Issuer, the Supervisor and each Registrar are each entitled to recognise the Holder of a Bond as the absolute owner of the Bond and shall not be bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance, security or other adverse interest to which any Bond may be subject. No recognition of any trust (express, implied or constructive), encumbrance, security or other adverse interest shall be entered on any Register. In the event of any conflict between any certificate or notice of registration issued in respect of a Bond and a Register, that Register shall prevail.
- 5.4 **Correction of errors:** Each Registrar may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the relevant Register.
- 5.5 **Co-ownership Bonds:**
- (a) Where two or more persons are registered as Holders of the same Bond(s) by virtue of any application for Bonds, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application, memorandum, or other instrument, those persons will be deemed to hold the Bond(s) as joint tenants with right of survivorship.
 - (b) If two or more persons apply (on an application for any Bonds or by memorandum of transfer or other instrument), to be registered as Holders as tenants in common, the Registrar for the relevant Series may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share. If the Bonds cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amounts (and any minimum multiples thereof), the Registrar of the relevant Bonds may refuse to accept the application, memorandum of transfer or other instrument (as the case may be).
- 5.6 **Acquisition of Bonds by operation of law:** When the right to any Bond is acquired by any person in any manner other than by way of a transfer under this Deed (whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or otherwise) the Registrar of the relevant Bonds, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Bond, will enter that person's name in the Register as the Holder of that Bond accordingly.
- 5.7 **Notification by Holders:** Any change of name or address of any Holder or any change in any other information required to be inserted in any Register in respect of any Holder shall immediately be notified to the Registrar of the relevant Bonds in writing by the Holder, or if a joint holding by all the joint Holders.

- 5.8 **Register compliance:** The Issuer shall comply with, and shall use all reasonable endeavours to ensure that each Registrar complies with all statutory requirements and the requirements of this Deed relating to the keeping of each Register and the details entered in each Register. Without limitation to the generality of the foregoing, the Register in respect of any Series shall be audited in accordance with applicable auditing and assurance standards by the Auditors (or such other qualified auditor that is acceptable to the Supervisor) annually within 4 months of the Issuer's balance date and at such other times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements of this clause 5.8 are not being complied with in relation to the Register for any Series.
- 5.9 **No liability:** No Registrar will be liable for any breach by the Issuer of any representation, obligation, undertaking, including the non-payment of any money due, nor will any Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.

6. SUBORDINATED BONDS

- 6.1 **Issue of Subordinated Bonds:** The Issuer may, if it expressly so provides in the Supplemental Trust Deed for any Tranche, issue Bonds which are subordinated in the event of the Winding-Up of the Issuer to the claims of Senior Creditors of the Issuer, in which case this clause 6 (as it may be modified by the relevant Supplemental Trust Deed) shall apply to that Tranche.
- 6.2 **Term Subordinated Bonds:** The rights and claims of Holders of Term Subordinated Bonds are, in a Winding-Up of the Issuer, subordinated to the claims of the Senior Creditors of the Issuer (with the intent that all claims of Senior Creditors shall be paid in full before any claims of the Holders of the Term Subordinated Bonds are paid), and prior to the commencement of a Winding-Up of the Issuer:
- (a) the obligation of the Issuer to make any payment in respect of the Term Subordinated Bonds is conditional upon the Issuer being solvent at the time the relevant payment falls due and, in the event that the Issuer is not solvent at that time, such obligation shall remain conditional until such time as the Issuer becomes solvent; and
 - (b) no payment shall be made in respect of the Term Subordinated Bonds except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.
- 6.3 **Undated Subordinated Bonds:** The rights and claims of Holders of Undated Subordinated Bonds are, in a Winding-Up of the Issuer, subordinated to the claims of the Senior Creditors of the Issuer and Holders of Term Subordinated Bonds (with the intent that all claims of Senior Creditors and Holders of Term Subordinated Bonds are paid in full before any claims of the Holders of the Undated Subordinated Bonds are paid), and prior to the commencement of a Winding-Up of the Issuer:
- (a) the obligation of the Issuer to make any payment in respect of the Undated Subordinated Bonds is conditional upon the Issuer being solvent at the time the payments and other amounts owing fall due and, in the event that the Issuer is not solvent at that time, such obligation shall remain conditional until such time as the Issuer becomes solvent; and
 - (b) no payment shall be made in respect of the Undated Subordinated Bonds except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.

6.4 **Solvency:**

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

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

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

6.6 No set-off: No Holder of a Subordinated Bond shall be entitled to net or set off against any amounts due in respect of the Subordinated Bonds held by that Holder any amount held by the Holder to the credit of the Issuer or otherwise to reduce the amount due to such Holder in respect of a Subordinated Bond by merger of accounts or lien or the exercise of any other rights of like effect. To the extent any netting, set-off, merger, lien or other right is required by law to be exercised that exercise shall be subject to clause 6.7.

6.7 Trust: Any payment, whether voluntarily or in any other circumstances, received by a Holder of Subordinated Bonds or by the Supervisor on its behalf from or on account of the Issuer (including by way of credit, netting, set-off or otherwise) or from any liquidator, receiver, manager or statutory manager of the Issuer in breach of this clause 6 will be held by the Supervisor or the relevant Holder in trust for and to the order of the Senior Creditors (and, in the case of payments received by the Holders of Undated Subordinated Bonds, payments will also be held in trust for and to the order of the Holders of Term Subordinated Bonds). Any such trust hereby created shall be for a term expiring on the earlier of the date on which all Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Bonds, the Holders of Term Subordinated Bonds) have been paid in full or eighty years from the date of this deed. Neither the Supervisor nor any Holder shall have any obligation under this clause 6.7 in respect of any payment received by anyone other than itself.

6.8 Performance of trust: Any trust mentioned in clause 6.7 may be performed by a Holder or the Supervisor by paying or repaying the amount so received or recovered, or so much thereof as shall be necessary to ensure that all of the Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Bonds, the Holders of Term Subordinated Bonds) are fully paid or repaid, on trust to the liquidator of, or other person charged with or responsible for the making of distributions on behalf of, the Issuer or, where there is no such person, the Issuer, for distribution to the appropriate Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Bonds, the Holders of Term Subordinated Bonds). The receipt of the liquidator or other such person or the Issuer, shall be a good discharge to the

Holder or the Supervisor for the performance by it of the trust mentioned in clause 6.7. Any amount which becomes subject to the trust mentioned in clause 6.7 and which is paid or repaid by any Holder, as the case may be, or the Supervisor pursuant to this clause 6.8 shall thereafter be treated as between the Issuer and the Supervisor or the Holder as if it had never been received or recovered in the first place.

- 6.9 **Contracts Privity Act:** For the purposes of the Contracts (Privity) Act 1982, the provisions of this clause 6 are intended to confer a benefit upon the Senior Creditors and to be enforceable by the Senior Creditors directly, but no consent of the Senior Creditors shall be required to any modification or amendment to this clause 6.
- 6.10 **No subordination of Supervisor's entitlement:** The provisions of this clause 6 apply only to payments or repayments by way of Principal Amount or interest on the Subordinated Bonds and nothing in this clause 6 shall subordinate, defer in priority or point of payment, or otherwise affect or prejudice the payment or reimbursement of the fees, expenses, indemnities or other moneys payable to the Supervisor pursuant to this Deed, or the rights and remedies of the Supervisor in respect thereof.
- 6.11 **Exercise of Supervisor's duties:** In respect of Subordinated Bonds issued as part of a Series, the duties of the Supervisor shall be construed and interpreted to recognise and take into account the subordinated nature of the Bonds including the following characteristics:
- (a) the subordination and the postponement in priority of the Subordinated Bonds to indebtedness to all Senior Creditors (and also, in the case of Undated Subordinated Bonds, to Holders of Term Subordinated Bonds);
 - (b) the Issuer may freely incur further indebtedness to Senior Creditors and further Subordinated Indebtedness; and
 - (c) the Issuer may, in the circumstances set out in this Deed, suspend payment on the Bonds,

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

- 6.12 **Bonds paramount:** In the execution of the trusts under this deed, the Supervisor shall at all times:
- (a) regard the interests of the Holders of Unsubordinated Bonds as paramount to the interests of the Holders of Subordinated Bonds; and
 - (b) regard the interests of the Holders of Term Subordinated Bonds as paramount to the interests of the Holders of Undated Subordinated Bonds,

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

7. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST

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

7.2 **Bonds:**

(a) **Principal Amount:**

- (i) Subject to clause 7.2(a)(ii), the Issuer shall, on the Maturity Date of each Bond, pay or cause to be paid to, or to the order of, the Supervisor the Principal Amount of that Bond in accordance with the Conditions applicable to that Bond.
- (ii) Notwithstanding clause 7.2(a)(i), the Issuer shall, on the Maturity Date of each Bond, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Bond. Such payment shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 7.2(a)(i).

(b) **Interest:**

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

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

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

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

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

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

8. CALCULATION OF INTEREST

8.1 Floating Rate Bonds:

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

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

8.3 Index-linked Bonds:

- (a) In the case of an Index-linked Bond for which the Principal Amount is calculated by reference to an Index, the Principal Amount on each Interest Payment Date (for the purposes of calculating the amount of interest payable by the Issuer on that Interest Payment Date) shall be determined in accordance with the formula recorded in the Register in respect of that Index-linked Bond.

- (b) If the amount of interest payable on an Index-linked Bond on an Interest Payment Date is a negative amount, no amount by way of interest shall be payable by the Issuer on that Interest Payment Date and the positive equivalent of that amount will be deducted from the Principal Amount of that Index-linked Bond for the balance of the term of that Bond. Nothing in this clause 8.3 obliges the Holder of that Index-linked Bond to make any payment to the Issuer by reason of the interest payable on the relevant Interest Payment Date being a negative amount.
- (c) If a deduction made pursuant to this clause 8.3 results in the Principal Amount of the Index-linked Bond being equal to or less than zero, the Issuer shall not be required to make any further payments of interest or principal in respect of that Bond and that Bond shall be cancelled. The Issuer shall procure that the Registrar promptly notifies the relevant Holders of such cancellation.

9. PAYMENTS

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

9.2 Method of payment:

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

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

9.4 Unclaimed payments:

- (a) Subject to clause 9.4(b), if any payment made by the Issuer to a Holder to the address, or into the bank account, last specified by that Holder to the Issuer or the Registrar is returned unclaimed, the amount concerned will (unless the

Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the Register for the relevant Series) be retained by the Registrar for the relevant Series to be held by it for the Holder concerned without any liability to invest or pay interest on that amount. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer without limiting the rights of the Holder entitled to the unclaimed amount; and

- (b) The Issuer will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment. If the amount concerned is not claimed within six years after the original date of payment, then the amount concerned is taken to be forfeited to the Issuer for the Issuer's benefit and shall no longer be treated as being an unclaimed amount.

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

10. TAXES

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

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

10.2 **Non-resident Withholding Tax:** New Zealand non-resident withholding tax will be deducted from payments of interest or payments deemed by law to be interest to any Holder (including, if applicable, any person who beneficially derives interest under the relevant Bond) who is non-tax resident. Unless otherwise stated in the relevant Information Memorandum or the relevant non-tax resident Holder notifies the Issuer that it elects that non-resident withholding tax be deducted from payments to it instead of Approved Issuer Levy, if the Issuer is lawfully able to pay Approved Issuer Levy in respect of any payment of interest (or deemed interest) to non-tax resident Holders, and elects to do so in respect of any Series, the Issuer, or the Registrar for the relevant Series on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the interest (or deemed interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment at the rate otherwise applicable.

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

- 10.4 **No gross-up:** The Issuer will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds under clauses 10.2 or 10.3. If, in respect of any Bond, the Registrar for the relevant Series or the Issuer becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond), then the Registrar for the relevant Series and the Issuer shall be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Registrar for the relevant Series or the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Registrar for the relevant Series or the Issuer and may be withheld from any further payments to that Holder. Nothing in this clause 10.4 will prejudice or affect any other right or remedy of the Registrar for the relevant Series or the Issuer.
- 10.5 **Maximum rate:** Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder (or, if applicable, any person who beneficially derives interest under the relevant Bond) provides evidence to the Issuer or the Registrar for the relevant Series (acceptable to it) that a lesser rate is applicable.
- 10.6 **Tax status:** The Issuer and the Registrar for the relevant Series shall be entitled for the purposes of this clause 10 to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Holder in relation to that Holder's tax status or tax residency, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Bonds.

11. REPRESENTATIONS AND WARRANTIES

- 11.1 **Representations and warranties:** The Issuer represents and warrants to the Supervisor and the Holders that:
- (a) **Status:** it is a company duly incorporated and validly existing under the laws of New Zealand;
 - (b) **Power and corporate authority:** it has power to enter into and perform its obligations under this Deed and to issue the Bonds;
 - (c) **Authorisations:** it has all necessary authorisations and has taken all necessary corporate and other action to authorise the execution and performance by it of this Deed and the issue of Bonds;
 - (d) **Binding obligations:** its obligations under this Deed and the Bonds (once issued) are legal, valid, binding and enforceable against it, in each case in accordance with its terms, subject to applicable bankruptcy, re-organisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject also (as to enforceability) to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law; and
 - (e) **No violation:** the execution and performance by it of its obligations under this Deed and the Bonds do not violate any applicable law or its constitution or any agreement, security document or other instrument to which it is a party or which is binding on it or any material part of its assets.

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

11.3 **Repetition:**

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

12. UNDERTAKINGS

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

- (a) **Notify Event of Default:** promptly notify the Supervisor of the occurrence of any Event of Default;
- (b) **Corporate existence:** maintain its corporate existence and will not amalgamate, merge or consolidate with any person unless the resulting or surviving entity assumes, to the satisfaction of the Supervisor, the obligations of the Issuer under the relevant Bonds;
- (c) **Send notices:** in respect of each Series, send copies to the Supervisor of all notices given by it to Holders of that Series generally;
- (d) **FMCA:** in respect of each Series, comply with the provisions of the FMCA applicable to that Series;
- (e) **Annual and half yearly reports:** if requested by the Supervisor or a Holder, send copies to the Supervisor or that Holder of the Issuer's annual report and/or half yearly report at the same time the Issuer distributes that annual report and/or half yearly report to shareholders of the Issuer;
- (f) **Information:** make available or provide to the Supervisor, or a person authorised by it for these purposes, all documents or records relating to the Issuer 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 Issuer 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;
- (g) **Security ratio:** ensure that the Total Secured Liabilities are less than 7.5% of Total Tangible Assets;
- (h) **Group ownership:** ensure that the book value of assets directly and beneficially owned by the Issuer and Guaranteeing Subsidiaries and which are included in Total Tangible Assets is never less than 90% of Total Tangible Assets;

- (i) **Contingent liabilities:** ensure that the Contingent Liabilities do not exceed 10% of Total Tangible Assets;
- (j) **Guaranteeing Subsidiaries:**
 - (i) as soon as practicable and in any event within three months:
 - (aa) after any company wherever incorporated becomes a Wholly Owned Subsidiary, procure that that Wholly Owned Subsidiary will become a Guaranteeing Subsidiary but only where the Tangible Assets of that Wholly Owned Subsidiary are greater than 10% of the Total Tangible Assets; and
 - (bb) after any company wherever incorporated becomes a Non-Wholly Owned Subsidiary, use its best endeavours to procure that that Non-Wholly Owned Subsidiary will become a Guaranteeing Subsidiary but only where the Tangible Assets of that Non-Wholly Owned Subsidiary are greater than 10% of the Total Tangible Assets,

and procure that that Wholly Owned Subsidiary or Non-Wholly Owned Subsidiary (as the case may be) executes and delivers to the Supervisor in form and substance satisfactory to the Supervisor a Subsidiary Guarantee to become a Guaranteeing Subsidiary;
 - (ii) procure that each Guaranteeing Subsidiary performs its obligations under the relevant Subsidiary Guarantee;
- (k) **Breach of issuer obligations:** if it has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene, any of its issuer obligations in respect of a Series, it will, 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;
- (l) **Insolvency:** if the Issuer 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; and

12.2 **Supplemental Trust Deed:** In respect of each Series, the Issuer undertakes to the Holders of that Series and the Supervisor that it will, for so long as any Bonds of that Series are outstanding:

- (a) **Supplemental Trust Deed:** comply in all material respects with and perform its obligations under the Supplemental Trust Deeds for that Series;

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

12.3 Reports of Directors and Financial Statements: The Issuer covenants with the Supervisor that, so long as any Bonds are outstanding, the Issuer will deliver to the Supervisor:

- (a) not later than four months after the end of each of its financial years, a copy of:
 - (i) the latest Financial Statements of the Issuer, but only where the Issuer is required by law to prepare such Financial Statements or when the Issuer's Tangible Assets are less than 90% of Total Tangible Assets as disclosed in the consolidated Financial Statements; and
 - (ii) the latest consolidated Financial Statements of the Group,
 in each case made up as at the last day of that financial year and duly audited; and
- (b) not later than three months after the end of each of its financial half-years, a copy of:
 - (i) the latest Financial Statements of the Issuer, but only where the Issuer is required by law to prepare such Financial Statements or when the Issuer's Tangible Assets are less than 90% of Total Tangible Assets as disclosed in the consolidated Financial Statements; and
 - (ii) the latest consolidated Financial Statements of the Group,
 for the preceding half-year, in each case made up as at the last day of that half-year;
- (c) not later than the times of delivery of the latest Financial Statements for the Issuer or Group (as applicable) pursuant to clauses 12.3(a) or 12.3(b), a report signed by two Directors in the form set out in schedule 2, or such other form as

the Issuer and the Supervisor may agree or, if applicable, as set out in the Supplemental Trust Deed stating the matters referred to therein as at the end of and in respect of such year or half-year, as the case may be; and

- (d) upon request, a reconciliation of the Financial Statements for the Group to the Financial Statements for the Issuer for the half-year or full financial year, as applicable.

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

- (a) whether, in the course of performing their duties as Auditors, they have become aware of:
 - (i) any non-payment of interest or any breach of the provisions of this Deed, and if so giving particulars thereof; or
 - (ii) any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by this Deed, by law or by the FMCA, and if so giving particulars thereof;
- (b) whether they, as Auditors, have audited the Register for each Series, and if not whether another firm (and which firm if any) audited the Register for each Series, and to the extent that the Auditors have audited the Register for a Series, whether in their opinion there is reasonable assurance that, in all material respects, the Register for that Series has been duly maintained in accordance with the FMCA and correctly contains the information required by the FMCA;
- (c) whether their audit has disclosed any matter, and if so giving particulars thereof, calling in their opinion for further investigation by the Supervisor in the interests of the Holders;
- (d) that they have perused the report(s) of the Directors provided in accordance with clause 12.3(c) ("**Directors' Report**") given since the last report by the Auditors (or the date of this deed, whichever is the later), and that, so far as matters which they have observed in the performance of their duties as auditors are concerned, nothing has come to their attention to show that the statements made in the Directors' Report are not correct;
- (e) the aggregate Principal Amount of Bonds in each Series on issue and outstanding; and
- (f) any other matter required by the FMCA or the FMC Regulations to be set out in that report.

Notwithstanding the above and without limiting the other provisions of this Deed (including the Trust Powers under this Deed), the Auditor's report may be provided in such other form as may be agreed between the Issuer, the Supervisor and the Auditor from time to time.

12.5 Appointment of Auditors:

- (a) **Appointment:** For so long as any Bonds are outstanding, the Issuer must, before recommending the appointment or reappointment of persons as auditors of the Issuer:
 - (i) consult with the Supervisor on such appointment or reappointment and the nature and scope of any assurance engagement in relation to the Issuer's compliance with this Deed;
 - (ii) ensure that any comments of the Supervisor concerning the proposed Auditors are brought to the attention of the persons appointing or reappointing the Auditors;
 - (iii) give the Supervisor an opportunity to be a party to the assurance engagement for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the Supervisor's powers or duties;
 - (iv) ensure that the terms of appointment of the Auditors, whether the Auditors is conducting an audit, review or other engagement, include that the Auditors will give the Supervisor an opportunity to meet with the Auditors, without any representative of the Issuer being present, to raise or discuss:
 - (aa) at the beginning of such audit, review or engagement, any issues or concerns relevant to the exercise or performance of the Supervisor's powers or duties; and
 - (bb) matters arising in the performance of such audit, review or engagement and to answer any questions the Supervisor may have concerning such engagement.
- (b) **Resignation:** For so long as any Bonds are outstanding, the Issuer must notify the Supervisor if the Auditors resign from appointment, or decline to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditors for resigning their appointment or declining to accept appointment or reappointment. The Issuer must not attempt to prevent any person who has resigned its appointment as an auditor, or declined to accept an appointment or reappointment as an auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

13. DEFAULT

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

- (a) **Non-payment:** subject to any provisions of the Supplemental Trust Deed applicable to any Bond relating to suspension of interest payments:
 - (i) any amount of, or in respect of, the Principal Amount payable in respect of any Bond is not paid in the manner specified in this Deed on its due date or within two Business Days after its due date where non-payment on its due date has arisen solely by reason of a technical, computer or similar error outside the control of the Issuer; or

- (ii) any amount of, or in respect of, interest payable in respect of any Bond is not paid in the manner specified in this Deed within two Business Days of its due date (for the avoidance of doubt, in the event that interest is suspended in accordance with the relevant Supplemental Trust Deed the due date for payment of that interest shall not have occurred for the purposes of this Deed and this clause 13.1(a) until such interest becomes payable in accordance with the relevant Supplemental Trust Deed); or
 - (iii) any other amount payable under this Deed is not paid in the manner specified in this Deed within 10 Business Days of its due date; or
- (b) **Other breach:** the Issuer or any Guaranteeing Subsidiary commits any breach of, or omits to observe, any of its material undertakings or obligations under this deed (other than those referred to in clause 13.1(a)) and, in respect of any such breach or omission which is capable of being remedied, such breach or omission is not remedied within 30 days of the Issuer or that Guaranteeing Subsidiary (as the case may be) becoming aware of that breach or omission; or
- (c) **Misrepresentation:** any representation, warranty or statement made or deemed to be repeated by or in respect of the Issuer in this deed is or was untrue or incorrect in a material respect when made, deemed repeated or delivered and this has a material adverse effect on the Issuer; or
- (d) **Dissolution:** an application (other than a frivolous or vexatious application which is being contested in good faith by appropriate proceedings) or an order is made, or a resolution is passed or proposed for the dissolution of the Issuer or any Guaranteeing Subsidiary (except for the purpose of and followed by an amalgamation or solvent reconstruction:
 - (i) where a Guaranteeing Subsidiary's assets are acquired by or vested in any other Guaranteeing Subsidiary or the Issuer; or
 - (ii) on terms previously approved by an Extraordinary Resolution of Holders); or
- (e) **Receiver:** a receiver, liquidator, provisional liquidator is appointed of, or an encumbrancer takes possession of, or exercises its power of sale in respect of, the whole or any material part of the assets of the Issuer or any Guaranteeing Subsidiary; or
- (f) **Statutory management:** a statutory manager is appointed under the Corporations (Investigation and Management) Act 1989 in respect of the Issuer or any Guaranteeing Subsidiary; or
- (g) **Insolvency:** the Issuer or any Guaranteeing Subsidiary is declared or becomes insolvent or is or is deemed under any applicable law to be unable to pay its debts when they fall due; or
- (h) **Cross-acceleration:** the Issuer or any Guaranteeing Subsidiary fails to repay any indebtedness in aggregate in excess of \$10,000,000 required to be repaid prior to its stated maturity by reason of a default (however described) by the Issuer or any Guaranteeing Subsidiary; or
- (i) **Cessation of Business:** the Issuer ceases or threatens to cease to carry on all or substantially all of its business or operations (except for the purpose of,

and followed by, an amalgamation or solvent reconstruction on terms previously approved by an Extraordinary Resolution of all Holders); or

- (j) **Supplemental Trust Deed:** (in relation to any Bond) any event occurs which is specified in the Conditions for that Bond as an event of default,

then at any time thereafter, provided that event is continuing unremedied, the Supervisor may in its discretion and shall immediately upon being directed to do so by an Extraordinary Resolution passed by Holders of a Series of Bonds declare the Principal Amount of the Bonds of that Series, together with accrued interest thereon, to be immediately due and payable by notice in writing to the Issuer whereupon it shall become immediately due and payable.

- 13.2 **Distribution of funds in respect of unsecured Bonds:** All moneys received by the Supervisor in respect of unsecured Bonds from the Issuer on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Bonds including, without limitation, the moneys due to the Holders of secured Bonds) be held and applied (subject to the provisions of clause 6):

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

- 13.3 **Distribution of funds in respect of secured Bonds:** All moneys received by the Supervisor in respect of secured Bonds on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Bonds and subject to the terms of any security and/or inter-creditor agreement relating to those Bonds) be held and applied:

- (a) first, subject to any direction made by any court, in payment of all amounts due to the Supervisor under this Deed (including all expenses, losses and liabilities sustained or incurred by the Supervisor under this Deed, all fees payable to the Supervisor under this Deed, and any Default Interest on each such amount);
- (b) secondly, in or towards payment to the Holders of secured Unsubordinated Bonds, rateably in proportion to the Bond Moneys owing to them in respect of the secured Unsubordinated Bonds held by them; and

- (c) thirdly, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

14. APPOINTMENT OF SUPERVISOR

- 14.1 The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor for the Holders on the terms and conditions of this Deed. The Supervisor shall hold in trust for the benefit of the Holders:
- (a) the right to enforce any obligations or duties that the Issuer and any Guaranteeing Subsidiary has under this Deed, any relevant guarantee and the FMCA in relation to the Bonds (including the right to enforce the Issuer's and any Guaranteeing Subsidiary's obligation to repay to a Holder the Principal Amount of the Bonds held by that Holder, together with interest thereon, in accordance with the terms of this Deed and any relevant guarantee); and
 - (b) if applicable, any charge or security for repayment.

15. SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES

- 15.1 **Fees:** The Issuer shall pay to the Supervisor such fees as may from time to time be agreed between them in writing.
- 15.2 **Expenses:** The Issuer shall pay all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with:
- (a) the preparation, signing and (if applicable) registration of this deed, each Supplemental Trust Deed and each Information Memorandum;
 - (b) the exercise of any Trust Power, including the taking of any expert advice deemed reasonably necessary or expedient by the Supervisor;
 - (c) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders in accordance with the terms and conditions of this Deed; or
 - (d) any waiver, consent or other action requested by the Issuer.
- 15.3 **Indemnity by Issuer:** Subject to clause 19.1, and without prejudice to the right of indemnity by law given to trustees, the Supervisor or any of its officers, directors, employees or agents shall be indemnified by the Issuer for all expenses, losses and liabilities reasonably sustained or incurred in carrying out its licensee obligations (as defined in section 4 of the FMSA) or the Trust Powers or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this Deed, other than a claim arising out of a wilful default, gross negligence or wilful breach of trust.
- 15.4 **Indemnity by Holders:** Subject to clause 16.2(a)(vi), the Supervisor is not required to take any action or exercise any Trust Power or comply with any request or direction pursuant to this Deed unless, subject to clause 19.1, it has first been indemnified to its satisfaction against all expenses, losses and liabilities it may reasonably sustain or incur by so doing.
- 15.5 **Payments:** The fees, expenses, indemnities and other amounts payable under this Deed to the Supervisor shall be payable by the Issuer at the times agreed (or, in the

absence of agreement, on demand) and, if not paid when due, shall carry Default Interest in accordance with clause 7.6 until paid.

16. SUPERVISOR'S POWERS AND DUTIES

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

16.2 **Series:** In relation to each Series the Supervisor shall, in addition to any powers and duties provided by law or by the security for any Bonds which are secured, have the following powers and duties, subject to the terms of the Supplemental Trust Deeds in relation to the relevant Series:

(a) **General responsibilities and duties:** The Supervisor:

- (i) is responsible for acting on behalf of the Holders in relation to the Issuer, any matter connected with this Deed or the terms of the offer of a Series and any contravention or alleged contravention of the issuer obligations in respect of a Series;
- (ii) is responsible for supervising the Issuer's performance of its issuer obligations and in order to ascertain whether or not the assets of the Issuer and each Guaranteeing Subsidiary that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of the Bonds as they become due, subject, in the case of any Subordinated Bonds issued as part of a Series, to clause 6.11;
- (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:
 - (aa) act honestly in acting as supervisor;
 - (bb) in exercising its powers and performing its duties as supervisor, act in the best interests of the Holders; and
 - (cc) 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 a Series to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Holders of that Series;
- (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 Holders or an affected Class of Holders that is not inconsistent with any enactment, rule of law or this Deed in relation to:

- (aa) seeking a remedy to a contravention or alleged contravention of the issuer obligations in respect of a Series; and
 - (bb) 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 such Holders and to all other circumstances relevant to the general interests of such Holders, the Supervisor may, apply to the court for an order:
- (i) under section 208 of the FMCA, if the Supervisor is satisfied that:
 - (aa) the Issuer and any Guaranteeing Subsidiary is unlikely to be able to pay all money owing in respect of one or more Series as and when due;
 - (bb) the Issuer is insolvent (as defined in the FMCA);
 - (cc) the security of benefits or the financial position or management of the Issuer is otherwise inadequate;
 - (dd) there is a significant risk that the interests of Holders will be materially prejudiced for any other reason; or
 - (ee) the provisions of this Deed are no longer adequate to give proper protection to the interests of the Holders; or
 - (ii) under section 210 of the FMCA and within 20 working days (or, with leave of the court, within any longer period) after the passing of an Extraordinary Resolution of Holders, directing it not to comply with an Extraordinary Resolution of Holders,

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

- (c) **Material breach:** If the Issuer breaches any issuer obligation in respect of a Series or any such breach is likely to occur, the Supervisor shall, unless it is satisfied that such breach will not have a material adverse effect on the Holders of that Series, be entitled in its absolute discretion to require the Issuer to report to those Holders the circumstances and the nature of such breach and any other relevant information concerning the Issuer which the Supervisor has received in relation to this Deed and which it reasonably considers to be material to those Holders, and invite those Holders to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Trust Powers under this Deed. If the Issuer fails to give that report the Supervisor shall be entitled to do so itself.

- (d) **Represent Holders:** The Supervisor may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Holders, represent and act on behalf of those Holders in any matter concerning them generally.
- (e) **Investment:** Any moneys held by the Supervisor which are subject to the trusts created by this Deed may, at the discretion of the Supervisor, be invested in the name of the Supervisor or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income (less any commissions properly payable to the Supervisor) arising from all such investments made by the Supervisor will belong to the person in respect of whom such moneys are held by the Supervisor.
- (f) **Power to remedy breach:** The Supervisor's powers to remedy any breach of this Deed are subject to any other provision of this Deed which is inconsistent with the exercise of such powers.
- (g) **Power to engage expert:** The Supervisor may engage an expert (for example, an auditor, investigating accountant, valuer or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:
 - (i) determine the financial position of the Issuer;
 - (ii) review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 16.2(g), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance and (without limiting clause 15.2(b)) the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

16.3 Release of Guaranteeing Subsidiaries: If applicable and subject to:

- (a) no Event of Default having occurred and continuing unremedied; and
- (b) a Guaranteeing Subsidiary ("**Relevant Subsidiary**") ceasing to be a Principal Subsidiary as disclosed in the most recent Financial Statements of the Group delivered to the Supervisor pursuant to clause 12.3,

the Supervisor will, on receipt of certification from the Issuer as to the matters in clause 16.3 (a) and (b) above and at the cost of the Issuer, release the Relevant Subsidiary from the relevant Subsidiary Guarantee by executing a deed of release in, or to the effect of, the form set out in Schedule 5 (or such other form as the Issuer and the Supervisor may agree).

17. EXERCISE OF SUPERVISOR'S POWERS

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

- (a) has absolute discretion as to the exercise of the Trust Powers and as to the conduct of any action, proceeding or claim (provided it has acted in accordance with sections 112 and 113 of the FMCA); and

- (b) may refrain from exercising any Trust Power until directed by Extraordinary Resolution of Holders or of the affected Class of Holders to do so.
- 17.2 **Reliance:** The Supervisor shall be entitled without liability for loss, to obtain, accept and act on, or to decline and elect not to act on:
- (a) any communication or document (including any fax or email) reasonably believed by it to be genuine and correct;
 - (b) subject to clause 16.2(a)(vi), any resolution which the Supervisor believes to have been properly passed at any meeting of Holders or affected Class of Holders;
 - (c) advice and statements of lawyers, accountants and other experts reasonably selected by it or by the Issuer;
 - (d) a certificate signed by or on behalf of the Issuer as to any matters of fact which might reasonably be expected to be within the knowledge of the Issuer or that any particular transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of Holders generally or of any Class of Holders generally, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and
 - (e) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Deed, as conclusive evidence of the facts stated therein.
- 17.3 **Delegation:** The Supervisor must not delegate any of its functions under clauses 16.2(a)(i) to 16.2(a)(iii) (inclusive) unless such delegation is expressly permitted by the FMCA or as 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 relevant Holders to do so:
- (a) delegate at any time to any person any of the Trust Powers which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit provided that any such delegation shall not relieve the Supervisor of its responsibilities under this Deed; and
 - (b) authorise any person as it thinks fit to act as its representative at any meeting.
- 17.4 **Supervisor's consent:** Any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor thinks fit.
- 17.5 **Subscribers' money:** The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by purchasers of the Bonds.
- 17.6 **Safe custody:** The Supervisor may hold or place this Deed and any other documents with any bank or any person whose business includes the undertaking of safe custody of documents or with any lawyer or firm of lawyers (in each case reasonably considered by the Supervisor to be of good repute) and the Supervisor is not responsible for or required to insure against any loss incurred in connection with that deposit.
- 17.7 **Fiduciary relationship:** The Supervisor and any of its related companies and officers may (without having to account to the Issuer or any Holder) engage in any kind of business with the Issuer and its Subsidiaries and may accept fees or other consideration for services without having to account to the Holders.

17.8 **Confidentiality:** Unless ordered to do so by law, court order or the Conditions, the Supervisor shall not be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by the Issuer.

17.9 **Representation and warranty:** The Supervisor represents and warrants to the Issuer and the Holders that it is licensed (as that term is defined in the FMCA) and that such licence covers the supervision of all Bonds issued under this Deed. The representation and warranty contained in this clause 17.9 shall be deemed to be repeated for the benefit of the Issuer and each Holder on the Issue Date of each Bond.

18. REPLACEMENT OF SUPERVISOR

18.1 **Resignation or removal of Supervisor:** Subject to, in the case of clauses 18.1(a) to 18.1(c), the appointment and acceptance of a successor Supervisor as provided in this clause 18, and the Supervisor having performed all its functions and duties or a court consenting to such resignation or removal (as applicable):

- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice to the Issuer;
- (b) the Issuer may, with the consent of the FMA, remove the Trustee from office by giving not less than 90 days' written notice to the Trustee;
- (c) the Holders may remove the Supervisor from office by passing an Extraordinary Resolution of Holders to that effect; or
- (d) the FMA or the Issuer may remove the Supervisor from office in accordance with the FMSA.

18.2 **Appointment of new Supervisor:** Upon such a notice of resignation or removal being given, the Issuer will, subject to clause 18.3, have the right to appoint a successor Supervisor, who must be licensed (as defined in the FMCA) with such licence covering the supervision of all Bonds issued under this Deed.

18.3 **Approval by Extraordinary Resolution:** Where at any time there are Bonds outstanding under this Deed, the removal of the Supervisor pursuant to clause 18.1(b), and the appointment of any successor Supervisor pursuant to clause 18.2, shall be subject to approval by an Extraordinary Resolution of Holders.

18.4 **Failure to appoint Supervisor:** Other than where the successor Supervisor requires approval pursuant to clause 18.3, if a successor Supervisor has not been appointed by the Issuer or has not accepted an appointment within 60 days after any such notice, then the retiring Supervisor may, on behalf of the Issuer, appoint a successor Supervisor. In circumstances where the successor Supervisor requires approval by an Extraordinary Resolution of the Holders, any failure of the Issuer to appoint or have approved a successor Supervisor will entitle the Holders, by an Extraordinary Resolution, to appoint a new Supervisor.

18.5 **Successor Supervisor:** Upon the acceptance of any appointment under this clause 18 by a successor Supervisor:

- (a) the successor Supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under the Transaction Documents and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations; and

- (b) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this Deed.

18.6 **Execution of documents:** Upon the acceptance of any appointment under this clause 18 by a successor Supervisor, the successor Supervisor shall execute all such documents which are necessary or appropriate and in such form as may be required by the other parties to the Transaction Documents, such that the successor Supervisor is bound by all the covenants on the part of the Supervisor under the Transaction Documents from the date of such appointment. Any appointment of a successor Supervisor has no effect until such documents are executed by the successor Supervisor.

18.7 **Notice:** The Issuer shall notify all Holders of the appointment of any new supervisor as soon as reasonably practicable following such appointment.

19. LIABILITY OF SUPERVISOR

19.1 **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 are available only in relation to the proper performance of its duties under clauses 16.2(a)(iv) and 16.2(a)(vii) and no other provision of this Deed that is contrary to the foregoing shall have any effect.

19.2 **Duty of care:** Notwithstanding any other provision of this deed but subject to any applicable law and the provisions of any Supplemental Trust Deed, the Supervisor does not assume any duty of care to the Issuer, any creditors of the Issuer or any other person other than the Holders (subject to and in accordance with this Deed) in exercising the Trust Powers, and shall not be liable to any person (including the Issuer and any Holders) in any way except for wilful default, gross negligence or wilful breach of trust where the Supervisor has failed to show the degree of care and diligence required of it having regard to the provisions of this Deed.

19.3 **No liability:** The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction given to it by Holders.

20. BENEFIT OF DEED

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

21. AMENDMENTS

21.1 **Limited right to amend:** Except as provided in this clause 21 and clause 22 but without limiting applicable law, the Issuer may not cancel, vary or amend any provision of this Deed while any Bonds are outstanding. Any amendment to this Deed must be in writing signed by the Issuer and the Supervisor and the Supervisor must, where required by the FMCA, provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA.

21.2 **Amendment without consent:** In relation to each Class, the provisions of this Deed may be amended without the consent of the Holders of that Class where:

- (a) such amendment (in the opinion of the Issuer and the Supervisor):
 - (i) is of a minor, formal, administrative or technical nature;
 - (ii) is to correct a manifest error;
 - (iii) is to comply with the requirements or a modification of the requirements of any applicable law or any rules of any stock exchange in New Zealand or elsewhere;
 - (iv) is necessary for the purpose of obtaining or maintaining a quotation of any Bonds on any stock exchange in New Zealand or elsewhere;
 - (v) is in respect of any of the provisions for reporting to the Supervisor under this Deed or in respect of clauses 15 and 17; or
 - (vi) is agreed to by the Supervisor pursuant to clause 22.3,

and, in any such case, the Issuer is of the opinion that such amendment will not be materially prejudicial to the interests of affected Holders generally and the Supervisor is satisfied and certifies that such amendment will not have a material adverse effect on the affected Holders; or

- (b) the Supervisor is satisfied that such amendment will not have a material adverse effect on the affected Holders or the FMA is satisfied that such amendment is necessary to enable this Deed to comply with the FMCA or any other enactment or any rule of law and consents to such amendment.

Notice of any such amendment, including a description of the amendment, shall be provided by the Issuer to the Holders affected by the amendment within 10 working days of the amendment being made, unless the Supervisor notifies the Issuer that such notification is not required to be provided to the Holders or that it would be appropriate to give notice of the amendment in some other manner.

21.3 **Amendment approved by Holders:** Without limiting clause 21.2, in relation to each Class the provisions of this Deed may be amended if the amendment has been approved by an Extraordinary Resolution of each Class of Holders that is or may be adversely affected by the amendment. Where the relevant Class of Holders holds Bonds from more than one Series, this Deed in respect of each such Series is deemed to be amended in accordance with the amendment approved by that Class of Holders in accordance with this clause 21.3.

21.4 **Single Meeting:** Where an amendment requiring approval of the Holders pursuant to clause 21.3 relates to or arises from any general change in the constitution, affairs or business of the Issuer, such approval shall not be required to be dealt with by way of separate meetings of each such Class of Holders.

21.5 **Notice:** Notice of any proposed variation under clause 21.3 shall be given by the Issuer to each Holder or if it affects one or more Classes of Holders but not all Classes of Holders, to the Holders of each affected Class of Holders not less than 15 working days before the date on which it is intended that such variation take effect, but the non-receipt of notice by any such Holder shall not affect the validity of any such variation.

22. WAIVER

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

- (a) may be deemed appropriate, provided that the Supervisor is satisfied that such variation will not have a material adverse effect on the affected Holders and the Supervisor provides or, where applicable, obtains the certificates required under section 108(2)(b) of the FMCA; or
- (b) may be agreed by the Supervisor pursuant to and in accordance with clause 22.3.

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

22.3 **Exemptions:** Subject to any applicable law and except to the extent expressly provided otherwise in the Conditions for any Bonds, if:

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

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

23. FURTHER AND SUBSTITUTED ISSUERS

23.1 **Further Issuers:** The Issuer shall be entitled to nominate any Wholly Owned Subsidiary which is a member of the Guaranteeing Group to be the issuer of the Bonds of a particular Series by so providing in the Supplemental Trust Deeds for that Series, provided that the new issuer enters into the relevant Supplemental Trust Deeds and agrees to become bound by the terms of this deed, the Bonds issued by the new issuer are guaranteed by the Issuer and otherwise on terms satisfactory to the Supervisor (acting reasonably).

23.2 **Substituted Issuers:** The Issuer may, without the consent of the Holders of any Series but subject to the Supervisor's consent, substitute any Wholly Owned Subsidiary ("**Substituted Obligor**") in place of the Issuer (or of any previous substitute under this clause 23.2) as the principal debtor under this Deed and the Bonds either generally or in relation to one or more Series, but only if:

- (a) the Substituted Obligor succeeds to and becomes bound by all the terms and conditions of the Transaction Documents for the relevant Series by entering into such agreements and documents ("**Substitution Documents**"), each in form and substance satisfactory to the Supervisor, as the Supervisor (acting reasonably) may deem appropriate;
- (b) such amendments are made to any other documents (including any Information Memorandum in respect of the relevant Bonds) as the Supervisor may reasonably deem appropriate;
- (c) two directors of the Substituted Obligor certify that the Substituted Obligor will be solvent immediately after such substitution;
- (d) (if the relevant Bonds, or any of them, are publicly rated by a rating agency as a result of a contract between the Issuer and that rating agency) that rating agency confirms in writing that following such substitution the rating assigned to the relevant Bonds in force immediately prior to the substitution taking effect shall be maintained or increased or (if the relevant Bonds are not publicly rated by a rating agency) the Substituted Obligor has a corporate rating of not less than the corporate rating of the Issuer at that time;
- (e) the Issuer (or any such previous Substituted Obligor) and the Substituted Obligor comply with such other reasonable requirements as the Supervisor may direct which the Supervisor reasonably considers are in the interests of the Holders generally of the relevant Bonds, which may include a requirement that the Issuer guarantees payment of the relevant Bonds and/or remains bound by certain of the provisions of this Deed in respect of the relevant Bonds;
- (f) prior to the substitution being effected, the Substituted Obligor warrants and represents to the Holders that:
 - (i) it has obtained all necessary authorisations for such substitution;
 - (ii) it has obtained all necessary authorisations for the performance by it of its obligations under the relevant Transaction Documents and the relevant Bonds and that they are in full force and effect; and
 - (iii) the obligations assumed by it are its legal, valid and binding obligations, enforceable against it in accordance with their terms, subject to laws affecting creditors' rights generally and equitable principles of general application; and
- (g) legal opinions (in form and substance reasonably satisfactory to the Supervisor in respect of the relevant Series) have been delivered to the Supervisor confirming that, following such substitution:
 - (i) the Transaction Documents and the Bonds will constitute legal, valid and binding obligations of the Substituted Obligor, enforceable against it in accordance with their terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and equitable principles of general application;
 - (ii) the Substituted Obligor is validly incorporated in its jurisdiction of incorporation;
 - (iii) all necessary authorisations are in full force and effect; and

- (iv) amounts payable to the Holders of the relevant Series will not be reduced by the existence of any applicable taxes (by deduction from such amounts or otherwise) except for such taxes (if any) in respect of which the Substituted Obligor has agreed to make compensating payments to those Holders.

23.3 **Release of substituted issuer:** Any Substitution Document entered into pursuant to clause 23.2 shall, if so expressed, release the Issuer from any or all of its obligations under the Bonds and the Transaction Documents for the relevant Series with effect as of the date of substitution. Notice of any substitution pursuant to clause 23.2 shall be given to the Holders of the relevant Series within 14 days of the execution of the Substitution Documents and compliance with the other requirements of clause 23.2.

23.4 **Completion of Substitution:** After notice has been given in accordance with clause 23.3:

- (a) the Substituted Obligor shall be deemed to be the principal debtor and to have all the rights, powers and obligations of the Issuer under the Transaction Documents for the relevant Series as if the Substituted Obligor were originally named in those Transaction Documents in place of the Issuer; and
- (b) this Deed and the Conditions of the relevant Bonds shall be deemed to be amended as necessary to give effect to the substitution.

24. MEETINGS AND RESOLUTIONS OF BONDHOLDERS

24.1 **Meetings:** Meetings of Holders and any Class of Holders are to be convened and held in accordance with the provisions of schedule 1. Regulation 78 and schedule 11 of the FMC Regulations (other than clauses 2 and 5 of schedule 11) do not apply except to the extent incorporated into schedule 1. For the avoidance of doubt, in respect of any meeting involving Holders to approve an Extraordinary Resolution, to the extent of any inconsistency, clauses 2 and 5 of schedule 11 of the FMC Regulations shall prevail over any section in Schedule 1 (except to the extent clauses 2 and 5 of schedule 11 of the FMC Regulations are expressly subject to, or allow matters to be set by, a trust deed).

24.2 **Resolutions of Holders:** Any matter relating to this Deed or the Bonds may be agreed or approved by the relevant Class of Holders by signing (in any number of counterparts) a memorandum in writing, recording the matter so agreed or approved.

25. NOTICES

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

- (a) **Writing:** be given or made in writing by fax, email or letter and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to the recipient at the address, email address or fax number, and marked for the attention of the person (if any), from time to time designated by the recipient to the other for the purposes of this Deed or the Bonds;
- (c) **Deemed delivery:** not be effective until received by the recipient, and any such notice or communication shall be deemed to be received:

- (i) (if given or made by letter) when left at the address of the recipient or 5 Business Days after being put in the post (by airmail if to another country), postage prepaid, and addressed to the recipient at that address;
- (ii) (if given or made by email) on completion of transmission of that email in readable form to the relevant email address; or
- (iii) (if given or made by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient,

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

25.2 **Email:** 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.

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

(a) **The Issuer:**

Auckland International Airport Limited
First Floor
4 Leonard Isitt Drive
Auckland Airport
Auckland
New Zealand

Phone No: (09) 255 9040
Fax No: (09) 275 4927
Email: philip.neutze@aucklandairport.co.nz
Attention: Chief Financial Officer

(b) **The Supervisor:**

The New Zealand Guardian Trust Company Limited
Level 6
191 Queen Street
Auckland
New Zealand

Phone No: (09) 909 5100
Fax No: (09) 969 3732
Email: ct-auckland@nzgt.co.nz
Attention: General Manager - Corporate Trusts

(c) **The Holders:**

The address of each Holder last entered in the Register.

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

26. GENERAL

- 26.1 **Registration of deed:** If the Issuer proposes to issue a Series, it shall promptly, at its own cost, lodge with the Registrar of Financial Service Providers this deed, the relevant Supplemental Trust Deeds in respect of that Series and any amendment to this deed or such Supplemental Trust Deeds and any certificate as required by the FMCA and shall pay all costs and expenses incidental to doing so.
- 26.2 **Waivers and remedies:** Time shall be of the essence of this Deed but no delay in acting, or failure to act, by a Holder is a waiver of any of that Holder's rights, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights provided in this Deed do not exclude any rights provided by law.
- 26.3 **Partial invalidity:** A provision of this Deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA, the FMC Regulations or any term implied into this Deed by the FMCA or the FMC Regulations. An invalid provision in this Deed shall not affect the enforceability of the remaining provisions of this Deed.
- 26.4 **Further issues:** The Issuer may from time to time, without the consent of the Holders, issue notes or other debt obligations on such other terms and conditions as the Issuer may think fit.
- 26.5 **Documents:** The Issuer must:
- (a) make copies of this deed, the relevant Supplemental Trust Deed, the Information Memorandum relating to Bonds held by the relevant Holder, the Agency Agreement and any Calculation Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series available for inspection during usual business hours by any Holder at the office of the Issuer (or such other office as the Issuer may notify the Holders from time to time) which, at the date of this deed, is as specified in clause 25.3(a). Each Holder will be deemed to have notice of the provisions of this Deed and each other Transaction Document in relation to the relevant Series; and
 - (b) retain, make available for inspection, provide and deliver copies of any document or information as required by, and in accordance with, the FMCA for such fee as permitted by the FMCA.
- 26.6 **Survival:** The indemnities given in this Deed will survive the repayment of all the Bonds and the termination of this Deed.
- 26.7 **Remedies cumulative:** The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 26.8 **Counterparts:** This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart (by fax or otherwise).

27. GOVERNING LAW

- 27.1 **Governing law:** This deed shall be construed and take effect as a contract and declaration of trust made in New Zealand and shall be governed by New Zealand law.
- 27.2 **Submission to jurisdiction:** The Issuer and the Supervisor submit to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Deed.

SIGNED AS A DEED

[Signing blocks not applicable as this deed was amended and restated pursuant to a deed of amendment and restatement]

SCHEDULE 1

MEETINGS OF HOLDERS

1. DEFINITIONS

1.1 In these provisions:

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

“Authorised Person” means, in respect of a meeting involving Holders, the person authorised by the Supervisor to receive and count votes at that meeting cast in accordance with regulation 13.10 or, if no such person is so authorised, the Supervisor.

“Extraordinary Resolution” means a resolution passed at a meeting of Holders, properly convened and held in accordance with the provisions of this schedule, and approved by Holders holding Bonds with a Principal Amount of no less than 75% of the aggregate Principal Amount of the Bonds held by those persons who are entitled to vote and who vote on the question.

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

“regulation” means a clause of this schedule.

“Representative” means:

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

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

2. CONVENING

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

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

- 2.3 **By Issuer or authorised person:** The Issuer may at any time of its own volition convene a meeting of the Holders, and shall, at the request in writing of a person authorised by the FMC Regulations to call a meeting of a Class of Holders, convene a meeting of that Class of Holders.
- 2.4 **By Supervisor:** In relation to any Class of Bonds, the Supervisor may at any time of its own volition (after such consultation with the Issuer which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting), or the Issuer shall, at the request in writing of the Supervisor, convene a meeting of Holders of that Class. The Supervisor shall not be obliged to convene a meeting of the relevant Holders pursuant to this regulation until it has been indemnified to its satisfaction (acting reasonably), subject to clause 19.1, against all costs and expenses to be incurred in relation to that meeting.
- 2.5 **Place of meeting:** Each meeting will be held in the city or town in which the registered office of the Issuer is situated or at such other place as designated by the Issuer.
- 2.6 **Regulations:** Meetings of Holders shall be convened and held in accordance with the provisions of this schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this schedule, as the Supervisor and the Issuer may agree from time to time.
- 2.7 **Methods of holding meetings:** A meeting of Holders may be held by a quorum of Holders 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 Holder 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 regulations 2.7(a) and 2.7(b) above.

3. NOTICE OF MEETINGS

- 3.1 **Persons to be notified:** Notice of every meeting shall be given in the manner provided in clause 25 of this Deed to:
- (a) every Holder 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 Holder who, to the actual knowledge of the Issuer, is deceased or insolvent as the case may be;
 - (c) the Issuer, if the meeting is convened by the Supervisor;
 - (d) the Supervisor;
 - (e) if the relevant Bonds are listed, any stock exchange on which those Bonds are listed; and
 - (f) the Auditors and every director of the Issuer.

3.2 **Time for notification:** Subject to regulation 4.5, at least 15 working 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.

3.3 **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 Holder to form a reasoned judgment in relation to it;
- (c) the right of a Holder 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.

3.4 **Prior notification of Supervisor:** The Issuer shall, at least 10 working days (or any lesser period approved by the Supervisor) before the Issuer 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 it proposes to send to the relevant Holders (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 comments in writing to the Issuer 5 working days (or any lesser period approved by the Issuer) before the notice of meeting is given under regulation 3.2.

3.5 **Irregular notice:** Notwithstanding any other provision of this regulation 3, a meeting may be called by shorter notice than that specified in regulation 3.2, or by notice without compliance with regulation 3.3 or by notice with any other irregularity or called without any formal notice, and any such meeting shall be deemed to have been duly called and any such irregularity or lack of formal notice shall be waived if:

- (a) all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or lack of formal notice or if such waiver is so agreed by all such Holders 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 Holders.

3.6 **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.

4. QUORUM

4.1 **Quorum required:** No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Holder is present at a meeting for the purposes of this schedule 1 and part of the quorum if that Holder is present in person or by Representative or is participating in that meeting by means of audio, audio and visual or electronic communication.

- 4.2 **Quorum for Extraordinary Resolution:** Subject to regulation 4.4, the quorum for passing an Extraordinary Resolution will be the Holders present at the meeting or which have cast votes under regulation 13.10 holding or representing at least 25% of the Principal Amount of the Bonds held by those Holders who are entitled to vote. Where a Holder holds Zero Coupon Bonds, for the purposes of determining the quorum, the Principal Amount of those Zero Coupon Bonds is to be construed as a reference to the net present value of those Zero Coupon Bonds (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Bond by a proportion of any discount to that Principal Amount applicable to such Bond on its Issue Date) as at the date of the meeting.
- 4.3 **Quorum for other business:** Subject to regulation 4.4, the quorum for the transaction of any business other than the passing of an Extraordinary Resolution will be at least two Holders present at the meeting holding or representing at least 10% in Principal Amount of the Bonds held by those Holders who are entitled to vote. Where a Holder holds Zero Coupon Bonds, for the purposes of determining the quorum, the Principal Amount of those Zero Coupon Bonds is to be construed as a reference to the net present value of those Zero Coupon Bonds (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Bond by a proportion of any discount to that Principal Amount applicable to such Bond on its Issue Date) as at the date of the meeting.
- 4.4 **Quorum not present:** If, within 30 minutes after the Appointed Time, a quorum is not present the meeting, if convened at the request of Holders, will be dissolved. In any other case it will be adjourned to the day that is 10 working days later at the same time and place or to such other date, time and place as may be appointed by the chairman of the meeting or the Supervisor. At such adjourned meeting, if a quorum is not present 30 minutes after the Appointed Time, the Holders present at the adjourned meeting will be a quorum for the transaction of business including the passing of Extraordinary Resolutions.
- 4.5 **Notice of adjourned meeting:** Notwithstanding regulations 3.1 and 3.2, notice of any such adjourned meeting of Holders at which an Extraordinary Resolution is to be submitted shall be given to the same persons as those who were given notice of the original meeting and 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 Holders present at the adjourned meeting will form a quorum whatever the Principal Amount of 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.

5. CHAIRMAN

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

6. RIGHT TO ATTEND AND SPEAK

- 6.1 Any:
- (a) director, officer or solicitor, auditor or accountant of the Issuer;
 - (b) person appropriately authorised by the Issuer;

- (c) director, officer or solicitor of the Supervisor; or
- (d) person appropriately authorised by the Supervisor,

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

7. ADJOURNMENT

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

8. ONLY PERSONS ON REGISTER RECOGNISED BY COMPANY

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

9. AUTHORITY TO VOTE

- 9.1 **Voting:** An individual Holder may vote personally or by his Representative and a Holder which is a corporation may vote by its Representative. A Holder may appoint more than one Representative, each such Representative being authorised to act on behalf of the Holder in respect of a specified Principal Amount of Bonds, provided that only 1 proxy is appointed to exercise the rights relating to a particular Bond held by that Holder.
- 9.2 **Entitlement:** The persons named in the Register as Holders at the Proxy Closing Time, or the Representative(s) or the personal representatives or assignees in bankruptcy of any such Holder will be exclusively entitled to vote at the meeting in respect of the Bonds recorded as owned by them.

10. PROXIES

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

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

10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form approved by the Issuer and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution. The instrument of proxy must state whether the appointment is for a particular meeting or a specified term.

10.5 **Proxy valid for meeting:** An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the specified term or for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.

10.6 **Proxy in favour of chairman:** An instrument of proxy in favour of:

(a) the chairman of the Issuer; or

(b) the chairman of the meeting,

(however expressed) will be valid and effectual as though it were in favour of a named person and will, in the case of paragraph 10.6(a) above, constitute the person holding the office of the chairman of the Issuer or, in the case of paragraph 10.6(b) above, constitute the person who chairs the meeting for which the proxy is used (whether on adjournment or not) and such person shall be the lawful proxy of the appointer.

11. HOLDER MAY APPOINT ATTORNEY

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

12. REPRESENTATIVES

12.1 **Authority:** A Representative of a Holder which is a corporation or a corporation sole will, until his authority is revoked, be entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual Holder and will be entitled to produce evidence of his authority to act at any time before the Appointed Time of, or at, the meeting or adjourned meeting or for the taking of a poll at which the Representative proposes to vote.

12.2 **Right to act:** A Representative will have the right to demand or join in demanding a poll and will (except and to the extent to which the Representative is specially directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.

13. VOTING PROCEDURE AND POLLS

13.1 **Voting:** An Extraordinary Resolution put to the vote of a meeting will 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 chairman or, in the case of a meeting of Holders held under regulations 2.7(b) or 2.7(c), by any method permitted by the chairman of the meeting, unless, in any case, a poll is demanded (before or after the vote is taken on a resolution) by:

- (a) the chairman of the meeting (who must in any event call for a poll on a resolution on which the chairman holds sufficient votes cast under regulation 13.10 if the chairman believes that, if a poll is taken, the result may differ from that obtained on a show of hands or by voice);
- (b) the Supervisor;
- (c) the Issuer or any representative of the Issuer; or
- (d) one or more Holders present at the meeting holding or representing not less than 5% in aggregate Principal Amount of the Bonds.

A declaration by the chairman of the meeting that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded in accordance with this regulation 13.10.

- 13.2 **Number of votes:** On a show of hands each person who is entitled to vote and present at the meeting or casting a vote pursuant to regulation 13.10, will have one vote only. On a poll every Holder who is entitled to vote and present at the meeting or casting a vote pursuant to regulation 13.10 will have one vote for every \$1 of Principal Amount of the Bonds of which that person is the Holder, provided that where a Holder holds Zero Coupon Bonds, for the purposes of calculating that Holder's voting entitlement in this regulation 13.2, the Principal Amount of those Zero Coupon Bonds is to be construed as a reference to the net present value of those Zero Coupon Bonds (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Bond by a proportion of any discount to that Principal Amount applicable to such Bond on its Issue Date) as at the date of the meeting. On a poll a person entitled to more than one vote need not use all their votes or cast all the votes they use in the same way.
- 13.3 **Poll:** If a poll is demanded it will be taken in the manner directed by the chairman of the meeting and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 13.4 **Chairman has casting vote:** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands took place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Holder or on behalf of Holders.
- 13.5 **Election of chairman:** A poll demanded on the election of a chairman of the meeting or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and in a place appointed by the chairman. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 13.6 **No disturbance:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.
- 13.7 **Joint Holders:** In the case of joint Holders the vote of the senior who tenders a vote will be accepted to the exclusion of the vote of the other joint Holders and for this purpose

seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.

- 13.8 **Disqualification:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.
- 13.9 **Voting by Issuer:** Notwithstanding any other regulation, any Bonds held by or on behalf of the Issuer or any of its Subsidiaries shall not confer any right to vote for the period that they are so held.
- 13.10 **Voting by other means:**
- (a) A Holder 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 Issuer or the Supervisor.
 - (b) A Holder 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 Holder's Bonds are to be voted on to the Issuer or the Authorised Person for that meeting. Such notice must reach that person before the Proxy Closing Time unless the Issuer or the Authorised Person (as the case may be), in its absolute discretion, elects to accept any notice notwithstanding that that notice is received or produced at a place other than that specified above or out of time.
 - (c) The Issuer or the Authorised Person for that meeting (as applicable) must:
 - (i) collect together all of those votes received by it;
 - (ii) in relation to each resolution to be voted on at that meeting, count the number of Holders voting for and against the resolution and the number of votes cast for and against the resolution by each Holder;
 - (iii) sign a certificate that it has carried out the duties set out in regulations 13.10(c)(i) and 13.10(c)(ii) above and that sets out the results of the counts required by regulation 13.10(c)(ii); and
 - (iv) ensure that the certificate required by regulation 13.10(c)(iii) above is presented to the chairman.

14. EXTRAORDINARY RESOLUTIONS

- 14.1 **Powers:** A meeting of Holders will, in addition to all other powers which by this Deed are specified as exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary Resolution namely power to:
- (a) sanction either unconditionally or upon any conditions the release of the Issuer or any Guaranteeing Subsidiary from the payment of all or any part of the moneys payable pursuant to this Deed or the Bonds;

- (b) sanction any request from the Issuer for the exchange of the Bonds for, or the conversion of the Bonds into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
- (c) postpone or, with the concurrence of the Issuer, to accelerate the day when the Principal Amount of any Bonds becomes payable and to suspend or postpone for a time the payment of interest on any Bonds;
- (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against the Issuer or any Guaranteeing Subsidiary or its assets however those rights arise;
- (e) assent to any amendment to the terms of this deed or the relevant Supplemental Trust Deed proposed or agreed to by the Issuer (and, where required, the Supervisor) and to authorise the Supervisor to execute any Supplemental Trust Deed embodying any such amendment;
- (f) give any sanction, assent, release or waiver of any breach or default by the Issuer or any Guaranteeing Subsidiary or the Supervisor under any of the provisions of this deed or the relevant Supplemental Trust Deed;
- (g) sanction any scheme for the reconstruction of the Issuer or any Guaranteeing Subsidiary or for the amalgamation of the Issuer or any Guaranteeing Subsidiary with any other corporation where such sanction is necessary;
- (h) discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under this Deed;
- (i) subject to the provisions of this Deed, remove any Supervisor and to approve the appointment of or appoint a new Supervisor;
- (j) consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in any of the foregoing paragraphs of this regulation 14.1, or as to any other matter which may be necessary to carry out and give effect to any Extraordinary Resolution;
- (k) authorise or direct the Supervisor and if required, the Issuer to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.

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

- (a) a resolution which affects a particular Holder only, rather than the rights of all Holders generally, or of a particular Class of Holders generally, will not be binding on such Holder unless such Holder agrees to be bound by the terms of such resolution;
- (b) a resolution which affects one Class only of Bonds is deemed to have been duly passed if passed at a properly convened and held meeting of the Holders of that Class or pursuant to regulation 16;

- (c) a resolution which affects more than one Class of Bonds, but does not give rise to a conflict of interest between the Holders of any of the Classes so affected, is deemed to have been duly passed if passed at a single properly convened and held meeting of the Holders of all Classes so affected or pursuant to regulation 16; and
- (d) a resolution which affects more than one Class of Bonds and gives or may give rise to a conflict of interest between the Holders of any of the Classes so affected is deemed to have been duly passed if passed at separate properly convened and held meetings of the Holders of each Class so affected or pursuant to regulation 16.

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

15. MINUTES TO BE KEPT

15.1 Minutes of all resolutions and proceedings at every meeting will be made by the Issuer or, if the Issuer is not present at the meeting, by a person appointed by the chairman of the meeting. Minutes must be entered in books from time to time provided for that purpose by the Issuer. The chairman must ensure that a certificate of votes under regulation 13.10 held by the chairman is attached to the minutes. Any such minutes, if signed or apparently signed by the chairman of the meeting at which a resolution was passed or proceedings had or by the chairman of the next meeting of Holders, will be prima facie evidence of the matters recorded in those minutes. Until the contrary is proved every meeting in respect of which minutes have been made will be deemed to have been properly held and convened and all resolutions passed or proceedings had at that meeting to have been properly passed and had.

16. RESOLUTIONS IN WRITING

16.1 **Extraordinary Resolution:** Anything that may be done by Holders by a resolution or Extraordinary Resolution passed at a meeting of Holders may be done by a resolution in writing signed by not less than 75% of the Holders having the right to vote on that resolution, holding in aggregate Bonds conferring the right to cast not less than 75% of the votes which could be cast on that resolution.

16.2 **Counterparts:** Any such resolution may consist of several documents in similar form (including letters, electronic mail or other similar means of communication), each signed by one or more Holders.

16.3 **Execution:** Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.

SCHEDULE 2

FORM OF DIRECTORS' REPORTING CERTIFICATE

1. This report is given by the undersigned Directors of Auckland International Airport Limited ("**Issuer**") pursuant to clause 12.3(c) of the Master Trust Deed dated 9 July 2004 between the Issuer and The New Zealand Guardian Trust Company Limited, as trustee ("**Trust Deed**").
2. Unless the context otherwise requires, terms defined in the Trust Deed have the same meaning herein.
3. We, the undersigned, hereby state that as at the last day of the financial {year} {half-year} ending on { } ("**Reporting Date**"), to the best of our knowledge and belief having made all due inquiries, and, during the immediately preceding financial {year} {half-year}:
 - (a) {Here state any matter, or state if there is no matter, which has arisen relating to the Issuer which would materially and adversely affect the ability of the Issuer to perform its obligations under the Trust Deed and any relevant Supplemental Trust Deed in respect of the Bonds or which adversely affects the Holders};
 - (b) the Issuer has observed and complied with its issuer obligations and all provisions expressed to be binding upon it under the Trust Deed and any relevant Supplemental Trust Deed in respect of Bonds including the payment of all interest on, and the Principal Amount in respect of, the Bonds;

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

{If any Event of Default has occurred, set out the particulars of the Event of Default and, if appropriate, details of how it has been, or is proposed to be, remedied.}
 - (d) the Issuer is in compliance with all of its issuer obligations;

[If the Issuer is not in compliance with all of its issuer obligations, set out the matters required by clause 12.1(k) of the Trust Deed in respect of such non-compliance.]
 - (e) the Principal Amount of Bonds (if any) which have been repaid on maturity is \${ }, details of which are set out below:

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

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

{If any Register in respect of a Series has not been duly maintained set out the particulars of the failure to maintain}

(h) {the Guaranteeing Subsidiaries are { } and { } };

{If there are no Guaranteeing Subsidiaries state so.}

(i) the Issuer has observed and complied with all its banking covenants;

{If the Issuer has not so complied and observed its banking covenants set out the particulars of the contravention and proposals to remedy the same}

(j) {Here state any enforcement action taken in relation to the Issuer's banking covenants};

(k) {Here state any changes to the Issuer's banking covenants}.

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

5. As at the Reporting Date:

(a) the aggregate Principal Amount of the Bonds outstanding is \${ }; and

(b) the amount of any unpaid interest relating to the outstanding Bonds is \${ }.

This report is given on the day of 20{ }

Director

Director

SCHEDULE 3
PARTICULARS OF BONDS IN REGISTER

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

SCHEDULE 4

FORM OF SUBSIDIARY GUARANTEE

Deed dated

Guarantee granted in favour of The New Zealand Guardian Trust Company Limited by [●] Limited (“**Guaranteeing Subsidiary**”)

BACKGROUND

- (A) Auckland International Airport Limited (“**Issuer**”) is party to a master trust deed dated 9 July 2004 as amended from time to time, between the Issuer and The New Zealand Guardian Trust Company Limited as supplemented by a supplemental trust deed dated [●] between the same parties (together, “**Trust Deed**”) providing for the constitution and issue of Bonds (as therein defined) by the Issuer from time to time.
- (B) The Issuer has, pursuant to the Trust Deed, issued a Tranche of Bonds which constitute Bonds as defined in the Trust Deed and pursuant to the provisions of the Trust Deed, the Guaranteeing Subsidiary is to give a guarantee of the due payment by the Issuer of the Bond Moneys from time to time payable in respect of those Bonds.
- (C) The directors of the Guaranteeing Subsidiary, being of the opinion that it is to the advantage and benefit of the Guaranteeing Subsidiary or the Issuer, as the case may be, to do so, have resolved that the Guaranteeing Subsidiary guarantees the due payment by the Issuer of the Bond Moneys and that this deed be accordingly executed by the Guaranteeing Subsidiary.

COVENANTS

1. INTERPRETATION

- 1.1 Unless otherwise defined in this deed or the context otherwise requires, terms defined in the Trust Deed shall have the same meanings in this deed.

2. GUARANTEE AND INDEMNITY

- 2.1 **Guarantee:** The Guaranteeing Subsidiary guarantees to the Supervisor on behalf of the Holders the due and punctual payment by the Issuer of the Bond Moneys, as and when the same become due and payable, in accordance with the Trust Deed, and the due observance and performance by the Issuer of all its obligations under the Trust Deed.
- 2.2 **Indemnity:** The Guaranteeing Subsidiary indemnifies the Supervisor on behalf of the Holders against all claims, liabilities, damages, losses and payments, and all costs, charges and expenses (including legal expenses on a full indemnity basis) and goods and services and similar taxes thereon incurred or sustained by the Supervisor or any Holders at any time as a direct or indirect consequence of:
 - (a) any Bond Moneys not being recoverable from the Issuer; or
 - (b) any monetary or other obligation of the Issuer to any Holder or the Supervisor (on behalf of the Holders) not being duly satisfied or performed by the Issuer.

- 2.3 **Payment:** If the Issuer fails to pay all or any part of the Bond Moneys on its due date, the Guaranteeing Subsidiary shall pay such moneys to the Supervisor on behalf of the Holders.

3. NATURE AND EXTENT OF OBLIGATIONS

- 3.1 **Liability not prejudiced:** The liability of the Guaranteeing Subsidiary under this deed shall not be abrogated, prejudiced or affected by:

- (a) the granting of time, credit or any indulgence or other concession to the Issuer or to any other guarantor by the Holders or any of them or by the Supervisor;
- (b) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any securities, documents of title, assets or of any of the rights of the Holders or any of them or of the Supervisor against the Issuer, or the Guaranteeing Subsidiary or any other guarantor;
- (c) anything done or omitted or neglected to be done by the Supervisor or the Holders or any of them whether in exercise of the authorities, powers and discretions vested in them by the Trust Deed or by any other dealing, matter or thing which, but for this provision, might operate to abrogate, prejudice or affect their respective guarantees;
- (d) the liability of any other guarantor of the Issuer ceasing from any cause whatever (including release or discharge by the Holders or any of them or by the Supervisor);
- (e) any other person joining in this, or giving any similar, guarantee and indemnity;
- (f) the dissolution, receivership or statutory management of the Issuer or any other guarantor of the Issuer;
- (g) the enforcement of, or failure to enforce, any rights of the Supervisor or any Holder under this deed, the Trust Deed or any other document, or under any law;
- (h) any other guarantor being incompetent to give this guarantee and indemnity, or failing to become, or remain, legally bound in whole or in part under any of them respectively;
- (i) any guarantee and indemnity (including any guarantee and indemnity given pursuant to the Trust Deed) held or taken being void, defective or informal;
- (j) the amalgamation, change in constitution, status or control, or reconstruction or reorganisation, of the Guaranteeing Subsidiary or any other person;
- (k) any amendment to, or variation of, the Trust Deed or any other document, or the Guaranteeing Subsidiary not receiving notice of any such amendment or variation; or
- (l) any other matter or thing whatever.

- 3.2 **Principal obligation:** This guarantee and indemnity shall be a principal obligation and shall be treated as in addition to, and not in substitution for or collateral to, any other right which the Supervisor may have under, or by virtue of, the Trust Deed, to the intent that the respective guarantees and indemnities may be enforced against the Guaranteeing Subsidiary without first having recourse to any such rights and without

taking steps or proceedings against the Issuer or any other guarantor and notwithstanding that any other right may be, in whole or in part, unenforceable by reason of any rule of law or equity and notwithstanding any other acts or omissions on the part of the Supervisor.

- 3.3 **Continuing guarantee:** Subject to clauses 3.4 and 3.9, this guarantee and indemnity shall be a continuing guarantee and indemnity and accordingly shall be irrevocable and unconditional and shall remain in full force and effect until the whole of the Bond Moneys have been paid or satisfied.
- 3.4 **Discretion:** The Supervisor may, as regards the Guaranteeing Subsidiary, unless otherwise directed by an Extraordinary Resolution, determine, from time to time, whether it shall enforce or refrain from enforcing any guarantee and indemnity and, unless otherwise directed as aforesaid, may, from time to time, make any arrangement or compromise with the Guaranteeing Subsidiary in relation to any matter arising pursuant to the Trust Deed which the Supervisor thinks expedient in the interests of the Holders.
- 3.5 **Restrictions:** Until all the obligations of the Guaranteeing Subsidiary to the Supervisor have been fully satisfied, the Guaranteeing Subsidiary is not entitled to exercise any right of subrogation or contribution, or to require marshalling, or to claim the benefit of, any security now or in the future held by the Supervisor for the payment of any Bond Moneys.
- 3.6 **Waiver of rights:** The Guaranteeing Subsidiary waives in favour of the Supervisor all its rights (including rights of subrogation, contribution and marshalling) against the Supervisor and the Issuer and any other guarantor or any other person so far as may be necessary to give effect to this guarantee and indemnity.
- 3.7 **No rights to security:** This guarantee and indemnity shall not prejudicially affect, or be prejudicially affected by, any other right or guarantee now or at any time held by the Supervisor in respect of the Bond Moneys but such other right or guarantee shall be deemed to be collateral hereto and the Guaranteeing Subsidiary will not, as against the Supervisor, in any way claim the benefit, or seek the transfer, of any such right or guarantee or any right of recourse.
- 3.8 **Reinstatement:** If any payment made to the Supervisor or to any Holder by, or on behalf of, the Issuer or the Guaranteeing Subsidiary is avoided by law, such payment shall be deemed not to have discharged or affected the liability of the Issuer or the Guaranteeing Subsidiary in respect thereof and, in that event, the Supervisor and the Guaranteeing Subsidiary shall be restored to the position in which each would have been, and shall be entitled to exercise all the rights which each would have had, if such payment had not been made.
- 3.9 **Release:** The Guaranteeing Subsidiary may be released from its obligations under this deed in accordance with clause 16.3 of the Master Trust Deed, provided that no release shall operate to release the Guaranteeing Subsidiary from the liability for the payment of any indebtedness or any other obligation for which it is liable or obligated to the Supervisor or the Holders independently of this deed.

4. TAX

- 4.1 **Deductions or withholdings:** All sums payable under this deed must be paid:
- (a) free of any restriction or condition;

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

4.2 **Non-resident withholding tax:** New Zealand non-resident withholding tax will be deducted from payments under this deed of interest or payments deemed by law to be interest to any Holder (including, if applicable, any person who beneficially derives interest (or payments deemed by law to be interest) under the relevant Bond under this deed) who is non-tax resident (including where such person derives such interest jointly with one or more other persons one of whom is tax resident). Unless the relevant non-tax resident Holder notifies the Guaranteeing Subsidiary that it elects that non-resident withholding tax be deducted from payments to it under this deed instead of Approved Issuer Levy, if the Guaranteeing Subsidiary is lawfully able to pay Approved Issuer Levy in respect of any payment under this deed of interest (or deemed interest) to non-tax resident Holders, the Guaranteeing Subsidiary, or the Registrar for the relevant Series on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the interest (or deemed interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment at the rate otherwise applicable.

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

4.4 **No gross-up:** The Guaranteeing Subsidiary will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made under this deed pursuant to clause 4.2 or 4.3. If, in respect of any Bond, the Guaranteeing Subsidiary becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives interest or deemed interest under the relevant Bond under this deed) in respect of any amount payable under this deed, then the Guaranteeing Subsidiary shall be indemnified by the relevant Holder (or other person) in respect of such liability. Any moneys paid by the Guaranteeing Subsidiary in respect of such liability may be recovered from the Holder (or other person) as a debt due to the Guaranteeing Subsidiary and may be withheld from any further payments to that Holder (or other person). Nothing in this clause 4.4 will prejudice or affect any other right or remedy of the Guaranteeing Subsidiary.

5. **GOVERNING LAW**

5.1 This deed shall be governed by and construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this deed.

Execution

[Insert execution block for Guaranteeing Subsidiary]

SCHEDULE 5

FORM OF DEED OF RELEASE

Deed dated

Parties

[●] Limited (“**Relevant Subsidiary**”)

Auckland International Airport Limited (“**Issuer**”)

The New Zealand Guardian Trust Company Limited (“**Supervisor**”)

INTRODUCTION

- (A) The Issuer and the Supervisor are parties to a Master Trust Deed dated 9 July 2004 as amended from time to time, as supplemented by a Supplemental Trust Deed dated **[●]** (together, “**Trust Deed**”) providing for the constitution and issue of Bonds by the Issuer.
- (B) Pursuant to the provisions of the Trust Deed, the Relevant Subsidiary has, under a deed of guarantee dated **[●]** (“**Guarantee**”), granted a guarantee and indemnity in favour of the Supervisor in respect of the obligations of the Issuer under the Trust Deed in relation to the Bonds.
- (C) The Relevant Subsidiary wishes to be released and discharged from all its obligations and liabilities under the Guarantee.

COVENANTS

- 1. Unless otherwise defined in this deed or the context otherwise requires, terms defined in the Trust Deed shall have the same meanings in this deed.
- 2. Each of the Issuer and the Relevant Subsidiary undertakes and warrants for the benefit of the Supervisor that:
 - (a) no Event of Default has occurred and remains unremedied; and
 - (b) the Relevant Subsidiary has ceased to be a Principal Subsidiary as disclosed in the most recent Financial Statements of the Group delivered to the Supervisor pursuant to clause 12.3 of the Master Trust Deed.
- 3. The Relevant Subsidiary is, by the execution of this deed by the parties hereto, released and discharged from its guarantee and other undertakings under or arising out of the Guarantee provided that this release shall not operate to release:
 - (a) the Relevant Subsidiary from the liability for the payment of any indebtedness or any other obligation for which it is liable or obligated to the Supervisor or the Holders independently of the Guarantee;
 - (b) any other Guaranteeing Subsidiary from liability in respect of the Bond Moneys; or

- (c) any other Subsidiary Guarantee or any other security held in respect of the Bond Moneys.
- 4. [Notwithstanding this release, the Guarantee continues for certain amounts including amounts which the Supervisor may subsequently be required to repay under any law. In particular, the release set out under paragraph 3 above is without prejudice to the rights of the Supervisor where any payment by the Issuer or the Guarantor received or recovered by, or on behalf of the Supervisor, is avoided by law. Where any such payment is avoided by law:
 - (a) such payment shall be deemed not to have affected or discharged the liability of the Guarantor under the Guarantee in favour of the Supervisor, and the Guarantor and the Supervisor shall be restored to the position in which each would have been if such payment had not been received or recovered; and
 - (b) the Supervisor shall be entitled to exercise all of its rights under the Guarantee which it would have been entitled to exercise if such payment had not been received or recovered.] ***[Note: To be considered on a case by case basis.]***
- 5. This deed is governed by, and shall be construed in accordance with, the laws of New Zealand.

Execution

[Insert execution block for relevant parties]