

**Anthony  
Harper**

# **Debenture Trust Deed**

**General Finance Limited**

**and**

**Bridges Financial Services Limited**

**and**

**Covenant Trustee Services Limited**

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# Debenture Trust Deed

Date 30 June 2026

## Parties

- 1 **General Finance Limited** a company having its registered office at Auckland (New Zealand company number 860336) (**Company**)
- 2 **Bridges Financial Services Limited** a company having its registered office at Auckland (New Zealand company number 942179) (**Charging Subsidiary**)
- 3 **Covenant Trustee Services Limited** a company having its registered office at Auckland (New Zealand company number 2194946) (**Trustee**)

## Background

- A The Company and Corporate Trust Limited executed a debenture trust deed originally dated 2 November 2004 (**Original Deed**).
- B On 1 March 2016, Corporate Trust Limited and Covenant Trustee Services Limited amalgamated to become Covenant Trustee Services Limited, with the effect being that the Trustee became the trustee.
- C On 1 November 2024, Bridges Financial Services Limited (**Charging Subsidiary**) became a charging subsidiary for the purposes of the Existing Trust Deed.
- D The Original Deed, as amended, varied, and amended and restated from time to time, has most recently been amended and restated by a deed dated 28 May 2025 (**Existing Trust Deed**).
- E The Company wishes to amend the Existing Trust Deed in order to:
  - (a) reflect changes to the Company's required minimum capital ratio which will take effect on 1 October 2026; and
  - (b) make other minor amendments to the Existing Trust Deed.
- F Clauses 13.1 and 13.2 of the Existing Trust Deed provide that Existing Trust Deed may not be amended without the consent of the Trustee, who must not consent unless (amongst other things) the Company and the Trustee are satisfied that the amendment does not have a material adverse effect on the Stockholders. The Company and the Trustee are satisfied that the amendments contained in this Deed do not have a material adverse effect on the Stockholders, and that the amendments are otherwise permitted by the Existing Trust Deed and the FMC Act.
- G The Company, the Trustee, and the Charging Subsidiary wish to enter into this Deed to record the variation of the Existing Trust Deed.

## Operative provisions

- 1 The Company, the Trustee, and the Charging Subsidiary agree that with effect on and from 30 June 2026 (**Effective Date**) the Existing Trust Deed is amended and restated by rescinding each of the existing clauses of the Existing Trust Deed and by substituting the clauses of this Deed so that the Existing Trust Deed is replaced by the terms of this Deed.
- 2 All Stock on issue as at the Effective Date is deemed to be Stock issued under this Deed, and the Company's obligations in respect of that Stock continues on the terms set out in this Deed.

## Agreed terms

### 1 Definitions and construction

#### 1.1 Interpretation

- (a) This Trust Deed shall be construed and take effect as a contract and declaration of trust made in New Zealand.
- (b) All references to money in this Deed shall unless the contrary is stated be deemed to be references to New Zealand currency.

#### Definitions

#### 1.2 In this Deed unless the context otherwise requires:

**3-Month Liquidity Period** means, in respect of each Liquidity Report, the three-month period immediately following the relevant month to which the Liquidity Report relates.

**Appropriate Rate** means a rate of interest 2% above the ninety day non-bank commercial bill rate (expressed as a percentage yield per annum) in New Zealand as from time to time published by Reuters News Services or if no such rate is so published 2% above the average rate payable by the Trustee to its bankers at the relevant time on overdrafts.

**Auditors** means the person or persons for the time being holding the office of auditor of the Company as provided by the FMC Act.

**Business Day** means a day on which registered banks are open for general banking business in Auckland.

**Capital** means, at any date, the Charging Group's capital calculated on that date on a consolidated basis in accordance with regulation 10 of the NBDT Regulations.

**Capital Ratio** means, at any date, the Charging Group's capital ratio calculated on that date on a consolidated basis in accordance with regulation 9 of the NBDT Regulations.

**Cash** means notes and coins and on-call deposits held with registered banks in New Zealand which would be disclosed if a consolidated statement of financial position of the Charging Group were prepared as at that date in accordance with NZ GAAP.

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

**Charging Group Member** means each member of the Charging Group.

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

**Companies Act** means the Companies Act 1993.

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

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

**Credit Rating** has the meaning set out in the NBDT Regulations.

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

**Directors** means a director or the directors of the Company acting in accordance with the Constitution of the Company for the time being.

**Directors' Quarterly Report** means a certificate of the Directors furnished to the Trustee in accordance with clause 6.1(h).

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

**Extraordinary Resolution** means a resolution approved by Stockholders holding Stock with a combined nominal value of no less than 75% of the nominal value of Stock held by those Stockholders who are entitled to vote and who vote on the question.

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

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

**Liabilities** means liabilities which should be classified as such by NZ GAAP but does not include Contingent Liabilities.

**Liquidity** means Cash or access to a standby liquidity facility provided by a registered bank or any other financial institution approved in writing by the Trustee.

**Liquidity Cover Ratio** means a ratio derived as follows:

$$\text{LCR} = \frac{\text{L} + \text{LR}}{\text{DR}}$$

Where:

L = Liquidity

LR = expected loan receivables within the relevant quarterly period measured by the ratio.

DR = expected gross deposit redemptions within the relevant quarterly period measured by the ratio.

**Liquidity Position** means the Company's Liquidity position, as disclosed in each Liquidity Report.

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

**Majority of Stockholders** means:

- (a) when the total number of Stockholders is not more than five, all Stockholders, and
- (b) when the total number of Stockholders is more than five, Stockholders not being less than five in number (including every Major Security Stockholder) and holding more than one-half in Principal amount of the Stock.

**Major Security Stockholder** means a holder for the time being of Security Stock where the Principal amount of the Security Stock is equal to or greater than 30% of the aggregate Principal amount of all Stock outstanding for the time being.

**Market Valuation** means:

- (a) in relation to Real Property, the amount of a valuation made at any time within twelve months (or such shorter period as the Trustee directs pursuant to clause 5.4(e)) of the date at which the same falls to be determined hereunder by a member of the New Zealand Institute of Valuers chosen by the Company and approved by the Trustee.
- (b) in relation to shares or other equity securities or units in any company, unit trust or other person which are listed on a recognised securities exchange, the weighted average sale price over the previous 5 days on which the shares were traded, and in relation to unlisted shares or other equity securities or units in any company, unit trust or other person, the net tangible asset backing of those shares, equity securities or units.

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

**Occupied Premises** means any land and buildings which are owned by a Charging Group Member and occupied (fully or partially) by it for the purposes of its business.

**Occupied Premises Mortgage** means any mortgage of the Occupied Premises.

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

**Personal Property** means, in relation to any company, all of its present and after-acquired personal property (as defined in the PPSA);

**PPSA** means the Personal Property Securities Act 1999;

**Principal** means:

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

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

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

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

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

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

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

**Register** means the register of the Stock to be kept pursuant to this Deed.

**Registered Address** in respect of a Stockholder means his address for the time being recorded in the Register.

**Related Party** means a related party as defined in section 6 of the NBDT Act.

**Related Party Exposure** means, at any date, the Charging Group's related party exposures calculated on that date on a consolidated basis in accordance with regulation 24 of the NBDT Regulations.

**Related Party Transaction** means any transaction of any nature between the Company or any other Charging Group Member and a Related Party including, but not limited to:

- (a) the provision of financial accommodation by the Company or any other Charging Group Member to a Related Party;
- (b) the investment by the Company or any other Charging Group Member in the capital or equity of a Related Party;
- (c) the transfer of assets between the Company or any other Charging Group Member and a Related Party;

- (d) the provision of services by or to the Company or any other Charging Group Member to or by a Related Party; and
- (e) the giving of a guarantee, indemnity or other commitment by the Company or any other Charging Group Member to, at the request of, or for the benefit of, a Related Party,
- (f) but does not include:
- (g) the provision of financial accommodation by a Related Party to a Charging Group Member on arm's-length commercial terms, or any payment by a Charging Group Member to that Related Party of principal, interest or other moneys in respect of that financial accommodation in accordance with those terms;
- (h) transactions with a Related Party in relation to investments of a Charging Group Member which are, or are to be, held by that Related Party as nominee or trustee for that Charging Group Member;
- (i) payment of reasonable salary and other remuneration benefits to a Related Party who is employed by a Charging Group Member;
- (j) payment of reasonable remuneration and expenses to a Director for his or her services as a Director of a Charging Group Member; or
- (k) any transaction whereby an amount is owing to the Charging Group by, or by the Charging Group to, a Related Party as a result of an apportionment of costs for shared facilities or services, so long as the apportionments are made on a reasonable and commercial basis and the resulting intercompany balances are cleared annually before the end of each financial year of the Company.

**Secured Indebtedness** means all moneys payable on the Stock and all other moneys (including, for the purposes of sections 71 and 72 of the PPSA, future advances) payable to or at the direction of the Trustee or to any Stockholder under or pursuant to this Deed or the terms of issue of any of the Stock.

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

**Security Stock** means Stock issued by the Company in accordance with clause 2.2.

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

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

**Stock** means all debenture stock or other secured indebtedness by whatever name called, constituted and issued by the Company pursuant to this Deed from time to time and for the time being outstanding and uncanceled and includes the Principal represented by such stock.

**Stock Certificate** means a certificate, transaction statement or other written acknowledgement of Stock issued by the Company pursuant to clause 2.12 or 2.13 evidencing that the person named is the holder of the amount of Stock stated in the certificate.

**Stockholders** means the several persons from time to time entered in the Register as the holders of Stock and includes their personal representatives.

**Subordinated Debt** means a liability which:

- (a) on a liquidation of the debtor company concerned is to the satisfaction of the Trustee either to be deferred in point of payment to all other liabilities (not being liabilities which are similarly deferred) whether secured or unsecured, present or future (**Preferred Liabilities**) of the debtor company;
- (b) cannot be repaid, if repayment would cause the debtor company concerned to be in breach of this Deed; and
- (c) in respect of which any distribution to the creditor on account of the liability will be subject to an express or implied trust to account to any one or more creditors entitled to Preferred Liabilities.

**Subsidiary** means a company which is for the time being a subsidiary of the Company within the meaning of Section 5 of the Companies Act and any other person to be treated as a subsidiary in terms of New Zealand Equivalent to International Accounting Standard 27 of the Institute of Chartered Accountants of New Zealand (or any substitute accounting standard) as amended from time to time.

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

**Total Contingent Liabilities** means, at any time, the aggregate amount of all Contingent Liabilities of the Charging Group at that date other than any Contingent Liability:

- (a) that is secured to the Charging Group by a first ranking security interest over an asset in all respects acceptable to the Trustee; or
- (b) in respect of which the Charging Group has the benefit of a guarantee or indemnity from a bank, other financial institution or other person, in any case having a credit rating or credit worthiness acceptable to the Trustee.

**Total Liabilities** means, at any time, the aggregate of:

- (a) the amounts of all Liabilities of the Charging Group as would be disclosed in a Statement of Financial Position if a Statement of Financial Position was then prepared;
- (b) Total Contingent Liabilities; and
- (c) the amount payable on redemption of Redeemable Shares,

but does not include the principal amount of Subordinated Debt or Convertible Notes.

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

- (a) 75% of the market value, as determined by the latest Market Valuation, of any Real Property of the Charging Group;
- (b) the market value, as determined by the latest Market Valuation, of any of the Charging Group's shares or other equity securities or units in any company, unit trust or other person; and
- (c) the book values of all other Tangible Assets of the Charging Group as would be disclosed in a Statement of Financial Position if a Statement of Financial Position was then prepared adjusted by excluding the book values of any Tangible Assets situated outside New Zealand in respect of which the Trustee is not satisfied that there is a valid and effective security interest in favour of the Trustee enforceable in accordance with the laws of the place where the relevant assets are situated.

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

**Trustee** means the trustee or trustees for the time being under this Deed.

**Value of Related Party Transaction** means:

- (a) in respect of the provision of financial accommodation or the investment of capital or equity, the principal amount of the financial accommodation or the investment;
- (b) in respect of the transfer of assets or the provision of services, the consideration, or if the services are ongoing, the aggregate consideration during the relevant twelve month period;
- (c) in respect of guarantees, indemnities or other commitments, the maximum principal amount of the guarantee, indemnity or other commitment; and
- (d) in respect of any other Related Party Transaction, the amount thereof or the consideration therefor paid or payable during the relevant twelve month period.

**Construction of certain references**

1.3 In this Deed, unless the context otherwise requires, any reference to:

**class** and **supervisor** have the meanings given to them in the FMC Act.

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

**control** means the possession, direct or indirect, of the power to direct, or cause the direction of, the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

**guarantee** means any guarantee, indemnity or other obligation (whatever called) to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment of, indemnify against the consequences of default in the payment of, or otherwise be responsible for, any liability of any other person.

**month** means calendar month.

**owing** includes unpaid.

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

**redemption** includes repayment and **redeem** includes repay and vice versa. a **security interest** includes:

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

but does not include:

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

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

The singular includes the plural and vice versa.

#### **PPSA**

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

#### **References to clauses**

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

#### **References to statutes**

- 1.6 References to any statute shall refer also to any regulations, orders or notices made under that statute and in all cases include any statutory modification amendment or re-enactment of that statute or provisions substituted for that statute, for the time being in force.

#### **Clause and paragraph headings**

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

#### **Schedules**

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

#### **No postponement of attachment or subordination**

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

#### **Companies Act terms**

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

#### **Conflicts with FMC Act and FMC Regulations**

- 1.11 Notwithstanding section 107 of the FMC Act, in the case of Security Stock and Stockholders that hold Security Stock, in the event that any provision of this Deed conflicts with a provision in the FMC Act or the FMC Regulations addressing the same subject matter, the FMC Act or the FMC Regulations (as applicable) shall prevail, unless this Deed imposes a higher standard. The Trustee's determination of which provision applies shall be binding except in the case of manifest error.

#### **Conditions of licence**

- 1.12 Where:
- (a) any conditions of licence are imposed on the Company's licence under the NBDT Act which have the effect of modifying the requirements imposed by the NBDT Regulations; and
  - (b) the Company and the Trustee are satisfied that modification does not have a material adverse effect on the Stockholders,

references in this Deed to the NBDT Regulations are to be read as references to the NBDT Regulations as modified by those conditions of licence.

## **2 Constitution and issue of Stock**

### **Creation of Stock**

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

### **Security Stock**

- 2.2 Stock issued pursuant to this Deed may be issued to any person as Security Stock in the form or to the effect of the Security Stock Certificate set out in the Schedule 2 (including the conditions set out in Schedule 3) and such Security Stock may be issued as continuing security for the payment of any present or future liabilities (whether by way of indemnity, guarantee or otherwise) loans, credits, advances, discounts and other accommodation of, to, for on account of or at the request of the Company or any other Charging Group Member together with interest and other moneys as in the relevant Stock Certificate so provided.

### **Provisions relating to Security Stock**

- 2.3 Security Stock issued pursuant to this Deed shall not be transferable except where the transfer occurs by operation of law and shall at all times be held on and subject to the express condition (which shall be mentioned in every Stock Certificate) that on a distribution of the moneys available for payment to Stockholders pursuant to the provisions of clause 8.14 every holder of Security Stock shall be entitled to payment *pari passu* with the other Stockholders as to Principal in respect only of the Principal of the Security Stock held by that Stockholder as the case may be and as to interest, only to interest calculated in accordance with the provisions of the respective Stock Certificate issued in accordance with this Deed.

### **Ranking of Stock**

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

### **Purchase by Charging Group**

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

### **Cancellation**

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

## 2.7 **Covenant to repay Stock**

- (a) The Company acknowledges its indebtedness to the Trustee in respect of the Principal and interest outstanding from time to time in respect of the Stock whenever such Stock is issued and covenants with the Trustee to pay to the Trustee when due, in the currency and manner in which the same is payable, at such place as the Trustee shall by notice in writing direct, the Principal of such Stock and that until such payment the Company will pay to the Trustee interest on such Stock in the currency and manner in which such interest is payable in accordance with the terms and conditions of issue of such Stock.
- (b) Notwithstanding the provisions of sub-clause (a) the Company shall, unless and until otherwise requested by the Trustee or prevented by law, pay all Principal and interest in respect of the Stock issued by it to the Stockholder in accordance with the terms and conditions of issue of such Stock and each such payment shall operate as payment to the Trustee in satisfaction, to the extent of the payment, of the indebtedness acknowledged by this clause.

### **Right to deduct withholding and other taxes**

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

### **Unclaimed payments to Stockholders**

- 2.9 If any payment made to any Stockholder pursuant to clause 2.7 at the Stockholder's last Registered Address shall be returned unclaimed the amount of the payment shall (unless notice of a change of Registered Address has in the meantime been received by the Company) be retained by the Company and held for such Stockholder without liability to invest or pay any interest on such amount. Any money unclaimed for 6 years or longer shall be forfeited in accordance with the Unclaimed Moneys Act 1971.

### **Validity of Stock**

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

### **Enforcement of Stockholders rights**

- 2.11 No Stockholder shall be entitled to proceed directly against the Company or any other Charging Group Member unless the Trustee fails to enforce any rights and remedies against the Company or any other Charging Group Member after having become bound to do so in accordance with the provisions of this Deed.

### **2.12 Stock Certificates**

- (a) The Company shall, subject to the conditions of issue of the Stock, issue to every Stockholder a Stock Certificate or several Stock Certificates in reasonable denominations such Stock Certificates to be in or to the effect of the form set out in either Schedule 1 or 2 (as appropriate) including the conditions set out in Schedule 3 (or in such other form as the Trustee shall approve) and in the case of holders of bearer Stock and Stock which is repayable in a currency other than New Zealand currency in such form as the Trustee approves.

- (b) The Stock shall be held with the benefit of and subject to the provisions of this Deed, the conditions endorsed on the Stock Certificates and the further conditions contained in Schedule 3 or such (if any) of them as are applicable respectively and any further special conditions not inconsistent with this Deed as may be required by the terms of issue of the Stock or as may be required by or approved by the Trustee and such provisions, conditions and special conditions shall be binding on the Company and the Stockholders and all persons claiming through them respectively.
- (c) Such Stock Certificates shall be executed by the Company as prescribed by the Company's Constitution or on behalf of the Company by the manual or facsimile signature of any person or persons appointed by the Directors for the purpose, provided that Stock Certificates in the form of transaction statements or other written acknowledgements need not be executed by the Company.

#### **Replacement Stock Certificates**

2.13 The Company may at any time issue:

- (a) several new Stock Certificates in respect of the Stock specified in any Stock Certificate in exchange for the latter; and
- (b) a new Stock Certificate to the holder of Security Stock in exchange for any existing Stock Certificate or Certificates for such Stock (whether denominated in the same currency as the existing Stock Certificate or Certificates or not),

provided always that the aggregate nominal amount of the Stock specified in any such new Stock Certificate or Certificates shall not exceed the aggregate nominal amount of the Stock specified in the existing Stock Certificate or Certificates which are to be exchanged or (as the case may be) the aggregate nominal amount of such Stock plus the nominal amount of any additional Security Stock to be issued by the Company to the holder of the Stock Certificate or Certificates being exchanged contemporaneously with such exchange.

2.14 **Alteration of terms and conditions of issue of any Stock**

- (a) Subject to clause 13, the Company may at any time and by prior arrangement with the Stockholder or group of Stockholders concerned alter any of the terms or conditions attached to any Stock but so that such alteration shall not be inconsistent with any of the provisions of this Deed.
- (b) Details of any such alteration shall be recorded in the Register in respect of the Stock affected and the Company may issue a new replacement Stock Certificate or Certificates in respect of such Stock embodying the terms and conditions of any such alteration.

#### **Register**

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

- (a) the Company shall comply with all statutory requirements and all requirements of the Trustee applicable to the Register;
- (b) the Trustee, any Receiver, any Stockholder and any person authorised in writing by any of such persons may at all reasonable times inspect the Register and take copies of and extracts from the same;
- (c) the Register may be closed for periods not exceeding thirty days in total in any one year;
- (d) the Register shall be audited by or to the satisfaction of the Auditors at regular intervals of not more than twelve months or on request in writing by the Trustee.

#### **Transferability restricted**

- 2.16 Stock issued pursuant to (or deemed to be issued pursuant to) this Deed shall not be transferable except where the transfer occurs by operation of law. This clause applies notwithstanding any conditions on which Stock was originally issued.

### **3 Guarantee by Charging Group**

#### **Guarantee**

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

#### **Payment**

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

#### **No discharge**

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

#### **Principal obligation**

- 3.4 This guarantee shall be a principal obligation and shall be treated as in addition to and not in substitution for or collateral to any other security or right which the Trustee may have under or by virtue of this Deed and in particular shall be independent of any other security to the intent that

this guarantee may be enforced against each Charging Group Member without first having recourse to any such securities or rights and without taking steps or proceedings against the Company or any other guarantor (including any Charging Group Member) and notwithstanding that any other security may be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Trustee of any other security or any acts or omissions on the part of the Trustee.

**Continuing guarantee**

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

**Enforcement**

- 3.6 The Trustee may as regards all or any of the Charging Group Members (unless otherwise directed in writing by any Major Security Stockholder or by the registered holder or holders of a majority in Principal amount of Stock or by an Extraordinary Resolution) determine from time to time whether it shall enforce or refrain from enforcing this guarantee and unless otherwise directed may from time to time make any arrangement or compromise with any Charging Group Member which the Trustee may think expedient in the interests of the Stockholders.

**Payments in gross**

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

**Suspense account**

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

**Other security collateral**

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

**Payments avoided**

- 3.10 If any payment made to the Trustee or to any Receiver appointed by the Trustee or to any Stockholder by or on behalf of any Charging Group Member be voided by law such payment shall be deemed not to have discharged or affected the liability of each Charging Group Member for

the payment or any security interest by any Charging Group Member in favour of the Trustee in respect of the payment and, in that event, the Trustee and each Charging Group Member shall be restored to the position in which each would have been, and be entitled to exercise all the rights which each would have had, if such payment had not been made.

#### **Rights suspended**

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

#### **Principal debtor**

- 3.12 Although as between the Company on the one hand and each other Charging Group Member on the other hand, the joint and several liability of each other Charging Group Member to the Trustee may be that of sureties only, nevertheless, as between each other Charging Group Member on the one hand and the Trustee on the other hand, the liability of each other Charging Group Member shall be deemed to be the liability of a principal debtor and the security interests given by each Charging Group Member to the Trustee by or pursuant to this Deed shall constitute security for the Secured Indebtedness and such liability shall not be affected or diminished nor shall such security interests over the Secured Property be released or discharged by any of the matters referred to above or by any other act indulgence or omission which but for this present provision would have operated to release any Charging Group Member wholly or partly from its liability hereunder to the Trustee.

## **4 Security interests and dealings with assets**

#### **Security interests by Company**

- 4.1 As a continuing security for the payment of the Secured Indebtedness, the Company grants to the Trustee:
- (a) a security interest in the Personal Property; and
  - (b) a charge over the Other Property.

#### **Nature of charge over Other Property**

- 4.2 The charge created by this Deed in respect of Other Property is:
- (a) a floating charge over Other Property in respect of which a fixed charge is not legally and fully effective; and
  - (b) a fixed charge over all other Other Property.

#### **Crystallisation of floating charge**

- 4.3 To the extent that the charge over Other Property is a floating charge in accordance with clause 4.2(a), that charge will become a fixed charge automatically and with immediate effect:
- (a) without the need for notice by the Trustee, on the occurrence of an Event of Default; or
  - (b) on notice by the Trustee to the Company at any time, if the Trustee believes that any of that Other Property is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in contravention of this Deed.

#### **Security interests over assets situated outside New Zealand**

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

#### **Negative pledge**

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

#### **Permitted security interests**

- 4.6 Subject always to the provisions of clause 5.1(b), the Company or any other Charging Group Member may:
- (a) permit to subsist the Occupied Premises Mortgage;
  - (b) create a Prior Security Interest over any asset to secure any moneys to be borrowed, raised or otherwise owing in purchasing or acquiring such asset if at the time of such borrowing the aggregate of all moneys secured by existing Prior Security Interests (excluding the Occupied Premises Mortgage) together with the money so proposed to be borrowed or raised or to be otherwise owing and secured would not exceed 5% of Total Tangible Assets; and
  - (c) permit to subsist any security interest existing over the assets of a company immediately prior to that company becoming a Charging Subsidiary provided that:
    - (i) such security interests were not created in contemplation of that company becoming a Charging Subsidiary and
    - (ii) such security interests are discharged within 6 months after that company becomes a Charging Subsidiary.

#### **Ranking of Prior Security Interests**

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

#### **Partial releases of Charging Group Members or Secured Property**

- 4.8 At any time before the Date of Enforcement, on the request in writing and at the cost of the Company and without approval by the Stockholders (unless in the opinion of the Trustee the interests of the Stockholders would be materially prejudiced) and on being satisfied as a result of receiving such valuations or other evidence as the Trustee shall specify that full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release and on and subject to such terms and conditions as in its discretion the Trustee may specify, the Trustee may:
- (a) release any Charging Group Member from its guarantee and other obligations under or pursuant to this Deed; and/or

- (b) release any part of the Secured Property from the operation of any security interest created by or pursuant to this Deed; and/or
- (c) execute all documents which may be necessary to effect any such release or discharge, provided always that:
  - (d) the Trustee shall not concur in the sale and subsequent release of the whole or a major part of the business or undertaking of the Charging Group (viewing the Charging Group as a single entity) without the sanction of an Extraordinary Resolution; and
  - (e) in any other case, where the Trustee is not satisfied that full market or otherwise reasonable value is being received or that the circumstances otherwise justify the release, the Trustee may nevertheless concur in the release or discharge with the consent of a Majority of Stockholders.

**Proceeds of sale of released assets**

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

**Further assurance**

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

**Appointment of Trustee as attorney**

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

**Quiet enjoyment**

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

## 5 Financial limitations and special covenants

**Financial limitations**

- 5.1 The Company and each of the other Charging Group Members covenants with the Trustee that none of them will at any time after the date of this Deed:
- (a) **Total Liabilities limitation**  
 permit the Total Liabilities to exceed 95% of Total Tangible Assets;

(b) **Prior Security Interests limitation**

borrow or raise any money on the security of any Prior Security Interest when the aggregate of all principal moneys then secured by existing Prior Security Interests (excluding the Occupied Premises Mortgage) plus the moneys so proposed to be borrowed or raised and secured would exceed 5% of Total Tangible Assets.

(c) **Capital Ratio limitation**

permit the Charging Group's Capital Ratio to be:

- (i) less than 9%, if the Company has a Credit Rating; or
- (ii) less than 15%, if the Company does not have a Credit Rating.

**Additional financial limitation**

- 5.2 Without limiting clause 5.3(f), the Company and each of the other Charging Group Members covenants with the Trustee that, at all times, the Company will manage its Liquidity to ensure that, in respect of each 3-Month Liquidity Period, the projected Liquidity Position is positive in respect of each of the three months in that 3-Month Liquidity Period. A breach of this clause is an event of review under clause 8.2.

**Negative covenants**

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

(a) **Restriction on assets**

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

- (i) the Occupied Premises;
- (ii) Real Property or shares which are held as security for the provision of financial accommodation, or are held as a result of enforcing any such security pending realisation;
- (iii) premises leased and occupied by the Company or any Charging Group Member for the purposes of its business; or
- (iv) shares in any other Charging Group Member;

(b) **Restriction on Related Party Transactions**

enter into any Related Party Transaction except in the ordinary course of business and where the terms of the Related Party Transaction are evidenced in writing and the consideration for the Related Party Transaction is on the basis of an arm's-length transaction as between two unrelated parties contracting in an open market, provided however that in any twelve month period the aggregate Value of Related Party Transactions entered into or remaining outstanding shall not exceed 2% of Total Tangible Assets as at the end of that twelve month period;

(c) **Restriction on Related Party Exposures**

at any time permit the Charging Group's aggregate Related Party Exposures to exceed 10% of the Charging Group's Capital;

(d) **Restrictions on business**

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

(e) **Exposure limits**

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

- (f) **Liquidity requirements**  
at any time allow the Liquidity Cover Ratio to fall below 1.25 times;
- (g) **Occupied Premises Mortgage**  
allow the principal amount secured by the Occupied Premises Mortgage at any time to exceed 66% of the Market Valuation of the Occupied Premises at that time;
- (h) **Disposal of undertaking**  
sell or transfer as a going concern, whether by a single transaction, or any series of transactions whether related or not, the whole of its undertaking, or any part or parts of its undertaking comprising more than 25% of Total Tangible Assets;
- (i) **Writing up of assets**  
write up the value of any asset in its books of account beyond the fair market value as approved by the Auditors at the time of such writing up;
- (j) **Compromise or amalgamation**  
enter into or make any proposal for a compromise or amalgamation (other than any amalgamation with another Charging Group Member, prior written notice of which has been given to the Trustee); or
- (k) **Distributions**  
make any distribution other than:
  - (i) from a Charging Group Member to the Company;
  - (ii) by way of redemption of Redeemable Shares; or
  - (iii) by way of dividend out of profits,
  - (iv) and in any event no distributions of any kind are to be made at any time after an Event of Default has occurred and is continuing.

**General covenants**

- 5.4 Each of the Company and the other Charging Group Members covenants with the Trustee that it will:
- (a) **Attend shareholders' meetings of the Company**  
permit the Trustee through its agent, attorney or representative to attend any shareholders' meeting of the Company and to be heard on any part of the business of the meeting which concerns the Trustee or the Stockholders;
  - (b) **Carry on business**  
carry on and conduct its business in an efficient, prudent and businesslike manner;
  - (c) **Meet obligations**  
duly pay all liabilities and comply with all obligations binding on it by law, contract or otherwise;
  - (d) **Information**  
whenever requested, to give to the Trustee or any chartered accountant or Receiver or other person appointed by the Trustee such information as they shall require with respect to all matters relating to its affairs and all matters relating to the Stockholders and ensure that all such information is true and accurate in all material respects as at the date when that information is provided and will not omit to state any fact or circumstance which would make that information untrue, inaccurate or misleading in any material respect;

- (e) **Obtain valuation of Real Property**  
if requested to do so at any time by the Trustee, obtain, at the Company's expense, a valuation of any Real Property owned by a Charging Group Member for the purpose of determining its Market Valuation, provided that the Trustee shall not request such valuations at lesser intervals than three months;
- (f) **Events of default**  
promptly on becoming aware of the same notify the Trustee of the occurrence of any Event of Default and any event or circumstance which:
  - (i) with the lapse of time, giving of notice or fulfilment of any other requirement would constitute an Event of Default; or
  - (ii) may have a material adverse effect on the Company,
 giving full details of it and of any action taken (or to be taken) as a result;
- (g) **Maintain consents**  
maintain in full effect all consents required to enable it to perform or comply with its material obligations under this Deed;
- (h) **Compliance with laws, etc.**  
duly and promptly comply with all laws, directives and consents the non-compliance with which might give rise to a security interest or have a material adverse effect on the Company or may adversely and materially affect the rights or security of the Trustee or any Stockholder under this Deed; and
- (i) **Compliance with FMC Act and FMC Regulations**  
notwithstanding clause 5.4(h), duly and promptly comply with the FMC Act and the FMC Regulations.

## 6 Reports and information for Trustee

### Reports and information

6.1 The Company covenants with the Trustee that it will:

- (a) **Furnish annual accounts**  
furnish or cause to be furnished directly by the Auditors to the Trustee within 3 months (or such further time as the Trustee agrees in writing) after the close of each financial year of the Company:
  - (i) the Statement of Financial Position and statement of financial performance of the Company; and
  - (ii) if there are any other Charging Group Members, a separate consolidated Statement of Financial Position and consolidated statement of financial performance of the Charging Group,
 each duly audited and signed by 2 Directors together with all documents and reports required by the FMC Act to be annexed to or to accompany such statements;
- (b) **Furnish semi-annual accounts**  
furnish or cause to be furnished to the Trustee within 2 months (or such further time as the Trustee agrees in writing) after the close of each financial half year of the Company:
  - (i) the statement of financial position and statement of financial performance of the Company at the end of and in respect of that half year; and

(ii) if there are any other Charging Group Members, a separate consolidated statement of financial position and consolidated statement of financial performance of the Charging Group at the end of and in respect of that half year, each signed by 2 Directors.

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

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

- (i) copies of the financial statements referred to in clause 6.1(a), each duly audited and signed and made up as at the next monthly management accounting date of the Company occurring after the expiry of the notice, or as at such other date as the Trustee and the Company agree, together with all documents and reports required by the FMC Act to be annexed to or to accompany such statements; and
- (ii) a report by the Auditors setting out the information referred to in clause 6.1(g) in respect of the financial statements so requested with such adaptations as may be necessary or such of that information as may be required by the Trustee,
- (iii) such financial statements and Auditors report to be provided within two months after the relevant accounting date, or within such longer period as the Trustee may in its discretion agree;

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

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

(e) **Furnish accounts of Subsidiaries**

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

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

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

(g) **Auditors' annual report**

furnish to the Trustee at the same time as there is furnished to the Trustee the Statement of Financial Position a separate report by the Auditors stating:

- (i) whether or not in the performance of their duties as auditors they have become aware of any matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Trustee by the FMC Act or by this Deed or by law and if so, giving particulars of such matter;
- (ii) whether or not their audit has disclosed any matter (and if so particulars of such matter) calling in their opinion for further investigation by the Trustee in the interests of Stockholders;
- (iii) that they have perused the quarterly Directors' Quarterly Report given since the last report by the Auditors and that so far as matters which they have observed in the performance of their duties as auditors are concerned the statements made in paragraphs 2 and 3 of each such certificate are fairly stated and that, in their opinion, the statement made in paragraph 1 of each such certificate is reasonable;

(h) **Directors' Quarterly Report**

within 4 weeks (or such further time as the Trustee agrees in writing) after the end of each quarter of each financial year and if so required by the Trustee on or before the last day of the month following any month during which the Trustee shall request the same (which request shall only be made if the Trustee considers that special circumstances warrant such request and so certifies in writing to the Company specifying such special circumstances) furnish to the Trustee a certificate signed by not less than 2 Directors on behalf of the Directors in or to the effect of the form set out in Schedule 5;

(i) **Monthly accounts and reports**

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

- (i) a liquidity report of the Charging Group for that month in such form as the Trustee may reasonably require;
- (ii) a capital adequacy report as at the end of that month in such form as the Trustee may reasonably require;
- (iii) a Trust Deed financial ratio compliance report as at the end of that month in such form as the Trustee may reasonably require;
- (iv) a copy of the management accounts of the Charging Group for that month prepared by the Directors; and
- (v) a report of the Charging Group for that month in, or to the effect of, a form to be agreed by the Company and the Trustee outside of this Deed.

(j) **Change in Subsidiaries**

forthwith give notice in writing to the Trustee of:

- (i) the acquisition or formation by the Company or any other Charging Group Member of any Subsidiary including its name and furnish to the Trustee a copy of the most recent statement of financial position and statement of financial performance of any Subsidiary so acquired;
- (ii) any change in the shareholding of a Charging Group Member;

(k) **Give notice if financial limits exceeded or covenants breached**

forthwith give notice in writing to the Trustee if:

- (i) any of the financial limits imposed by clauses 5.1, 5.2 or 5.3 have been or are about to be exceeded;
- (ii) the Company or any other Charging Group Member fails to comply with any other covenant in clause 5.3; or
- (iii) the Charging Group's Capital Ratio is within 2% of the minimum percentage in clause 5.1(c) (for example if the Capital Ratio in clause 5.1(c)(ii) is 15% and the Charging Group's Capital Ratio for that period is 16%); and

(l) **Notice of proceedings**

forthwith give notice to the Trustee of the service of any material notice affecting the Secured Property or any part of them (and not being in connection with the normal conduct of its business) or of the commencement of any proceedings which materially and adversely affect the same.

## 7 Charging Subsidiaries

### Further Charging Subsidiaries

- 7.1 The Company shall procure each Subsidiary, promptly on it becoming a Subsidiary, becomes a Charging Subsidiary by executing registering and delivering to the Trustee a deed in the form or substantially in the form prescribed in Schedule 4 guaranteeing and securing the Secured Indebtedness and agreeing to become bound by this Deed as a Charging Subsidiary.

### Compliance by Charging Subsidiaries

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

## 8 Enforcement of security on default

### When security is enforceable

- 8.1 Subject to clauses 8.4 and 9.3, the security constituted by this Deed shall become enforceable on the happening of any one or more of the following events:
- (a) **Non-payment**

a member of the Charging Group fails to pay any amount of the Secured Indebtedness on its due date for payment;
  - (b) **Breach of undertaking**

a Charging Group Member does not perform or comply with any of its obligations under clause 5.1, 5.2, or 5.3 or a default notice is served under clause 8.2(d);
  - (c) **Breach of other obligations**

a Charging Group Member fails to perform or comply with any of its other obligations under this Deed in a material respect and, in the case of a failure that is capable of remedy, that failure is not remedied within 14 days of the date that a Charging Group Member first became aware of it;
  - (d) **Avoidance or repudiation**
    - (i) this Deed ceases to have effect (in whole or in any material part) or is or becomes void, voidable, illegal, invalid or unenforceable in any material respect (other than by reason of any waiver); or
    - (ii) a Charging Group Member repudiates or does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate this Deed;
  - (e) **Insolvency**

any Charging Group Member:

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

- (f) **Enforcement**  
either:
- (i) a distress, attachment, execution or other legal process for an amount of or in excess of \$10,000 in aggregate (or its equivalent in other currencies) is levied or enforced on or against assets of a Charging Group Member and is not discharged or stayed within 14 days; or
  - (ii) a receiver, trustee, manager, administrator or similar officer is appointed in respect of a Charging Group Member or the whole or any material part of its assets;
- (g) **Liquidation**  
an order is made or resolution passed for the liquidation of a Charging Group Member, except:
- (i) for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Trustee before that step is taken; or
  - (ii) where its assets available for distribution are distributed to another Charging Group Member;
- (h) **Amalgamation**  
the board of a Charging Group Member passes any resolution not previously approved by the Trustee for or in contemplation of any amalgamation with or involving another company then existing or yet to be formed (unless such amalgamation is of a Charging Group Member with another Charging Group Member);
- (i) **Corporations (Investigation and Management) Act 1989**  
a Charging Group Member is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, a statutory manager is appointed to it or any step is taken with a view to any such appointment in respect of it under that Act (including a recommendation by the Financial Markets Authority supporting such an appointment);
- (j) **Cessation of business**  
a Charging Group Member ceases or threatens to cease to conduct all or a substantial part of its business (except where the business of the relevant person is transferred to another Charging Group Member or for the purposes of and followed by an amalgamation or solvent reconstruction on terms approved by the Trustee);
- (k) **Enforcement of Prior Security Interest**  
a Prior Security Interest is enforced;
- (l) **Cross default**  
any indebtedness for borrowed money of a Charging Group Member of or in excess of \$10,000 in aggregate (or its equivalent in other currencies):
- (i) is not paid within any applicable grace period or (if no grace period applies) when due; or
  - (ii) becomes due before it would otherwise have been due by reason of any default or event of default (howsoever described) or any facility for financial accommodation or any underwriting facility available to a Charging Group Member is cancelled or suspended by any person providing it by reason of any default or event of default (howsoever described);
- (m) **Change in control**  
there is a change in the control of the Company without the prior written consent of the Trustee (which may not be unreasonably withheld provided the Company and the

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

## 8.2 Events of review

- (a) It is an **event of review** if:
- (i) the Charging Group's Capital Ratio is within 2% of the minimum percentage in clause 5.1(c) (for example if the Capital Ratio in clause 5.1(c)(ii) is 15% and the Charging Group's Capital Ratio for that period is 16%) and the Trustee considers (acting reasonably) that the Charging Group is likely to breach the covenant in clause 5.1(c) within the next six months; or
  - (ii) in respect of any 3-Month Liquidity Period, the Company's projected Liquidity Position in respect of any of the three months in that 3-Month Liquidity Period is negative.

The Trustee shall promptly notify the Company upon the occurrence of an event of review.

- (b) Upon the occurrence of an event of review, the Company shall consult with the Trustee for the period of not less than ten and not more than 20 Business Days immediately following the receipt of such notification with a view to agreeing on any action to be taken by the Company to avoid the breach described in clause 8.2(a)(i) occurring or to avoid the Company's actual Liquidity Position for any monthly period described in clause 8.2(a)(ii) being negative.
- (c) If, at the end of the 20 Business Day period, the Trustee is not satisfied with the action which the Company has proposed to take to avoid the breach described in clause 8.2(a)(i) occurring or to avoid the Company's actual Liquidity Position for any monthly period described in clause 8.2(a)(ii) being negative, the Trustee may serve a default notice on the Company.
- (d) If a default notice is served by the Trustee on the Company pursuant to this clause 8.2, an Event of Default will occur under clause 8.1(b) on the date of service of such notice.

### Trustee's powers on enforcement of security

8.3 At any time after the security constituted by this Deed shall have become enforceable the Trustee may in its discretion and shall forthwith (subject to the provisions of clause 9.10) on the request in writing of any Major Security Stockholder or on being directed to do so by an Extraordinary Resolution take one or more of the following steps:

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

## 8.4 Notice of exercise of Trustee's powers

- (a) The powers conferred by the preceding clause (the **enforcement powers**) shall be exercisable by the Trustee without notice to the Company or any other Charging Group Member but before exercising any enforcement powers the Trustee shall, except where it shall certify in writing to the Company that in its opinion delay would imperil the interests of the Stockholders or where in its opinion the event is not capable of being remedied within 14 days, give written notice of its intention to the Company (which may be in general terms and which shall be deemed to be notice also to the other Charging Group

Members) and shall not exercise the enforcement powers until the expiration of 14 days after the giving of such notice.

- (b) If within such period of 14 days the relevant breach or default is remedied to the satisfaction of the Trustee or the Trustee notifies the Company in writing that the particular breach or event relied on no longer in the opinion of the Trustee detrimentally affects the security created by or pursuant to this Deed, the Trustee shall not exercise the enforcement powers. Notwithstanding anything contained in this clause 8.4, if the Trustee has appointed a Receiver no further notice shall, subject to Section 119 of the Property Law Act 2007, be required before exercising the enforcement powers.
- (c) The Trustee shall not be under any obligation to advise any Stockholder of any occurrence of the nature specified in clause 8.1, or to convene any meeting of Stockholders, unless in the Trustee's opinion the occurrence is such as has, or may have, a material adverse effect on the interests of the Stockholders generally.

#### **Trustee's borrowing powers**

- 8.5 The Trustee may, for the purpose of exercising any of its powers under clause 8.3 and for the purpose of payment to the Trustee of any moneys owing to it in terms of this Deed, borrow or raise money on the security of all or any part of the Secured Property in priority to the Secured Indebtedness on such terms as the Trustee may think fit.

#### **Events in which a receiver may be appointed**

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

#### **Powers rights and duties of Receiver**

- 8.7 Subject to any restriction imposed by the Trustee, a Receiver is to have:
- (a) all the rights of the Trustee under clause 8.3; and
  - (b) all the rights conferred on receivers and managers by law (including under the Receiverships Act 1993).

#### **Receiver agent of debtor**

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

#### **Receiver's remuneration**

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

#### **No liability as mortgagee in possession**

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

### **Protection of persons dealing with Trustee and Receiver**

- 8.11 No person dealing with the Trustee or any Receiver or the Receiver's agents shall be concerned to enquire whether the security constituted by this Deed has become enforceable or whether the power exercised or purported to be exercised has become exercisable or whether any moneys remain due on the security of this Deed or as to the necessity or expediency of the conditions subject to which any sale shall be made or otherwise as to the propriety or regularity of any exercise of the enforcement powers or to see to the application of any moneys paid to the Trustee or to any Receiver and in the absence of fraud on the part of such person such dealing shall be deemed with respect to such person to be within the powers conferred by this Deed and to be valid and effectual accordingly and the remedy of the Charging Group in respect of any irregularity or impropriety whatsoever in exercise of such powers shall be in damages only.

### **Receipt of Trustee or Receiver**

- 8.12 On any exercise of the enforcement powers and on any other dealing or transaction under this Deed the receipt of the Trustee or the Receiver for any other moneys paid to it or the Trustee or the Receiver shall effectively discharge the person paying the same and discharge the person from being concerned to see to the application or being answerable for the loss or misapplication of such moneys.

### **Concurrent sale or receivership**

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

### **Application of proceeds of enforcement**

- 8.14 All moneys received by the Trustee and any Receiver after the Date of Enforcement shall (subject to payment of or provision for any debts or liabilities having priority to the Stock) be held and applied:
- (a) **first** (subject to any order made by any Court) in payment or retention of all costs charges expenses and liabilities incurred and payments made by or on behalf of the Trustee or any Receiver under this Deed or any collateral security and of all remuneration payable to the Trustee or any Receiver with interest as provided in this Deed;
  - (b) **secondly** in or towards payment to the Stockholders *pari passu* in proportion to the amounts owing whether actually or contingently to them of the Principal in respect of their Stock and interest calculated in accordance with the provisions of the respective Stock Certificates, provided always that:
    - (i) before making any such payment the Trustee shall, in the case of each holder of Security Stock but subject as provided below, set aside an amount (or the proper proportion of the Security Stock in the event of the amount available for distribution and application in respect of the amounts owing to the Stockholders respectively being less than one hundred cents in the dollar) equal to the aggregate of the contingent liabilities (if any) forming part of the Security Stock;
    - (ii) in the event of a contingent liability being indeterminate or unlimited in amount then the Trustee shall, subject as provided below, set aside such amount as shall be nominated by the holder of the relevant Security Stock as its reasonable estimate of that contingent liability or the proper proportion of that liability in the event of the amounts available for distribution and application in respect of the amounts owing to the Stockholders respectively being less than one hundred cents in the dollar;

- (iii) any amount set aside in accordance with these provisos shall be held by the Trustee and applied in the following manner:
  - (A) when and so often as a contingent liability in whole or in part shall become an absolute ascertained liability the Trustee shall pay to the holder of the relevant Security Stock the amount of such absolute and ascertained liability or the relevant proportionate part as if the same had been a debt presently payable to such holder at the Date of the Enforcement;
  - (B) when and so often as any portion of the amount set aside pursuant to these provisos is no longer required for the purposes of the immediately preceding sub-paragraph (i) then the same shall become available for distribution and payment as otherwise provided in this clause;
- (c) **thirdly** subject to the rights of any subsequent encumbrancers, in payment of the surplus (if any) of such moneys to the Company or such other person or persons as the High Court of New Zealand on the application of the Trustee may direct.

**Order of payment of Principal and interest**

- 8.15 All monies available for payment to Stockholders under clause 8.14 shall be applied first on account of interest and secondly on account of Principal provided that if the Trustee considers it expedient in the interests of Stockholders generally to do so or the Stockholders by Extraordinary Resolution so direct, the whole or any part of the Principal may be paid before any payment is made on account of interest.

**Trustee's powers to postpone distribution**

- 8.16 If the amount of the money at any time available under clause 8.14 for payment of Principal of the Stock is less than 10% of the amount of the Stock, the Trustee may invest those moneys in any investments authorised until such investments and income, together with any other funds for the time being under the control of the Trustee and applicable for the purpose, amount to a sum sufficient to pay 10% of the amount of such Stock.

**Notice of distribution**

- 8.17 The Trustee shall give not less than fourteen days' notice to the Stockholders of the day place and time fixed for any payment to them under clause 8.14 and after the day so fixed (unless the Trustee fails to make payment in which case interest shall run until payment is actually made or effected) the Stockholders shall be entitled to interest on the balance only (if any) of the Principal owing on the Stock held by them after deducting the amount (if any) payable on the day so fixed.

**Production of Stock Certificate on payment by Receiver or Trustee**

- 8.18 On any payment under any of the provisions of clause 8.14 on account of the Stock the relevant Stock Certificates shall be produced to the Trustee who shall endorse them with details of payment but the Trustee may in any particular case dispense with production and endorsement on such indemnity being given as it shall think sufficient or without any indemnity.

**Currency of Proceeds**

- 8.19 The Trustee shall distribute moneys in the currency in which it holds or receives them (the **Currency of Proceeds**). The Trustee and any Stockholder may agree otherwise.

**Currency of Proceeds different from Currency of Indebtedness**

- 8.20 Where, in respect of any Stockholder and any distribution to be made under clause 8.14, the Currency of Proceeds is different from the currency in which that Stockholder's Stock (or any part of that Stockholder's Stock) is denominated (the **Currency of Indebtedness**):
- (a) any part of a Stockholder's Stock denominated in a currency other than the Currency of Proceeds shall be notionally converted into the Currency of Proceeds on the date of distribution at the current exchange rates (as determined by the Trustee in its sole discretion);

- (b) the amounts owing to each Stockholder in the Currency of Proceeds (either actually or notionally converted in accordance with paragraph (a)) shall be utilised in determining the pari passu entitlement of each Stockholder;
- (c) in any distribution the Trustee shall distribute to each Stockholder its entitlement in the Currency of Proceeds; and
- (d) for the purpose of determining by what amount the indebtedness due under any Stock denominated in a currency other than the Currency of Proceeds has been reduced, the amount distributed shall be deemed to be the amount in the Currency of Indebtedness equivalent to the amount distributed in the Currency of Proceeds converted at the rate of exchange referred to in paragraph (a) above.

#### **Waiver of rights**

8.21 Each Charging Group Member:

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

#### **Power to call for and rely on certificates of indebtedness**

8.22 For the purposes of determining the appropriate payment to be made to any Stockholder pursuant to clause 8.14, or the voting entitlement of any Stockholder under this Deed, the Trustee may (but need not) require any Stockholder to provide it with a certificate giving details of all amounts of any particular kind due or alleged to be due in respect of that Stockholder's Stock as at any date. The Trustee shall be entitled to rely on the accuracy and correctness of any such certificate. Each Stockholder shall also provide the Trustee with whatever information it may require for the purpose of this clause. The Trustee shall incur no liability in so acting or for the consequences of so acting should any such certificate or information prove to have been incorrect, or for failing to request or obtain any such certificate or information.

## **9 Powers and provisions relating to Trustee**

### **Powers of investment**

9.1 Any moneys subject to the trusts hereof may at the discretion of the Trustee be invested in the name of the Trustee or of its nominees in any investment whatsoever or at the request of the Company in the purchase of Stock and with power to vary, deal with, or dispose of, such investments.

- 9.2 The income arising from such investments shall until the Date of Enforcement belong to the Company or the relevant Charging Group Member as the case may be.

**Applications to Court**

- 9.3 The Trustee may at any time after the Date of Enforcement apply to the Court for an order that the powers and trusts hereof be exercised under the direction of the Court and for the appointment of a Receiver of all or any part of the Secured Property and for any other order or directions in relation to the execution and administration of the powers and trusts hereof as the Trustee shall deem expedient and it may assent to or approve of or oppose any application to the Court made by or at the instance of any Stockholder and shall, subject to clause 9.13, be indemnified by the Company against all expenses incurred in relation to any such application or proceedings.

**Waiver by Trustee**

- 9.4 Subject to section 13 of this Deed and to any direction or request given by Stockholders pursuant to any provision of the FMC Act or by the Stockholders pursuant to clause 8.3 the Trustee may at any time and from time to time by notice in writing to the Company or any other Charging Group Member as the case may be, waive in part or in whole, for a specified period or completely, on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Company or any other Charging Group Member, as the case may be of any of the provisions of this Deed or of any collateral security, provided the Trustee is satisfied that the interests of the Stockholders will not be materially prejudiced, but such waiver shall in no way prejudice the rights of the Trustee and the Stockholders in respect of any other breach.

**Supplemental powers of Trustee**

- 9.5 In addition to the provisions of the law relating to trustees and to facilitate the discharge of its duties hereunder but subject always to clause 9.13:
- (a) the Trustee may without liability for loss obtain, accept and act on or decline and elect not to act on:
    - (i) the opinion or advice of or any information obtained from any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert although the same shall subsequently be found to contain some error or not be authentic;
    - (ii) a certificate signed by any two directors on behalf of the directors of the company concerned as to any fact or matter prima facie within the knowledge of the Company or the other Charging Group Member concerned or that any transaction or thing is expedient or commercially desirable and not detrimental to the interests of the Stockholders as sufficient evidence of such fact or matter or the expediency or desirability of such transaction or thing; and
    - (iii) the statements contained in any certificate or report given pursuant to the provisions of this Deed as conclusive evidence of the facts stated in such certificate or report;
  - (b) the Trustee shall not be responsible for acting or relying on any resolution purporting to have been passed at any meeting of the Stockholders in respect whereof a proper record has been made and which the Trustee believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings at the meeting or otherwise howsoever;
  - (c) the Trustee shall not be responsible for the money subscribed by the applicants for or subscribers of the Stock or be bound to see to the application of that money;
  - (d) the Trustee shall not be bound to enquire into or be liable for any defects or failure in the title of the Company or any other Charging Group Member to the Secured Property whether such defects or failure might have been discovered on an enquiry and remedied or not;

- (e) except as otherwise expressly provided in this Deed, the Trustee shall have absolute discretion as to the exercise of all trusts, powers, authorities and discretions vested in it by this Deed, and as to the conduct of any action, proceeding or claim and, provided it shall have acted with reasonable care and diligence, it shall not be responsible for any loss, damages or expenses that may result from the exercise or non-exercise of such powers; and
- (f) the Trustee whenever it thinks it expedient in the interests of the Stockholders to do so may:
  - (i) delegate at any time (at the expense of the Charging Group) to any person any of the trusts, powers, authorities or discretions vested in the Trustee by this Deed (other than any of its functions under section 111(1) of the FMC Act, except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act 2011) which cannot conveniently be exercised by it or through its employees on such terms and conditions (including the power to sub-delegate) as the Trustee may think fit and the Trustee shall not be responsible for any loss incurred by any misconduct or default on the part of any such delegate or sub-delegate;
  - (ii) authorise such person as it thinks fit to act as its representative at any meeting; and
  - (iii) (in addition to the exercise of the powers contained in clause 9.2) apply to the Court for directions in relation to any question arising either before or after the Date of Enforcement.

#### **Indemnity of Trustee**

- 9.6 Without prejudice to the right of indemnity by law given to trustees and (in the case of the Trustee) subject to clause 9.13, the Trustee and every Receiver, attorney, manager, agent or other person appointed by the Trustee under this Deed, shall be indemnified out of the Secured Property in respect of all liabilities and expenses incurred in the execution or purported execution of the powers and trusts hereof and against all actions, costs and demands in respect of any matter or thing done or omitted relating hereto other than a claim arising out of a wilful default or wilful breach of trust and the Trustee may retain and pay out of any moneys in its hand arising from the trusts of this Deed all sums necessary to effect such indemnity and also the remuneration and disbursements of the Trustee as provided in this Deed and the Trustee shall have a security interest on the Secured Property for all money payable to it under this clause or otherwise howsoever arising out of or in connection with this Deed or the issue of the Stock.

#### **Fiduciary relationship**

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

#### **Represent Stockholders**

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

#### **Retirement of Trustee**

- 9.9 The Trustee may retire at any time without assigning any reason on giving 30 days notice in writing to the Company, provided that the Trustee may not retire unless:
- (a) all functions and duties of the position have been performed;

- (b) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
- (c) the court consents.

**9.10 Appointment of new Trustee**

- (a) The power of appointing a new trustee or trustees hereof shall be vested in the Company but no trustee shall be appointed unless such appointment is first approved by an Extraordinary Resolution of the Stockholders. On the Trustee notifying the Company that it wishes to retire or on the Company wishing to appoint a new trustee (following the exercise of rights under s122(1)(a) or (b) of the FMC Act) the Company shall promptly call a meeting of the Stockholders for the purpose of approving an appointment of a new trustee and if approval is given the Company shall exercise its power of appointment. Only a licensed supervisor shall be appointed as a trustee of this Deed.
- (b) In the event that the Company within 30 days of receiving notice of the Trustee's intention to retire fails to call a meeting of the Stockholders or to exercise the power vested in it of appointing a new trustee or new trustees then in either case the Stockholders may by Extraordinary Resolution exercise such power to the exclusion of the Company.
- (c) Notwithstanding clause 9.9(a), if a person has been appointed by the Financial Markets Authority as trustee under this Deed pursuant to section 22(2)(b) of the Financial Markets Supervisors Act 2011, the Company may, before the end of that person's six month appointment period, appoint that person on a continuing basis as the trustee of this Deed for the Stockholders without any requirement for that appointment to be first approved by an Extraordinary Resolution of the Stockholders.

**Trustee's indemnity by Stockholders**

- 9.11 If the Trustee shall receive a request or direction pursuant to the provisions of clause 8.3 the Trustee shall not be bound to comply with the request or direction unless the Trustee shall, subject to clause 9.13, first be indemnified to its satisfaction against all actions proceedings claims and demands to which the Trustee may be rendered liable and all expenses which it may incur by so doing.

**Additional Trustee's powers**

- 9.12 The powers conferred by this Deed on the Trustee shall be in addition to any powers which may from time to time be vested in trustees by law and to any powers which may from time to time be vested in the Trustee as the holder of any of the Stock.

**Enforcement of Stockholder's rights**

- 9.13 The Trustee holds the following in trust for the benefit of Stockholders:
- (a) the right to enforce the Company's duty to repay, or to pay interest, under the terms of the Stock;
  - (b) any charge or security for repayment (including the security created by section 4 of this Deed and any supplemental deed executed by a Charging Group Member);
  - (c) the right to enforce any other duties that the Company, any other Charging Group Member and any other person have under:
    - (i) the terms of the Stock; or
    - (ii) the provisions of this Deed or the FMC Act in relation to the Stock.

**Trustee's liability**

- 9.14 No provision of this Deed shall have the effect of indemnifying the Trustee against liability where the Trustee fails to:
- (a) act honestly in acting as a supervisor;

- (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Stockholders (excluding holders of Security Stock );
- (c) exercise reasonable diligence in carrying out its functions as a supervisor; or
- (d) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

## 10 Remuneration of Trustee

### Remuneration

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

### Expenses

- 10.2 The Company will also pay all expenses including travelling expenses reasonably incurred by or on behalf of the Trustee in connection with:
- (a) the preparation, execution and registration of this Deed;
  - (b) the exercise by the Trustee of any power conferred on the Trustee by this Deed or on any Stockholder including the taking of any expert advice deemed necessary or expedient by the Trustee;
  - (c) any breach or default in the observance or performance by the Company or any of the other Charging Group Members of the covenants, obligations and conditions of this Deed;
  - (d) the convening and holding and carrying out of any directions or resolutions of any meeting of Stockholders; and
  - (e) any application under the trusts and provisions hereof for its consent to or approval of any act or matter.

### Payments continuing

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

### Payments to be secured by security interest on Secured Property

- 10.4 All expenses incurred by, all payments made in the lawful exercise of the powers conferred on and all remuneration payable to, the Trustee or to any Receiver shall be payable by the Company on demand and shall be secured by an additional security interest on the Secured Property and form part of the Secured Indebtedness and shall be satisfied before any payment is made to the Stockholders and until payment shall carry interest at the Appropriate Rate from the date on which they have become payable.

## 11 Meetings of Stockholders

### 11.1 Convening

- (a) The Trustee or the Company may at any time of their own volition convene a meeting of the Stockholders.

- (b) The Company shall whenever required to do so pursuant to the FMC Act convene a meeting of the Stockholders.
- (c) The Trustee (subject to its being indemnified to its satisfaction against all costs and expenses to be incurred, which right to be indemnified is subject to clause 9.13) shall at the request in writing of any Major Security Stockholder or of Stockholders that have a combined nominal value of no less than 5% of the nominal value of the Stock on issue in that class convene a meeting of the Stockholders. Any such request shall state the nature of the business proposed to be dealt with at the meeting.
- (d) Subject to clause 11.3(c), at least ten days before the Company convenes a meeting it shall advise the Trustee in writing of the place day and hour of the meeting and the nature of the business to be transacted and shall obtain the prior approval in writing of the Trustee to the draft of the documents to be sent to the Stockholders concerned and if the Trustee shall so require shall include with the documents sent to such Stockholders any statement which the Trustee requires to make in relation to the meeting and the matters to be dealt with at the meeting.

**Place**

- 11.2 Each meeting shall be held in the city or town at which the registered office of the Company is situated or at such other place as the Trustee determines or approves.

**11.3 Notice**

- (a) The Company must ensure that written notice of the time and place of a meeting is sent to the following at least 15 Business Days before the meeting:
  - (i) every Stockholder entitled to receive notice of the meeting;
  - (ii) the Trustee; and
  - (iii) every director and an Auditor of the Company.
- (b) The notice given under paragraph (a) above must state:
  - (i) the nature of the business to be transacted at the meeting in sufficient detail to enable a Stockholder to form a reasoned judgment in relation to it;
  - (ii) the text of any Extraordinary Resolution to be submitted to the meeting; and
  - (iii) the right of a Stockholder to appoint a proxy.
- (c) If an Extraordinary Resolution is to be submitted to the meeting:
  - (i) a draft of the proposed notice of the meeting must be given to the Trustee at least 10 Business Days before the notice is given under paragraph (a) above (or any lesser period approved by the Trustee); and
  - (ii) the notice of the meeting must be accompanied by a document containing the Trustee's comments on the proposed Extraordinary Resolution (but only if the Trustee has provided those comments in writing to the Company at least 5 Business Days before the notice is given under paragraph (a) above).
- (d) An irregularity in a notice of a meeting is waived if:
  - (i) all Stockholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Stockholders agree to the waiver; or
  - (ii) the Trustee indicates at the meeting that the Trustee is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Stockholders.
- (e) The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Stockholder does not invalidate the proceedings at that meeting.

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

**11.4 Further notice provisions**

- (a) In the case of a meeting convened by the Trustee under clause 11.1(c), clause 11.3 applies with all necessary amendments. In addition, the Trustee shall give notice of the meeting to the Company.
- (b) In the case of a meeting of Stockholders that hold Security Stock, the Company or the Trustee (as applicable) shall give notice of the meeting (in the form required by clause 11.3) to and every legal personal representative or an assignee in bankruptcy of a deceased or bankrupt Stockholder who, but for the Stockholder's death or bankruptcy would have been entitled to receive notice of the meeting.
- (c) If any of the Stock is listed for quotation on the New Zealand Debt Market a copy of the relevant notice of meeting shall also be sent to the New Zealand Exchange at the same time as notices are sent to the Stockholders.

**Additional notification**

- 11.5 If the meeting is convened by the Company a copy of the notice shall be sent to the Trustee. If the meeting is convened by the Trustee a copy of the notice shall be sent to the Company. If any of the Stock is listed for quotation on the New Zealand Debt Market a copy of the notice shall also be sent to the New Zealand Exchange at the same time as notices are sent to the Stockholders.

**11.6 Quorum**

- (a) No business may be transacted at a meeting of Stockholders if a quorum is not present.
- (b) A quorum for a meeting of Stockholders at which an Extraordinary Resolution is to be submitted is present if Stockholders or their proxies are present who hold Stock with a combined nominal value of no less than 25% of the nominal value of Stock held by those Stockholders who are entitled to vote on the business to be transacted at the meeting.
- (c) A quorum for any other business at a meeting of Stockholders is present if at least 2 Stockholders or their proxies are present.
- (d) Despite paragraphs (a) to (c) of this clause 11.6, if a quorum is not present within 30 minutes after the time appointed for the meeting:
  - (i) in the case of a meeting called under section 120(1)(b) of the FMC Act, the meeting is dissolved; and
  - (ii) in the case of any other meeting, the meeting is adjourned to the day that is 10 Business Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Trustee may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Stockholders or their proxies present are a quorum.
- (e) To avoid doubt, a Stockholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

**Further quorum provisions**

- 11.7 In the case of a meeting of Stockholders holding Security Stock, the following additional provisions apply:

- (a) Notwithstanding clause 11.6(c), the quorum for the transaction of any business other than the passing of an Extraordinary Resolution shall be the holders present in person or by representative of at least 10% in Principal amount of the Security Stock.

- (b) Without prejudice to clause 11.6(d)(ii), if a quorum is not present within 30 minutes after the time appointed for the meeting, in the case of a meeting convened on the request of Stockholders holding Security Stock, the meeting is dissolved.
- (c) Notwithstanding clause 11.3(f), notice of any adjourned meeting at which an Extraordinary Resolution is to be submitted shall be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice shall state that the Stockholders present in person or by representative at the adjourned meeting whatever their number and whatever the amount of relevant Security Stock held by them shall form a quorum.

**Chairman**

- 11.8 A person nominated in writing by the Trustee shall preside at every meeting and if no such person is nominated or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting the Stockholders present shall choose one of their number to be chairman.

**Right to attend and speak**

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

**11.10 Adjournment**

- (a) The chairman may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

**Only persons on Register recognised by Company**

- 11.11 The persons registered as Stockholders in the Register and no other person or persons shall be recognised and treated as the legal holders of the relevant Stock whether such persons are or are not in fact the owners of the Stock.

**11.12 Authority to vote**

- (a) In the case of Stock, a Stockholder who is an individual may vote personally or by the Stockholder's representative and a Stockholder which is a company may vote by its representative.
- (b) In this clause **representative** means:
  - (i) in the case of a Stockholder being an individual a person appointed by an instrument by way of proxy or by a power of attorney; and
  - (ii) in the case of a Stockholder being a company or corporation sole either:
    - (A) a person appointed by an instrument of proxy or by a power of attorney; or
    - (B) a person authorised pursuant to its constitution.
- (c) The following persons shall be exclusively entitled to vote in person or by representative in respect of the Stock mentioned:
  - (i) the persons registered as Stockholders in the Register in respect of the Stock recorded as owned by them respectively; and
  - (ii) every legal personal representative or an assignee in bankruptcy of a deceased or bankrupt Stockholder who, but for the Stockholder's death or bankruptcy would have been entitled to receive notice of the meeting, in respect of the Stock devolving on them respectively.

### 11.13 Proxies

- (a) The instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or if the appointor is a company either under its seal or under the hand of an officer or attorney so authorised.
- (b) A person appointed to act as a proxy need not be a Stockholder and a holder of a proxy shall have the right to speak at the meeting.
- (c) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a copy of such power or authority certified by a Solicitor or Notary Public or in such other manner as the Trustee shall approve shall be deposited at such place as the Trustee or the Company with the approval of the Trustee may in the notice convening the meeting direct or (if no such place is appointed) then at the registered office of the Company not less than forty eight hours (or such other shorter period as the Company may direct in the notice convening the meeting) before the time appointed for holding the meeting or adjourned meeting or for the taking of a poll at which the person named in the instrument proposes to vote and, subject as provided below, in default the instrument of proxy shall not be treated as valid provided always that the Trustee may in its absolute discretion accept as valid any instrument of proxy notwithstanding that such 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.
- (d) An instrument of proxy may be in any usual or common form or in such other form as the Trustee shall approve and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- (e) A proxy whether in a usual or common form or not shall unless the contrary is stated be valid as well for any adjournment of the meeting as for the meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy shall be valid after the expiration of twelve months from the date of its execution but this provision shall not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.
- (f) An instrument of proxy in favour of:
  - (i) the chairman of the Company; or
  - (ii) the chairman of the meeting or the chairman (however expressed),shall be valid and effectual as though it were in favour of a named person and shall in the case of sub-paragraph (i) above constitute the person holding the office of the chairman of the Company and in the case of sub-paragraph (ii) above constitute the person who chairs the meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointor.

#### **Stockholder may appoint Attorney**

- 11.14 Any Stockholder may by power of attorney appoint an attorney (who need not be a Stockholder) to vote and act on the Stockholder's behalf at any meeting. Any attorney shall be entitled to produce evidence of the attorney's appointment at any time before the time appointed for the holding of or at the meeting or adjourned meeting or for the taking of a poll at which he proposes to vote. An attorney if so empowered may appoint a proxy for the Stockholder granting the power of attorney.

#### **Corporate representatives**

- 11.15 A person authorised by a Stockholder which is a company or corporation sole to act for it at any meeting shall in accordance with that person's authority, until the authority is revoked by the company concerned, be entitled to exercise the same powers on behalf of that company as that company could exercise if it were an individual Stockholder and shall be entitled to produce evidence of that person's authority to act at any time before the time appointed for the holding of,

or at, the meeting or adjourned meeting or for the taking of a poll at which that person proposes to vote.

**11.16 Rights of representatives**

- (a) A representative shall have the right to demand or join in demanding a poll and shall (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 Stockholder concerned.
- (b) The Trustee and any officer of the Trustee may be appointed a representative.

**11.17 Voting procedure and polls**

- (a) A resolution put to the vote at a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or the Trustee or any representative of the Trustee or by any Major Security Stockholder or by one or more Stockholders holding or representing not less than 5% in Principal value of the Stock. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (b) On a show of hands each person present at the meeting and entitled to vote shall have one vote only. On a poll every Stockholder including any holder of Security Stock who is present in person or in the case of Stock by a proxy or an attorney or a representative shall have one vote for every \$1 Principal amount of Stock of which he is the holder provided always that any Stock for the time being held by the Company or any Subsidiary shall not whilst so held confer any right to vote.
- (c) If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (d) 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 takes place or at which the poll is demanded shall be entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Stockholder or on behalf of Stockholders.
- (e) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such time (not being more than thirty days from the date of the meeting) and place as the chairman may direct. The result of such poll shall 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.
- (f) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (g) On a poll votes may be given either personally or by representative. On a poll a person entitled to more than one vote need not use all that person's votes or cast all the votes he uses in the same way.
- (h) In the case of joint Stockholders the vote of the senior who tenders a vote whether in person or by representative shall be accepted to the exclusion of the votes of the other joint Stockholders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.
- (i) A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form of appointment shall be valid notwithstanding the previous death insanity or (in the case of a company) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or of the authority under which the proxy was executed or the transfer of the Stock in respect of which the vote is given provided

that no intimation in writing of such death insanity liquidation revocation or transfer is received by the Trustee or the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, power of attorney or other form of appointment is used.

#### 11.18 Extraordinary Resolutions

- (a) Without limiting the rights, powers and discretions conferred on the Trustee by this Deed a meeting of the Stockholders shall 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:
- (i) power to sanction either unconditionally or on any conditions:
    - (A) the release of the Company from the payment of all or any part of the Secured Indebtedness;
    - (B) the release of any Charging Group Member from its guarantee and from its obligations to the Trustee in respect of the Stockholders and of any security interest created by or pursuant to this Deed; or
    - (C) the surrender or release of the whole or any part of the Secured Property;
  - (ii) power to sanction the exchange of Stock for or the conversion of Stock into shares stock debentures debenture stock or other obligations or securities of the Company or any other company formed or to be formed;
  - (iii) power to postpone or with the concurrence of the Company to accelerate the day when the Principal of the Stock shall become payable and to suspend or postpone for a time the payment of interest on Stock;
  - (iv) power to sanction any release, modification, waiver variation or compromise or any arrangement in respect of the rights of the Stockholders against the Company and/or the other Charging Group Members or against their respective properties howsoever such rights shall arise;
  - (v) power to assent to any modification or addition to the provisions contained in this Deed or the conditions attaching to the Stock proposed or agreed to by the Company;
  - (vi) power to give any sanction, assent, release or waiver of any breach or default by the Company or any other Charging Group Member under any of the provisions of this Deed;
  - (vii) power to authorise the Trustee or any Receiver appointed by it where it or he shall have entered into possession of all or any part of the Secured Property to give up possession of the same to the Company or the other Charging Group Members either unconditionally or on any condition;
  - (viii) subject to the FMC Act, power to discharge release or exonerate the Trustee from all liability in respect of an act of commission or omission for which the Trustee has or may become responsible under this Deed;
  - (ix) power to sanction any scheme for the reconstruction of the Company or any other Charging Group Member or for the amalgamation of the Company or any other Charging Group Member with any other company where such sanction is necessary;
  - (x) subject to the provisions of this Deed, power to remove any Trustee and to approve the appointment of or appoint a new Trustee; and
  - (xi) power to authorise or direct the Trustee to concur in and execute any supplemental deed or other document embodying any such sanction,

modification, addition, authority or approval, assent, release, waiver, direction or request,

provided always that no modification or addition shall be made in the terms and conditions of issue of any Security Stock or to the rights, powers or privileges of the holders of Security Stock without the consent in writing of the holder of the Security Stock insofar as these rights, powers or privileges differ materially from the rights, powers and privileges of the holders of other Stock.

- (b) An Extraordinary Resolution passed at a meeting of the Stockholders duly convened and held in accordance with this Deed shall be binding on all the Stockholders whether present or not present or entitled to be present or not at the meeting and each of the Stockholders and the Trustee (subject to the provisions of its indemnity contained in this Deed) shall be bound to give effect to the resolution accordingly and the passing of any such resolution shall as between the Trustee and the Stockholders be conclusive evidence that the circumstances justify the passing of such resolution, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of any such resolution provided always that a resolution which affects a particular Stockholder or Stockholders only as opposed to the rights of the Stockholders generally shall not be binding on such Stockholder or Stockholders unless such Stockholder agrees or Stockholders agree to be bound by the terms of such resolution.

#### **Minutes to be kept**

- 11.19 Minutes of all resolutions and proceedings at every meeting shall be made by the Trustee or, if the Trustee shall not be present at such meeting, by some person appointed by the chairman of such meeting and duly entered in books from time to time provided for that purpose by the Trustee at the expense of the Company and any such minutes if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting of Stockholders shall be prima facie evidence of the matters stated in those minutes and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings carried out at the meeting shall be deemed to have been duly passed and carried out.

Copies of such minutes shall be furnished by the Trustee to the Company as early as possible after the holding of the meeting to which they refer.

#### **11.20 Resolutions in writing**

- (a) Anything that may be done by Stockholders by a resolution or Extraordinary Resolution passed at a meeting of Stockholders may be done by a resolution in writing signed by at least 75% of the Stockholders having the right to vote on that resolution, holding in the aggregate Stock conferring the right to cast not less than 75% of the votes which could be cast on that resolution.
- (b) Any such resolution may consist of several documents in similar form, each signed by one or more Stockholders.
- (c) Any such resolution may be signed by a Stockholder, or an agent or attorney of the Stockholder duly authorised in writing, or if the Stockholder is a company, either under its seal or signed by an officer or attorney so authorised or by any director, secretary, general manager, investment manager or other person who appears to the Trustee to have authority to sign the resolution on behalf of the company.

#### **FMC Regulations**

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

## 11.22 Classes of Stock

- (a) In addition to meetings of Stockholders in general, meetings of classes of Stockholders may be held, and the provisions of this clause 11 shall apply to any meeting of a class of Stockholders as if references to 'Stockholders' were references to Stockholders in that class of Stockholders only and references to 'Stock' or 'Security Stock' were references to the relevant class of Stock or Security Stock only.
- (b) A power which may be exercised by Stockholders by Extraordinary Resolution may only be exercised by an Extraordinary Resolution of a class of Stockholders if the Trustee agrees, acting reasonably, that the exercise of that power only affects that class of Stockholders, unless each affected class of Stockholders passes the same, or substantially the same, Extraordinary Resolution.
- (c) The references to Extraordinary Resolution in clauses 3.6, 8.3, 8.15 and 9.9(a)-(c) shall be read as references to an Extraordinary Resolution passed by Stockholders generally and not by one or more classes of Stockholders only.

## 12 Miscellaneous provisions

### Notices

- 12.1 Any notice, requisition, demand or request under this Deed may be signed by or on behalf of the Company, any other Charging Group Member, the Trustee or any Stockholder by an officer, agent or attorney or by its, his or her respective solicitors and may be given:
- (a) to Stockholders, by sending it through the post in a pre-paid letter addressed in the case of each Stockholder to the Stockholder's Registered Address;
  - (b) to the Company or a Charging Group Member by delivering it, or posting it, to their respective registered offices; and
  - (c) in the case of the Trustee, by delivering it or posting it to the office of the branch of the Trustee which normally undertakes and performs the administration of the trusts hereof, or to its registered office or to its principal place of business.
  - (d) In proving the giving of such notice by post it shall be sufficient to prove that the person signing has signed for or on behalf of the person giving the notice and that the envelope containing the notice was properly addressed, stamped and despatched in the ordinary course of post, and the notice if posted to an address in New Zealand shall be deemed to be served on the day following the day of posting and if posted to an address outside New Zealand the notice shall be deemed to be served on the tenth day after the date of its posting.
  - (e) In the case of joint holders of Stock a notice given to the Stockholder whose name stands first in the Register in respect of such holding shall be sufficient notice to all the joint holders.

### Registration of Deed

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

### Release on payment

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

## 13 Alterations to Trust Deed

### Amendments

- 13.1 The provisions of this Deed may not be amended nor may this Deed be replaced unless the amendment or replacement is made:
- (a) with the consent of the Trustee; or
  - (b) (despite anything to the contrary in this Deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this Deed) under section 109 of the FMC Act, sections 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace this Deed under an enactment.

### Supervisor consent

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

### Stockholder consent

- 13.3 The approval of the Stockholders for the purposes of clause 13.2(a)(i) must be the approval of an Extraordinary Resolution of:
- (a) the Stockholders; or
  - (b) each class of Stockholders that is or may be adversely affected by the amendment or replacement.

### Majority of Stockholders may temporarily vary provisions of Trust Deed

- 13.4 Subject to clauses 13.1 to 13.3, a Majority of Stockholders may agree in writing with the Company temporarily to vary or suspend compliance with any of the provisions of this Deed on such terms and conditions and for such period as shall be agreed. Any such agreement shall be binding on the parties to this Deed and the Stockholders.

## Signing

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

Signed by  
General Finance Limited

Geoffrey Sinclair

Director signature

Director signature

Director name

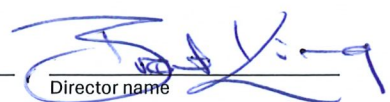
Director name

Signed by

**Bridges Financial Services Limited**

in the presence of

  
\_\_\_\_\_  
Director signature  
*Sale Director*



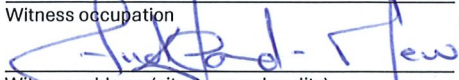
  
\_\_\_\_\_  
Director name

Witness signature

Witness name

Witness occupation

Witness address (city, town or locality)

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**Yolinda Freimond  
Barrister & Solicitor  
Auckland, New Zealand**

Signed by

**Covenant Trustee Services Limited**

  
\_\_\_\_\_  
Signature

**Richard Spong**  
\_\_\_\_\_  
Authorised signatory name

  
\_\_\_\_\_  
Signature

**Rachel Canlett**  
\_\_\_\_\_  
Authorised signatory name

in the presence of

Witness signature

Full Name

Address

Occupation

**WITNESS TO BOTH SIGNATURES**  
Full Name: Debra Morton  
Residential Address: Auckland  
Occupation: Senior Corporate Trust Administrator

Signature:





3674

**Schedule 1 – Form of Stock Certificate other than Security Stock**

**General Finance Limited**

Certificate No:

Amount of Stock: \$

Registered Office:

**Debenture Stock Certificate**

The Debenture Stock (**Stock**) evidenced by this Stock Certificate is created and issued pursuant to the Constitution of General Finance Limited (the **Company**) and constituted and secured by a Trust Deed dated 2 November 2004 (as amended, varied and amended and restated from time to time) between the Company and (now) Covenant Trustee Services Limited (as trustee for the Stockholders) which Stock is issued with the benefit and subject to the provisions of the Trust Deed (and any deed supplemental to or modifying the same) and the Conditions endorsed hereon.

**This is to certify that**

- 1 The Stockholder named in the table appearing below is the registered holder of the amount of Stock specified above.
- 2 The Stock held by such Stockholder bears interest at the rate per annum specified below and is redeemable at par on the date set out below after the word **Redemption**.
- 3 Interest on the Stock evidenced by this Stock Certificate is payable or, if the Stock is issued as compounding interest Stock, compounded quarterly/half-yearly on the \_\_\_\_\_ day of \_\_\_\_\_ in each year until redemption computed on the amount of principal moneys of the Stock from time to time outstanding.

Name and Address of Stockholder:

Rate of Interest:

Redemption:

**Dated**

Signed by

**General Finance Limited**

\_\_\_\_\_  
Director signature

\_\_\_\_\_  
Director name

\_\_\_\_\_  
Director signature

\_\_\_\_\_  
Director name



## **Notes**

- 1 This Stock Certificate must be surrendered before redemption.
- 2 All payments of principal and interest will be made in New Zealand.
- 3 All sums specified in this Stock Certificate relate to New Zealand currency.
- 4 A copy of the Trust Deed may be inspected at the registered office of the Company.

## **Conditions**

- 1 The Principal and interest payable in respect of the Stock will be paid on the relevant dates set out above, but will become immediately due and payable if the security constituted by the Trust Deed shall become enforceable and is enforced by the Trustee.
- 2 Interest shall cease to accrue on the Stock from the date fixed for payment of the Principal unless either the Trustee enforces this Deed or, on production of this Stock Certificate, the Company fails to make payment, in either of which case interest shall run until redemption or payment is actually effected or made.
- 3 Every Stockholder will be recognised by the Company as entitled to his Stock and to the Principal and interest payable on such Stock free from any equity set-off or cross claim between the Company and the original or any intermediate holder of the Stock.
- 4 The Stock shall not be transferable by the holder.

## Schedule 2 – Form of Stock Certificate for Security Stock

### General Finance Limited

Certificate No:

Registered Office:

Nominal Amount:

### Security Stock Certificate

The Debenture Stock evidenced by this Stock Certificate is Security Stock created and issued pursuant to the Constitution of General Finance Limited (the **Company**) and constituted and secured by a Trust Deed dated 2 November 2004 (as amended, varied and amended and restated from time to time) made between the Company and (now) Covenant Trustee Services Limited (as trustee for the Stockholders) and is issued with the benefit and subject to the provisions of the Trust Deed and the Conditions endorsed hereon.

### This is to certify that

- 1 [ ] (the **Lender**) is the registered holder of Security Stock (the **Stock**) payable on demand.
- 2 Subject to the provisions of clause 3 the Stock is issued by way of continuing security for the due payment and satisfaction to the Lender on demand of all liabilities of the Company and the other Charging Group Members or any of them to the Lender whether incurred before or after the issue of this Certificate and whether matured or not and whether incurred by the Company and/or the other Charging Group Members or any of them alone or jointly with another or others and whether as principals or sureties and whether absolute or contingent and whether incurred within or without the scope of the relationship of banker and customer and shall include but not by way of limitation liabilities in respect of advances and in respect of cheques, bills, notes and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed and in respect of interest (whether capitalised or otherwise compounded or current) and as regards current interest including interest on capitalised interest or on interest otherwise compounded to accrue from day to day at the rate or respective rates from time to time without prior or other notice to the Company or the other Charging Group Members determined on by the Lender, and in respect of commission, exchanges, re-exchanges, legal expenses and other usual and proper banking and commercial charges.
- 3 The Stock is issued on the special condition that at any date (the **relevant date**) the Stock shall secure only:
  - (a) as principal, the lesser of:
    - (i) the liabilities referred to in clause 2 of this Certificate at the relevant date (after deducting interest accruing from the immediately preceding date for payment of interest to, or the debiting of interest by the Lender); and
    - (ii) the nominal amount of the Stock,(such lesser amount being referred to in this Certificate as the **Secured Amount**); and
  - (c) as interest, the amount of interest deducted pursuant to paragraph (a) preceding plus interest on the Secured Amount from the relevant date up to the date of final payment at the rate charged or chargeable by the Lender in respect of advances by the Lender to the Company and/or the other Charging Group Members or any of them at the relevant date or if there shall be differential rates charged or chargeable to the Company and/or the other Charging Group Members or any of them at the relevant date then at the overall average rate charged or chargeable,
  - (d) and on any distribution of the moneys available pursuant to the provisions of clause 8.14 of the Trust Deed the Stock shall entitle the Lender to payment pari passu with the other



Stockholders in respect only of the Secured Amount determined at the Date of Enforcement together with interest calculated pursuant to the provisions of the foregoing paragraph (b) on the footing that the Date of Enforcement is the relevant date.

## Dated

Signed by

**General Finance Limited**

\_\_\_\_\_  
Director signature

\_\_\_\_\_  
Director name

\_\_\_\_\_  
Director signature

\_\_\_\_\_  
Director name

## Notes

- 1 All sums specified in this Certificate relate to New Zealand Currency.
- 2 Attention is drawn to the Conditions endorsed hereon.

## Conditions

- 1 The holder of the Stock is entitled pari passu and rateably with the holders of all other Stock constituted by the Trust Deed to the benefit of and is subject to the provisions of the Trust Deed.
- 2 Subject as provided in this certificate, the holder of the Stock shall as a condition precedent to receiving payment of all or any part of the Secured Amount after enforcement of the security constituted by the Trust Deed produce this Certificate for endorsement to the Company or to the Trustee as the case may require provided always that this Condition shall not preclude payment by the Company or by the Trustee with the consent of the Company without production of this Certificate if the Company or the Trustee so elects and provided further that this Condition shall not apply if the Trustee requires payment to it of the Secured Amount in accordance with the provisions of the Trust Deed.
- 3 The Stock shall not be transferable by the holder.

### **Schedule 3 – Further conditions applicable to all Stock**

#### **Further conditions**

- 1 Every Stockholder shall be entitled to receive a Stock Certificate or several Stock Certificates for the Stockholder's Stock duly executed by the Company pursuant to the Trust Deed provided always that joint holders of Stock shall not be entitled to duplicate Stock Certificates in respect of the Stock held by them jointly and the Stock Certificates in respect of a joint holding may be delivered to such of the joint holders as the joint holders may in writing direct or the Company may select.
- 2 The Stockholder shall as a condition precedent to receiving payment of the Principal of the Stock produce in the case of part payment and surrender in the case of payment in full, the Stockholder's Stock Certificate to the Company or in case of contemplated payment by the Trustee, to the Trustee provided always that this Condition shall not preclude payment by the Company or by the Trustee without production of the Stock Certificate if the Company or the Trustee so elects and on payment in part the Stock Certificate shall be endorsed accordingly and returned to the Stockholder and on payment in full the Stock Certificate shall be deemed to have been cancelled and surrendered to the Company.
- 3 The Company may at the request of a Stockholder issue a Stock Certificate in replacement of a lost, destroyed, damaged or incorrect certificate subject to production where possible of the existing certificate to the Company or to such evidence being produced and such indemnity being given as to loss or destruction as the Company may reasonably require.
- 4 Subject to the provisions of the Trust Deed the Company will only recognise the registered holder of the Stock, the Stockholder's executors or administrators as the absolute owner of the Stock and except as ordered by a Court of competent jurisdiction or by statute required shall not be bound to take notice or see to the execution of any trust whether express implied or constructive to which any Stock may be subject and the receipt of such Stockholder for the amount payable in respect of the Stock shall be a good discharge to the Company notwithstanding any notice it may have of the right, title and interest or claim of any other person to or in respect of the amount so payable. No notice of any trust express, implied or constructive shall be entered on the Register in respect of any Stock.
- 5 Any person becoming entitled to Stock in consequence of the death or bankruptcy of any Stockholder may, on producing such evidence that that person sustains the character in respect of which that person proposes to act under this Condition or of that person's title as the Directors shall think sufficient, be registered himself as the holder of such Stock. This Condition shall include any case in which a person becomes entitled as a survivor of persons registered as joint holder.
- 6 Any Principal and interest payable in respect of the Stock may be paid by direct credit to the Bank account nominated by the holder or by cheque or warrant crossed 'not transferable' sent through the post to the registered address of the holder or in the case of joint holders to the registered address of that one of the joint holders who is first named on the Register in respect of such Stock or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to such other person as the holder or joint holders may in writing direct and payment of such cheque or warrant to the holder or to such other person as the holder or joint holders may so direct shall be a satisfaction of the Principal or interest in respect of which it was drawn.
- 7 If several persons are entered in the Register as joint holders of any Stock then without prejudice to the last preceding Condition the receipt of any one of such persons for any Principal or interest from time to time payable on or in respect of such Stock shall be as effective a discharge to the Company as if the person signing such receipt were the sole registered holder of such Stock.

## Schedule 4 – Supplemental trust deed

### Date

### Parties

- 1 **[Subsidiary Limited]** a company having its registered office at [city] (New Zealand company number [number]) (**Subsidiary**)
- 2 **Covenant Trustee Services Limited** a company having its registered office at Auckland (New Zealand company number 2194946) (**Trustee**).

### Background

- A The Subsidiary is a subsidiary within the meaning of the Companies Act 1993 of General Finance Limited (**Company**).
- B The Company entered in to a Trust Deed dated 2 November 2004 (as amended, varied and amended and restated from time to time) (**Trust Deed**) to secure the principal and interest moneys and premium (if any) from time to time payable in respect of the Stock and all other moneys from time to time owing on the security of the Trust Deed.
- C At the request of the Company the Subsidiary wishes to execute this Deed (being a deed supplemental to the Trust Deed and in the form prescribed in Schedule 4 to the Trust Deed) in order to become a Charging Subsidiary as defined in and pursuant to the provisions of the Trust Deed.
- D The directors of the Subsidiary resolved on \_\_\_\_\_ that the Subsidiary:
  - (a) guarantee the due payment by the Company of all moneys from time to time owing on the security of the Trust Deed;
  - (b) execute, register and deliver to the Trustee security (both fixed and floating) over its undertaking and assets in support of its guarantee,and that this Deed be accordingly executed.

### Agreed terms

- 1 To the extent to which the same are applicable the definitions and provisions contained in clause 1.2 of the Trust Deed shall apply to and be incorporated in this Deed.
- 2 The Subsidiary jointly and severally with all other Charging Group Members unconditionally guarantees the due and punctual payment by the Company and each other Charging Group Member, in accordance with the provisions of the Trust Deed of the Secured Indebtedness as and when the same shall become due and payable and the due observance and performance by each other Charging Group Member of all of its obligations under the Trust Deed and the provisions set out in clauses 3.2 to 3.12 (inclusive) of the Trust Deed shall apply to the unconditional guarantee given by the Subsidiary in the same manner and to the same extent as if the same had been mutatis mutandis set out in full in this Deed and made applicable to this guarantee.
- 3 As a continuing security for the payment of the Secured Indebtedness, the Subsidiary grants to the Trustee:
  - (a) a security interest in its Personal Property; and
  - (b) a charge over its Other Property.
- 4 The charge created by this Deed in respect of Other Property is:
  - (a) a floating charge over Other Property in respect of which a fixed charge is not legally and fully effective; and

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

## Signing

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

[Execution]

## Schedule 5 – Directors' Quarterly Report

General Finance Limited (Company)

Directors' Quarterly Report as at [*end of financial quarter*] (Relevant Date)

Covenant Trustee Services Limited

We refer to the Trust Deed dated 2 November 2004 (as amended, varied and amended and restated from time to time) between the Company and (now) yourselves as trustee. Terms defined in the Trust Deed have the same meanings where used in this report. The undersigned, being two directors of the Company, certify on behalf of all the Directors of the Company as follows, as at the Relevant Date:

- 1 Having considered the financial position (including Contingent Liabilities) of the Charging Group as a going concern (which the Directors are satisfied will be the case over the relevant period) and such budgets, reports, projections, certificates and assurances as they deem necessary and the anticipated trading transactions and sources of finance arranged or expected on reasonable grounds to be arranged during the 12 months from the Relevant Date, to the best of the Directors' knowledge and belief:
  - (a) the Charging Group will be able to meet all its Liabilities (including maturing Stock and interest on Stock) which fall due or are anticipated to become payable during the 12 months from the Relevant Date in accordance with accepted commercial practice; and
  - (b) the Company and each member of the Charging Group (if any) meets the Solvency Test (as defined in section 4 of the Companies Act 1993).
- 2 To the best of the Directors' knowledge and belief after having made all due enquiry:
  - (c) all Stock which has fallen due for payment (and in respect of which there are no arrangements to leave such Stock remaining owing on other terms as to repayment) has been paid or otherwise satisfied;
  - (d) all interest due on such Stock has been paid or otherwise satisfied;
  - (e) the Company or its agent has duly maintained and had audited at least annually the Register;
  - (f) the Charging Group has complied with the provisions of clause 5.1 of the Trust Deed;
  - (g) the Company and each of the other Charging Group Members (if any) has duly observed and performed all the provisions binding on them respectively under the Trust Deed or any security collateral to the Trust Deed;
  - (h) there has been no change in any accounting method or method of valuation of the Secured Property or Liabilities or in the criteria applied in deciding whether debts should be written off or not; [*If any change has been made, a statement to that effect with particulars*]
  - (i) no material trading or capital loss has been sustained by the Company or any other Charging Group Member (if any); [*If any loss has been sustained, a statement to that effect with particulars*]
  - (j) no Liabilities arising from guarantees or indemnities have been incurred during the 3 months ending on the Relevant Date; [*If any Liabilities has been incurred, a statement to the effect with details*]
  - (k) no Liabilities arising from guarantees or indemnities will or are likely to mature in the 12 months from the Relevant Date which will materially affect the Company or its ability to repay any Stock maturing or interest payable during that period;
  - (l) no circumstances have occurred which materially adversely affect the security created by the Trust Deed or the likelihood of the Stockholders being paid in full;
  - (m) no circumstances have arisen which render adherence to any existing method of valuation of assets or Liabilities misleading or inappropriate;

- (n) no event has happened which could cause the Stock to become repayable before due date;
- (o) there has not been any substantial change in the nature of the business of the Company or of any of its Subsidiaries;
- (p) all parts of the Secured Property which ought to be insured hereunder were insured in accordance with the provisions of the Trust Deed or any collateral security and all premiums thereon have been duly paid; and
- (q) no Subsidiaries have been formed or acquired which are not Charging Subsidiaries;
- (r) the Company is in compliance with all requirements and obligations under the FMC Act and FMC Regulations;
- (s) the Company's current product disclosure statement and all information on the *Disclose* register are up-to-date and are not false or misleading in any material respect;
- (t) the Company has not been prohibited by section 82(1) of the FMC Act from offering or continuing to offer debt securities at any time since the last Directors' Quarterly Report was provided to the Trustee;
- (u) the Company is in compliance with its obligations in accordance with its NBDT Act licence and has not received any notification of cancellation or change of conditions of that licence *[if applicable]*;
- (v) the Company is in compliance with all requirements and obligations under the Deposit Takers Act 2023 and Deposit Takers Regulations 2025 *[if applicable]*;
- (w) the Company and each Charging Subsidiary (if any) is in compliance with all requirements of the NBDT Act and NBDT Regulations;
- (x) the Company and each Charging Subsidiary (if any) is in compliance with its obligations under the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*;
- (y) the Company has adopted a risk management programme which complies with section 27 of the NBDT Act and which has been approved by the Trustee;
- (z) any material amendments made to the Company's risk management programme have been approved by the Trustee;
- (aa) no circumstances have occurred which require the Company to amend the Company's risk management programme;
- (bb) in carrying on its business, the Company has at all times complied with the Company's risk management programme;
- (cc) the Company has not materially changed its lending policies since the date of the last Directors' Quarterly Report and it has complied with its lending policies since that date;
- (dd) no events that would render the security enforceable as described in clause 8.1 of the Trust Deed have occurred;
- (ee) there has not been:
  - (i) any transaction that would require the consent of the Reserve Bank under section 43 of the NBDT Act (change in ownership);
  - (ii) any change in directors of the Company;
  - (iii) any change in the senior officers of the Company; or
  - (iv) any major transaction (as defined in the Companies Act) entered into by the Company, or any related series of transactions that have the effect of a major transaction,
 which has not been notified in advance to the Trustee;

(ff) [provide details of the interests register of all directors. If an interests register does not exist, complete the following:

Director's name	Directorship (name company)
Director's name	Controlling interest (as defined)];

(gg) no independent directors:

- (i) are an employee of either the Company or a related party;
- (ii) are a director of a related party; or
- (iii) directly or indirectly have a qualifying interest in more than 10% of the voting securities of the Company or a related party;

(hh) list of all current exemptions from Reserve Bank and / or Financial Markets Authority:

Exemption details	Date exemption expires
Exemptions applications pending (details) requested	Date exemption

(ii) the Company has a *Fair Conduct Programme (FCP)* that is fit-for-purpose and the Company is compliant in all respects with sections 446G, 446H, 446I, and 446J of the FMC Act;

(jj) the FCP has been (or will be) reviewed annually and has been approved by the Company's board; and

(kk) the following complaints have been received from investors received during the quarter: [provide details of complaints and resolutions].

3 As at the Relevant Date, the calculations of the ratios and covenants in clauses 5.1 to 5.3 and 6.1(i)(i) of the Trust Deed and a written statement setting out the assumptions used by the Company for the purposes of making the calculations for the Company's liquidity position and other calculations required by the Trust Deed and relevant legislation are attached:

**Dated**

.....  
Director

.....  
Director

