

Deed of Amendment and Restatement (Master Trust Deed)

relating to Fonterra Co-operative Group Limited

Dated 1 November 2018

**Mayne
Wetherell**

Parties

Fonterra Co-operative Group Limited (**Fonterra**)

The New Zealand Guardian Trust Company Limited, as bond trustee appointed under the Trust Deed (defined below) (**Trustee**)

Background

Pursuant to clause 21.2(a) of the master trust deed dated 18 November 2002 as amended and restated on 1 April 2015 (**Trust Deed**), the parties to this deed have agreed to amend and restate the terms of the Trust Deed to reflect changes in New Zealand legislation and to clarify the audit requirements of the Register on the terms and conditions set out in this deed.

Covenants

1. Definitions

1.1 **Definitions:** Unless otherwise defined in this deed, capitalised terms shall have the meaning given to those terms in the Trust Deed.

1.2 **Interpretation:** In this deed:

Effective Date means the date of this deed.

2. Amendment and restatement

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

3. Confirmation

3.1 Except to the extent set out in this deed, the provisions of the Trust Deed, and the various covenants and obligations of each of the parties thereunder, are hereby ratified and confirmed and shall remain in full force and effect.

3.2 For the purposes of clause 21.2(a) of the Trust Deed, Fonterra is of the opinion that:

(a) the amendments contemplated by this deed are:

(i) of a minor, formal, administrative or technical nature; or

- (ii) to comply with the requirements or a modification of the requirements of any applicable law; and
- (b) such amendments will not be materially prejudicial to the interests of Holders.

3.3 For the purposes of clause 21.2(a) of the Trust Deed, the Trustee:

- (a) is of the opinion that the amendments contemplated by this deed are:
 - (i) of a minor, formal, administrative or technical nature; or
 - (ii) to comply with the with the requirements or a modification of the requirements of any applicable law; and
- (b) is of the reasonable opinion that such amendments will not adversely affect, or be materially prejudicial to, the interests of the relevant Retail Holders.

4. General

- 4.1 This deed may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. Any party may enter into this deed by signing any such counterpart.
 - 4.2 This deed is governed by and must be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
-

Execution Page

Fonterra

Signed for and on behalf of **Fonterra Co-operative Group Limited** by its authorised signatory in the presence of:



Signature of authorised signatory

SIMON TILL

Name of authorised signatory



Signature of witness

MATHEW HAWORTH

Name of witness

FINANCE


Occupation

AUCKLAND

City/town of residence

Trustee


Signed by **The New Zealand Guardian Trust
Company Limited** by:



Signature of authorised signatory

ASIF SALEEM

Name of authorised signatory



Signature of authorised signatory

HRVOJE KOPRIVCIC

Name of authorised signatory

Signature of witness

WITNESS TO BOTH SIGNATURES

Full Name: Debra Gail Morton

Residential Address: Auckland

Name of witness: Debra Gail Morton
Occupation: Corporate Trusts Administrator

Signature:



ACT 1571

Occupation

City/town of residence

Schedule – Amended and Restated Master Trust Deed

FONTERRA CO-OPERATIVE GROUP LIMITED

Issuer

THE NEW ZEALAND GUARDIAN TRUST COMPANY LIMITED

Trustee

MASTER TRUST DEED

Contents

| | |
|---|----|
| 1. INTERPRETATION | 1 |
| 2. ISSUE AND FORM OF NOTES | 10 |
| 3. STATUS OF NOTES | 11 |
| 4. TITLE AND TRANSFER | 11 |
| 5. REGISTER..... | 12 |
| 6. SUBORDINATED NOTES..... | 14 |
| 7. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST | 17 |
| 8. CALCULATION OF INTEREST | 18 |
| 9. PAYMENTS | 19 |
| 10. TAXES | 20 |
| 11. REPRESENTATIONS AND WARRANTIES..... | 21 |
| 12. UNDERTAKINGS | 22 |
| 13. DEFAULT..... | 26 |
| 14. APPOINTMENT OF TRUSTEE..... | 29 |
| 15. TRUSTEE'S FEES, EXPENSES AND INDEMNITIES | 29 |
| 16. TRUSTEE'S POWERS..... | 30 |
| 17. EXERCISE OF TRUSTEE'S POWERS | 33 |
| 18. REPLACEMENT OF TRUSTEE..... | 34 |
| 19. LIABILITY OF TRUSTEE..... | 35 |
| 20. BENEFIT OF DEED..... | 35 |
| 21. AMENDMENTS | 35 |
| 22. WAIVER..... | 37 |
| 23. CONSTRUCTION BY REFERENCE TO ANALOGOUS OBLIGATIONS AND EXEMPTIONS | 38 |
| 24. FURTHER AND SUBSTITUTED ISSUERS | 38 |
| 25. MEETINGS OF HOLDERS | 40 |
| 26. NOTICES | 40 |
| 27. RELEASE | 41 |
| 28. MISCELLANEOUS | 41 |
| 29. GOVERNING LAW | 42 |
| SIGNATURES..... | 43 |
| SCHEDULE 1..... | 44 |
| MEETINGS OF HOLDERS | 44 |
| SCHEDULE 2..... | 55 |
| FORM OF ISSUE NOTICE..... | 55 |
| SCHEDULE 3..... | 57 |
| FORM OF DIRECTORS' REPORTING CERTIFICATE | 57 |

DEED dated 18 November 2002 (as amended and restated on 1 November 2018)

PARTIES

FONTERRA CO-OPERATIVE GROUP LIMITED ("Issuer")

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

INTRODUCTION

- A. The Issuer is registered under the Companies Act and the Co-operative Companies Act. The Issuer proposes to establish a note programme under which it may from time to time issue notes denominated in New Zealand dollars.
- B. Each series of Notes issued by the Issuer will be constituted by and issued on terms set out in a Supplemental Trust Deed made between the Issuer and the Trustee. The terms of such Supplemental Trust Deed may modify the terms of this Deed in relation to the relevant Series of Notes.
- C. The Trustee has agreed, at the request of the Issuer, to act as trustee for the Holders of each Retail Series and, to the limited extent expressly provided in this Deed, for the Holders of each Wholesale Series, on the terms and conditions of this Deed applicable to that Series.

AGREEMENT

1. INTERPRETATION

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

"Agency Agreement" means, in relation to any Series, the agency agreement between the Issuer and the person appointed as registrar, calculation agent and paying agent for that Series, as specified in the Supplemental Trust Deed for that Series.

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

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

"Approved Issuer Levy" means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Note, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971 to enable the payment of such interest to be made to any non-tax resident for tax purposes with a deduction for New Zealand non-resident withholding tax at the rate of zero percent under section RF12 of the Income Tax Act 2007.

"Auditor" means the auditor for the time being of the Issuer.

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

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

- (a) either:
- (i) the bid settlement rate (rounded upwards, if necessary, to the nearest four decimal places) as displayed at or about 10.45am on the first day of that Interest Period on the Reuters Monitor Screen page BKBM (or its successor page) ("**Reuters Monitor Screen**") for bank bills having a term approximately equal to that Interest Period; or
 - (ii) if there is no such rate for bank bills having a term approximately equal to that Interest Period then the average (rounded upwards, if necessary, to the nearest four decimal places and ignoring the highest and lowest rates quoted) of the rates quoted to the Registrar for the relevant Series by each of the Reference Banks (or such one or more of them as are quoting) as being its buy rate for bank bills at or about that time on that date; or
 - (iii) if the Base Rate cannot be determined pursuant to paragraphs (i) or (ii) above, the rate per annum reasonably determined by the Registrar for the relevant Series to be the nearest practicable equivalent for that Interest Period; or
- (b) any other reference rate as may be specified in the Supplemental Trust Deed for a Series.

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

"Capital Notes" means capital notes issued by the Issuer under the capital notes trust deed dated 22 March 2001 and made between the Issuer and The New Zealand Guardian Trust Company Limited, as modified or supplemented from time to time.

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

- (a) all Retail Notes;
- (b) all Wholesale Notes;
- (c) in relation to matters affecting a Series only, that Series;
- (d) any Retail Notes which have attached to them identical rights, privileges, limitations, and conditions (but which may have a different Maturity Date or Interest Rate or both); or
- (e) any category of Notes having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of the Issuer (in

consultation with the Trustee if in relation to a Retail Series and in the event of any dispute from a Holder as to the Notes forming part of that category of Notes, in consultation with the Holders of that category of Notes) at any particular time, for any particular purpose, constitutes a separate class of Notes within either Wholesale Notes or Retail Notes, or both, as the case may be,

and "**Class of Holders**" means the Holders of those Notes. For the avoidance of doubt, Retail Holders and Wholesale Holders shall (except for the purposes of clause 21.4) constitute separate Classes for all purposes under this Deed.

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

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

"**Consolidated Financial Statements**" means, at any date, consolidated financial statements of the Group as at that date prepared in accordance with NZ GAAP and on a basis consistent with the most recent audited consolidated financial statements of the Group, except to the extent (if any) expressly disclosed in the notes to such statements or otherwise disclosed to the Trustee.

"**Co-operative Companies Act**" means the Co-operative Companies Act 1996.

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

"**Date of Enforcement**" means the date on which a Holder or the Trustee makes a declaration pursuant to clause 13.1.

"**Default Interest**" has the meaning given in clause 7.7.

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

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

"**Event of Default**" means any of the events specified in clause 13.1.

"**Extraordinary Resolution**" has the meaning set out in schedule 1.

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

"**Financial Statements**" means, with respect to a person or group of persons, financial statements within the meaning of section 6 or 7 (as appropriate) of the Financial Reporting Act.

"**Fixed Rate Note**" means a Note bearing a fixed rate of interest.

"**Floating Rate Note**" means a Note bearing interest at a margin over the Base Rate.

"**FMA**" means the Financial Markets Authority.

"FMCA" means the Financial Markets Conduct Act 2013.

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

"FMSA" means the Financial Markets Supervisors Act 2011.

"Group" means, at any time, the Issuer and its Subsidiaries at that time.

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

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

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

"Information Memorandum" means:

- (a) in relation to any Retail Series, the investment statement or product disclosure statement (as applicable) or such other document required by law which may replace a product disclosure statement; and
- (b) in relation to any Wholesale Series, the information memorandum or other offering document,

together with (in each case) all documents to be distributed with or which form part of the relevant document, which, in each case has been prepared by, or on behalf and with the approval of, the Issuer in relation to the relevant Series.

"Interest Payment Date" means:

- (a) in relation to a Floating Rate Note, the last day of each Interest Period for that Floating Rate Note; and
- (b) in relation to a Fixed Rate Note, the quarterly, semi-annual or annual dates (or such other dates) fixed at the time of issue of that Note for the payment of interest in respect of that Note and recorded as such in the Register.

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

"Interest Rate" means, in relation to a Note, the rate of interest (if any) payable in respect of that Note (which may be a fixed rate or a margin over the Base Rate) specified at the time of issue of that Note and recorded as such in the Register.

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

"Issue Notice" means a notice relating to an issue of Notes from the Issuer to the Registrar for the relevant Series substantially in the form set out in schedule 2, or such other form of notice as the Issuer and the Registrar for the relevant Series may from time to time agree.

"Issuer" means Fonterra Co-operative Group Limited (or, in relation to any particular Series, any other person which is or becomes an issuer of the Notes of that Series in accordance with clause 24).

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

"Maturity Date" means, in relation to a Note, the date for the repayment of that Note, being the date recorded as such in the Register in respect of that Note.

"Minimum Principal Amount" means, in relation to a Note, the minimum Principal Amount of that Note, being the amount specified as such in the relevant Supplemental Trust Deed.

"Note" means a note (which shall be an Unsubordinated Note or a Subordinated Note and shall form part of a Retail Series or a Wholesale Series) constituted by, and subject to the terms and conditions set out in, this Deed, and includes an Amortising Note, a Fixed Rate Note, a Floating Rate Note, an Index-linked Note or a Zero Coupon Note.

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

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

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

- (a) in relation to an Amortising Note, the principal amount thereof for the time being outstanding, as reduced in accordance with clause 7.4; or
- (b) in relation to an Index-linked Note, the principal amount thereof for the time being outstanding, as increased or reduced in accordance with clause 8.3.

"Principal Subsidiary" means, at any time, on the basis of the Consolidated Financial Statements at that time and the then most recent audited or, if not available, unaudited Financial Statements (consolidated, if applicable) of the relevant Subsidiary:

- (a) any Subsidiary of the Issuer whose total assets (consolidated, if applicable) represent at least 10 percent of the Total Assets of the Group;
- (b) any Subsidiary of the Issuer whose total net sales (consolidated, if applicable) represent at least 10 percent of the total net sales of the Group; or
- (c) any other Subsidiary of the Issuer (**receiving Subsidiary**) to which is transferred either:
 - (i) all or substantially all of the assets of another Subsidiary which immediately prior to the transfer was a Principal Subsidiary (**disposing Subsidiary**); or
 - (ii) sufficient assets of the Issuer or another Subsidiary for the receiving Subsidiary to have been a Principal Subsidiary had the transfer

occurred on or before the date of the Consolidated Financial Statements,

provided that:

- (d) in the case of paragraph (c) above, the receiving Subsidiary shall forthwith, upon the transfer, become a Principal Subsidiary and, with effect from the date of publication of the immediately succeeding Consolidated Financial Statements, paragraphs (a) and (b) above shall determine whether the disposing Subsidiary and the receiving Subsidiary are Principal Subsidiaries or not; or
- (e) a certificate signed by two directors of the Issuer certifying that in their opinion a Subsidiary is or is not or was or was not on a specified date a Principal Subsidiary shall, in the absence of a manifest error, be conclusive and binding on the parties.

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

"Reference Banks" means ANZ Bank New Zealand Limited, Bank of New Zealand, Deutsche Bank AG, Citibank N.A. and Westpac New Zealand Limited.

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

"Registrar" means, in respect of any Series, the person named in the relevant Agency Agreement and specified in the Supplemental Trust Deed for that Series as the registrar, calculation agent and/or paying agent for that Series, or any successor agent appointed under the relevant Agency Agreement in relation to that Series.

"Retail Series" means a Series of Notes which may, in accordance with the relevant Conditions, be offered or sold to members of the public or as a regulated offer under the FMCA or a Series of Notes that is designated as a Retail Series in the Supplemental Trust Deed for that Series, and **"Retail Note"** means a Note which is part of a Retail Series and **"Retail Holder"** means a Holder of a Retail Note.

"Securities Act" means the Securities Act 1978.

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

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

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

"Series" means the Notes issued pursuant to a particular Supplemental Trust Deed (which may be issued in Tranches).

"Subordinated Indebtedness" means any present or future indebtedness of the Issuer for or in respect of moneys borrowed or raised which by its terms is expressed to be

subordinated in the event of Winding-Up of the Issuer to the claims of Senior Creditors of the Issuer, and includes, for the avoidance of doubt, the Capital Notes.

"Subordinated Note" means a Term Subordinated Note or an Undated Subordinated Note.

"Subsidiary" means, in relation to any person:

- (a) a subsidiary within the meaning of section 5 of the Companies Act (or any other person which would be a subsidiary of that person if that person and the other person were both registered under the Companies Act); or
- (b) a "subsidiary" in accordance with NZ GAAP,

of that person.

"Supplemental Trust Deed" means a deed supplemental to this deed entered into by the Issuer and the Trustee pursuant to clause 2.4 constituting and setting out the terms and conditions of a Series.

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

"Total Assets" means, at any date, the aggregate amount on a consolidated basis of all assets of the Group which would be disclosed by the latest available Consolidated Financial Statements as at that date.

"Tranche" means Notes of the same Series in respect of which all terms are identical (except as to Issue Date, Maturity Date, Interest Rate and/or frequency of payment of interest).

"Transaction Documents" means, in relation to a Series, the documents specified as such in the relevant Supplemental Trust Deed.

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

"Trust Powers" means, in relation to a Series, the trusts, powers, authorities or discretions vested in the Trustee by this Deed in relation to that Series.

"Undated Subordinated Note" means a Note which, in accordance with its Conditions, is Subordinated Indebtedness of the Issuer and which is identified in the Supplemental Trust Deed constituting it and in the Register as an Undated Subordinated Note and which has no Maturity Date. An Undated Subordinated Note may be a Fixed Rate Note, a Floating Rate Note or an Index-linked Note. An Undated Subordinated Note may also be a Capital Note.

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

"Wholesale Series" means a Series of Notes which are not permitted, in accordance with the relevant Conditions, to be offered or sold to members of the public for the

purposes of the Securities Act or to retail investors for the purposes of the FMCA or a Series of Notes that is designated as a Wholesale Series in the Supplemental Trust Deed for that Series, and "**Wholesale Note**" means a Note which is part of a Wholesale Series and "**Wholesale Holder**" means a Holder of a Wholesale Note.

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

"**Zero Coupon Note**" means a Note in respect of which no interest is payable issued or to be issued by the Issuer at a discount to its Principal Amount.

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

an "**authorisation**" includes:

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

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

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

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

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

something having a "**material adverse effect**" in relation to the Issuer is a reference to it having a material adverse effect on the consolidated financial condition or operations of the Issuer and its Subsidiaries taken together which materially adversely affects the Issuer's ability to perform or comply with its obligations under this Deed or any Note.

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

"**outstanding**" means, in relation to Notes, all Notes other than those which have been:

- (a) redeemed or repaid in full in accordance with the Conditions applicable to those Notes; or

- (b) purchased and cancelled in accordance with the Conditions applicable to those Notes.

"payment" includes satisfaction of a monetary obligation.

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

"public" and **"member of the public"** shall be construed in accordance with the Securities Act.

a **"security"** includes a mortgage, charge, lien, pledge, security interest of any nature, and any other arrangement having like economic effect over any property, assets or revenues, and **"unsecured"** means not subject to a security.

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

"tax resident" means any person to whom resident withholding tax applies in relation to the holding of the Notes, in accordance with New Zealand tax legislation (or to whom resident withholding tax would not apply if that person was not exempted from resident withholding tax on payments of interest), and **"non-tax resident"** shall be construed accordingly.

"working day" has the meaning set out in the Interpretation Act 1999.

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

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

1.4 **Miscellaneous:**

- (a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) Unless the context otherwise requires, words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders;
- (c) References to any legislation or to any provision of any legislation shall be deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless the context otherwise requires, shall also include any statutory instruments issued under any such legislation or provision.
- (d) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.

- (e) References to any party to this deed or any other document or any Holder shall include its successors or permitted assigns.
- (f) References to a time of day are references to New Zealand time unless otherwise stated.
- (g) Anything which may be done at any time may also be done from time to time.

2. ISSUE AND FORM OF NOTES

- 2.1 **Power to issue Notes:** Notes may be issued by the Issuer under this deed at the times, in the amounts, to the persons, on the terms and conditions and at the prices from time to time determined by the Issuer.
- 2.2 **Form of Notes:** Without limitation to clause 2.1, Notes may be issued on terms such that the Principal Amount is a fixed amount or a reducing amount or an amount to be calculated by reference to an Index and/or that interest (if the Note is interest-bearing) will be calculated by reference to a specific interest rate (which may be a fixed rate or a margin over the Base Rate) or by reference to an Index or both. In addition, Notes shall be Subordinated Notes or Unsubordinated Notes, as specified in the relevant Supplemental Trust Deed.
- 2.3 **Wholesale Notes and Retail Notes:** Notes shall be issued on the basis that the relevant Series may be a Retail Series or a Wholesale Series as specified in the relevant Conditions or the relevant terms of the offer.
- 2.4 **Supplemental Trust Deed:** Notes shall be constituted and issued in Series. Each Series shall be subject to the terms and conditions set out in a Supplemental Trust Deed for that Series and (as modified by that Supplemental Trust Deed) this deed. To the extent that the Supplemental Trust Deed for a Series modifies this deed, or in the event of any conflict between the provisions of that Supplemental Trust Deed and those of this deed, that Supplemental Trust Deed shall prevail over this deed in relation to that Series. The provisions of the relevant Supplemental Trust Deed and this deed read together in accordance with this clause 2.4 shall constitute the Conditions for the Notes of the relevant Series.
- 2.5 **Creation and issue:** Notes of a Series are constituted when the Supplemental Trust Deed for that Series has been signed by the Issuer and the Trustee. Notes are issued and created by the Registrar entering in the Register the particulars of that Note, substantially as specified in the Issue Notice relating to those Notes under the heading "MTN Details".
- 2.6 **Provisions applicable to Notes:** The Notes shall be issued and held with the benefit of and subject to the applicable Conditions, all of which are binding upon the Issuer, the Trustee and the Holders. The Holders shall be deemed to have notice of the applicable Conditions, the provisions of this Deed and each other Transaction Document in relation to the relevant Series.
- 2.7 **Enforcement of Holders' rights:**
 - (a) The Trustee holds its rights and benefits under this Deed (including the right to enforce the Issuer's obligations and duties under this Deed or the FMCA in relation to the Retail Notes) in trust for, and for the benefit of, the Retail Holders and, only to the extent expressly set out in the relevant Supplemental Trust Deed for a Wholesale Series, the Wholesale Holders of that Wholesale

Series. No Retail Holder shall be entitled to enforce any of its rights or remedies under this Deed directly against the Issuer unless the Trustee fails to enforce such rights or remedies after having become bound to do so in accordance with this Deed.

- (b) Wholesale Holders may enforce any of their rights or remedies under this Deed directly against the Issuer.

2.8 **Form of Notes:** Each Note shall:

- (a) be in uncertificated book entry form;
- (b) have a Minimum Principal Amount for holdings of that Note and also may have a minimum multiple of that amount for such holdings, in each case as specified in the relevant Supplemental Trust Deed; and
- (c) have a tenor of one year or longer.

3. STATUS OF NOTES

3.1 **Status of Notes generally:**

- (a) The Notes are and will at all times be direct, unsecured and (except in relation to Subordinated Notes) unsubordinated indebtedness of the Issuer.
- (b) Except where the Notes are expressed in the Supplemental Trust Deed for the relevant Series to be Term Subordinated Notes or Undated Subordinated Notes, the Notes shall be Unsubordinated Notes and nothing in clause 6 shall apply in respect of them.

3.2 **Status of Unsubordinated Notes:** Unsubordinated Notes rank and will at all times rank equally without any preference or priority among themselves and at least equally with all present and future unsubordinated and unsecured indebtedness of the Issuer (except indebtedness preferred solely by operation of law and subject to laws affecting creditors' rights generally and equitable principles of general application).

3.3 **Status of Term Subordinated Notes:** Term Subordinated Notes rank and will at all times rank equally without any preference or priority among themselves and at least equally with all other present and future unsecured Subordinated Indebtedness of the Issuer having a specified Maturity Date (subject to laws affecting creditors' rights generally and equitable principles of general application).

3.4 **Status of Undated Subordinated Notes:** Undated Subordinated Notes rank and will at all times rank equally without any preference or priority among themselves and at least equally with all other present and future unsecured Subordinated Indebtedness of the Issuer having no fixed maturity date (subject to laws affecting creditors' rights generally and equitable principles of general application).

4. TITLE AND TRANSFER

4.1 **Certificates:** At the request of a Holder, or otherwise as required by the FMCA or any other applicable law, the Issuer shall procure the Registrar of the relevant Notes to issue to that Holder a confirmation, certificate or notice of registration in relation to the Notes held by that Holder, such confirmation, certificate or notice to include all

information required under the FMCA (if applicable), be provided in the manner required by the FMCA (if applicable) and to be in the form agreed between the Issuer and the Registrar of the relevant Notes. A confirmation, certificate or notice of registration issued in respect of a Note will not constitute a document of title. Entitlement will be determined solely by entry in the Register and, in the case of the beneficial interest in Notes lodged in NZClear, the records of NZClear.

- 4.2 **Transfer:** Title to a Note may be transferred by a transfer in any commonly used form which complies with the standard form and procedures of the Registrar of the relevant Notes and which is produced to the Registrar of the relevant Notes.
- 4.3 **Partial transfers:** A Holder may transfer part only of its interest in a Note. However, no transfer of any part of its interest may be effected if such transfer would result in the transferor or the transferee holding or continuing to hold a Note with a Principal Amount of less than the applicable Minimum Principal Amount (or minimum multiple thereof).
- 4.4 **Fees:** The Issuer shall, and shall procure each Registrar will, make no service charge to the Holders for:
- (a) the registration of any holding of Notes; or
 - (b) the transfer of registered title to any Notes.

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

- 4.5 **Selling restrictions:**
- (a) Each Holder shall only offer for sale or sell any Note in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
 - (b) Without limitation to the generality of clause 4.5(a), Notes shall not be offered or sold by the Issuer or any Holder in breach of the selling restrictions contained in the relevant Conditions or the relevant terms of the offer.
 - (c) No Information Memorandum or any advertisement, prospectus or other offering material in respect of any Note may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.

5. REGISTER

- 5.1 **Register:** The Issuer shall at all times while Notes are outstanding cause the Registrar for each Series to maintain the Register for that Series in New Zealand, which must record in respect of each Note the information specified in the Issue Notice relating to those Notes under the heading "MTN Details" plus the following information:
- (a) the name, address and (where known) tax residency of the Holder;
 - (b) details of the account to which payments in respect of the Notes are to be made;
 - (c) transfers of the Note and the date on which the Note was transferred to the Holder;

- (d) details of any resident withholding tax exemption certificate(s) held by the Holder; and
- (e) any other information required by law.

5.2 Disclosure and inspection:

- (a) The Issuer shall ensure that the Registrar of the relevant Notes discloses to a Holder who so requests, any information held on the Register which relates to the Note(s) registered in the name of that Holder.
- (b) The Issuer and the Trustee may, at all reasonable times during the office hours of the relevant Registrar and subject to any applicable laws, inspect and take extracts (including electronic copies) from each Register without payment of any fee.
- (c) In respect of a Retail Series, the Issuer shall ensure that the Registrar makes available for inspection, and provides copies of or extracts from, the Register as required by, and in accordance with, the FMCA.

5.3 Register shall prevail: Except as ordered by a court of competent jurisdiction, the Issuer, the Trustee and each Registrar are each entitled to recognise the Holder of a Note as the absolute owner of the Note and shall not be bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance, security or other adverse interest to which any Note may be subject. No recognition of any trust (express, implied or constructive), encumbrance, security or other adverse interest shall be entered on the Register. In the event of any conflict between any certificate or notice of registration issued in respect of a Note and the Register, the Register shall prevail.

5.4 Correction of errors: Each Registrar may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the relevant Register.

5.5 Co-ownership Notes:

- (a) Where two or more persons are registered as Holders of the same Note(s) by virtue of any application for Notes, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application, memorandum, or other instrument, those persons will be deemed to hold the Note(s) as joint tenants with right of survivorship.
- (b) If two or more persons apply (on an application for any Notes or by memorandum of transfer or other instrument), to be registered as Holders as tenants in common, the Registrar for the relevant Series may, after notifying the persons of its intention to do so, divide the Notes into parcels which represent each such person's share. If the Notes cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amounts (and any minimum multiples thereof), the Registrar of the relevant Notes may refuse to accept the application, memorandum of transfer or other instrument (as the case may be).

5.6 Acquisition of Notes by operation of law: When the right to any Note is acquired by any person in any manner other than by way of a transfer under this Deed (whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or otherwise) the Registrar of the relevant Notes, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the

Holder of that Note, will enter that person's name in the Register as the Holder of that Note accordingly.

- 5.7 **Notification by Holders:** Any change of name or address of any Holder or any change in any other information required to be inserted in any Register in respect of any Holder shall immediately be notified to the Registrar of the relevant Notes in writing by the Holder, or if a joint holding by all the joint Holders.
- 5.8 **Register compliance:** The Issuer shall comply with, and shall use all reasonable endeavours to ensure that each Registrar complies with all statutory requirements and the requirements of this Deed relating to the keeping of the Register and the details entered in the Register. Without limitation to the generality of the foregoing, the Register in respect of any Retail Series shall be audited (collectively or otherwise) in accordance with applicable auditing and assurance standards by the Auditor annually and, where the Register is not audited collectively, within 4 months of the Issuer's balance date, and at such other times as the Trustee may request in writing if the Trustee has reasonable grounds for believing that the requirements of this clause 5.8 are not being complied with in relation to the Register for any Retail Series.

6. SUBORDINATED NOTES

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

- (b) no payment shall be made in respect of the Undated Subordinated Notes except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.

6.4 **Solvency:**

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

6.5 **Contingent debt:** On a Winding-Up of the Issuer, the Trustee and the Holders of Subordinated Notes shall only be entitled to prove for any sum payable in respect of the Subordinated Notes as a debt which is subject to and contingent upon prior payment in full of, in the case of Holders of Term Subordinated Notes, the Senior Creditors, or in the case of Holders of Undated Subordinated Notes, the Senior Creditors and the Holders of Term Subordinated Notes. The Trustee agrees, and by purchasing a Subordinated Note each Holder of Subordinated Notes will be deemed to agree, that:

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

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

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

6.8 **Performance of trust:** Any trust mentioned in clause 6.7 may be performed by a Holder or the Trustee by paying or repaying the amount so received or recovered, or so much thereof as shall be necessary to ensure that all of the Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Notes, the

Holders of Term Subordinated Notes) are fully paid or repaid, on trust to the liquidator of, or other person charged with or responsible for the making of distributions on behalf of, the Issuer or, where there is no such person, the Issuer, for distribution to the appropriate Senior Creditors (and, in the case of any payment held in trust by a Holder of Undated Subordinated Notes, the Holders of Term Subordinated Notes). The receipt of the liquidator or other such person or the Issuer, shall be a good discharge to the Holder or the Trustee for the performance by it of the trust mentioned in clause 6.7. Any amount which becomes subject to the trust mentioned in clause 6.7 and which is paid or repaid by any Holder, as the case may be, or the Trustee pursuant to this clause 6.8 shall thereafter be treated as between the Issuer and the Trustee or the Holder as if it had never been received or recovered in the first place.

6.9 **Contract and Commercial Law Act:** For the purposes of subpart 1 of part 2 of the Contract and Commercial Law Act 2017, the provisions of this clause 6 are intended to confer a benefit upon the Senior Creditors and to be enforceable by the Senior Creditors directly, but no consent of the Senior Creditors shall be required to any modification or amendment to this clause 6 in accordance with clause 21.

6.10 **No subordination of Trustee's entitlement:** The provisions of this clause 6 apply only to payments or repayments by way of Principal Amount or interest on the Subordinated Notes and nothing in this clause 6 shall subordinate, defer in priority or point of payment, or otherwise affect or prejudice the payment or reimbursement of the fees, expenses, indemnities or other moneys payable to the Trustee pursuant to this Deed, or the rights and remedies of the Trustee in respect thereof.

6.11 **Exercise of Trustee's duties:** Subject to clause 16.2, the Trustee owes no duties to Holders of Subordinated Notes which are issued as part of a Wholesale Series. In respect of Subordinated Notes issued as part of a Retail Series, the duties of the Trustee shall be construed and interpreted to recognise and take into account the subordinated nature of the Notes including the following characteristics:

- (a) the subordination and the postponement in priority of the Subordinated Notes to indebtedness to all Senior Creditors (and also, in the case of Undated Subordinated Notes, to Holders of Term Subordinated Notes);
- (b) the Issuer may freely incur further indebtedness to Senior Creditors and further Subordinated Indebtedness; and
- (c) the Issuer may, in the circumstances set out in this Deed, suspend payment on the Notes;

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

6.12 **Notes paramount:** In the execution of the trusts under this deed, the Trustee shall at all times:

- (a) regard the interests of the Retail Holders of Unsubordinated Notes as paramount to the interests of the Retail Holders of Subordinated Notes; and
- (b) regard the interests of the Retail Holders of Term Subordinated Notes as paramount to the interests of the Retail Holders of Undated Subordinated Notes,

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

7. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST

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

7.2 Principal Amount of Wholesale Notes: The Issuer shall, on the Maturity Date of each Wholesale Note, unconditionally pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Wholesale Note in accordance with the Conditions applicable to that Note.

7.3 Principal Amount of Retail Notes:

(a) Subject to clause 7.3(b), the Issuer shall, on the Maturity Date of each Retail Note, pay or cause to be paid to, or to the order of, the Trustee the Principal Amount of that Retail Note in accordance with the Conditions applicable to that Note.

(b) Notwithstanding clause 7.3(a), the Issuer shall, on the Maturity Date of each Retail Note, unless and until otherwise requested by the Trustee, pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Retail Note. Such payment shall operate as a payment to the Trustee in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 7.3(a).

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

7.5 Interest: The Issuer shall pay interest on each Interest Payment Date:

(a) on each Floating Rate Note for each Interest Period, at the rate per annum equal to the aggregate of the Base Rate for that Interest Period (as determined by the Registrar for the relevant Series) and the Margin for that Floating Rate Note;

(b) on each Fixed Rate Note, at the Interest Rate for that Fixed Rate Note; and

(c) on each Index-linked Note, in accordance with the formula or at the Interest Rate (as the case may be) recorded in the Register in respect of that Index-linked Note.

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

7.7 Default interest: If any amount payable in respect of a Note or any other amount due to any person under this Deed is not paid on its due date interest ("**Default Interest**")

shall accrue on the unpaid amount (net of any interim or progress payments made) (after, as well as before, judgment) at the rate determined by the Registrar for the relevant Series to be the aggregate of 2% and the Base Rate which on the due date would apply to an Interest Period of one month, shall be determined at monthly intervals thereafter until the unpaid amount (net of any interim or progress payments) is paid and shall be compounded monthly until paid. For the avoidance of doubt, this clause 7.7 shall not apply in respect of payments suspended in accordance with this Deed.

8. CALCULATION OF INTEREST

8.1 Floating Rate Notes:

- (a) **Interest Periods:** Each Interest Period in relation to a Floating Rate Note shall be a period of one, two, three, four, five or six months' duration (as specified by the Issuer at the time of issue of that Note and entered in the Register) and:
- (i) the first Interest Period will commence on (and include) the Issue Date and end on (but exclude) the next Interest Payment Date and each subsequent Interest Period will commence on (and include) the Interest Payment Date of the previous Interest Period and end on (but exclude) the next Interest Payment Date;
 - (ii) if an Interest Period would otherwise end on a day which is not a Business Day, it will be extended to the next Business Day, unless that day falls in the next calendar month, in which case that Interest Period will end on the first preceding day that is a Business Day; and
 - (iii) if the final Interest Period would otherwise extend beyond the Maturity Date, it will end on the Maturity Date.
- (b) **Basis for calculation:** Interest shall be calculated on the Principal Amount of the Floating Rate Note, on the basis of the number of days in the relevant Interest Period and a year of 365 days. Interest shall accrue from day to day and shall be paid to the Holder in arrears on the Interest Payment Date for that Interest Period.

8.2 **Fixed Rate Notes:** Interest shall be calculated on the Principal Amount of each Fixed Rate Note and shall be payable in arrears in equal quarterly, semi-annual, annual or other instalments on each Interest Payment Date for that Fixed Rate Note.

8.3 Index-linked Notes:

- (a) In the case of an Index-linked Note for which the Principal Amount is calculated by reference to an Index, the Principal Amount on each Interest Payment Date (for the purposes of calculating the amount of interest payable by the Issuer on that Interest Payment Date) shall be determined in accordance with the formula recorded in the Register in respect of that Index-linked Note.
- (b) If the amount of interest payable on an Index-Linked Note on an Interest Payment Date is a negative amount, no amount by way of interest shall be payable by the Issuer on that Interest Payment Date and the positive equivalent of that amount will be deducted from the Principal Amount of that Index-Linked Note for the balance of the term of that Note. Nothing in this

clause obliges the Holder of that Index-Linked Note to make any payment to the Issuer by reason of the interest payable on the relevant Interest Payment Date being a negative amount.

- (c) If a deduction made pursuant to this clause results in the Principal Amount of the Index-Linked Note being equal to or less than zero, the Issuer shall not be required to make any further payments of interest or principal in respect of that Note and that Note shall be cancelled.

9. PAYMENTS

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

9.2 **Method of payment:** A Holder may, by notice to the Registrar for the relevant Series, request the Registrar to make payments in respect of any Note held by it to a specified bank account and may at any time cancel or amend any notice so given. No such notice, or cancellation or amendment of a notice, will have effect in respect of any payment unless received by the Registrar before the Record Date for that payment. In the absence of any such notice, payments in respect of each Note will be made by posting a cheque to the address of the relevant Holder appearing in the Register at the Holder's risk. A notice from one of several Holders of the same Notes shall be deemed to be given by all such Holders.

9.3 **Business Day:** If any Interest Payment Date or the Maturity Date of a Note is not a Business Day for that Note, the due date for the payment to be made on that date will be:

- (a) in relation to a Fixed Rate Note, the next following Business Day and all other provisions of this Deed and the Agency Agreement will be read and construed accordingly; or
- (b) in relation to a Floating Rate Note, the next following Business Day unless that following Business Day falls in the next calendar month, in which case the due date for that payment to be made will be the first Business Day preceding that Interest Payment Date or that Maturity Date, and all other provisions of this Deed and the Agency Agreement will be read and construed accordingly.

9.4 **Unclaimed payments:**

- (a) **Retail Notes:** In respect of any Retail Notes, if any payment made by the Issuer to any Retail Holder of that Retail Note at its address last entered in the Register is returned unclaimed the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address to be entered in the Register) be retained by the Registrar for the relevant Retail Series to be held by it for the Retail Holder concerned without any liability to invest or pay interest on that amount. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer. The Issuer will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment unless a Holder subsequently provides the Issuer with proof of its entitlement

thereto together with evidence that that Holder has no claim for the relevant amount under the Unclaimed Money Act 1971.

- (b) **Wholesale Notes:** In respect of any Wholesale Notes, if any payment made by the Issuer to any Wholesale Holder at its address last entered in the Register is returned unclaimed the amount concerned must (unless the Registrar or the Issuer has in the meantime received notice of a change of address to be entered in the Register) be returned to the Issuer unless it is otherwise agreed between the Issuer and the Registrar for the relevant Notes that such unclaimed monies are to be retained by the Registrar. The Issuer will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment.

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

10. TAXES

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

- (a) free of any restriction or condition;
- (b) free and clear of, and (except to the extent required by law or as provided in this clause 10) without any deduction or withholding on account of, any taxes; and
- (c) (except to the extent required by law) without deduction or withholding on account of any other amount whether by way of set-off or otherwise (except as provided in clauses 10.2, 10.3 and 10.4).

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

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

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

11. REPRESENTATIONS AND WARRANTIES

- 11.1 **Representations and warranties:** The Issuer represents and warrants to the Trustee and the Holders that:
- (a) **Status:** it is a company duly incorporated under the Companies Act and registered under the Co-operative Companies Act and validly existing under the laws of New Zealand and has the power and authority to own its assets and to carry on its business as presently conducted;
 - (b) **Power and corporate authority:** it has power, and all necessary corporate action (including passing all resolutions) has been taken, to authorise it to enter into, execute and deliver, exercise its rights and perform its obligations under this Deed and to issue the Notes;
 - (c) **Binding obligations:** its obligations under this Deed and the Notes (once issued) are legal, valid, binding and enforceable against it, in each case in accordance with its terms, subject to applicable bankruptcy, re-organisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject also (as to enforceability) to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law;
 - (d) **No contravention:** neither its entry into, exercise of its rights nor the performance of its obligations under, this Deed nor any transaction contemplated thereby (including the issue of Notes) will:
 - (i) violate or contravene any applicable law to which it is subject; or
 - (ii) violate any of its constitutive documents; or
 - (iii) cause any limit on its powers, or on the right or ability of its directors to exercise those powers, to be exceeded; and

- (e) **No Event of Default:** no Event of Default has occurred and is continuing.
- 11.2 **Supplemental Trust Deed:** In respect of a Series, the Issuer shall make such further representations and warranties as are set out in the Supplemental Trust Deed for that Series.
- 11.3 **Repetition:**
- (a) The representations and warranties contained in clause 11.1 shall be deemed to be repeated for the benefit of the Trustee and the Holders on the Issue Date and each Interest Payment Date of each Note.
- (b) In respect of a Series, the representations and warranties contained in clause 11.2 shall be deemed to be repeated for the benefit of the Trustee and the Holders of that Series on the Issue Date and each Interest Payment Date of each Note forming part of that Series.

12. UNDERTAKINGS

- 12.1 **General undertakings:** The Issuer undertakes to the Holders of each Series and (in respect of each Retail Series only) the Trustee that it will, for so long as any Notes of that Series are outstanding:
- (a) **Agency Agreement:** comply in all material respects with and perform all material obligations under each Agency Agreement and use all reasonable endeavours to ensure that each Registrar also does so;
- (b) **Notify Event of Default to Holders:** promptly notify the Trustee and the Wholesale Holders of the occurrence of any Event of Default;
- (c) **Supplemental Trust Deed:** comply in all material respects with and observe its material obligations under this Deed;
- (d) **Registrar:** ensure that a Register for each Series of Notes is maintained and give notice to the relevant Holders of any resignation or removal of the Registrar for that Series and the appointment of any replacement Registrar promptly following such event;
- (e) **Register:** in relation to that Series, cause the Registrar for that Series to keep the Register for that Series pursuant to the relevant Agency Agreement;
- (f) **Authorisations:** in relation to that Series, obtain, effect and promptly renew from time to time all material authorisations required under any applicable law to enable it to perform and comply fully with the Conditions for that Series or required on its part for the validity or enforceability of this deed and the Supplemental Trust Deed for that Series;
- (g) **Send Notices:** send copies to the Trustee of all notices given by it to Holders of that Series generally;
- (h) **FMCA:** where that Series is a Retail Series, comply with the provisions of the FMCA and the FMC Regulations applicable to the Retail Notes;
- (i) **Report of contravention:** where that Series is a Retail Series, if the Issuer has reasonable grounds to believe that it has contravened, may have

contravened, or is likely to contravene, any of its issuer obligations in respect of that Retail Series, it will, as soon as practicable, report to the Trustee in writing of the contravention or possible contravention and advise the Trustee of the steps (if any) that it has taken or intends to take in light of the contravention or possible contravention, and the date by which the steps were taken or are to be taken;

- (j) **Insolvency:** where that Series is a Retail Series, if the Issuer becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become insolvent (as defined in the FMCA), it will, as soon as practicable:
 - (i) disclose to the Trustee all information relevant to that matter that is in its possession or under its control and that was obtained in the course of, or in connection with, the performance of its functions as issuer; and
 - (ii) advise the Trustee of the steps (if any) that it intends to take in respect of that matter and the date by which the steps are to be taken;
- (k) **Comply with laws:** punctually comply with all laws (including all laws relating to the environment and the payment of taxes) binding upon it the non-compliance with which is likely to materially adversely affect the general interests of Holders; and
- (l) **Negative pledge:** so long as any Note remains outstanding, the Issuer undertakes to the Holders that it shall not, and shall procure that none of its Principal Subsidiaries will, create or permit to subsist any Security Interest upon the whole or any part of its present or future undertaking, assets or revenues (including uncalled capital) to secure any Relevant Indebtedness or Guarantee of Relevant Indebtedness without:
 - (i) at the same time or prior thereto securing the notes equally and rateably therewith to the satisfaction of the Holders; or
 - (ii) providing such other security for the Notes as may be approved by an Extraordinary Resolution of the Holders.

For the purposes of this clause 12.1(l):

Guarantee means, in relation to any Indebtedness of any person, any obligation of another person to pay such Indebtedness including, without limitation:

- (i) any obligation to purchase any such Indebtedness;
- (ii) any obligation to lend money, to purchase or subscribe shares or other securities or to purchase assets or services in order to provide funds for the payment of such Indebtedness;
- (iii) any indemnity against the consequences of a default in the payment of such Indebtedness; or
- (iv) any other agreement to be responsible for such Indebtedness.

Indebtedness means any indebtedness of any person for money borrowed or raised including, without limitation, any indebtedness for or in respect of:

- (i) amounts raised by acceptance under any acceptance credit facility;
- (ii) amounts raised under any note purchase facility;
- (iii) the amount of any liability in respect of leases or hire purchase contracts which would, in accordance with applicable law and generally accepted accounting principles, be treated as finance or capital leases;
- (iv) the amount of any liability in respect of any purchase price for assets or services the payment of which is deferred for a period in excess of 60 days; or
- (v) amounts raised under any other transaction including, without limitation, any forward sale or purchase agreement, having the commercial effect of a borrowing.

Relevant Indebtedness means any Indebtedness which is in the form of or represented by any bond, note, debenture, debenture stock, loan stock, certificate, or other instrument which is, or is capable of being, listed, quoted or traded on any stock exchange or in any securities market, including, without limitation, any over-the-counter market, whether or not initially distributed by means of a private placement.

Security Interest means any mortgage, charge, pledge, lien or other security interest including, without limitation, anything analogous to any of the foregoing under the laws of any jurisdiction.

12.2 **Reports and Financial Statements:** The Issuer covenants with the Trustee that, so long as any Retail Notes are outstanding, the Issuer will:

- (a) deliver to the Trustee, as soon as practicable (and in any event within four months) after the last day of each of its financial years, its Consolidated Financial Statements (duly audited); and
- (b) deliver to the Trustee, as soon as practicable (and in any event within three months) after the last day of each of its financial half-years, its consolidated half-yearly Financial Statements;
- (c) deliver to the Trustee, not later than the times of delivery of the latest Financial Statements for the Issuer pursuant to clause 12.2(a) above, a report signed by a Director and by the chief executive or chief financial officer of the Issuer in the form set out in schedule 3, or such other form as the Issuer and the Trustee may agree, stating the matters referred to therein as at the end of and in respect of such year;
- (d) deliver to the Trustee, within 5 Business Days after each Interest Payment Date in respect of a Retail Series, a certificate signed by two Authorised Officers stating whether all interest due on the relevant Retail Notes was paid on the Interest Payment Date and, if not:

- (i) whether Default Interest has accrued on the unpaid interest from the relevant Interest Payment Date at the default rate of 2% in accordance with clause 7.7; and
 - (ii) the date on which the Issuer expects to pay the relevant interest and Default Interest to the relevant Retail Holders; and
- (e) make available or provide to the Trustee or a person authorised by it for these purposes all documents or records relating to the Issuer and any report or other information (which may be about any matter relevant to the Trustee's performance of its functions and include forward-looking reports) that the Trustee or its authorised person, by written notice, require the Issuer to make available or provide within the timeframe and in the manner specified by the Trustee or its authorised person in that notice provided that such timeframe and manner are reasonable in the circumstances.

12.3 **Auditor's Report:** The Issuer shall, so long as any Retail Notes are outstanding, provide to the Trustee, at the same time as the audited latest Financial Statements for the Issuer are provided in accordance with clause 12.2(a), a separate report by the Auditor stating:

- (a) whether, in the course of performing their duties as Auditor, they have become aware of any non-payment by the Issuer of any interest on any of the Notes and if so the amount of the interest so unpaid;
- (b) the aggregate Principal Amount of Notes in each Retail Series on issue and outstanding;
- (c) whether there is reasonable assurance that, in all material respects, the Register for each Retail Series has been maintained in accordance with the FMCA and correctly contains the information required by the FMCA;
- (d) whether in the performance of their duties as Auditor they have become aware of any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Trustee by this Deed or, in respect of Retail Notes, the FMCA, and if so giving particulars thereof;
- (e) whether their audit has disclosed any matter, and if so giving particulars thereof calling in their opinion for further investigation by the Trustee in the interests of the Retail Holders; and
- (f) that they have perused as part of their normal requirements for the completion of their audit the report of the directors of the Issuer under clause 12.2(a) given since the last report by the Auditor and whether, so far as matters which they have observed in the performance of their duties are concerned, anything has come to their attention which would cause them to believe that any of the statements made in those reports are incorrect.

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

12.4 Appointment of Auditor:

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

13. DEFAULT

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

- (a) **Non-payment:**
- (i) any amount of, or in respect of, the Principal Amount or interest payable in respect of any Note is not paid in the manner specified in this Deed within 10 Business Days of its due date; or

- (ii) any other amount payable under this Deed in the manner required within 20 Business Days after its due date;
- (b) **Other breaches:** the Issuer fails to perform or comply in a material respect with any other material obligation under this Deed other than that referred to in clause 13.1(a) and that failure is incapable of remedy or, if capable of remedy, is not remedied within 20 Business Days of the date on which the Issuer first became aware of it;
- (c) **Misrepresentation:** any representation, warranty or statement made or deemed to have been made by or on behalf of the Issuer in this Deed is or proves to have been untrue, inaccurate, misleading, deceptive or incorrect in a material respect when made or repeated or deemed to have been made or repeated and the matter (the subject of the relevant misrepresentation) is material such that that misrepresentation has a material adverse effect on the Issuer;
- (d) **Liquidation:** the Issuer ceases or threatens to cease to carry on all or substantially all of its business or operations (except for the purposes of, and followed by, an amalgamation or solvent reconstruction in respect of which the new entity assumes all of its obligations under this deed and in respect of the Notes), or an order is made, or a resolution is passed for the Winding-Up of the Issuer;
- (e) **Receiver:** either:
 - (i) an encumbrancer takes possession of the whole or any material part of the assets of the Issuer; or
 - (ii) a receiver, manager, inspector, trustee, or other similar person is appointed in respect of the Issuer;
- (f) **Distress or execution:** a distress, attachment or other execution for a sum exceeding 1.00% of Total Assets at the relevant time is levied or enforced upon, or commenced against, any asset of the Issuer and is not discharged or stayed within 20 Business Days;
- (g) **Insolvency:** the Issuer is declared or becomes bankrupt or insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with section 287 of the Companies Act 1993, or enters into dealings with any of its creditors with a view to avoiding, or in expectation of, insolvency, or makes a general assignment or an arrangement, compromise or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally (except, in each case, for the purpose of, and followed by, an amalgamation or solvent reconstruction in respect of which the new entity assumes all of its obligations under this deed and in respect of the Notes);
- (h) **Statutory management:** a recommendation is made to appoint a statutory manager by the FMA) under the Corporations (Investigation and Management) Act 1989 in respect of the Issuer;
- (i) **Cross-default:** any indebtedness in excess in aggregate of 1.00% of Total Assets at the relevant time of the Issuer is not paid when due or within any applicable grace periods or is declared to be due and payable or cancelled or

terminated prior to its stated maturity by reason of an event of default, cancellation or similar event;

- (j) **Invalidity of deed:** any material provision of this Deed:
- (i) ceases to have effect in whole or in part, other than by performance or as permitted by its terms; or
 - (ii) becomes wholly or partly void, voidable, illegal, invalid or unenforceable (other than by reason only of a party waiving any of its rights) or the performance of any such provision becoming illegal,
- or the Issuer, or any person on its behalf, makes any allegation or claim to that effect; or
- (k) **Supplemental Trust Deed:** (in relation to any Note) any event occurs which is specified in the Conditions for that Note as an event of default,
- then at any time thereafter, provided that event is continuing unremedied:
- (A) **Wholesale Series:** a Wholesale Holder may, without prejudice to any other remedies which that Holder may have:
- (1) where that Event of Default occurs under clause 13.1(a) in relation to a Note held by that Holder; or
 - (2) where that Event of Default occurs under any other paragraph of this clause 13.1 and the Holders of the Wholesale Notes (or in the case of clause 13.1(k), the Holders of the Notes of the relevant Series) resolve by Extraordinary Resolution to do so,
- declare all (but not some only) of the Notes held by that Holder to be immediately due and payable by notice in writing to the Issuer; and
- (B) **Retail Series:** the Trustee may in its discretion and shall immediately upon being directed to do so by an Extraordinary Resolution passed by Holders of the Retail Notes declare the Notes of each Retail Series to be immediately due and payable by notice in writing to the Issuer.

13.2 **Distribution of funds in respect of Retail Notes:** All moneys received by the Trustee in respect of Retail Notes from the Issuer on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Notes) be held and applied (subject to the provisions of clause 6 of this deed):

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

- (c) thirdly, in or towards payment to the Retail Holders of Term Subordinated Notes (if any), rateably in proportion to the amounts actually or contingently owing to them in respect of the Term Subordinated Notes held by them;
- (d) fourthly, in or towards payment to the Retail Holders of Undated Subordinated Notes (if any) rateably in proportion to the amounts actually or contingently owing to them in respect of the Undated Subordinated Notes held by them; and
- (e) fifthly, the surplus (if any) of such moneys, in payment to the Issuer or to such other person (including a liquidator of the Issuer) who may be lawfully entitled thereto.

14. APPOINTMENT OF TRUSTEE

- 14.1 The Issuer appoints the Trustee, and the Trustee accepts appointment, as trustee for the relevant Holders on the terms and conditions of this Deed. The Trustee shall hold in trust for the benefit of the relevant Holders the right to enforce any obligations or duties that the Issuer has under this Deed and the FMCA, including the right to enforce the Issuer's obligation to repay to a Holder the Principal Amount of the Notes held by that Holder, together with interest thereon, in accordance with the terms of this Deed.

15. TRUSTEE'S FEES, EXPENSES AND INDEMNITIES

- 15.1 **Fees:** The Issuer shall pay to the Trustee such fees as may from time to time be agreed between them in writing.
- 15.2 **Expenses:** The Issuer shall pay all expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Trustee in connection with:
- (a) the preparation, signing and (if applicable) registration of this deed, each Supplemental Trust Deed, each Information Memorandum and any prospectus;
 - (b) the exercise of any Trust Power, including the taking of any expert advice deemed reasonably necessary or expedient by the Trustee;
 - (c) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders in accordance with the terms and conditions of this Deed; or
 - (d) any waiver, consent or other action requested by the Issuer.
- 15.3 **Indemnity by Issuer:** Subject to clause 19.1 and without prejudice to the right of indemnity by law given to trustees, the Trustee shall be indemnified by the Issuer for all expenses, losses and liabilities reasonably sustained or incurred in carrying out its licensee obligations (as defined in section 4 of the FMSA) or the Trust Powers or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this Deed, other than a claim arising out of a wilful default, gross negligence or wilful breach of trust.
- 15.4 **Indemnity by Holders:** Subject to clause 16.3(a)(vi), the Trustee is not required to take any action or exercise any Trust Power or comply with any request or direction pursuant

to this Deed unless, subject to clause 19.1, it has first been indemnified to its satisfaction against all reasonable expenses, losses and liabilities it may sustain or incur by so doing.

- 15.5 **Payments:** The fees, expenses, indemnities and other amounts payable under this Deed to the Trustee shall be payable by the Issuer at the times agreed (or, in the absence of agreement, on demand) and, if not paid when due, shall carry Default Interest in accordance with clause 7.7 until paid.

16. TRUSTEE'S POWERS AND DUTIES

- 16.1 **General powers:** The powers, authorities and discretions conferred on the Trustee by this Deed shall be in addition to any powers, authorities and discretions which may from time to time be vested in trustees by law in relation to Retail Notes or (if applicable) Wholesale Notes and to any powers, authorities and discretions which may from time to time be vested in the Trustee as the Holder of any Note.

16.2 Wholesale Series:

- (a) The Trustee shall have no powers or duties in relation to any Wholesale Series except the powers and duties explicitly set out in the Conditions for any Wholesale Notes.
- (b) Where any authorisation or direction in respect of the taking of any action or other matter may, under the provisions of this Deed, be given to the Trustee by an Extraordinary Resolution of Wholesale Holders, the Trustee may act in reliance upon such authorisation or (as the case may be) shall act in accordance with any such direction, and shall not be responsible for any costs, damages, expenses, liabilities or inconvenience that may result from the actions so taken in reliance thereon, provided that the Trustee shall not be so bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, damages, expenses and liabilities which it may incur by so doing.

- 16.3 **Retail Series:** In relation to each Retail Series the Trustee shall, in addition to any powers provided by law, have the following powers and duties, subject to the terms of the Supplemental Trust Deed in relation to the relevant Series:

- (a) **General responsibilities and duties:** The Trustee:
- (i) is responsible for acting on behalf of the Retail Holders in relation to the Issuer, any matter connected with this Deed or the terms of the regulated offer of a Retail Series and any contravention or alleged contravention of the issuer obligations in respect of a Retail Series;
- (ii) is responsible for supervising the Issuer's performance of its issuer obligations and in order to ascertain whether or not the assets of the Issuer that are or may be available, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of the Retail Notes as they become due, subject, in the case of any Subordinated Notes issued as part of a Retail Series, to clause 6.11;
- (iii) is responsible for performing and exercising any other functions, duties and powers conferred or imposed on the Trustee by this Deed, the FMCA and the FMSA;

- (iv) must:
 - (A) act honestly in acting as trustee;
 - (B) in exercising its powers and performing its duties as trustee, act in the best interests of the Retail Holders;
 - (C) exercise reasonable diligence in carrying out its functions as trustee;
 - (v) must do all the things it has the power to do to cause any contravention or alleged contravention of the issuer obligations in respect of a Retail Series to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Retail Holders of that Retail Series;
 - (vi) subject to any court order made under section 210 of the FMCA, must act in accordance with any direction given by an Extraordinary Resolution of Retail Holders or an affected Class of Retail Holders that is not inconsistent with any enactment, rule of law or this Deed in relation to:
 - (A) seeking a remedy to a contravention or alleged contravention of the issuer obligations in respect of a Retail Series; and
 - (B) any other matter connected with the Trustee's functions; and
 - (vii) in exercising its powers and performing its duties as trustee, must exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor (as those terms are defined in the FMCA) would exercise in the same circumstances.
- (b) **Applications to court:** Having regard to any other powers or remedies available to it under this Deed or at law for the protection of the interests of Retail Holders and to all other circumstances relevant to the general interests of such Holders, the Trustee may apply to the court for an order:
- (i) under section 208 of the FMCA, if the Trustee is satisfied that:
 - (A) the Issuer is unlikely to be able to pay all money owing in respect of one or more Retail Series as and when due;
 - (B) the Issuer is insolvent (as defined in the FMCA) or the financial position or management of the Issuer is otherwise inadequate;
 - (C) there is a significant risk that the interests of Retail Holders will be materially prejudiced for any other reason; or
 - (D) the provisions of this Deed are no longer adequate to give proper protection to the interests of the Retail Holders; or
 - (ii) under section 210 of the FMCA and within 20 working days (or, with leave of the court, within any longer period) after the passing of an

Extraordinary Resolution of Retail Holders, directing it not to comply with an Extraordinary Resolution of Retail Holders,

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

- (c) **Waiver:** Subject to any direction given by Extraordinary Resolution of the Retail Holders or affected Class of Retail Holders, the Trustee may at any time by written notice to the Issuer waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Issuer of this Deed or any Conditions of any Retail Notes provided the Trustee is reasonably satisfied that such waiver will not have a material adverse effect on the relevant Holders. Any such waiver will bind all Holders of the relevant Retail Notes and, if the Trustee reasonably requires, must be notified by the Issuer to those Holders as soon as practicable.
- (d) **Material breach:** If the Issuer breaches any issuer obligation in respect of a Retail Series, the Trustee shall, unless it is satisfied that such breach will not have a material adverse effect on the Holders of that Retail Series, be entitled in its absolute discretion to require the Issuer to report to those Retail Holders the circumstances and the nature of such breach and any other relevant information concerning the Issuer which the Trustee has received in relation to this Deed and which it reasonably considers to be material to those Holders, and invite those Holders to indicate to the Trustee their preferences as to any exercise or non-exercise of the Trust Powers under this Deed. If the Issuer fails to give that report the Trustee shall be entitled to do so itself.
- (e) **Represent Holders:** The Trustee may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Retail Holders, represent and act on behalf of those Holders in any matter concerning them generally.
- (f) **Investment:** Any moneys held by the Trustee which are subject to the trusts created by this Deed may, at the discretion of the Trustee, be invested in the name of the Trustee or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income (less any commissions properly payable to the Trustee) arising from all such investments made by the Trustee will belong to the person in respect of whom such moneys are held by the Trustee.
- (g) **Power to remedy breach:** The Trustee's powers to remedy any breach of this Deed are subject to any other provision of this Deed which is inconsistent with the exercise of such powers.
- (h) **Power to engage expert:** The Trustee may engage an expert (for example, an auditor, investigating accountant, valuer or actuary) if the Trustee considers, on reasonable grounds, that it requires the assistance of the expert to:
 - (i) determine the financial position of the Issuer; or

- (ii) review the business, operation, management systems or the governance of the Issuer.

Where the Trustee engages an expert pursuant to this clause 16.3(h), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance and (without limiting clause 15.2(b)) the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

17. EXERCISE OF TRUSTEE'S POWERS

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

- (a) has absolute discretion as to the exercise of the Trust Powers and as to the conduct of any action, proceeding or claim (provided it has acted with reasonable care and diligence); and
- (b) may refrain from exercising any Trust Power until directed by Extraordinary Resolution of the affected Class of Holders to do so.

17.2 **Reliance:** The Trustee shall be entitled without liability for loss, to obtain, accept and act on, or to decline and elect not to act on:

- (a) any communication or document (including any fax or email) reasonably believed by it to be genuine and correct;
- (b) subject to clause 16.3(a)(vi), any resolution which the Trustee believes to have been properly passed at any meeting of any Class of Holders;
- (c) advice and statements of lawyers, accountants and other experts reasonably selected by it or the Issuer;
- (d) a certificate signed by or on behalf of the Issuer as to any matters of fact which might reasonably be expected to be within the knowledge of the Issuer or that any particular transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of any Class of Holders, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and
- (e) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Deed, as conclusive evidence of the facts stated therein.

17.3 **Delegation:** The Trustee must not delegate any of its functions under clauses 16.3(a)(i) to (iii) unless such delegation is expressly permitted by the FMCA or permitted by, and then subject to, conditions imposed under the FMSA but may, for the avoidance of doubt, delegate its other functions. Where the Trustee may delegate its functions, it may, whenever it thinks it expedient in the interests of the relevant Holders to do so:

- (a) delegate at any time to any person any of the Trust Powers which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit provided that any such delegation shall not relieve the Trustee of its responsibilities under this Deed; and
- (b) authorise any person as it thinks fit to act as its representative at any meeting.

- 17.4 **Trustee's consent:** Any consent given by the Trustee for the purposes of this Deed may be given on such terms and conditions (if any) as the Trustee thinks fit.
- 17.5 **Subscribers' money:** The Trustee shall not be responsible for monitoring the application by the Issuer of the money paid by purchasers of the Notes.
- 17.6 **Safe custody:** The Trustee may hold or place this Deed and any other documents with any bank or any person whose business includes the undertaking of safe custody of documents or with any lawyer or firm of lawyers (in each case reasonably considered by the Trustee to be of good repute) and the Trustee is not responsible for or required to insure against any loss incurred in connection with that deposit.
- 17.7 **Fiduciary relationship:** The Trustee and any of its related companies and officers may (without having to account to the Issuer or any Holder) engage in any kind of business with the Issuer and its Subsidiaries and may accept fees or other consideration for services without having to account to the Holders.
- 17.8 **Confidentiality:** Unless ordered to do so by law, court order or the Conditions, the Trustee shall not be required to disclose to any Holder any confidential financial or other information made available to the Trustee by the Issuer.
- 17.9 **Representation and warranty:** The Trustee represents and warrants to the Issuer and the Retail Holders that it is licensed (as that term is defined in the FMCA) and that such licence covers the supervision of all Retail Notes issued under this Deed. The representation and warranty contained in this clause 17.9 shall be deemed to be repeated for the benefit of the Issuer and each Retail Holder on the Issue Date and each Interest Payment Date of each Retail Note.

18. REPLACEMENT OF TRUSTEE

- 18.1 **Resignation or removal of Trustee:** Subject to, in the case of clauses 18.1(a) to 18.1(c), the appointment and acceptance of a successor Trustee as provided in this clause 18, the Trustee having performed all its functions and duties or a court consenting to such resignation or removal (as applicable):
- (a) the Trustee may resign at any time by giving not less than 90 days' written notice to the Issuer;
 - (b) the Issuer may, with the consent of the FMA, remove the Trustee from office by giving not less than 30 days' written notice to the Trustee;
 - (c) the Relevant Class of Holders (as defined in clause 18.2 below) may remove the Trustee from office by passing an Extraordinary Resolution to that effect; or
 - (d) the FMA or the Issuer may remove the Trustee from office in accordance with the FMSA.
- 18.2 **Appointment of new Trustee:** The power to appoint a new trustee of this Deed is vested in the Retail Holders and the Wholesale Holders in respect of which the Trustee is acting as trustee under this Deed (together "**Relevant Class of Holders**") by way of an Extraordinary Resolution of the Relevant Class of Holders and in the Issuer, but no new trustee may be appointed by the Issuer unless such appointment is first approved by an Extraordinary Resolution of the Relevant Class of Holders. Upon the Trustee notifying the Issuer that it wishes to retire, or upon the Issuer wishing to appoint a new trustee, the Issuer must promptly call a meeting of the Relevant Class of Holders for the

purposes of approving an appointment of a new trustee and, if such approval is given, the Issuer may exercise its power of appointment.

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

- (a) the successor Trustee will succeed to, and become vested with, all the rights, powers and obligations of the retiring Trustee under the Transaction Documents and, as from that time, the retiring Trustee shall be discharged from its rights, powers and obligations; and
- (b) the retiring Trustee must transfer to the successor Trustee all moneys, investments, property and books held by the Trustee under this Deed.

18.4 **Notice:** The Issuer shall notify all Holders in the Relevant Class of Holders (as defined in clause 18.2) of the appointment of any new trustee as soon as reasonably practicable following such appointment.

19. LIABILITY OF TRUSTEE

19.1 **Limitation on indemnity:** The Trustee's rights to be indemnified in relation to the performance of the Trustee's licensee obligations (as that term is defined under section 4 of the FMSA) under this Deed are available only in relation to the proper performance of its duties under clauses 16.3(a)(iv) and 16.3(a)(vii) and no other provision of this Deed that is contrary to the foregoing shall have any effect.

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

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

20. BENEFIT OF DEED

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

21. AMENDMENTS

21.1 **Limited right to amend:** In relation to each Class, except as provided in this clause 21, the Issuer may not cancel, vary or amend any provision of this Deed while any Notes are outstanding. Any amendment to this Deed must be in writing signed by the Issuer and the Trustee and, in relation to an amendment affecting Retail Notes, the Trustee

must, where required by the FMCA, provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA.

21.2 Amendment without consent:

- (a) In relation to each Class, the provisions of this Deed may be amended without the consent of the Holders of that Class where:
- (i) such amendment (in the opinion of the Issuer (and, where that Class is or is part of a Retail Series and without limiting clause 21.2(a)(ii), in the opinion of the Trustee)):
 - (A) is of a minor, formal, administrative or technical nature;
 - (B) is to correct a manifest error;
 - (C) is to comply with the requirements or a modification of the requirements of any applicable law;
 - (D) is necessary for the purpose of obtaining or maintaining a quotation of any Notes on any stock exchange in New Zealand or elsewhere;
 - (E) is in respect of any of the provisions for reporting to the Trustee under this Deed or in respect of clauses 15 and 17; or
 - (F) (where that Class is or is part of a Retail Series) is agreed to by the Trustee pursuant to clause 23,

and, in any such case, the Issuer is of the opinion that such amendment will not be materially prejudicial to the interests of Holders of the affected Notes generally and, in the case of an amendment affecting Retail Notes, the Trustee is satisfied that such amendment will not have a material adverse effect on the affected Retail Holders; or
 - (ii) in the case of an amendment affecting Retail Notes:
 - (A) the Trustee is satisfied that such amendment will not have a material adverse effect on the affected Retail Holders; or
 - (B) the FMA is satisfied that such amendment is necessary to enable this Deed to comply with the FMCA or any other enactment or any rule of law and consents to such amendment.
- (b) Notice of any such amendment, including a description of the amendment, shall be provided by the Issuer to the relevant Holders within 10 working days of the amendment being made, unless in the case of Retail Notes, the Trustee notifies the Issuer that such notification is not required to be provided to the Holders of Retail Notes or it would be appropriate to give notice of the amendment in some other manner.

21.3 **Amendment approved by Holders:** Without limiting clause 21.2 but subject to clause 21.5, in relation to each Class the provisions of this Deed may be amended if the amendment has been approved:

- (a) by an Extraordinary Resolution of each Class of Holders that is or may be adversely affected by the amendment; or
- (b) in writing by all Holders of that Class of Holders (and such authorisation to be given in one or more documents in similar form).

Where the relevant Class of Holders holds Notes from more than one Series, this Deed is deemed to be amended in respect of each such Series in accordance with the amendment approved by that Class of Holders in accordance with this clause 21.3.

21.4 **Single Meeting:** Where an amendment requiring approval of the Holders pursuant to clause 21.3 relates to or arises from any general change in the constitution, affairs or business of the Issuer, and the subject matter of such resolution is the same in relation to Retail Holders and Wholesale Holders, such approval shall not be required to be dealt with by way of separate meetings of each such Class of Holders unless the Trustee determines that there is a material difference in the effect of such resolution on Retail Holders from Wholesale Holders.

21.5 **Notice:** Notice of any proposed variation under clause 21.3 shall be given by the Issuer to each Holder of each affected Class of Holders not less than 14 days before the date on which it is intended that such variation take effect, but the non-receipt of notice by any such Holder shall not affect the validity of any such variation.

22. WAIVER

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

- (a) the Trustee may deem appropriate provided that it is satisfied that such temporary variation will not have a material adverse effect on the affected Holders and the Trustee provides or, where applicable, obtains the certificates required under section 108(2)(b) of the FMCA; or
- (b) may be agreed by the Trustee pursuant to clause 23.

22.2 **Waivers:** Subject to any applicable law and except to the extent expressly provided otherwise in the Conditions for any Notes, by notice to the Issuer the Trustee may, in respect of any Retail Series, waive any breach or anticipated breach by the Issuer of this Deed applicable to the relevant Retail Notes either wholly or in part for a specified period or indefinitely and on such other terms and conditions as:

- (a) it deems expedient provided that it is satisfied that such waiver will not have a material adverse effect on the affected Holders, and provided further that no such waiver shall prejudice the rights of the Trustee or the Holders in respect of any other breach; or
- (b) may be agreed by the Trustee pursuant to clause 23.

23. CONSTRUCTION BY REFERENCE TO ANALOGOUS OBLIGATIONS AND EXEMPTIONS

23.1 Except to the extent expressly provided otherwise in the Conditions for any Notes, if the Issuer is granted an exemption, or an exemption is applicable to the Issuer, in relation to any obligation imposed upon the Issuer by or pursuant to the FMCA, the Companies Act, the Co-operative Companies Act 1996 or the Financial Reporting Act which is materially the same as or analogous to any obligation of the Issuer under this Deed or any Notes, then provided two Authorised Officers of the Issuer certify that such amendment, temporary variation or waiver will not have a material adverse effect on the Issuer or any Class of Holders, the Trustee may in respect of any Retail Series agree to amend or temporarily vary this Deed or the Notes or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

24. FURTHER AND SUBSTITUTED ISSUERS

24.1 **Further Issuers:** The Issuer shall be entitled to nominate any wholly-owned Subsidiary of the Issuer to be the issuer of the Notes of a particular Series by so providing in the Supplemental Trust Deed for that Series, provided that the new issuer enters into the relevant Supplemental Trust Deed and agrees to become bound by the terms of this deed and in the case of a Retail Series on terms satisfactory to the Trustee (acting reasonably).

24.2 **Substituted Issuers:** The Issuer may, without the consent of the Holders of any Series but in respect of any Retail Series, subject to the Trustee's consent, substitute any wholly-owned Subsidiary of the Issuer ("**Substituted Obligor**") in place of the Issuer (or of any previous substitute under this clause) as the principal debtor under this Deed and the Notes either generally or in relation to one or more Series but only if:

- (a) the Substituted Obligor succeeds to and becomes bound by all the terms and conditions of the Transaction Documents for the relevant Series by entering into such agreements and documents ("**Substitution Documents**"), each in form and substance satisfactory to:
 - (i) (where the relevant Series is a Retail Series) the Trustee, as the Trustee (acting reasonably) may deem appropriate;
 - (ii) (where the relevant Series is a Wholesale Series) the Holders of that Wholesale Series, as those Holders (acting reasonably) may deem appropriate;
- (b) (where the relevant Series is a Retail Series) such amendments are made to any other documents (including any Information Memorandum and prospectus in respect of the relevant Notes) as the Trustee may reasonably deem appropriate;
- (c) two Authorised Officers of the Substituted Obligor certify that the Substituted Obligor will be solvent immediately after such substitution;
- (d) (if the relevant Notes, or any of them, are publicly rated by a rating agency as a result of a contract between the Issuer and that rating agency) that rating agency confirms in writing that following such substitution the rating assigned to the relevant Notes in force immediately prior to the substitution taking effect shall be maintained or increased;

- (e) the Issuer (or any such previous Substituted Obligor) and the Substituted Obligor comply with such other reasonable requirements as:
- (i) (where the relevant Series is a Retail Series), the Trustee may direct which the Trustee reasonably considers are in the interests of the Retail Holders (as a whole) of the relevant Notes; or
 - (ii) (where the relevant Series is a Wholesale Series), the Holders of that Wholesale Series may direct,
- which may include a requirement that the Issuer guarantees payment of the relevant Notes and/or remains bound by all or certain of the provisions of this Deed in respect of the relevant Notes;
- (f) prior to the substitution being effected, the Substituted Obligor warrants and represents to the Holders that;
- (i) it has obtained all necessary authorisations for such substitution;
 - (ii) it has obtained all necessary authorisations for the performance by it of its obligations under the relevant Transaction Documents and the relevant Notes and that they are in full force and effect; and
 - (iii) the obligations assumed by it are its legal, valid and binding obligations, enforceable against it in accordance with their terms, subject to laws affecting creditors' rights generally and equitable principles of general application; and
- (g) legal opinions (in form and substance reasonably satisfactory to the Trustee in respect of the relevant Retail Series or the Holders of the relevant Wholesale Series, as the case may be) have been delivered to the Trustee or the relevant Holders, as the case may be, confirming that, following such substitution:
- (i) the Transaction Documents and the Notes will constitute legal, valid and binding obligations of the Substituted Obligor, enforceable against it in accordance with their terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and equitable principles of general application;
 - (ii) the Substituted Obligor is validly incorporated in its jurisdiction of incorporation;
 - (iii) all necessary authorisations are in full force and effect; and
 - (iv) amounts payable to any Holders will not be reduced by the existence of any applicable taxes (by deduction from such amounts or otherwise) except for such taxes (if any) in respect of which the Substituted Obligor has agreed to make compensating payments to the Holders.

24.3 Release of substituted issuer: Any Substitution Document entered into pursuant to clause 24.2 shall, if so expressed, release the Issuer from any or all of its obligations under the Notes and the Transaction Documents for the relevant Series. Notice of any substitution pursuant to clause 24.2 shall be given to the Holders of the relevant Series

within 14 days of the execution of the Substitution Documents and compliance with the other requirements of clause 24.2.

24.4 **Completion of Substitution:** After notice has been given in accordance with clause 24.3:

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

25. RESOLUTIONS OF HOLDERS

25.1 **Meetings of Holders:** Meetings of a Class of Holders are to be convened and held in accordance with the provisions of schedule 1. Regulation 78 and schedule 11 of the FMC Regulations (other than clauses 2 and 5 of schedule 11) do not apply except to the extent incorporated into schedule 1.

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

26. NOTICES

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

- (a) **Writing:** be given or made in writing by fax, letter or electronic mail and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to the recipient at the address, fax number or electronic mail address, and marked for the attention of the person (if any), from time to time designated by the recipient to the other for the purposes of this Deed or the Notes;
- (c) **Deemed delivery:** not be effective until received by the recipient, and any such notice or communication shall be deemed to be received:
 - (i) (if given or made by letter) when left at the address of the recipient or 5 Business Days after being put in the post (by airmail if to another country), postage prepaid, and addressed to the recipient at that address;
 - (ii) (if given or made by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient; or
 - (iii) (if by electronic mail) when actually received in readable form,

provided that any notice or communication received or deemed received after 5pm on a working day in the place to which it is sent, or on a day which is not a

working day in that place, shall be deemed not to have been received until the next working day in that place.

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

(a) **The Issuer:**

Fonterra Co-operative Group Limited
 109 Fanshawe Street
 Auckland 1010
 Fax No: (09) 379 8221
 Email address: DL_Treasury_Admin@Fonterra.com
 Attention: Fonterra Treasury

(b) **The Trustee:**

The New Zealand Guardian Trust Company Limited
 Level 15
 191 Queen Street
 Auckland
 Fax No: (09) 969 3732
 Email address: ct-auckland@nzgt.co.nz
 Attention: General Manager – Corporate Trusts

(c) **The Holders:**

The address of each Holder last entered in the Register.

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

27. RELEASE

27.1 Upon being indemnified to its reasonable satisfaction pursuant to clause 15.3 and upon proof being given to the reasonable satisfaction of the Trustee that all sums owing or outstanding in respect of the Notes or otherwise under this Deed have been paid or satisfied or that provision for such payment or satisfaction has been made in accordance with the provisions of this Deed and upon payment or retention of all costs, charges and expenses incurred by, or payable to, the Trustee in relation to this Deed and the remuneration of the Trustee and all other money payable hereunder the Trustee shall, at the request and cost of the Issuer, execute a deed of release of this Deed and shall thereupon retire.

28. MISCELLANEOUS

28.1 **Registration of deed:** If the Issuer proposes to issue a Retail Series, it shall promptly, at its own cost, lodge with the Registrar of Financial Service Providers this deed, the Supplemental Trust Deed in respect of that Series, any amendment to this deed or that Supplemental Trust Deed and any certificate as required by the FMCA and shall pay all costs and expenses incidental to doing so.

- 28.2 **Waivers and remedies:** Time shall be of the essence of this Deed but no delay in acting, or failure to act, by a Holder is a waiver of any of that Holder's rights, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights provided in this Deed do not exclude any rights provided by law.
- 28.3 **Partial invalidity:** A provision of this Deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA, the FMC Regulations or any term implied into this Deed by the FMCA or the FMC Regulations. An invalid provision in this Deed shall not affect the enforceability of the remaining provisions of this Deed.
- 28.4 **Further issues:** Subject to any agreement to the contrary contained in any dealer or subscription agreement relating to the issue of any Notes, the Issuer may from time to time, without the consent of the Holders, issue notes or other debt obligations on such other terms and conditions as the Issuer may think fit.
- 28.5 **Documents:** The Issuer must:
- (a) make copies of this deed, each Supplemental Trust Deed, the Information Memorandum and prospectus (if any) relating to Notes held by the relevant Holder, the Agency Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series available for inspection during usual business hours by any Holder at the registered office of the Issuer (or such other office as the Issuer may notify the Holders from time to time); and
 - (b) in relation to a Retail Series, retain, make available for inspection, provide and deliver copies of any document or information required by, and in accordance with, the FMCA for such fee as permitted by the FMCA.
- 28.6 **No liability:** No Registrar will be liable for any breach by the Issuer of any representation, obligation, undertaking, including the non-payment of any money due, nor will any Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.
- 28.7 **Survival:** The indemnities given in this Deed will survive the repayment of all the Notes and the termination of this Deed.
- 28.8 **Remedies Cumulative:** The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided by law.
- 28.9 **Counterparts:** This deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart (by fax or otherwise).
- 29. GOVERNING LAW**
- 29.1 **Governing law:** This deed shall be construed and take effect as a contract and declaration of trust made in New Zealand and shall be governed by New Zealand law.
- 29.2 **Submission to jurisdiction:** The Issuer and the Trustee submit to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Deed.

SIGNATURES

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

SCHEDULE 1
MEETINGS OF HOLDERS

1. DEFINITIONS

1.1 In these provisions:

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

"**Authorised Person**" means, in respect of a meeting involving Retail Holders, the person authorised by the Trustee to receive and count votes at that meeting cast in accordance with regulation 13.9 or, if no such person is so authorised, the Trustee.

"**Extraordinary Resolution**" means a resolution passed at a meeting of Holders, properly convened and held in accordance with the provisions of this schedule, at which not less than three fourths of the persons who are entitled to vote and who voted upon a show of hands or, if a poll is properly demanded, not less than three fourths of the votes given on such a poll by those who are entitled to vote and who voted in favour of the resolution.

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

"**regulation**" means a clause of this schedule.

"**Representative**" means:

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

1.2 **Classes:** In this schedule, references to "**Notes**" and "**Holders**" are references to the Notes of the relevant Class of Notes only and the Holders of the Notes of the relevant Class of Notes only.

2. CONVENING

2.1 **Meeting required by law:** The Issuer shall, whenever required to do so pursuant to the Companies Act 1993 or the FMCA or any other applicable law, convene a meeting of the Holders.

- 2.2 **By Holders:** The Issuer shall, at the request in writing of Holders holding not less than 5% of the aggregate Principal Amount of the Notes (with such requisition signed by, or on behalf of, those Holders), convene a meeting of the Holders. The request must state the nature of the business proposed to be dealt with at the meeting concerned.
- 2.3 **By Issuer or authorised person:** The Issuer may at any time of its own volition convene a meeting of the Holders and shall, at the request in writing of a person authorised by the FMC Regulations to call a meeting of a Class of Retail Holders, convene a meeting of that Class of Retail Holders.
- 2.4 **By Trustee:** In relation to any Class of Retail Notes, the Trustee may at any time of its own volition (after such consultation with the Issuer which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting), or the Issuer shall, at the request in writing of the Trustee, convene a meeting of Retail Holders of that Class. The Trustee shall not be obliged to convene a meeting of the relevant Retail Holders pursuant to this regulation until it has been indemnified to its reasonable satisfaction, subject to clause 19.1, against all costs and expenses to be incurred in relation to that meeting.
- 2.5 **Place of meeting:** Each meeting will be held in the city or town in which the registered office of the Issuer is situated or at such other place as designated by the Issuer.
- 2.6 **Regulations:** Meetings of Holders shall be convened and held in accordance with the provisions of this schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this schedule, as the Trustee and the Issuer may agree from time to time.
- 2.7 **Methods of holding meetings:** A meeting of Holders may be held by a quorum of Holders or their Representatives:
- (a) being assembled together at the time and place appointed for the meeting;
 - (b) participating in the meeting by means of audio, audio and visual, or electronic communication provided that, in the case of a meeting of Retail Holders, the Trustee approves such means and each Retail Holder or its Representative complies with any conditions imposed by the Trustee in relation to the use of such means; or
 - (c) by a combination of both of the methods described in regulations 2.7(a) and (b) above.

3. NOTICE OF MEETINGS

- 3.1 **Persons to be notified:** Notice of every meeting shall be given in the manner provided in clause 26 of this Deed to:
- (a) every Holder entered in the Register as at the close of business five Business Days prior to the date of despatch of the notice;
 - (b) every personal representative or assignee in bankruptcy of any such Holder who, to the actual knowledge of the Issuer, is deceased or insolvent as the case may be;
 - (c) the Issuer, if the meeting is convened by the Trustee;

- (d) the Trustee, if the meeting is convened by the Issuer;
- (e) if the relevant Notes are listed, any stock exchange on which those Notes are listed; and
- (f) the Auditor and every director of the Issuer.

3.2 **Time for notification:** Subject to regulation 4.5, at least 15 working days' notice of every meeting will be given. The notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.

3.3 **Contents of notice:** The notice will specify:

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

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

3.4 **Prior notification of Trustee:** The Issuer shall, at least 10 working days (or any lesser period approved by the Trustee) before the Issuer gives notice of a meeting, advise the Trustee in writing of the intended place and time of the meeting and the nature of the business to be conducted and shall, in respect of a meeting of any Retail Holders, obtain the prior written approval of the Trustee to any documents it proposes to send to the relevant Retail Holders (such approval not to be unreasonably withheld or delayed). If the Trustee so requires, the documents shall include any statement or comments which the Trustee wishes to make in relation to the meeting and the matters to be considered at the meeting provided the Trustee provides such statement or those comments in writing to the Issuer 5 working days (or any lesser period approved by the Issuer) before the notice of meeting is given under regulation 3.2.

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

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

3.6 **Accidental omission:** The accidental omission to give notice to, or the non-receipt of notice by, any person entitled to receive notice will not invalidate the proceedings at any meeting.

4. QUORUM

- 4.1 **Quorum required:** No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Holder is present at a meeting for the purposes of this Schedule 1 and part of the quorum if that Holder is present in person or by Representative or is participating in that meeting by means of audio, audio and visual or electronic communication.
- 4.2 **Quorum for Extraordinary Resolution:** Subject to regulation 4.4, the quorum for passing an Extraordinary Resolution will be the Holders present at the meeting holding or representing at least 25% of the Principal Amount of the Notes held by those Holders who are entitled to vote. Where a Holder holds Zero Coupon Notes, for the purposes of determining the quorum, the Principal Amount of those Zero Coupon Notes is to be construed as a reference to the net present value of those Zero Coupon Notes (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Note by a proportion of any discount to that Principal Amount applicable to such Note on its Issue Date) as at the date of the meeting.
- 4.3 **Quorum for other business:** Subject to regulation 4.4, the quorum for the transaction of any business other than the passing of an Extraordinary Resolution will be at least two Holders present at the meeting holding or representing at least 10% in Principal Amount of the Notes held by those Holders who are entitled to vote. Where a Holder holds Zero Coupon Notes, for the purposes of determining the quorum, the Principal Amount of those Zero Coupon Notes is to be construed as a reference to the net present value of those Zero Coupon Notes (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Note by a proportion of any discount to that Principal Amount applicable to such Note on its Issue Date) as at the date of the meeting.
- 4.4 **Quorum not present:** If, within 30 minutes after the Appointed Time, a quorum is not present the meeting, if convened at the request of Holders, will be dissolved. In any other case it will be adjourned to the day that is 10 working days later at the same time and place or to such other date, time and place as may be appointed by the chairman or, in the case of a meeting involving Retail Holders, by the Trustee. At such adjourned meeting, if a quorum is not present 30 minutes after the Appointed Time, all the Holders present at the adjourned meeting will be a quorum for the transaction of business including the passing of Extraordinary Resolutions.
- 4.5 **Notice of adjourned meeting:** Notwithstanding regulations 3.1 and 3.2, notice of any such adjourned meeting of Holders at which an Extraordinary Resolution is to be submitted shall be given to the same persons as those who were given notice of the original meeting and otherwise will be given in the same manner as for an original meeting (except that only seven clear days' notice will be required) and such notice will state that, if a quorum is not present 30 minutes after the Appointed Time, the Holders present at the adjourned meeting will form a quorum whatever the Principal Amount of Notes held by them provided that, if a meeting is adjourned for less than 30 days, it will not be necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

5. CHAIRMAN

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

6. RIGHT TO ATTEND AND SPEAK

- 6.1 Any director, officer or solicitor, auditor or accountant of the Issuer, or any person appropriately authorised by the Issuer (or, in relation to any Retail Series, any director, officer or solicitor of the Trustee, or any person appropriately authorised by the Trustee), may attend any meeting and all such persons will have the right to speak at the meeting.

7. ADJOURNMENT

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

8. ONLY PERSONS ON REGISTER RECOGNISED BY COMPANY

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

9. AUTHORITY TO VOTE

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

10. PROXIES

- 10.1 **In writing:** The instrument appointing a proxy must be in writing signed, or in the case of an electronic notice sent, by the appointer or his attorney or, if the appointer is a

corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.

- 10.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder. A holder of a proxy will have the right to speak at the meeting.
- 10.3 **Deposit of proxy:** The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a solicitor or in any other manner approved by the Issuer, must be deposited at the place appointed by the Issuer in the notice convening the meeting (or, if no such place is appointed, then at the registered office of the Issuer) not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless the Issuer or, in the case of a meeting involving Retail Holders, the Authorised Person for that meeting, in its absolute discretion, elects to accept any instrument of proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.
- 10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form approved by the Issuer and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution. The instrument of proxy must state whether the appointment is for a particular meeting or a specified term.
- 10.5 **Proxy valid for meeting:** An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the specified term or for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.
- 10.6 **Proxy in favour of chairman:** An instrument of proxy in favour of:
- (a) the chairman of the Issuer; or
 - (b) the chairman of the meeting,

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

11. HOLDER MAY APPOINT ATTORNEY

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

12. CORPORATE REPRESENTATIVES

- 12.1 **Authority:** A Representative of a Holder which is a corporation or a corporation sole will, until his authority is revoked, be entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual Holder and will be entitled to produce evidence of his authority to act at any time before the Appointed Time of, or at, the meeting or adjourned meeting or for the taking of a poll at which the Representative proposes to vote.
- 12.2 **Right to act:** A Representative will have the right to demand or join in demanding a poll and will (except and to the extent to which the Representative is specially directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.

13. VOTING PROCEDURE AND POLLS

- 13.1 **Voting:** An Extraordinary Resolution put to the vote of a meeting will be decided by poll. Any other resolution put to the vote of a meeting will be decided on a show of hands or by voice as determined by the chairman or, in the case of a meeting of Holders held under regulations 2.7(b) or (c), by any other method permitted by the chairman of the meeting, unless, in any case, a poll is demanded (before or after the vote is taken on a resolution) by:
- (a) in the case of a meeting involving Retail Holders, the Trustee;
 - (b) the chairman (who must in any event call for a poll on a resolution on which the chairman holds sufficient votes cast under regulation 13.9 if the chairman believes that, if a poll is taken, the result may differ from that obtained on a show of hands or by voice);
 - (c) the Issuer or any representative of the Issuer; or
 - (d) one or more Holders present at the meeting holding or representing not less than 5% in aggregate Principal Amount of the Notes.

A declaration by the chairman that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded in accordance with this regulation 13.1.

- 13.2 **Number of votes:** On a show of hands each person entitled to vote and present at the meeting or casting a vote pursuant to regulation 13.9, will have one vote only. On a poll every Holder who is entitled to vote and present at the meeting or casting a vote pursuant to regulation 13.9 will have one vote for every \$1 of Principal Amount of the Notes of which he is the Holder, provided that where a Holder holds Zero Coupon Notes, for the purposes of calculating that Holder's voting entitlement in this clause, the Principal Amount of those Zero Coupon Notes is to be construed as a reference to the net present value of those Zero Coupon Notes (as calculated by the Registrar for the relevant Series by adjusting, on a straight line basis, the Principal Amount of the relevant Note by a proportion of any discount to that Principal Amount applicable to such Note on its Issue Date) as at the date of the meeting. On a poll a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

- 13.3 **Poll:** If a poll is demanded it will be taken in the manner directed by the chairman and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 13.4 **Chairman has casting vote:** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands took place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Holder or on behalf of Holders.
- 13.5 **Election of chairman:** A poll demanded on the election of a chairman or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and in a place appointed by the chairman. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.
- 13.6 **No disturbance:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.
- 13.7 **Joint Holders:** In the case of joint Holders the vote of the senior who tenders a vote will be accepted to the exclusion of the vote of the other joint Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
- 13.8 **Disqualification:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Notes in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.
- 13.9 **Voting by other means:**
- (a) A Holder may exercise the right to vote at any meeting by casting a postal vote, a vote by email or a vote using any other electronic means permitted by the Issuer or, in the case of a meeting involving Retail Holders, the Trustee.
 - (b) A Holder may cast a vote using the above means on all or any of the matters to be voted on at a meeting by sending a notice of the manner in which that Holder's Notes are to be voted on to the Issuer or, in the case of a meeting involving Retail Holders, the Authorised Person for that meeting. Such notice must reach that person before the Proxy Closing Time unless the Issuer or the Authorised Person (as the case may be), in its absolute discretion, elects to accept any notice notwithstanding that that notice is received or produced at a place other than that specified above or out of time.
 - (c) The Issuer or, in the case of a meeting involving Retail Holders, the Authorised Person for that meeting (as applicable) must:
 - (i) collect together all of those votes received by it;

- (ii) in relation to each resolution to be voted on at that meeting, count the number of Holders voting for and against the resolution and the number of votes cast for and against the resolution by each Holder;
- (iii) sign a certificate that it has carried out the duties set out in regulations 13.9(c)(i) and (ii) above and that sets out the results of the counts required by regulation 13.9(c)(ii); and
- (iv) ensure that the certificate required by regulation 13.9(c)(iii) above is presented to the chairman.

14. EXTRAORDINARY RESOLUTIONS

14.1 **Powers:** A meeting of Holders will, in addition to all other powers which by this Deed are specified as exercisable by Extraordinary Resolution, have the following powers exercisable by Extraordinary Resolution namely power to:

- (a) sanction either unconditionally or upon any conditions the release of the Issuer from the payment of all or any part of the moneys payable pursuant to this Deed or the Notes;
- (b) sanction any request from the Issuer for the exchange of the Notes for, or the conversion of the Notes into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
- (c) postpone or, with the concurrence of the Issuer, to accelerate the day when the Principal Amount of any Notes becomes payable and to suspend or postpone for a time the payment of interest on any Notes;
- (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against the Issuer or its assets however those rights arise;
- (e) assent to any amendment to the terms of this deed or the relevant Supplemental Trust Deed proposed or agreed to by the Issuer (and, where required, the Trustee) and to authorise the Issuer and the Trustee to execute any Supplemental Trust Deed embodying any such amendment;
- (f) give any sanction, assent, release or waiver of any breach or default by the Issuer or the Trustee under any of the provisions of this deed or the relevant Supplemental Trust Deed;
- (g) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation where such sanction is necessary;
- (h) discharge, release or exonerate the Trustee from all liability in respect of any act of commission or omission for which the Trustee has or may become responsible under this Deed;
- (i) subject to the provisions of this Deed, remove any Trustee and to approve the appointment of or appoint a new Trustee;

- (j) consent to, approve, authorise and direct the Trustee in respect of any of the matters referred to in any of the foregoing paragraphs of this regulation 14.1, or as to any other matter which may be necessary to carry out and give effect to any Extraordinary Resolution;
- (k) authorise or direct the Issuer and if required, the Trustee to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.

14.2 Binding on Holders: An Extraordinary Resolution passed at a meeting of Holders properly convened and held will be binding upon all the Holders whether or not present or entitled to be present at the meeting and the Holders will be bound to give effect to that resolution. The passing of any such resolution will, as between the Issuer and the Holders, be conclusive evidence that the circumstances justify the passing thereof the intention being that the meeting is entitled to determine without appeal whether or not the circumstances justify the passing of any such resolution. Notwithstanding the foregoing, a resolution which affects a particular Holder will not be binding on such Holder unless such Holder agrees to be bound by the terms of such resolution. Whenever there are Notes outstanding which do not form a single Class then the provisions of this schedule shall have effect subject to the following:

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

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

15. MINUTES TO BE KEPT

15.1 Minutes of all resolutions and proceedings at every meeting will be made by the Issuer or, if the Issuer is not present at the meeting, by a person appointed by the chairman of the meeting. Minutes must be entered in books from time to time provided for that purpose by the Issuer. The chairman must ensure that a certificate of votes under regulation 13.9 held by the chairman is attached to the minutes. Any such minutes, if signed or apparently signed by the chairman of the meeting at which a resolution was passed or proceedings had or by the chairman of the next meeting of Holders, will be prima facie evidence of the matters recorded in those minutes. Until the contrary is proved every meeting in respect of which minutes have been made will be deemed to

have been properly held and convened and all resolutions passed or proceedings had at that meeting to have been properly passed and had.

16. RESOLUTIONS IN WRITING

- 16.1 **Extraordinary Resolution:** Anything that may be done by Holders by a resolution or Extraordinary Resolution passed at a meeting of Holders may be done by a resolution in writing signed by not less than 75% of the Holders entitled to vote on that resolution, holding in aggregate the Notes conferring the right to cast not less than 75% of the votes which could be cast on that resolution.
- 16.2 **Counterparts:** Any such resolution may consist of several documents in similar form (including letters, electronic mail or other similar means of communication), each signed by one or more Holders.
- 16.3 **Execution:** Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.

SCHEDULE 2
FORM OF ISSUE NOTICE

[Letterhead of Issuer]

To [Agent]
Attention [Wholesale New Issues]
Telephone [(09) 4888 721]
Facsimile [(09) 4888 787]
Email [Wholesaleissues@computershare.co.nz]

Re Supplemental Trust Deed Dated [] ("**Deed**")

Terms defined in the Deed have the same meaning in this Issue Notice.

We confirm our instructions to you as Agent to undertake the duties set out in the Agency Agreement in respect of an issue of MTN's as described below:

Details for first registered MTN holder

Name¹ New Zealand Central Securities Depository Limited
o/a NZClear New Zealand System
For credit of [NZClear Account Details of organisation undertaking initial settlement]

MTN Details:

Issuer: Fonterra Co-operative Group Limited

MTN Reference: [A name which may be required for reference purposes]
[eg. "MTN Issued 4 August 2001 Maturing 4 August 2006"]

Issue Date:

Maturity Date:

Type of Note: [Fixed Rate, Floating Rate, Indexed, Zero Coupon]

Interest Frequency: [Quarterly, Semi Annual]

Interest Dates:

Interest Formula: [Actual/365, Quarterly Amount, Half Annual Amount]

Interest Rate: [Actual %, Base Rate (define) + Margin, Index formula]

¹ If the securities are not to be held in the NZClear System then the details of the actual investor are to be provided.

Principal Amount [Actual, Index formula, Amortisation Dates, amortisation amounts]:

First Interest Period: [Full coupon payable to Holder as at Record Date,
X days payable to Holder as at Record Date,
X days payable to initial subscriber]

Minimum Denomination:

Multiple Denomination:

Series and Tranche Details:

Series:

Tranche:

Tranche Amount:

Issue Amount:

Yours sincerely

FONTERRA CO-OPERATIVE GROUP LIMITED

By:

Authorised Officer

ACKNOWLEDGEMENT

We confirm the registration of the MTNs as described herein (and confirm the settlement proceeds of \$[] have been transferred to bank account []).

Yours sincerely
[Agent]

By:

.....
Authorised Officer

SCHEDULE 3

FORM OF DIRECTORS' REPORTING CERTIFICATE

1. This report is given by the undersigned Director and [Chief Executive Officer][Chief Financial Officer] of Fonterra Co-operative Group Limited ("**Issuer**") pursuant to clause 12.2(c) of the Master Trust Deed dated [] 2001 between the Issuer and The New Zealand Guardian Trust Company Limited, as trustee ("**Trust Deed**").
2. Unless the context otherwise requires, terms defined in the Trust Deed have the same meaning herein.
3. We, the undersigned, hereby state that as at last day of the financial year ending on [] ("**Reporting Date**"), to the best of our knowledge and belief having made all due inquiries, and, during the immediate preceding financial year:
 - (a) {Here state any matter, or state if there is no matter, which has arisen relating to the Issuer which would materially and adversely affect the ability of the Issuer to perform its obligations under the Trust Deed and the Retail Notes or which adversely affects the Retail Holders};
 - (b) the Issuer {has}{has not} observed and complied with all provisions expressed to be binding upon it under the Trust Deed and any relevant Supplemental Trust Deed in respect of Retail Notes including the payment of all interest on, and the Principal Amount in respect of, the Retail Notes;

{If the Issuer has not so complied and observed the provisions of the Trust Deed or any Supplemental Trust Deed set out the particulars of the contravention and proposals to remedy the same}
 - (c) the Principal Amount of Retail Notes (if any) which have been repaid on maturity is \$[], details of which are set out below:

[set out details of Retail Notes which have been repaid on maturity in the immediately preceding financial year]
 - (d) the Principal Subsidiaries of the Issuer are:

[insert names of Principal Subsidiaries]

| | Total Assets | Net sales |
|--|--|---|
| Group | <i>[insert Total Assets of the Group]</i> | <i>[insert net sales of the Group]</i> |
| <i>[insert name of Principal Subsidiary]</i> | <i>[insert Total Assets of the Principal Subsidiary]</i> | <i>[insert net sales of the Principal Subsidiary]</i> |

4. As at the date of this certificate, and having considered the financial position (including contingent liabilities) of the Issuer as a going concern (which the directors of the Issuer are satisfied will be the case) and such budgets, reports, projections, certificates and assurances as they deem necessary and the anticipated trading transactions and sources of finance arranged or capable of being arranged during the 12 months from

the Reporting Date, to the best of our knowledge and belief the Issuer will be able to meet all its liabilities (including maturing Notes and interest on Notes) which fall due or are anticipated to become payable during the 12 months from the Reporting Date in accordance with accepted commercial practice.

5. The aggregate Principal Amount of the Retail Notes outstanding, and the amount of any unpaid interest relating to the outstanding Retail Notes as at the Reporting Date is \$[].

This report is given on the day of 20[]

Director

[Chief Executive Officer][Chief Financial Officer]