

# Deed of Amendment and Restatement (Master Trust Deed)

relating to the Auckland Council

Dated 26 February 2015

**Mayne  
Wetherell**

## Parties

Auckland Council (**Council**)

Trustees Executors Limited (**Trustee**)

## Background

The parties have agreed to amend and restate the master trust deed dated 27 September 2012 (**Master Trust Deed**) on the terms of this deed to comply with and to reflect the Financial Markets Conduct Act 2013 (**FMC Act**) and the Financial Markets Conduct Regulations 2014.

## Covenants

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### 1. Interpretation

- 1.1 **Definitions:** Unless otherwise defined in this deed, words and phrases defined in the Master Trust Deed shall have the same meaning when used in this deed.
- 1.2 **Interpretation:** In this deed:
- Effective Date** means 18 March 2015.

### 2. Amendment and Restatement

- 2.1 The Master 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 Master 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 14.1(a) of the Master Trust Deed, the Trustee:
- (a) is of the opinion the amendments contemplated by this deed are:
    - (i) in accordance with clause 14.1(a)(i) of the Master Trust Deed, of a technical nature;
    - (ii) in accordance with clause 14.1(a)(iv) of the Master Trust Deed, to comply with the FMC Act (which has replaced the Securities Act 1978); or
    - (iii) in accordance with clause 14.1(a)(viii), to comply with, or as a result of the coming into effect of, any legislation; and
  - (b) is of the reasonable opinion that such amendments will not adversely affect the interests of the Retail Holders.
- 3.3 Council acknowledges that it is of the view that the amendments contemplated by this deed will not adversely affect, and are not detrimental to, the interests of the Retail Holders.

#### **4. Counterparts**

- 4.1 This deed may be executed in counterparts all of which will together constitute one and the same instrument. Where a party transmits its counterpart copy by facsimile or by electronic transmission to the other party then such transmission shall be deemed proof of signature of the original and the signed counterpart copy shall be deemed an original.

#### **5. Governing Law**

- 5.1 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.
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### Execution Page

Signed by Auckland Council by:

*Stephen Town*

Signature of Chief Executive

STEPHEN TOWN

Name of Chief Executive

*[Handwritten signature]*

Signature of witness

*Yvonne Karlane*

Name of witness

EA

Occupation

Auckland

City/town of residence

Signed for and on behalf of Trustees Executors Limited by:

*[Handwritten signature]*

Authorised signatory

Clynton Neil Hardy

Name of authorised signatory

*[Handwritten signature]*

Authorised signatory

Shahzad Contractor

Name of authorised signatory

*Adesh Kaur*

Witness to both signatures

Name of witness

Adesh Kaur  
Business Analyst

Occupation Auckland

City/town of residence



2015/CTN/18/2

**Schedule**  
**Amended and Restated Master Trust Deed**

# MASTER TRUST DEED

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AUCKLAND COUNCIL

TRUSTEES EXECUTORS LIMITED



## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	1
2. ISSUE, FORM AND STATUS OF BONDS	9
3. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST	11
4. CALCULATION OF INTEREST	13
5. REGISTER	14
6. PAYMENTS AND TRANSFERS	15
7. TAXES	19
8. SELLING RESTRICTIONS	20
9. REPRESENTATIONS AND WARRANTIES	20
10. UNDERTAKINGS	22
11. REPORTS AND INFORMATION	23
12. DEFAULT	25
13. PROVISIONS RELATING TO TRUSTEE	29
14. ALTERATIONS TO TRUST DEED AND WAIVERS	36
15. MEETINGS OF HOLDERS	39
16. NOTICES	39
17. MISCELLANEOUS	40
18. COSTS AND EXPENSES	41
19. ABSENCE OF CROWN GUARANTEE	42
20. GOVERNING LAW AND SUBMISSION TO JURISDICTION	42
21. DELIVERY	42

## SCHEDULES

SCHEDULE 1 PARTICULARS TO BE RECORDED IN THE REGISTER IN RESPECT OF EACH BOND

SCHEDULE 2 MEETINGS OF HOLDERS

SCHEDULE 3 REPORTING CERTIFICATE

SCHEDULE 4 AUDITOR

DEED DATED 27 September 2012 (as amended and restated on 26 February 2015)

**PARTIES**

1. **AUCKLAND COUNCIL** a Council duly constituted as a territorial authority under the Act (**Council**)
2. **TRUSTEES EXECUTORS LIMITED** (**Trustee**)

**BACKGROUND**

- A. Council has determined to enter into this Deed to provide for the constitution and issue of Bonds.
- B. Each series of Bonds issued by Council will be constituted by and issued on terms set out in this deed and in the case of Retail Series, in a Supplemental Trust Deed made between Council and the Trustee. The terms of any such Supplemental Trust Deed may modify the terms of this deed in relation to the relevant series of Retail Bonds.
- C. The Trustee has agreed, at the request of Council, to act as trustee of this Deed for the benefit of 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 contained in this Deed.

**THIS DEED RECORDS THAT:**

1. **DEFINITIONS AND INTERPRETATION**

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1.1 **Definitions:** In this Deed, unless the context indicates otherwise:

**Act** means the Local Government Act 2002;

**Agency Agreement** means the registrar and paying agency agreement dated 5 November 2010 between the Registrar and Council pursuant to which the Registrar is appointed as registrar, calculation and paying agent for the Bonds;

**Annual Report** means the report prepared and adopted by Council under section 98 of the Act at the end of each financial year of Council;

**Approved Issuer** has the meaning given to that term in the Income Tax Act;

**Approved Issuer Levy** has the meaning given in section 86F of the Stamp and Cheque Duties Act 1971;

**Auditor** means the person or persons for the time being holding the office of auditor of Council (or any agent or delegate of such person or persons);

**Base Rate** means, in respect of an Interest Period, either:

- (a) **Bill rate:** the rate per annum (rounded to the nearest four decimal places) as determined by Council on the first day of that Interest Period





to be the Average FRA rate for bank-accepted bills of exchange having a tenor approximately equal to the relevant Interest Period as displayed at or about 10.45 am on that date on the Reuters Monitor Screen page BKBM (or its successor page) provided that:

- (i) if (but only if) there is no such rate displayed for bank-accepted bills of exchange having that tenor, then the average (rounded to the nearest four decimal places) of the rates quoted to Council on the relevant date by each of the Reference Banks as being its mid rate for such bank bills having a tenor approximately equal to the Interest Period at or about that time on that date; and
  - (ii) if fewer than two Reference Banks quote rates, such rate as Council may reasonably determine to be the nearest practical equivalent; or
- (b) **Other specified rate:** in relation to a Bond, any other reference rate specified in the relevant Conditions for a Series;

**Bond** means a note, bond or other instrument by whatever name called (which will 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 a Fixed Rate Bond, a Floating Rate Bond, an Index-linked Bond or a Zero Coupon Bond;

**Charged Assets** has the meaning given to that term in the Debenture;

**Chief Executive** has the meaning given to that term in the Debenture;

**Conditions** means, in relation to a Series or a Tranche, the terms and conditions applicable to that Series or Tranche as recorded in the Register or otherwise specified at the time of issue of the relevant Series or Tranche, and (as modified by the relevant Supplemental Trust Deed in the case of a Retail Series) this deed;

**Date of Acceleration** means the date on which a Wholesale Holder or the Trustee gives notice to Council pursuant to clause 12.1 declaring the Outstanding Moneys to have become immediately due and payable;

**Debenture** means the debenture trust deed dated 2 December 2010 entered into by Council and the Trustee as trustee;

**Event of Default** means any of the events set out in clause 12.1(a) to (k) (inclusive);

**Exemption Certificate** means a certificate of exemption from resident withholding tax issued under section 32H of the Tax Administration Act 1994 or any predecessor or successor provision;

**Extraordinary Resolution** has the meaning set out in schedule 2;

**Fixed Rate Bond** means a Bond bearing a fixed rate of interest;

**Floating Rate Bond** means a Bond bearing interest at a margin over or under 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.

**Holder** means:

- (a) in respect of an Unlodged Bond at any time, the person whose name is recorded in the Register as the holder of that Unlodged Bond at that time; and
- (b) in respect of a Lodged Bond at any time, the holder of the beneficial interest in that Lodged Bond as evidenced by the records of NZClear maintained by the Manager at that time,

and, in each case, includes any personal Representative or successor of that person;

**Income Tax Act** means the Income Tax Act 2007;

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

**Index-linked Bond** means a Bond (being, for the avoidance of doubt, a Fixed Rate Bond, a Floating Rate Bond or a Zero Coupon Bond) in respect of which either the Principal Amount, or the interest payable thereon, or both, is to be calculated by reference to an Index;

**Information and Meetings Act** means the Local Government Official Information and Meetings Act 1987;

**Information Memorandum** means:

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

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, Council in relation to the relevant Series;

**Interest Payment Date** means:

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

Bond for the payment of interest in respect of that Fixed Rate Bond and recorded as such in the Register in respect of that Fixed Rate Bond; and

- (c) in relation to any other Bond, the dates fixed at the time of issue of that Bond for the payment of interest in respect of that Bond and recorded as such in the Register in respect of that Bond;

**Interest Period** means, in relation to a Bond which is interest-bearing, the period fixed at the time of issue of that Bond and recorded as such in the Register and, in relation to a Floating Rate Bond, as determined in accordance with clause 4.1(a) in respect of that Bond;

**Interest Rate** means, in relation to a Bond, the rate of interest (if any) payable in respect of that Bond (which may be a fixed rate or a margin over or under the Base Rate or a rate calculated by reference to an Index) specified at the time of issue of that Bond and recorded as such in the Register;

**Issue Date** means, in relation to a Bond, the date on which that Bond is issued, being the date recorded as such in the Register;

**Listed Bond** means a Bond that is quoted on the NZDX;

**Lodged Bond** means, at any time, a Bond that is lodged in NZClear at that time;

**Manager** means, at any time, the manager of NZClear at that time (which, at the date of this Deed, is the Reserve Bank of New Zealand);

**Margin** means, in relation to a Floating Rate Bond or a Fixed Rate Bond, the margin (if any) specified at the time of issue and recorded as such in the Register in respect of that Bond;

**Maturity Date** means, in relation to a Bond, the date for the repayment of that Bond, being the date recorded as such in the Register in respect of that Bond;

**Minimum Principal Amount** means, in relation to a Series or Tranche, the minimum Principal Amount of the Bonds forming part of that Series or Tranche, being the amount specified as such in the applicable Conditions;

**NZClear** means the securities clearing and settlement facility established by the Reserve Bank of New Zealand and known as the "NZClear System" and includes any securities clearing and/or settlement facility which replaces or supersedes it from time to time;

**NZDX** means the market operated by NZX on which listed debt securities are traded or any successor or replacement of that market;

**NZX** means NZX Limited;

**NZX Listing Rules** means the listing rules of NZX from time to time;

**Outstanding** means, in relation to a Bond, that the Bond has not been redeemed or repaid in full by Council, or otherwise cancelled, in accordance with this Deed;

**Outstanding Moneys** means the Principal Amount, interest and other moneys payable on, or in relation to, the Bonds to the Holders, or where those Bonds are

Retail Bonds to, or at the direction of, the Trustee, at that time under or pursuant to this Deed, and a reference to **Outstanding Moneys** includes any part of them;

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

**Principal Amount** means, in relation to a Bond, the amount (other than interest) payable on redemption or repayment of that Bond, being the amount recorded as such in the Register in respect of that Bond or, as the context may require, in relation to an Index-linked Bond, the principal amount thereof for the time being outstanding, as increased or reduced in accordance with clause 4.3;

**Record Date** means, in relation to a payment due in respect of a Bond, 6.00pm on the tenth day before the due date for the making of that payment or, if that day is not a business day for that Bond, the preceding business day for that Bond;

**Reference Banks** means Westpac New Zealand Limited, ANZ Bank New Zealand Limited and Bank of New Zealand or any successor of the same;

**Register** means the register of the Bonds maintained by the Registrar in accordance with the provisions of this Deed and the Agency Agreement;

**Registered Security** has the meaning given in section 86F of the Stamp and Cheque Duties Act 1971;

**Registrar** means Computershare Investor Services Limited as registrar, calculation and paying agent, or any successor agent appointed by Council;

**Reporting Certificate** means a certificate in the form that appears in schedule 3 or in such other form as Council and the Trustee may agree;

**Representative** has the meaning set out in schedule 2;

**Retail Series** means a Series of Bonds which may, in accordance with the relevant Conditions, be offered or sold to members of the public under the Securities Act or as a regulated offer under the FMCA or a Series of Bonds that is designated as a Retail Series in the relevant Conditions, and **Retail Bond** means a Bond which is part of a Retail Series, **Retail Holder** means a Holder of a Retail Bond and **Retail Tranche** means a Tranche of Retail Bonds;

**Secured Money** has the meaning given to that term in the Debenture;

**Securities Act** means the Securities Act 1978;

**Securities Regulations** means the Securities Regulations 2009;

**Security Stock Certificate** has the meaning given to that term in the Debenture;

**Series** means a Tranche of Bonds together with any further Tranche or Tranches of Bonds which are expressed to be consolidated and form a single series;

**Supplemental Trust Deed** means a deed supplemental to this deed entered into by Council and the Trustee pursuant to clause 2.4, setting out the terms and conditions which, together with this deed (as modified by that supplemental trust deed) apply to one or more Retail Series or Tranches;



**Tranche** means Bonds of the same Series, in respect of which all terms are identical except for their respective Issue Dates, first Interest Payment Dates and/or issue prices;

**Transaction Documents** means, in relation to a Series, the Debenture and the documents (if any) specified as such in the relevant Conditions;

**Trustee** means the trustee or trustees for the time being holding office as trustee under this Deed, and being the supervisor for the purposes of the FMCA, which at the date of this Deed is Trustees Executors Limited;

**Unlodged Bond** means, at any time, a Bond that is not lodged in NZClear at that time;

**Wholesale Series** means a Series of Bonds which are not permitted, in accordance with the relevant Conditions, to be offered or sold to members of the public under the Securities Act or to retail investors for the purposes of the FMCA or a Series of Notes that is not designated as a Retail Series in the relevant Conditions, and **Wholesale Bond** means a Bond which is part of a Wholesale Series and **Wholesale Holder** means a Holder of a Wholesale Bond;

**Zero Coupon Bond** means a Bond in respect of which no interest is payable issued or to be issued by Council at a discount to its Principal Amount; and

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

**1.2 Further Terms:** Any reference to:

the term **security interest** has the meaning ascribed to it in the PPSA;

a **business day** means:

- (a) a day (other than a Saturday or a Sunday) on which registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989) are open in Auckland and Wellington for the transaction of general banking business; and
- (b) in respect of a Listed Bond, a day which is also a 'Business Day' within the meaning given to that term in the NZX Listing Rules;

a **company** means any company or body corporate wherever incorporated or domiciled;

**Council** includes any delegate of Council as referred to in clause 1.5;

**this Deed** means this deed and, where used in relation to a particular Retail Series, Tranche or Bond, includes the Supplemental Trust Deed for that Series, Tranche or Bond 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;

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

**interest** includes discounts and other payments in the nature of interest;

**issuer obligation** has the meaning set out in the FMCA, being an obligation imposed on the Council 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;

**month** means calendar month;

**payment** includes:

- (a) a reference to repayment; and
- (b) satisfaction of a monetary obligation;

**public** and **member of the public** will be construed in accordance with the Securities Act;

**right** includes a right, benefit, entitlement, authority, discretion, remedy or power;

**tax(es)** includes a present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature regardless of where or by whom imposed, levied, collected, withheld or assessed and includes interest, penalties, fines, costs, charges or expenses or other amounts relating to or arising in connection therewith; and

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

**1.3 Interpretation:** In this Deed, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this Deed have the defined meaning throughout this Deed, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this Deed's interpretation;
- (c) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (d) **Plural and Singular:** references to the singular include the plural and vice versa;
- (e) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Deed. Each such schedule and attachment forms part of this Deed;
- (f) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;



- (g) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (h) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**;
- (i) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form;
- (j) **Successors and assigns:** references to any party to this Deed or any other document or any Holder will include its successors or permitted assigns;
- (k) **Time:** references to a time of day are references to New Zealand time unless otherwise stated; and
- (l) **Time to time:** anything which may be done at any time may also be done from time to time.

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

**1.5 Council Powers:** Subject to the Act, where this Deed confers any right or obligation on Council, the right or obligation may be exercised under delegated authority from Council by any committee or sub-committee, member or officer of Council.

**1.6 Trustee's Actions:**

- (a) **Decisions:** Except to the extent the Trustee cannot by law do so or such action is, in the reasonable opinion of the Trustee, contrary to generally accepted prudent practice or is directed otherwise by an Extraordinary Resolution, the Trustee will act reasonably as regards Council in respect of any consent, approval, discretion, consideration, decision, opinion, determination or action (collectively referred to in this clause 1.6 as a "decision") by it in respect of, or pursuant to, this Deed unless this Deed expressly provides for some other basis for the exercise of such decision by the Trustee.
- (b) **Discretion:** Subject to clause 1.6(a), and except to the extent otherwise expressly required by this Deed or by law, the Trustee may exercise any decision in respect of, or pursuant to, this Deed or any Retail Bonds in its own discretion.
- (c) **Binding on Stockholders:** Any action taken, or omitted to be taken, by the Trustee under or for the purposes of this Deed (or purportedly so) will bind the Holders.

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## 2. ISSUE, FORM AND STATUS OF BONDS

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- 2.1 Power to issue Bonds:** Bonds may be issued by Council pursuant to this Deed at the times, in the quantities, to the persons, on the terms and conditions and at the prices from time to time determined by Council.
- 2.2 Form of Bonds:**
- (a) Without limitation to clause 2.1, Bonds may be issued on terms such that the Principal Amount is a fixed amount or an amount to be calculated by reference to an Index and/or that interest (if the Bond is interest-bearing) will be calculated by reference to a specific interest rate (which may be a fixed rate or a margin over or under the Base Rate) or by reference to an Index or both.
  - (b) Each Bond will:
    - (i) be in uncertificated book entry form; and
    - (ii) in respect of each Tranche or Series, have a Minimum Principal Amount for holdings of Bonds of that Tranche or Series and also may have a minimum multiple for such holdings, in each case as specified in the relevant Conditions.
- 2.3 Wholesale Bonds and Retail Bonds:** Bonds will be constituted and issued in Series, which may be separated into Tranches. Bonds will be issued on the basis that the relevant Series may be a Retail Series or a Wholesale Series, in each case as specified in the relevant applicable Conditions.
- 2.4 Supplemental Trust Deed:** Each Retail Series and Tranche will be subject to the terms and conditions set out in a Supplemental Trust Deed and (as modified by that Supplemental Trust Deed) this deed. To the extent that the relevant Supplemental Trust Deed 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 will prevail over this deed in relation to that Series or Tranche.
- 2.5 Creation and issue:** A Bond is deemed to be issued once the details of that Bond, substantially as specified in Schedule 1, are entered in the Register and Council has received the full amount of the issue price for that Bond.
- 2.6 Provisions applicable to Bonds:** The Bonds will be issued and held with the benefit of and subject to the Conditions, all of which are binding upon Council, the Trustee and the Holders, and all persons claiming through or under them respectively. The Holders are deemed to have notice of the applicable Conditions, the provisions of this deed, each relevant Supplemental Trust Deed, the Agency Agreement and each other Transaction Document in relation to the Bonds they hold.
- 2.7 Enforcement of Holders' rights:**
- (a) The Trustee holds its rights and benefits under this Deed (including the benefit of the security created under the Debenture and the right to enforce Council's obligations and duties under this Deed and the FMCA in relation to the Retail Bonds) in trust for, and for the benefit of, the





Retail Holders and, only to the extent expressly set out in this Deed, the Wholesale Holders of that Wholesale Series. No Retail Holder will be entitled to enforce any of its rights or remedies under this Deed directly against Council unless the Trustee fails to enforce such rights or remedies after having become bound to do so in accordance with this Deed.

- (b) Subject to the provisions of this Deed (including clause 12.1), Wholesale Holders may enforce any of their rights or remedies under this Deed directly against Council.

- 2.8 Benefit of Deed:** Council acknowledges, in relation to each Series and the Holders of the Bonds of that Series, that this Deed (including, for the avoidance of doubt, the Supplemental Trust Deed for each Retail Series) is made for the benefit of and (subject to clause 2.7) is intended to be enforceable by, any person who is from time to time a Holder of the Bonds of that Series and the Trustee.
- 2.9 Security:** Each Bond is intended to be issued with the benefit of the security created by the Debenture. On or before the first issue of any Retail Bonds, Council will issue to the Trustee and, on or before the first issue of any Wholesale Bonds, Council will issue to the relevant Wholesale Holders, a Security Stock Certificate under the Debenture on such terms, and do such other things required under the Debenture, so as to ensure that the relevant Bonds constitute Stock (as defined in the Debenture) issued in accordance with the Debenture, and the Debenture will secure all present and future obligations of Council under this Deed in respect of those Bonds. Council and the Trustee acknowledge that upon such issue of a Security Stock Certificate to the Trustee, the Trustee will hold the benefit of the security created under the Debenture on trust for the benefit of the Retail Holders under and in accordance with this Deed. Council will procure that the Registrar, upon issue of a Security Stock Certificate to Wholesale Holders, will hold the Security Stock Certificate on behalf of the relevant Wholesale Holders.
- 2.10 Ranking of Debt:** Council undertakes to the Trustee and to the Holders that (to the extent permitted by law) its indebtedness under this Deed and in respect of the Bonds ranks and will at all times rank pari passu with the Secured Money.
- 2.11 Certificates/Notices:** At the request of a Holder, or as otherwise required by the FMCA or any other applicable law, or in the case of Listed Bonds, the NZX Listing Rules, Council will procure the Registrar to issue to that Holder a confirmation, certificate or notice of registration in relation to the Bonds held by that Holder, such confirmation, certificate or notice to include all information required under the FMCA (if applicable), be provided in the manner required by the FMCA (if applicable) and to be in a form agreed between Council and the Registrar. Any confirmation, certificate or notice of registration issued in respect of a Bond does not constitute a document of title. Entitlement to a Bond will be determined solely by entry in the Register and, in the case of the beneficial interest in Lodged Bonds, the records of NZClear.
- 2.12 Holders:** Notwithstanding any other provision of this Deed, Council and the Trustee will be entitled, for the purposes of this Deed, to rely absolutely on the advice of the Manager and the Registrar as to the identity of the Holder of any Lodged Bond or, as the case may be, Unlodged Bond at any time.

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### 3. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST

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**3.1 Determination of Principal Amount:** The Principal Amount of each Bond will be the amount recorded as such in the Register in respect of that Bond, which may be the par or face value or the amount calculated by the Registrar for that Bond by reference to the formula recorded in the Register in respect of that Bond, in either case, as may be reduced in accordance with clause 4.3.

#### 3.2 Wholesale Bonds:

- (a) Council will, on the Maturity Date of each Wholesale Bond, unconditionally pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Wholesale Bond in accordance with the Conditions applicable to that Bond.
- (b) Council will, as and when due and payable in accordance with the Conditions applicable to each Wholesale Bond, unconditionally pay or cause to be paid to, or to the order of, the relevant Holder all interest and other amounts payable in respect of that Bond in accordance with the Conditions applicable to that Bond.

#### 3.3 Retail Bonds:

**(a) Principal Amount:**

- (i) Subject to clause 3.3(a)(ii), Council will, on the Maturity Date of each Retail Bond, unconditionally pay or cause to be paid to, or to the order of, the Trustee the Principal Amount of that Retail Bond in accordance with the Conditions applicable to that Bond.
- (ii) Notwithstanding clause 3.3(a)(i), Council will, on the Maturity Date of each Retail Bond, unless and until otherwise requested by the Trustee, unconditionally pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Retail Bond. Such payment will operate as a payment to the Trustee in satisfaction (to the extent of the amount paid) of Council's obligations under clause 3.3(a)(i).

**(b) Interest:**

- (i) Subject to clause 3.3(b)(ii), Council will, as and when due and payable in accordance with the Conditions applicable to each Retail Bond, unconditionally pay or cause to be paid to, or to the order of, the Trustee all interest and other amounts payable in respect of that Retail Bond in accordance with the Conditions applicable to that Bond.
- (ii) Notwithstanding clause 3.3(b)(i), Council will, as and when due and payable in accordance with the Conditions applicable to each Retail Bond, unless and until otherwise requested by the Trustee, unconditionally pay or cause to be paid to, or to the order of, the relevant Holder all interest and other amounts payable in respect of that Retail Bond in accordance with the Conditions applicable to that Bond. Such payment will operate



as a payment to the Trustee in satisfaction (to the extent of the amount paid) of Council's obligations under clause 3.3(b)(i).

**3.4 Interest:** Subject to the Conditions applicable to a Bond, Council will pay interest on each Interest Payment Date:

- (a) on each Floating Rate Bond for each Interest Period, at the Interest Rate for that Floating Rate Bond;
- (b) on each Fixed Rate Bond, at the Interest Rate for that Fixed Rate Bond; and
- (c) on each Index-linked Bond, in accordance with the formula or at the Interest Rate (as the case may be) recorded in the Register in respect of that Index-linked Bond.

**3.5 Default interest:** Each Bond will cease to bear interest from its Maturity Date unless payment of the Principal Amount is improperly withheld or refused. If any amount payable in respect of a Bond or any other amount due to any person under this Deed is not paid on its due date, interest will 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 to be the aggregate of 2% and:

- (a) in the case of a Floating Rate Bond, the Interest Rate for that Floating Rate Bond;
- (b) in the case of a Fixed Rate Bond, the Interest Rate for that Fixed Rate Bond;
- (c) in the case of an Index-Linked Bond, the rate determined in accordance with the formula or the Interest Rate (as the case may be) recorded in the Register in respect of that Index-linked Bond; or
- (d) in the case of any other Bond, the Base Rate,

which on the due date would apply to an interest period of one month, will be determined at monthly intervals thereafter until the unpaid amount (net of any interim or progress payments) is paid and will be compounded monthly until paid. For the avoidance of doubt, this clause 3.5 will not apply in relation to payments of interest on any Bonds which have been suspended in accordance with the Conditions of those Bonds.

**3.6 Validity of Bonds:** No Holder will be concerned or obliged to enquire whether any Bond has been issued in contravention of any provision of this Deed. All Bonds issued for valuable consideration will be deemed to be validly issued and constituted by this Deed and entitled to the benefit of the provisions of this Deed notwithstanding that it may subsequently be determined that the issue of such Bonds was in breach of any provision of this Deed, but without prejudice to the Trustee's rights under or pursuant to this Deed against Council in relation to such breach.

**3.7 Purchase of Bonds:** Council may at any time purchase any Bond, on any market or by private treaty, at any price.

**3.8 Cancellation or reissue of Bonds:** Bonds purchased by Council may be cancelled by Council and if not so cancelled may be reissued by Council.



#### 4. CALCULATION OF INTEREST

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##### 4.1 Floating Rate Bonds:

- (a) **Interest Periods:** Each Interest Period in relation to a Floating Rate Bond will be a period of one, two, three, four, five or six months' duration or such other duration, as specified by Council at the time of issue of that Bond and recorded 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 for that Bond, it will be extended to the next business day for that Bond unless that next business day is in the next calendar month, in which case it will end on the first preceding day which is a business day, or adjusted as specified by Council at the time of issue of that Bond; 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 will be calculated on the Principal Amount of the Floating Rate Bond, on the basis of the number of days in the relevant Interest Period and a year of 365 days. Interest will accrue from day to day and will be paid to the Holder in arrears on the Interest Payment Date for that Interest Period, subject to any provisions relating to suspension of interest payments which are contained in the Conditions of the relevant Series or Tranche.

- 4.2 **Fixed Rate Bonds:** Interest will be calculated on the Principal Amount of each Fixed Rate Bond and will be payable in arrears in equal instalments on each Interest Payment Date for that Fixed Rate Bond as specified in the relevant Conditions.

##### 4.3 Index-linked Bonds:

- (a) In the case of an Index-linked Bond for which the Principal Amount is calculated by reference to an Index, the Principal Amount on each Interest Payment Date (for the purposes of calculating the amount of interest payable by Council on that Interest Payment Date) will be determined in accordance with the formula or the Interest Rate (as the case may be) recorded in the Register in respect of that Index-linked Bond.
- (b) If the amount of interest payable on an Index-linked Bond on an Interest Payment Date is a negative amount, no amount by way of interest will be payable by Council on that Interest Payment Date and the positive equivalent of that amount will be deducted from the Principal Amount of that Index-linked Bond for the balance of the term of that Index-linked Bond. Nothing in this clause 4.3 obliges the Holder of that Index-linked



Bond to make any payment to Council by reason of the amount of interest payable on the relevant Interest Payment Date being a negative amount.

- (c) If a deduction made pursuant to this clause 4.3 results in the Principal Amount of the Index-linked Bond being equal to or less than zero, Council will not be required to make any further payments of interest or principal in respect of that Index-linked Bond and that Indexed-link Bond will be cancelled. Council will ensure that the Registrar promptly notifies the relevant Holders of such cancellation.

## 5. REGISTER

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- 5.1 Register:** Council will at all times while Bonds are Outstanding maintain or take all reasonable steps to procure that the Registrar maintains the Register in New Zealand in accordance with all applicable laws and this Deed, which must record in respect of each Bond (to the extent applicable) the information specified in schedule 1. In the absence of manifest error, the entries made in the Register in relation to a Bond are conclusive evidence of the particulars of the Bond so entered.
- 5.2 Register shall prevail:** Except as ordered by a court of competent jurisdiction, Council, the Trustee and the Registrar are each entitled to recognise the Holder of a Bond as the absolute owner of the relevant Bond and will not be bound to enter in the Register or recognise any trust (express, implied or constructive), equity, right, title, interest (including a security interest) or claim affecting the ownership of any Bond or the indebtedness represented thereby. In the event of any conflict between any certificate or notice of registration issued in respect of a Bond and the Register, the Register will prevail.
- 5.3 Correction of errors:** The Registrar may (following consultation with Council), on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the Register.
- 5.4 Co-ownership of Bonds:**
- (a) Where two or more persons are registered as Holders of the same Bond(s) by virtue of any application for Bonds, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application, memorandum or other instrument, the persons will be deemed to hold the Bonds as joint tenants with right of survivorship.
- (b) If two or more persons apply, whether on application for the Bonds or by memorandum of transfer or other instrument, to be registered as Holders as tenants in common, the Registrar may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share. If the Bonds cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amounts (and any minimum multiples thereof), the Registrar may refuse to accept the application or memorandum of transfer or other instrument, as the case may be.
- 5.5 Acquisition of Bonds by operation of law:** When the right to any Bond is acquired by any person on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or as a survivor of persons registered as joint



holders, or in any manner other than by way of a transfer under this Deed, the Registrar, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Bond and upon receipt of such assurances as the Registrar or Council may require, will enter that person's name in the Register as the Holder of that Bond accordingly.

**5.6 Disclosure and inspection:** Council shall ensure that:

- (a) the Registrar discloses to a Holder who so requests, any information held on the Register which relates to the Bonds registered in the name of that Holder.
- (b) in respect of a Retail Series, the Registrar makes available for inspection, and provides copies of or extracts from, the Register as required by, and in accordance with, the FMCA and all other applicable laws, and subject to the same laws, where required by the Registrar, except in the case of the Trustee, upon payment of a reasonable fee take copies of and extracts from such entries in the Register as that person is entitled to inspect.

**5.7 Audit:** The Register in respect of any Retail Series shall be audited in accordance with applicable auditing and assurance standards by the Auditor, to determine whether in the auditor's opinion there is reasonable assurance that the Register correctly contains all information required by applicable laws, annually within 4 months after the Council's balance date.

**5.8 Closure of Register:** Subject to any applicable laws, Council may from time to time close the Register for any period or periods not exceeding 30 days in total in any year.

## **6. PAYMENTS AND TRANSFERS**

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**6.1 Payment to Holder:** Payment of the Principal Amount of, and interest (if any) on, a Bond (less any amount required to be deducted pursuant to clause 7) will be made in immediately available funds, for value on the date of payment, to the Holder of that Bond on the Record Date in respect of the relevant payment. If more than one person is named in the Register, payment will be made to the first person so named. Any payment made by, or on behalf of, Council in accordance with this clause will operate as a complete discharge to Council, to the extent of such payment, in relation to the relevant Bonds, subject to clause 6.5 below.

**6.2 Method of payment:**

- (a) Subject to clause 6.2(c), a Holder may, by written notice to the Registrar, request the Registrar to make payments in respect of any Bond 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 on or before the close of business on the Record Date for that payment. In the absence of any such notice, payments in respect of each Bond will be made by posting a cheque to the address of the relevant Holder appearing in the Register on the relevant Record Date, at the Holder's risk. Any notice given pursuant to this clause will be deemed to be automatically cancelled upon transfer of all of a Bond or, in the case of transfer of a part of a Bond, in respect of the part



transferred. A notice from one of the several Holders of the same Bonds will be deemed to be given by all such Holders.

- (b) If, for whatever reason, at any time a Holder has provided neither a current address nor current details of a bank account to the Registrar, any payments in respect of any Bond to that Holder will be deemed to be unclaimed money for the purpose of clause 6.4.
- (c) The Council will, in respect of a Lodged Bond, effect payment by utilising a "FIISCONF" payment transaction (or any replacement mechanism utilised in relation to NZClear).

**6.3 Business day:** If any Interest Payment Date or the Maturity Date of a Bond is not a business day for that Bond, the due date for the payment to be made on that date will be the next following business day for that Bond (except, in the case of a Floating Rate Bond, if the following business day falls in the next calendar month in which case the due date for that payment will be the first preceding day which is a business day) or adjusted as specified by Council at the time of issue of that Bond and all other provisions of this Deed and the Agency Agreement will be read and construed accordingly provided that no additional interest will be payable in the case of a Fixed Rate Bond for the delayed payment.

**6.4 Unclaimed payments:**

- (a) Subject to clause 6.4(b), if any payment made by Council to a Holder to the address, or into the bank account, last specified by that Holder to Council or the Registrar is returned unclaimed, the amount concerned will (unless the Registrar or Council has in the meantime received notice of a change of address or bank account to be entered in the Register for the relevant Bond):
  - (i) in the case of any Retail Bonds, be retained by the Registrar 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 Council without limiting the rights of the Holder entitled to the unclaimed amount; and
  - (ii) in the case of any Wholesale Bonds, be returned to Council unless it is otherwise agreed between Council and the Registrar that such unclaimed monies are to be retained by the Registrar, without limiting the rights of the Holder entitled to the unclaimed amount.
- (b) The person or persons who are entitled to those payments will be entitled to payment upon providing to the satisfaction of Council, sufficient evidence of such entitlement, and details of any such payment made will be given to the Registrar.
- (c) Council will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment. If the amount concerned is not claimed within six years after the original date of payment, then the amount concerned is taken to be forfeited to Council for Council's benefit and will no longer be treated as being unclaimed money for the purposes of the Unclaimed Money Act 1971.

- 6.5 Reinstatement:** Subject to clause 6.4, if any payment made to a Holder by, or on behalf of, Council is subsequently rescinded, avoided or otherwise restored to Council, that payment will be deemed not to have discharged or affected the liability of Council in respect of which that payment was made. In that event the relevant Holder and Council 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.
- 6.6 Transfer:** Title to an Unlodged Bond may be transferred by a transfer in any usual or common form signed by the transferor and the transferee and produced to the Registrar. The Registrar will thereupon record the name and address of the transferee in the Register. No transfer of a Bond may be registered later than the Record Date for repayment of the relevant Bond.
- 6.7 NZClear:** Notwithstanding clause 6.6, where Bonds are lodged in NZClear the beneficial interest in those Bonds may be transferred in accordance with the NZClear regulations.
- 6.8 Partial Transfers:** A Holder may transfer part only of its interest in a Bond. However, subject to clause 6.9, no transfer of any part of its interest may be effected if such transfer would result in the transferor or transferee holding or continuing to hold a Bond with a Principal Amount of less than the applicable Minimum Principal Amount, or not of a multiple, specified in the relevant Conditions.
- 6.9 Compulsory disposal when holding less than Minimum Principal Amount of Listed Bonds:** Council may at any time give notice to a Holder holding Listed Bonds of a particular Series or Tranche with a Principal Amount of less than the applicable Minimum Principal Amount of the Series or Tranche of which those Bonds form part that, if at the expiration of three months after the date the notice is given, that Holder still holds less than the applicable Minimum Principal Amount of Bonds of that Series or Tranche, Council may exercise the power of sale set out in this clause. If that power of sale becomes exercisable:
- (a) Council may arrange for the sale of those Bonds on behalf of that Holder, through NZX, or in some other manner approved by NZX.
  - (b) That Holder will be deemed to have authorised Council to act on behalf of that Holder in relation to the sale of those Bonds, and to sign all necessary documents relating to such sale.
  - (c) Council will account to that Holder for the net proceeds of sale (after deduction of reasonable sale expenses) which will be held on trust by the Council for, and paid (together with interest at such rate (if any) as Council deems appropriate) to, that Holder, on surrender of the certificate (if any) relating to those Bonds.
  - (d) The title of the purchaser of Bonds sold pursuant to this clause will not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of Council will be a good discharge to the purchaser for the purchase price.
- 6.10 Fees:** Council will, and will procure that the Registrar will, make no service charge to the Holders for:
- (a) the registration of any holding of Bonds; or





(b) the transfer of any Bonds.

Council and the Registrar may, however, require the payment by the relevant Holder of any taxes and other governmental charges payable as a result of a transfer.

- 6.11 Persons entitled on death of Holder:** The executors or administrators of a deceased Holder (not being one of several joint Holders), and in the case of the death of one or more of several joint Holders, the survivor or survivors of such joint Holders, will be the only persons recognised by Council as having any title to or interest in such Bonds provided that if that Holder, having sold any or all of the Bonds registered in the name of that Holder, had delivered to the transferee a transfer of the Bonds so sold, signed by the Holder, but such transfer had not been registered before the death of the Holder, Council may, subject to compliance by the transferee with the conditions as to transfer applicable to the Bonds, register that transfer notwithstanding that Council has notice of that Holder's death.
- 6.12 Joint Holders:** If several persons are entered in the Register as joint holders of any Bonds then, without prejudice to clause 6.1, the receipt, or compliance with payment directions, of any one of such persons for any amount from time to time payable on or in respect of such Bonds will be as effective a discharge to Council and the Trustee as if the person signing such receipt were the sole registered holder of such Bonds.
- 6.13 Details of Holders:** Every Holder will designate to the Registrar an address and may, at their election, designate a bank account into which payments under or in respect of the Bonds are to be made, in each case within New Zealand, and the address and account (if any) so designated will be the address and account of such Holder for all purposes of this Deed. Any change of name or address, or account to which payments are to be made, of a Holder or any change in any other information required to be inserted in the Register in respect of any Holder must immediately be notified in writing to the Registrar by the Holder, or if a joint holding, by all the joint Holders, accompanied by such evidence of such change as the Registrar may reasonably require, and the Register will be amended accordingly. Every Holder must give notice to the Registrar of its residency for taxation purposes (if different from the address provided under this clause 6.13).
- 6.14 Reliance on documents:** The Registrar, the Manager, the Trustee and Council will be entitled to accept the authenticity and genuineness of any transfer form or other document (including any notification of the information referred to in clause 6.13) and will not incur any liability for registering any transfer form which is subsequently discovered to be a forgery or otherwise defective, unless such person had actual notice of such forgery or defect at the time of registration of such transfer.
- 6.15 Register compliance:** Council will comply with, and use all reasonable endeavours to ensure that the 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.
- 6.16 No liability:** The Registrar will not be liable for any breach by Council of any representation, obligation or undertaking, including the non-payment of any money due, nor will the Registrar be liable for any negligent act, error or omission on the part of Council, nor for acting in accordance with any instruction or direction of Council or with the consent or approval of Council.

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## 7. TAXES

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

- (a) free of any restriction or condition;
- (b) free and clear of, and (except to the extent required by law or as provided for in this clause 7) without any deduction or withholding on account of, any taxes; and
- (c) without deduction or withholding on account of any other amount whether by way of set-off or otherwise (except as provided in clauses 7.2, 7.3 and 7.5).

**7.2 Non-Resident Withholding Tax:** Subject to clauses 7.3 and 7.4, New Zealand non-resident withholding tax will be deducted from payments of interest (or payments deemed by the Income Tax Act to be interest for non-resident withholding tax purposes) to any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond) who, for the purposes of the Income Tax Act, is neither resident in New Zealand nor engaged in business in New Zealand through a fixed establishment in New Zealand (**Non-Resident Holder**).

**7.3 Approved Issuer Levy:** Despite clause 7.2 and subject to clause 7.4, if, in respect of any payment of interest (or deemed interest) to a Non-Resident Holder, Council elects and is lawfully able to ensure that the payment is treated as paid by Council as an Approved Issuer in respect of a Registered Security by:

- (a) paying Approved Issuer Levy (in which case Council, or the Registrar on its behalf, will pay the Approved Issuer Levy and deduct an amount equal to that Approved Issuer Levy from the interest (or deemed interest) payable to that Non-Resident Holder); or
- (b) providing a statement to the Commissioner of Inland Revenue for Approved Issuer Levy to be zero-rated (in the event that the Bonds otherwise meet the requirements for Approved Issuer Levy to be zero-rated),

non-resident withholding tax will not be deducted from that payment, unless the Non-Resident Holder instructs Council in writing to deduct non-resident withholding tax from the payment.

**7.4 Resident Withholding Tax:** New Zealand resident withholding tax will be deducted from payments of interest (or payments deemed by the Income Tax Act to be interest for resident withholding tax purposes) to any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond) who is, for the purposes of the Income Tax Act, resident in New Zealand or not resident but engaged in business in New Zealand through a fixed establishment in New Zealand, unless an Exemption Certificate is produced to the Registrar on or before the Record Date for the relevant payment.

**7.5 No gross-up:** Council will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds pursuant to clause



7.2, 7.3 or 7.4 or as otherwise required by law. If, in respect of any Bond, the Registrar or Council becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond), then the Registrar and Council will be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Registrar or Council in respect of such liability may be recovered from the Holder as a debt due to the Registrar or Council and may be withheld from any further payments (if any) to that Holder. Nothing in this clause 7.5 will prejudice or affect any other right or remedy of the Registrar or Council.

**7.6 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 (including, if applicable, any other person who beneficially derives interest under the relevant Bond) provides evidence to Council or the Registrar (acceptable to it) that a lesser rate is applicable.

**7.7 Tax status:** Council and the Registrar will be entitled for the purposes of this clause 7 to rely, without further enquiry, upon any document produced, or statement made, by or on behalf of a Holder in relation to that Holder's tax status or residency, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the relevant Bonds. The Holder will indemnify Council and the Registrar for any loss or liability incurred by the Council or the Registrar as a result of the Council or the Registrar taking a tax position in reliance on such a document or statement which later proves to be false or misleading.

## 8. SELLING RESTRICTIONS

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### 8.1 Selling restrictions:

(a) Bonds may only be offered for sale or sold in conformity with all applicable laws and regulations in any jurisdiction in which they are offered, sold or delivered.

(b) Without limitation to the generality of clause 8.1(a), Bonds will not be offered or sold by Council or any Holder in breach of the selling restrictions contained in the relevant Conditions.

**8.2 Offering material:** No Information Memorandum or any advertisement or other offering material in respect of any Bond may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations and the selling restrictions contained in the relevant Conditions.

**8.3 Holder indemnity:** By its subscription for or purchase of Bonds, each Holder agrees to indemnify Council and each of its officers and employees in respect of any loss, cost, claim, fine, damages, liability or expense sustained or incurred by Council as a result of the breach by that Holder of the restrictions contained in this clause 8 or in the Conditions for the Series or Tranche of Bonds held by that Holder.

## 9. REPRESENTATIONS AND WARRANTIES

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**9.1 Representations and warranties:** Council represents and warrants to the Trustee and the Holders, on the date of this Deed, that:

- (a) **Status:** it is a council duly constituted as a territorial authority under the Act;
  - (b) **Power and authority:** it has:
    - (i) the power to enter into, exercise its rights and perform and comply with its obligations under this Deed and to issue the Bonds; and
    - (ii) taken all necessary action to authorise its entry into, execution and performance of this Deed and the issue of the Bonds;
  - (c) **Obligations:** this Deed and the Bonds (when issued) constitute its legal, valid and binding obligations, enforceable in accordance with their terms, subject to applicable bankruptcy, reorganisation, 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 laws violated:** neither its entry into this Deed, nor the exercise of any right or the performance or observance of any obligation under this Deed and the Bonds, nor any transaction contemplated hereby, by Council will:
    - (i) violate or contravene any law to which it is subject; or
    - (ii) cause any limitation on any of its powers, or on the right or ability of its officers to exercise those powers, to be exceeded; and
  - (e) **Authorisation:** all consents and other authorisations required to enable it lawfully to enter into, execute and exercise its rights and perform and comply with its obligations under this Deed and to ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms, have been obtained or effected and are in full force and effect and have been complied with.
- 9.2 Conditions:** In respect of a Bond, Council will make such further representations and warranties as are specified in the Conditions for that Bond.
- 9.3 Repetition:**
- (a) The representations and warranties contained in clause 9.1 will be deemed to be repeated by Council for the benefit of the Trustee and a Holder on each Issue Date and each Interest Payment Date for the Bonds held by that Holder or, in respect of a Bond which does not bear interest, on each date falling at quarterly intervals after the Issue Date, in each case, by reference to the facts and circumstances then existing.
  - (b) In respect of a Series or Tranche, the representations and warranties referred to in clause 9.2 will be deemed to be repeated for the benefit of the Trustee and the Holders of that Series or Tranche on the Issue Date and each Interest Payment Date of each Bond forming part of that Series or Tranche, in each case, by reference to the facts and circumstances then existing.



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## 10. UNDERTAKINGS

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**10.1 General undertakings:** Council undertakes to the Holders and (in respect of each Retail Series) the Trustee that it will, for so long as any Bonds are Outstanding:

- (a) **Debenture and Agency Agreement:** comply with and perform all its material obligations under the Debenture and the Agency Agreement and, in the case of the Agency Agreement, use all reasonable endeavours to ensure that the Registrar also does so;
- (b) **Notify Event of Default:** promptly notify the Trustee and the Wholesale Holders of the occurrence of any Event of Default, giving full details of any action that has been taken (or is to be taken) as a result; and
- (c) **Records:** procure that the financial statements of Council (as required by the Act) are at all reasonable times (whether kept at its principal office or any other place or places in New Zealand) open for inspection by the Trustee and any Holder, or any person properly appointed by the Trustee or any Holder.

**10.2 Series undertakings:** In respect of each Series, Council undertakes to the Holders of that Series and (where that Series is a Retail Series) the Trustee that it will, for so long as any Bonds of that Series are Outstanding:

- (a) **Supplemental Trust Deed:** comply in all material respects with and perform its material obligations under this deed and any relevant Supplemental Trust Deed and, in respect of a Bond, any additional undertakings specified in the Conditions for that Bond;
- (b) **Send notices:** where that Series is a Retail Series, send copies to the Trustee of all notices given by it to Holders of that Series generally;
- (c) **FMCA:** where that Series is a Retail Series, comply with any provisions of the FMCA and the FMC Regulations applicable to that Series and, if that Series is of Listed Bonds, the NZX Listing Rules applicable to that Series;
- (d) **Listed Bonds:** where the Conditions of a Bond indicates that that Bond is intended to be a Listed Bond, use its best endeavours to ensure that that Bond is, within a reasonable time, quoted on the NZDX or any alternative or successor recognised stock exchange and that such quotation is maintained;
- (e) **Authorisations:** obtain, effect and promptly renew from time to time all material authorisations required under any applicable law to enable it to perform and comply fully with the Conditions for that Series or required on its part for the validity or enforceability of this Deed;
- (f) **Information Memorandum:**
  - (i) not issue any Information Memorandum or lodge any register entry (as defined in the FMCA) information in respect of the offer of any Retail Bonds without prior notice to the Trustee; and



- (ii) not include any statement in any Information Memorandum, any register entry (as defined in the FMCA) information, or any advertisement (as defined in the FMCA) for any Bonds, concerning the Trustee, without the prior consent of the Trustee;
- (g) **Report of contravention:** where that Series is a Retail Series, if the Council 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 in a material respect, as soon as practicable, report the contravention or possible contravention to the Trustee in writing 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;
- (h) **Insolvency:** where that Series is a Retail Series, if Council becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become insolvent (as defined in the FMCA), as soon as practicable:
  - (i) disclose to the 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; and
- (i) **Auditor:** for so long as any Retail Bonds are Outstanding, comply with schedule 4.

## 11. REPORTS AND INFORMATION

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- 11.1 **Reporting Covenants:** Council covenants with the Trustee that it will, in respect of each Retail Series, subject to the Act and to its rights to withhold information pursuant to the Information and Meetings Act, at all times at which any Retail Bonds are Outstanding, except as otherwise permitted by the Trustee:
- (a) **Reporting Certificate:** as soon as reasonably practicable, but in any event no later than 4 months after the end of each of Council's financial years and no later than 2 months after the end of each of Council's financial half-years and, if required by the Trustee, each other financial quarter, and within 21 days of receipt of a written request by the Trustee (which request may only be made where the Trustee certifies that it has reasonable grounds to believe that Council is not complying with its obligations under this Deed in respect of a Retail Series), deliver to the Trustee a completed and signed Reporting Certificate;

**(b) Auditor's reports:**

- (i)** at the same time as the Reporting Certificate at the end of each of Council's financial years is provided under clause 11.1(a), provide a separate report by the Auditor addressed to the Trustee in respect of the Retail Bonds stating, in respect of each Retail Series:
  - (aa)** whether or not 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 and, if so, giving particulars thereof;
  - (bb)** whether or not their audit has disclosed any matter (and if so, particulars thereof) calling in their opinion for further investigation by the Trustee in the interests of the Retail Holders;
  - (cc)** that they have perused the certificates (if any) given on behalf of Council pursuant to clause 11.1(a) since their last report and that so far as matters which they have observed in the performance of their duties are concerned the statements made in such certificates are correct;
  - (dd)** whether, in the auditor's opinion, there is reasonable assurance that, in all material respects, the Register in respect of each Retail Series has been maintained in accordance with the FMCA and the provisions of this Deed and correctly contains the information required by the FMCA;
  - (ee)** as at the end of each relevant financial year:
    - (A)** the Principal Amount of the Retail Bonds in that Retail Series; and
    - (B)** whether or not from normal audit tests they have conducted they are satisfied that all Principal Amounts due and payable on the Retail Bonds of that Series have been paid or otherwise satisfied and that all interest due and payable on the Retail Bonds of that Series has been paid; and
  - (ff)** any other matter required by the FMCA to be set out in its report as notified by Council or the Trustee;
- (ii)** provide the Trustee with a copy of any report, financial statement or certificate which the Auditor has issued in respect of Council; and
- (iii)** on request of the Trustee provide to the Trustee all information relating to Council relevant to the exercise of Council's rights and duties in respect of this Deed.

Notwithstanding the above, the Auditor's report may be provided in such other form as may be agreed between Council, Trustee and the Auditor from time to time;

- (c) **Accounting and other records:** at the request in writing of the Trustee, make available for the Trustee's inspection the whole of the accounting and other records of Council, and give to the Trustee the information that it requires with respect to all matters relating to those records; and
- (d) **Reports:** make available or provide to the Trustee or a person authorised by it for these purposes all documents and records relating to Council and any reports 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 requires Council to make available or provide within the time and in the manner (which must be reasonable in the circumstances) specified by the Trustee or its authorised person.

## 12. DEFAULT

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**12.1 Events of Default:** If any of the following occurs, whether or not within the control of Council, and while it is continuing unremedied or unwaived:

- (a) **Non-payment:** subject to any provisions of this Deed applicable to any Bond relating to suspension of interest payments:
  - (i) default is made by Council in the payment on its due date of any Principal Amount of any Bond, and such default continues unremedied for two business days for that Bond; or
  - (ii) default is made by Council for a period of seven business days for that Bond in the payment of any interest on or secured by any Bond; or
  - (iii) default is made by Council for a period of 30 days after final demand in writing in the payment of any other material amount due and payable by Council pursuant to this Deed; or
- (b) **Other breach:** if any material default (other than those referred to in clause 12.1(a)) is made by Council in the performance or observance of any other material covenant, condition or other provision binding upon Council under a Supplemental Trust Deed or (as modified by that Supplemental Trust Deed) this deed (whether or not the Trustee has waived any prior similar default) and such default continues for more than 30 days after receipt by Council of a notice in writing from the Trustee specifying the default and requiring it to be remedied; or
- (c) **Misrepresentation:** any representation, warranty or statement made or deemed to be repeated by Council in a Supplemental Trust Deed or (as modified by that Supplemental Trust Deed) this deed is or was untrue or incorrect in any material respect when made or deemed repeated and, in respect of any such misrepresentation which is capable of being remedied, such misrepresentation is not remedied within 30 days of Council becoming aware of that misrepresentation; or



- (d) **Enforcement Event:** the security created by the Debenture is enforced or becomes enforceable in accordance with its terms; or
- (e) **Cessation of business or dissolution:** Council ceases or threatens to cease to carry on all or substantially all of its activities, or an order is made for the dissolution of Council (except where such order is followed by an amalgamation or a solvent reconstruction where all or substantially all of the operations of Council are transferred to or vested in another entity); or
- (f) **Receiver, etc:** a receiver, or receiver and manager, is appointed of (or Council requests any such appointment), or an encumbrancer takes possession of, or exercises its power of sale in respect of, all or any material part of the Charged Assets unless Council demonstrates to the satisfaction of the Trustee, in respect of Retail Bonds, and the Wholesale Holders, in respect of Wholesale Bonds, that such appointment or taking of possession or exercising of power will not have a material adverse effect on the ability of Council to meet its payment obligations under this Deed in respect of the relevant Bonds when due and payable; or
- (g) **Statutory management:** a statutory manager is appointed, or a recommendation in that regard is made by the FMA, under the Corporations (Investigation and Management) Act 1989 in respect of Council; or
- (h) **Invalidity of documents:** any material provision of this Deed or any Transaction Document:
- (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 Council, or any person on its behalf, makes any allegation or claim to that effect; or
- (i) **Change in law:** the enactment of or any change in any law or directive, by any governmental agency, occurs which will have a material adverse effect on the ability of Council to perform its payment obligations when due under this Deed; or
- (j) **Resolution to repudiate payment obligations:** Council passes at a duly convened Council meeting a formal resolution to repudiate its payment obligations under this Deed, and the passing of such resolution would result in the occurrence of an Event of Default under clause 12.1(a); or
- (k) **Conditions:** in relation to any Bond, any event occurs which is specified in the Conditions of that Bond as an event of default,

then at any time thereafter, provided that event is continuing unremedied or unwaived:

- (i) **Wholesale Series:** the Wholesale Holders may, following the passing of an Extraordinary Resolution of the Wholesale Holders (or, in the case of clause 12.1(k), the Holders of the Bonds of the relevant Wholesale Series), by notice in writing to Council, declare all (but not some only) of the Wholesale Bonds (or, in the case of clause 12.1(k), the Bonds of the relevant Wholesale Series) to be immediately due and payable; and
- (ii) **Retail Series:** the Trustee may in its discretion, and will immediately upon being directed to do so by an Extraordinary Resolution passed by the Holders of the Bonds of the relevant Retail Series, by notice in writing to Council, declare the Bonds of that Series to be immediately due and payable.

**12.2 Payments on acceleration:** If the Wholesale Holders or the Trustee makes a declaration under clause 12.1, then Council will immediately pay to each relevant Holder:

- (a) in the case of Bonds which are interest bearing, the Principal Amount of the Bond together with accrued interest thereon at the applicable Interest Rate calculated on a daily basis from the last Interest Payment Date on which interest was actually paid in respect of that Bond, or if no interest has been paid in respect of that Bond, from the Issue Date to the date of payment; and
- (b) in the case of Bonds which are not interest bearing, the net present value, as at the date of declaration, of the Principal Amount of the Bond determined by discounting the Principal Amount at the discount rate used to determine the purchase price for the relevant Bond at the time of its issue.

**12.3 Trustee's powers on enforcement:** At any time after the Outstanding Moneys of any Retail Bonds become due and payable pursuant to clause 12.1, subject to the terms of the Debenture, the Trustee may in its discretion, and will forthwith upon being directed to do so by an Extraordinary Resolution passed by the Holders of the Bonds of the relevant Retail Series, institute and pursue all such proceedings or other legal actions, execute any judgments obtained, compromise and effect compositions, and exercise all such other rights or remedies available under the Debenture and at law, as the Trustee may think fit, and for any of the purposes aforesaid may do all such other things as the Trustee may think fit to enforce payment of the relevant Outstanding Moneys.

**12.4 No obligation to advise Event of Default:** The Trustee will not be under any obligation to advise any Retail Holder of any occurrence of an Event of Default, or to convene any meeting of Retail Holders, unless in the Trustee's opinion the occurrence is materially prejudicial to the interests of the Retail Holders of the Bonds generally.

**12.5 Materially prejudicial events of default:** For the purposes of clause 12.4, the Trustee may determine whether or not a default in the performance or observance by Council of any obligation under this Deed is, in its opinion, materially prejudicial to the interests of the Retail Holders and any such determination will be conclusive and binding upon Council and the relevant Holders.



- 12.6 Distribution of funds:** All moneys received by the Trustee in respect of Retail Bonds for which a Date of Acceleration has arisen from, or on behalf of, Council on or after that Date of Acceleration will (subject to payment or provision for any debts or liabilities having priority to the Outstanding Moneys) be held and applied:
- (a) **First**, (subject to any direction made by any court) in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Trustee under the provisions contained in this Deed and of all remuneration payable to the Trustee hereunder, with interest thereon as herein provided;
  - (b) **Secondly**, in or towards payment to the Retail Holders in respect of Retail Bonds for which a Date of Acceleration has arisen, *pari passu* in proportion to the amounts actually or contingently owing to them in respect of such Retail Bonds; and
  - (c) **Thirdly**, subject to the rights of any other creditors, in payment to Council or as it will direct of the surplus (if any) of such moneys.
- 12.7 Payment of principal before interest:** In any payments pursuant to clause 12.6, interest will ordinarily be paid prior to principal. However, if the Trustee considers it expedient in the interests of the Retail Holders, payments may be, subject to the Act, made on account of principal before interest, or the whole of the interest, has been paid, but such alteration in the order of payment will not prejudice the right of Holders to receive the whole amount to which they would have been entitled if the ordinary order of payment had been observed.
- 12.8 Trustee's powers to postpone distribution:** If the amount of money at any time available under clause 12.6 for payment of principal is less than 10% of the aggregate Outstanding Moneys, the Trustee may, in its discretion, invest that money and such investments and the resulting income may be accumulated until the accumulations and any other available funds amount to a sum sufficient to pay at least 10% of the aggregate Outstanding Moneys.
- 12.9 Trustee to notify Registrar:** Upon any payment under any of the provisions of clause 12.6 on account of the Retail Bonds, the Trustee must promptly notify the Registrar of the amount of the payment and the Bonds to which it relates (if the payment relates to some only of the Bonds) and the Registrar will amend the Register accordingly.
- 12.10 Information:** For the purposes of Council or the Registrar making any determination, calculation, payment or determining any voting entitlements pursuant to this Deed or the Agency Agreement, Council or the Registrar may require any Holder to provide it with a certificate or other information giving details of all amounts of any particular kind due or owing or alleged to be due or owing in respect of such Holder's Bonds as at that date. Council or the Registrar will be entitled to act in reliance on such a certificate or other information and will incur no liability in so acting, or for consequences of so acting, should any such certificate or other information prove to have been incorrect, or for failing to request or obtain such a certificate or other information.
- 12.11 Holder information:** Each Holder will also provide the Trustee with whatever information it may require for the purpose of this clause 12. The Trustee will incur no liability in so acting or for the consequences of so acting should any such certificate or information prove to have been incorrect, or for failing to request or obtain any such certificate or information.



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**13. PROVISIONS RELATING TO TRUSTEE**

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**13.1 Appointment:** Council appoints the Trustee, and the Trustee accepts appointment, as trustee of this Deed for the benefit of 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 contained in this Deed. The Trustee will hold in trust for the benefit of the Retail Holders:

- (a) the right to enforce any obligations or duties that Council has under this Deed and the FMCA, including the right to enforce Council's obligation to repay to a Holder the Principal Amount of the Bonds held by that Holder, together with interest thereon, in accordance with the terms of this Deed; and
- (b) the security created under the Debenture under and in accordance with this Deed.

**13.2 Remuneration:**

- (a) Council will pay to the Trustee for its services as trustee such remuneration as will from time to time be agreed between Council and the Trustee.
- (b) Council will also, to the extent permitted by law, pay on demand all expenses (including travelling expenses and expenses incurred in the taking of any expert advice deemed necessary or expedient by the Trustee) reasonably incurred by or on behalf of the Trustee in connection with:
  - (i) the exercise by the Trustee of any right, power, duty or privilege conferred by this Deed on the Trustee;
  - (ii) any breach or default in the observance or performance by Council of any provision of this Deed;
  - (iii) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders;
  - (iv) any application under the trusts and provisions of this Deed for its consent to, or approval or execution of, any act, document or matter;
  - (v) any action taken by or required of the Trustee under this Deed; and
  - (vi) any other expenses agreed by Council from time to time.
- (c) The remuneration and other payments payable pursuant to this clause 13.2 will continue to be payable until the trusts contained in this Deed are finally wound up and whether or not the trusts contained in this Deed are in the course of administration by or under the direction of the court.
- (d) All expenses incurred and payments made by the Trustee in the lawful exercise of the rights conferred on the Trustee by this Deed, and all remuneration payable to the Trustee, will be payable by Council



promptly following demand and, while unpaid following demand, will form part of the Outstanding Moneys and will be satisfied before any payment is made to the Holders in respect of the Outstanding Moneys.

### 13.3 Wholesale Series:

- (a) The Trustee will 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 Bonds.
- (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) will act in accordance with any such direction, and will 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 will 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.

**13.4 Powers of investment:** Any moneys held by the Trustee which are subject to the trusts of this Deed may, to the extent permitted by law, at the discretion of the Trustee, be invested in the name of the Trustee or its nominee in any investment whatsoever or, at the request of Council, in the purchase of Bonds, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income arising from all such investments made by the Trustee will until the Date of Acceleration belong to Council.

**13.5 Applications to court:** The Trustee may apply to the court for an order under section 208 or section 210 of the FMCA, and it may approve of or oppose any application to the court made by or at the instance of the FMA or any Retail Holder. The Trustee will, subject to clause 13.15 and otherwise to the extent permitted by law, be indemnified by Council against all reasonable costs, charges and expenses incurred by and in relation to any such application or proceedings (except where such application or proceedings allege, or relate to, any fraud, default, negligence or wrongful action or omission by the Trustee).

**13.6 Supplemental powers of Trustee:** In addition to the laws relating to trustees and to facilitate the discharge of its duties under this Deed, but subject to clause 13.15, it is expressly declared that:

- (a) **Right to engage expert:** The Trustee is entitled, in the performance of its functions, to 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 determine the financial position of Council or review the business, operation or management systems or the governance of Council. If the Trustee engages such an expert, Council will provide reasonable assistance to the expert to allow the expert to provide the assistance to the Trustee and (without limiting clause 13.2(b)) the fees and expenses of the expert, which must be reasonable in the circumstances, will be paid by Council.
- (b) **Reliance:** The Trustee may, providing that it acts bona fide, without liability for loss, obtain, rely and act on, or decline and elect not to act on:

- (i) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, stockbroker, surveyor, auctioneer, chartered accountant or other expert whether obtained by any Retail Holder or by the Trustee or otherwise, and although the same may subsequently be found to contain some error or not be authentic;
  - (ii) a certificate signed by the Chief Executive on behalf of Council as to any fact or matter prima facie within the knowledge of such person or that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Retail Holders as sufficient evidence of such fact or matter or the expediency of such dealing, transaction, step or thing; and
  - (iii) the statements contained in any certificate, resolution or report given under this Deed as conclusive evidence of the facts stated therein.
- (c) **Reference on Record:** The Trustee will not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Holders, or any class thereof, which the Trustee believes to have been properly passed even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings of that meeting.
- (d) **Application:** The Trustee will not be responsible for, or be bound to see to the application of, the money subscribed by the applicants for, or subscribers of, Retail Bonds.
- (e) **Discretion:** Except as otherwise expressly provided in this Deed, the Trustee:
  - (i) will have sole discretion as to the exercise of all trusts and rights vested in it by this Deed and as to the commencement, prosecution, variation, discontinuance or compromise of any action, proceeding or claim and, provided it has acted with reasonable care and diligence, it will not be responsible to the Holders for any loss or cost that may result from the exercise or non-exercise thereof; and
  - (ii) may refrain from exercising any discretion, power or authority vested in it by this Deed until it has a direction to act from the relevant Holders given by Extraordinary Resolution and the Trustee will not be responsible for any loss or cost that may result from the non-exercise of the relevant discretion.
- (f) **No deemed knowledge:** The Trustee may assume that Council is performing its obligations under this Deed in respect of the Retail Bonds, and will not be deemed to have knowledge of the occurrence of an Event of Default in respect of the Retail Bonds unless and until the Trustee has received written notice from a Retail Holder or Council stating that such an Event of Default has occurred and describing it, or the officers of the Trustee having responsibility for the administration of this Deed otherwise become actually aware that such an Event of Default has occurred.



- (g) **Determinations conclusive:** As between itself and the Retail Holders the Trustee may determine all questions and doubts arising in relation to any of the provisions of this Deed and every such determination, whether made upon such a question actually raised, or implied in the acts or proceedings of the Trustee, will be conclusive and will bind the Trustee and the Retail Holders.
- (h) **Delegation:** The Trustee must not delegate any of its functions under clauses 13.18(b) to 13.18(d) 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 Retail Holders to do so:
- (i) delegate (with the prior approval of Council, except where the security created by the Debenture has become enforceable) at any time, to any person, any of the trusts or rights vested in the Trustee by this Deed which cannot conveniently be exercised by it or through its employees, upon such terms and conditions and under such regulations (including power to sub-delegate) as the Trustee may think fit provided that any such delegation will not relieve the Trustee of its responsibilities under this Deed;
  - (ii) authorise (with the prior written approval of Council, except where the security created by this Deed has become enforceable) any person it thinks fit to act as its representative at any meeting of Holders;
  - (iii) instead of acting through its permanent employees employ, with the prior written approval of Council (which will not be unreasonably withheld), in the carrying out of any of the trusts or rights vested in the Trustee by this Deed and pay, at the expense of the Trustee, an agent to transact all business and do all acts required to be done under this Deed including the receipt and payment of money;
  - (iv) in addition to the exercise of the powers contained in clause 13.5, apply to the court for directions in relation to any question arising, either before or after the Date of Acceleration.

### 13.7 Indemnity by Council:

- (a) Subject to clause 13.15 and without prejudice to the right of indemnity by law given to trustees, the Trustee and every attorney, manager, agent or other similar person appointed by the Trustee pursuant to this Deed will (subject to any applicable law) be indemnified by Council in respect of all liabilities and expenses incurred in the execution or purported execution of its licensee obligations (as defined in section 4 of the FSMA) and the rights or trusts contained in this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to the provisions of this Deed, other than a claim arising out of a wilful default, wilful breach of trust, negligence or breach of duty on the part of the Trustee or any such attorney, manager, agent or other person.

- (b) The Trustee may retain and pay out of any moneys in its hands arising pursuant to this Deed or from the trusts of this Deed all sums necessary to effect such indemnity and also the remuneration and expenses of the Trustee provided for in this Deed.

**13.8 Indemnity by Holders:** Subject to clause 13.18(f), if the Trustee receives a direction or request, in accordance with the provisions of this Deed the Trustee will not be bound to comply with it unless, subject to clause 13.15, the Trustee has first been indemnified to its satisfaction against any actions, proceedings, claims and demands to which it may be rendered liable, and all costs, charges, damages and expenses which it may incur, by so doing.

**13.9 Other relationships:**

- (a) **Holder:** Nothing in this Deed will be deemed to prohibit the Trustee or any related company of the Trustee (all of whom in this clause 13.9 where the context permits are included in the expression "the Trustee") or its directors or officers, from being a Holder or the holder of any other security (including any Security Stock Certificate issued under the Debenture) issued by Council or from acting in any representative capacity for a Holder or other such holder.

- (b) **Own account:** Without limiting the generality of clause 13.9(a), it is expressly declared that the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, attorney or agent or in any fiduciary, vicarious or professional capacity and the acting in such capacity will not be deemed a breach of any of the obligations under, or arising in respect of, this Deed or otherwise imposed or implied by law arising out of the fiduciary relationship between the Trustee and Council, or between the Trustee and the Holders, as the case may be.

- (c) **Other transactions:** The Trustee will not by reason of its fiduciary capacity be precluded from making any contracts or entering into any transactions with Council or with itself as trustee in the ordinary course of the business of the Trustee or from undertaking any insurance, financial or agency service with Council or for itself as trustee, and the Trustee will not be accountable either to Council or the Holders for any profits arising from such contracts, transactions or services.

- (d) **No deemed knowledge:** The Trustee will not be deemed to have knowledge of any matter if that knowledge is obtained when it is acting on its own account in a capacity other than as Trustee.

**13.10 Represent Holders:** The Trustee may at any time, either of the Trustee's own volition or pursuant to any direction or in accordance with any policy given or indicated by any meeting of Retail Holders, represent those Holders in any investigation, negotiation, action, transaction or proceedings concerning the interests of the Retail Holders generally in the affairs of Council or in the enforcement of the rights of the Retail Holders or any of them, and in particular in obtaining legal, accountancy or other professional advice as to the rights of the Holders Retail or the Trustee, the duties of the Trustee and the liabilities of Council and in enforcing the rights of the Retail Holders or the Trustee under any demand, action or proceeding.





**13.11 Disclosure:** Except where the Trustee, in its reasonable opinion, considers it necessary for the purposes of this Deed to disclose such to Holders, or to any person referred to in clause 13.6(a)(i), the Trustee will treat, and maintain, as confidential all information which it receives from, or in respect of, Council pursuant to this Deed.

**13.12 Resignation or removal:** Subject to, in the case of clauses 13.12(a) to 13.12(c), the Trustee having performed all its functions and duties, or the due appointment of and acceptance of appointment by a new trustee in accordance with clause 13.13 or a court consenting to such resignation or removal (as applicable):

- (a) the Trustee may resign at any time, without assigning any reason, by giving at least 90 days' (or such shorter period as Council may agree) notice in writing to Council, which notice Council will promptly give to Holders recorded in the Register as at the date of receipt;
- (b) the Trustee will be removed from office by an Extraordinary Resolution of Retail Holders passed to that effect;
- (c) Council may, with the consent of the FMA, remove the Trustee from office; or
- (d) the FMA or Council may remove the Trustee from office in accordance with the FMSA.

**13.13 Appointment of new Trustee:**

- (a) The power to appoint a new trustee is vested in Council but (at any time when there are Retail Bonds Outstanding) no new trustee or trustees will be appointed unless such appointment is first approved by an Extraordinary Resolution of Retail Holders. Upon any vacancy in the office of trustee arising, Council will promptly call a meeting of the Holders for the purpose of approving the appointment of a new trustee and, if approval is given, Council will exercise its power of appointment. Only a licensed supervisor (as those terms are defined in the FMCA) whose such licence covers the supervision of all Retail Bonds issued under this Deed may be appointed as a trustee of this Deed.
- (b) Upon the acceptance of any appointment by a new trustee:
  - (i) the new 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
  - (ii) the retiring Trustee must transfer to the successor trustee all moneys, investments, property and books held by the Trustee under this Deed.
- (c) Council shall notify all Retail Holders of the appointment of any new trustee as soon as reasonably practicable following such appointment.
- (d) If at any time when there are Retail Bonds Outstanding, within 30 days after receiving notice of the Trustee's intention to retire under clause

13.12(a) or the removal of the trustee pursuant to clauses 13.12(b) to 13.12(d), Council fails to call a meeting of Retail Holders pursuant to clause 13.13(a), or to exercise the power vested in it by this Deed after receiving the approval referred to in clause 13.13(a) for appointing a new Trustee or new Trustees, then in either case the Retail Holders may by Extraordinary Resolution exercise such power to the exclusion of Council.

- 13.14 Additional powers etc:** The rights conferred upon the Trustee by this Deed will be in addition to any rights which may from time to time be vested in trustees by law and to any rights which may from time to time be vested in the Trustee as a Holder.
- 13.15 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 13.18(e) and 13.18(h) and no other provision of this Deed that is contrary to the foregoing shall have any effect.
- 13.16 Trustee's Duty of Care:** None of the provisions of this Deed, but subject to clause 13.15 and any applicable law, will in any case in which the Trustee has failed to exercise reasonable care, skill and diligence, relieve the Trustee from, or indemnify the Trustee against, any liabilities which by virtue of any legislation or rule of law would otherwise attach to it in respect of any negligence, wilful default, wilful breach of trust or undertaking, or breach of duty for which it may be liable in relation to this Deed.
- 13.17 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.
- 13.18 General responsibilities and duties of Trustee:** Notwithstanding any other provision of this Deed, the Trustee:
- (a) must:
    - (i) exercise reasonable diligence to ascertain whether or not any breach of the terms of this Deed in respect of any Retail Bonds, or of the terms of the Retail Bonds, has occurred; and
    - (ii) do all the things that it is empowered to do to cause any breach of those terms to be remedied (except if it is satisfied that the breach will not materially prejudice the security of the Retail Bonds or the interests of the Retail Holders);
  - (b) is responsible for acting on behalf of the Retail Holders in relation to Council, 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;
  - (c) is responsible for supervising Council's performance of its issuer obligations and in order to ascertain whether or not the assets of Council that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the amounts of the Retail Bonds as they become due,

- (d) 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;
- (e) must:
  - (i) act honestly in acting as trustee;
  - (ii) in exercising its powers and performing its duties as trustee, act in the best interests of the Retail Holders;
  - (iii) exercise reasonable diligence in carrying out its functions as trustee;
- (f) must do all the things it has the power to do to cause any 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;
- (g) 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:
  - (i) seeking a remedy to a contravention of the issuer obligations in respect of a Retail Series; and
  - (ii) any other matter connected with the Trustee's functions.
- (h) 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.

**13.19 Representation and warranty:** The Trustee represents and warrants to Council 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 Bonds issued under this Deed. The representation and warranty contained in this clause 13.19 shall be deemed to be repeated for the benefit of Council and each Retail Holder on the Issue Date and each Interest Payment Date of each Retail Bond.

**13.20 NZX Listing Rules:** Subject to compliance by the Trustee with its obligations under the FMCA and FMC Regulations, in respect of Listed Bonds the Trustee will not be required to monitor compliance by Council or any other party with the NZX Listing Rules and, in the absence of notice to the contrary from Council or NZX, will be entitled to assume that Council is so complying. In the event of non-compliance with the NZX Listing Rules, the Trustee, in determining the action to be taken or not taken by it, will be entitled to have regard to the actions of the NZX, as relevant, in relation to that non-compliance by Council.

## 14. ALTERATIONS TO TRUST DEED AND WAIVERS

**14.1 Trustee may concur in certain alterations:** The provisions of this Deed may be added to or varied by deed executed by Council and the Trustee:



- (a) **Without consent:** without the consent of the Holders if, (where the amendment affects Retail Bonds) in the opinion of the Trustee, it is necessary or desirable:
- (i) to correct a manifest error or omission, or it is of a minor, formal or technical nature;
  - (ii) to facilitate the expedient issue of Bonds by Council;
  - (iii) to facilitate the expedient issue of types of Bonds not specifically provided for in this Deed;
  - (iv) to comply with the FMCA and the FMC Regulations in relation to the issue of Bonds to which that Act or those regulations may apply;
  - (v) to facilitate the listing or maintenance of listing of any Bond on any stock exchange;
  - (vi) to facilitate the establishment and maintenance of more than one Register, and the appointment of more than one Registrar, in respect of the issuing of different types of Bonds;
  - (vii) to facilitate the transfer of Bonds under a system authorised or approved under the FMCA or a 'designated settlement system' (as defined in Part 5C of the Reserve Bank of New Zealand Act 1989); or
  - (viii) to comply with, or as a result of the coming into effect of, any applicable law,
- and (where the amendment affects Retail Bonds) which does not, to the satisfaction of the Trustee, have a material adverse effect on the affected Retail Holders; or
- (b) **With Consent:** by an Extraordinary Resolution of each class of Holders that is or may be adversely affected by the amendment; or
- (c) **Retail Bonds:** in the case of an amendment affecting Retail Bonds, if the Trustee is satisfied that it does not, have a material adverse effect on the affected Retail Holders,

provided always that:

- (d) no variation or addition will be made in the terms and conditions of issue of any Bonds (as distinct from the provisions of this Deed) that have a material adverse effect on the Holders of those Bonds without the consent in writing of the relevant Holder; and
- (e) in relation to an amendment affecting Retail Bonds, the Trustee must, where required by the FMCA, provide or, where applicable, obtain the certificates required under section 108(2)(b) of the FMCA.

**14.2 Notice:** Council will, within 10 working days after an amendment is made under clause 14.1(a) or (c), send a notice that contains a description of the amendment

to every Retail Holder affected by that amendment, unless the Trustee notifies Council that such notification is not required or that it would be appropriate to give notice of the amendment in some other manner.

**14.3 Waiver by Trustee:**

- (a) Subject to any direction given pursuant to clauses 12.1 or 12.3 or otherwise given by the Retail Holders, the Trustee may, and if so directed by an Extraordinary Resolution of an affected class of Holders of Retail Bonds will, at any time and from time to time by notice in writing to Council 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 Council of any provision expressed or implied in this Deed in respect of Retail Bonds provided the Trustee, unless so directed, is satisfied that such waiver will not have a material adverse effect on the relevant Holders and the Trustee provides or, where applicable, obtains the certificates required under section 108(2)(b) of the FMCA but such waiver will not prejudice the rights of the Trustee or the Holders in respect of any other breach.
- (b) Any waiver by the Trustee in accordance with clause 14.2(a) will be binding on all relevant Holders.

**14.4 Waivers by Wholesale Holders:** Subject to any applicable law and except to the extent expressly provided otherwise in the Conditions for any Bonds, any class of Wholesale Holders may, by Extraordinary Resolution, waive, in whole or in part for a specified period or indefinitely and on such terms and conditions (if any) as may be deemed expedient, any breach or anticipated breach by Council of this Deed in respect of any Wholesale Bonds held by that class of Wholesale Holders.

**14.5 Exemptions:** Except to the extent expressly provided otherwise in the Conditions for any Bonds, if:

- (a) Council is granted an exemption, or an exemption is applicable to Council in relation to any obligation imposed upon Council by or pursuant to the FMCA or the NZX Listing Rules which is materially the same as or analogous to any obligation of Council under this Deed or any Bonds; and
- (b) the Chief Executive certifies that such amendment, release or waiver, as the case may be, will not have a material adverse effect on Council or any class of Holders,

then:

- (c) Council may, in respect of any Wholesale Bonds, amend this Deed or the Conditions for the relevant Wholesale Bonds and will be released from compliance with such obligation (including retrospectively) in a manner which is consistent with the relevant exemption. The Trustee will enter into such documents as Council may reasonably require to record only such amendment and release; or
- (d) Council may require the Trustee, in respect of any Retail Bonds, to agree to amend this Deed or the Conditions for the relevant Retail Bonds or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.



Notice of any such amendment will be provided to the relevant Holders within 30 days of the amendment being made.

## 15. MEETINGS OF HOLDERS

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All meetings of a class of Holders will be convened and held in accordance with the provisions set out in schedule 2. 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 2.

## 16. NOTICES

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

- (a) be given or made in writing by facsimile, email or letter and be signed by the sender or an authorised officer, employee, agent, attorney or solicitor of the sender;
- (b) be given or made to the relevant person at the address, email address or facsimile number, and marked for the attention of the person (if any), from time to time designated by that person for the purposes of this Deed;
- (c) not be effective until received by that person, and any such notice or communication will be deemed to be received by that person:
  - (i) (if given or made by letter) when left at the address of that party or one business day after being put in the post, postage prepaid, and addressed to that person at that address;
  - (ii) (if given or made by email) on completion of transmission to the relevant email address; or
  - (iii) (if given or made by facsimile) upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient designated for the purposes of this Deed,

provided that any notice or communication received or deemed received after 5pm on a business day, or on a day which is not a business day, will be deemed not to have been received until 9am on the next business day. Any notice given by Council or the Registrar to one of several Holders of the same Bonds will be deemed to have been given to all such Holders. If there are several Holders of the same Bonds then all such Holders must give any notice in respect of those Bonds.

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



**16.3 Initial contact details:** The initial address, facsimile number, email address and person (if any) so designated by each party, are set out below:

**(a) Council:**

Auckland Council  
135 Albert Street  
Auckland 1010

Facsimile No: 09 301 0100  
Email: john.bishop@aucklandcouncil.govt.nz  
Attention: Treasurer

**(b) The Trustee:**

Trustees Executors Limited  
Level 7, 51 Shortland Street  
PO Box 4197, Shortland Street  
Auckland 1140

Facsimile No: 09 308 7101  
Telephone No: 09 308 7100  
Email: ctnorth.banking@trustees.co.nz  
Attention: Business Manager, Corporate Trust

**(c) The Holders:**

The address of each Holder last entered in the Register at the relevant time.

**17. MISCELLANEOUS**

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**17.1 Waivers and remedies:** Time will be of the essence of this Deed but (except as otherwise provided in this Deed) no failure on the part of the Trustee or a Holder to exercise, and no delay on its part in exercising, any right, power or remedy under a Supplemental Trust Deed or this deed will operate as a waiver thereof, 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, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided by law.

**17.2 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. Without limiting the foregoing, if at any time any provision of a Supplemental Trust Deed or this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such illegality will not affect the enforceability of the remaining provisions of that Supplemental Trust Deed or this deed, as the case may be, nor will the legality, validity or enforceability or such provisions under the law of any other jurisdiction in any way be affected or impaired thereby.

**17.3 Further indebtedness:** Subject to any agreement to the contrary contained in any dealer or subscription agreement or Supplemental Trust Deed relating to the issue of any Bonds, Council, may from time to time, without the consent of the Holders, issue bonds, notes or other debt obligations on such other terms and conditions as Council may think fit.

- 17.4 Change in Registrar:** Council will give notice in accordance with clause 16 to the Holders of any appointment, resignation or removal of the Registrar or change in its specified office as soon as reasonably practicable following such event.
- 17.5 Documents:** Council will:
- (a) make copies of this deed, any relevant Supplemental Trust Deed, any Information Memorandum relating to Bonds held by the relevant Holder, the Agency Agreement and any other Transaction Document available for inspection during usual business hours by any Holder at the office of Council (which, at the date of this Deed, is as set out in clause 16.3 or such other office as Council 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 as required by, and in accordance with, the FMCA for such fee as permitted by the FMCA.
- 17.6 Survival:** The indemnities contained in this Deed will survive the payment of all the Bonds and the termination of this Deed.
- 17.7 Registration of Deed:** If Council proposes to issue a Retail Series, it will, 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 such Supplemental Trust Deed and any certificate as required by the FMCA.
- 17.8 Release of Deed:** Upon proof being given to the reasonable satisfaction of the Trustee that all Holders have been paid or satisfied in respect of both principal and interest, or that provision for such payment or satisfaction has been made in accordance with the provisions of this Deed and the requirements of any Bonds 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, the Trustee will at the request and cost of Council release and discharge Council from its obligations under this Deed.
- 17.9 Counterparts:** This Deed may be signed in counterparts. All executed counterparts together will constitute one document.

## **18. COSTS AND EXPENSES**

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- 18.1** Council will pay on demand:
- (a) **Enforcement costs:** subject to the making of a declaration under clause 12.1 to declare all of the Bonds immediately due and payable, all reasonable costs and expenses (including all reasonable legal expenses on a solicitor and own client basis and any goods and services and similar taxes thereon) sustained or incurred by the Trustee or the Holders in enforcing any rights under this Deed or otherwise, in respect of the Bonds; and
  - (b) **Stamp duty and other taxes:** all stamp duty and other documentary taxes payable in respect of the creation, issue and offering of the Bonds and the execution and delivery of this Deed. After the making of a declaration under clause 12.1 to declare all or any of the Bonds





immediately due and payable, Council will also indemnify the Holders from and against all stamp or cheque duty, issue, registration, documentary and other similar taxes in connection with any action taken by or on behalf of the Holders to enforce the obligations of Council under this Deed.

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**19. ABSENCE OF CROWN GUARANTEE**

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The Crown or Government of New Zealand does not guarantee or otherwise accept any liability for the Bonds or obligations of Council pursuant to this Deed.

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**20. GOVERNING LAW AND SUBMISSION TO JURISDICTION**

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This Deed and the Bonds are governed by and will be construed in accordance with the laws of New Zealand and Council, the Trustee and each Holder submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters or disputes arising in respect of this Deed or any Bond.

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**21. DELIVERY**

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

- (a) physical delivery of an original of this deed (or a counterpart of it), executed by that party, into the custody of the other party or the other party's solicitors; and
- (b) transmission by that party or its solicitors (or any other person authorised in writing by that party) of a facsimile, photocopied or scanned copy of an original of this deed (or a counterpart of it), executed by that party, to the other party or the other party's solicitors.

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



## SCHEDULE 1

### PARTICULARS TO BE RECORDED IN THE REGISTER IN RESPECT OF EACH BOND

Type of Bond [*Fixed Rate, Floating Rate, Zero Coupon*]

Index-linked [*Yes/No - If yes, principal and/or interest*]

Issue Date

Series/Tranche reference

Maturity Date

Principal Amount [*face value or formula for calculation on Maturity Date and/or Interest Payment Dates*]

Name and address of Holder

Minimum Principal Amount

Interest Rate\* [*fixed rate or margin over/under the Base Rate*]

Margin\*

Interest Payment Dates\*

Interest Periods\*

Index\*

Details of the account to which payments in respect of the Bond are to be made.

Transfers of the Bond and the date on which the Bond was transferred to the Holder

Cancellation of the Bond

Tax residency of Holder and, if not resident in New Zealand, advice whether the Holder is or is not engaged in business in New Zealand through a fixed establishment located in New Zealand.

Details of any Exemption Certificate held by the Holder

Any other information required by law.

\* if applicable

## SCHEDULE 2

### MEETINGS OF HOLDERS

#### 1. CONVENING

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- 1.1 Council will whenever required to do so by any applicable law convene a meeting of the Holders.
- 1.2 Council will at the request in writing of the Trustee or the Holders having the right to vote on the relevant matter and holding not less than 5% of the aggregate Principal Amount of the Bonds giving rise to such right to vote (with such requisition of Holders signed by, or on behalf of, those Holders) convene a meeting of the Holders. The request will state the nature of the business proposed to be dealt with at the meeting concerned.
- 1.3 In relation to any class of Retail Bonds, the Trustee may at any time of its own volition (after such consultation with Council as is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting), or Council shall, at the request in writing of the Trustee, convene a meeting of Retail Holders. The Trustee will not be obliged to convene a meeting of Holders pursuant to this paragraph until it has been indemnified to its reasonable satisfaction, subject to clause 13.15, against all reasonable costs and expenses to be thereby incurred.
- 1.4 Council may at any time of its own volition convene a meeting of 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.
- 1.5 Meetings of Holders will 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.
- 1.6 **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 paragraphs 1.6(a) and (b) above.
- 1.7 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 paragraph 13.10 or, if no such person is so authorised, the Trustee.

**Extraordinary Resolution** means a resolution passed:

- (a) 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; or
- (b) by written resolution signed in accordance with paragraph 14.3.

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

**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, or an assignee in bankruptcy or liquidator of a bankrupt Holder or Holder in liquidation;
- (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.

**1.8 Classes:** In this schedule, references to  **Holders** and  **Bonds** are references to only that class of Holders having the right to attend and vote at the meeting (as determined in accordance with paragraphs 9.3 to 9.5) and to the relevant class of Bonds held by those Holders.

## **2. PLACE**

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Meetings will be held in Auckland, or such other place as the Trustee determines or approves with the consent of Council, at a place designated in the relevant notice of meeting.

## **3. NOTICE OF MEETINGS**

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**3.1** At least five business days before Council gives notice of a meeting it will advise the Trustee in writing of the intended place, day and hour thereof and the precise nature of the business to be transacted at it and, in respect of a meeting of Retail Holders, will obtain the prior approval in writing of the Trustee to the documents it proposes to send to the Holders. If the Trustee so requires, the documents will include any statement which the Trustee wishes to make in relation to the meeting and the matters to be considered at it.

- 3.2** In the case of any Extraordinary Resolution to be proposed at a meeting involving Retail Holders, Council shall, at least 10 working days (or any lesser period approved by the Trustee) before Council gives notice of the meeting, provide to the Trustee a draft of the proposed notice of the meeting.
- 3.3** Notice of every meeting will be given in the manner provided in clause 16 of this deed to every Holder entered in the Register as at the close of business 5 business days prior to the date of despatch of the notice, the Trustee, the Auditor and every councillor of Council.
- 3.4** Subject to paragraph 4.6 of this schedule, 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. 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 terms of any resolution to be proposed at the meeting (and in the case of any special resolution to be proposed at a meeting involving Retail Holders, if the Trustee has provided comments in writing to Council at least 5 working days before the notice of the meeting is provided to the relevant Holders, those comments on the proposed special resolution);
  - (d)** the right of a Holder to appoint a Representative; and
  - (e)** the Authorised Person (if any) for the meeting.
- 3.5** An irregularity in a notice of a meeting is waived if all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver or, in the case of a meeting involving Retail Holders, the Trustee indicates at the meeting that it is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the relevant Holders.
- 3.6** The accidental omission to give notice to, or the failure to receive notice of a meeting by, any person entitled to receive such notice will not invalidate the proceedings at that meeting.
- 3.7** If the meeting is convened by Council, a copy of the notice will be sent to the Trustee. If the meeting is convened by the Trustee, a copy of the notice will be sent to Council. If any of the Bonds are Listed Bonds, a copy of the notice will also be sent to NZX at the same time as notices are sent to the Holders.

#### **4. QUORUM**

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- 4.1** 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 and part of the quorum if that Holder is present in person or by Representative or is participating in a meeting by means of audio, audio and visual, or electronic communication.

- 4.2 Subject to paragraph 4.4 of this schedule, 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 Bonds held by those Holders entitled to vote.
- 4.3 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% of the Principal Amount of the Bonds held by those Holders entitled to vote.
- 4.4 Where a Holder holds Zero Coupon Bonds, for the purposes of determining the quorum, the Principal Amount of those Zero Coupon Bonds is to be construed as a reference to the net present value of those Zero Coupon Bonds (as calculated by the Registrar by adjusting, on a straight line basis, the Principal Amount of the relevant Bond by a proportion of a discount to that Principal Amount applicable to such Bond on its Issue Date) as at the date of the meeting.
- 4.5 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 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, the Trustee. At such adjourned meeting, if a quorum is not present within 30 minutes after the Appointed Time, all the Holders present at the meeting will be a quorum for the transaction of business including the passing of Extraordinary Resolutions.
- 4.6 Notwithstanding paragraphs 3.3 and 3.4 of this schedule but subject to paragraph 4.7, notice of any such adjourned meeting of Holders at which any resolution is to be submitted will be given in the same manner as for an original meeting (except that only 5 days' notice will be required) and such notice will state that, if a quorum is not present within 30 minutes after the Appointed Time for the adjourned meeting, the Holders present at the adjourned meeting will form a quorum whatever the Principal Amount of Bonds held by them and will have the power to pass any resolution (including an Extraordinary Resolution) and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place.
- 4.7 If a meeting of Holders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

## **5. CHAIRMAN**

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- 5.1 At a meeting of Wholesale Holders, a person appointed by a resolution of Holders, from the Holders present, will preside as chairman of the meeting.
- 5.2 A person nominated in writing by the Trustee will preside at every meeting of Retail Holders. If no such person is appointed, 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 will choose one of their number to be chairman.

## **6. RIGHT TO ATTEND AND SPEAK**

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- 6.1 Any officer of, or solicitor for, Council, or any person appropriately authorised by Council, and (in relation to any Retail Series) any director or officer of, or solicitor

for, the Trustee or any other person appropriately authorised by the Trustee, may attend any meeting and all such persons will have the right to speak at the meeting.

- 6.2** A Representative will have the right to speak at the meeting and to demand or join in demanding a poll and will (except when 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.

## **7. ADJOURNMENT**

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- 7.1** 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** 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 COUNCIL**

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- 8.1** The persons named as Holders in the Register will be recognised and treated as the legal owners of the Bonds whether those persons are or are not in fact the owners thereof.

## **9. AUTHORITY TO VOTE**

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- 9.1** A Holder may vote personally or by Representative. A Holder may appoint more than one Representative, each such Representative being authorised to act on behalf of the Holder in respect of a specified Principal Amount of Bonds, provided that only one proxy is appointed to exercise the rights relating to a particular Bond held by that Holder.
- 9.2** The persons named in the Register as Holders as of the close of business one day prior to the Proxy Closing Time will be exclusively entitled to vote at a meeting in respect of the Bonds recorded as owned by them.
- 9.3** Only those Holders whose Bonds are affected by a resolution are entitled to attend a meeting and vote in respect of any resolution at that meeting.
- 9.4** Wholesale Holders will meet and vote together as one class and Retail Holders will meet and vote together as a separate class, except:
- (a)** as otherwise required by law or by the NZX Listing Rules;
  - (b)** where a resolution affects some Bonds in a manner different from the other Bonds, the Holders of each group of Bonds which are affected in the same way will meet and vote as separate classes; and
  - (c)** an amendment requiring approval of the Holders pursuant to clause 14.1(b) which relates to or arises from any general change in the constitution, affairs or business of Council, or this Deed, and the subject





matter of such resolution is the same in relation to Retail Holders and Wholesale Holders, will not be required to be dealt with by way of separate meetings of Wholesale Holders and Retail Holders.

- 9.5** Council (acting reasonably) will determine (in consultation with the Trustee in relation to any Retail Bonds) the classes applicable to any resolution.
- 9.6** Council and the Trustee may rely on, and the Holders and the Registrar will be bound by, a legal opinion from a reputable law firm in New Zealand regarding the application of paragraphs 9.3 to 9.5 in relation to any particular resolution.

## **10. PROXIES**

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- 10.1** The instrument appointing a proxy must be in writing signed by 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** A person appointed to act as a proxy need not be a Holder and a holder of a proxy will have the right to speak at the meeting.
- 10.3** 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 Notary Public or in such other manner as Council approves, will either be deposited at such place as Council may in the notice convening the meeting direct or (if no such place is appointed) then at the principal office of Council not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless Council 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** An instrument of proxy may be in any usual or common form or in any other form approved by Council and may make provision for directions to be given by the appointer 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** An instrument of proxy, whether in a usual or common form or not, unless the contrary is stated thereon need not 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** An instrument of proxy in favour of:
- (a)** Council; or
  - (b)** the chairman; or
  - (c)** 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 Chief Executive or, in the case of paragraphs (b) and (c) 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**

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- 11.1** 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 of, or at, the meeting or adjourned meeting or for the taking of a poll at which that attorney proposes to vote. An attorney who is so empowered may exercise the Holder's right to appoint a proxy.

## **12. CORPORATE REPRESENTATIVES**

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- 12.1** A Representative of a Holder which is a corporation or a corporation sole will, until its 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.

## **13. VOTING PROCEDURE AND POLLS**

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- 13.1** An Extraordinary Resolution put to a 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 paragraphs 1.6(b) and 1.6(c) of this schedule, 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)** the chairman (who must in any event call for a poll on a resolution on which the chairman holds sufficient votes cast under paragraph 13.10 if the chairman believes that, if a poll is taken, the result may differ from that obtained on a show of hands or by voice); or
  - (b)** Council or any representative of Council; or
  - (c)** In the case of a meeting involving Retail Holders, the Trustee or any representative of the Trustee; or
  - (d)** Holders holding or representing not less than 5% in aggregate Principal Amount of the Bonds.
- 13.2** 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 paragraph 13.1.
- 13.3** On a show of hands each person entitled to vote and present at the meeting (whether personally or as a Representative) or a casting vote pursuant to paragraph 13.10, will have one vote only. On a poll every Holder who is entitled to

vote and present at the meeting or a casting vote pursuant to paragraph 13.10 will have one vote for every \$1 of Principal Amount of the Bonds giving the right to vote at the meeting of which it is the Holder provided that any Bonds for the time being held by Council will not, while so held, confer any right to vote and provided further that where a Holder holds Zero Coupon Bonds, for the purposes of calculating that Holder's voting entitlement in this paragraph 13.3, the Principal Amount of those Zero Coupon Bonds is to be construed as a reference to the net present value of those Zero Coupon Bonds (as calculated by the Registrar by adjusting, on a straight line basis, the Principal Amount of the relevant Bond by a proportion of any discount to that Principal Amount applicable to such Bond on its Issue Date) as at the date of the meeting. The certificate of any Holder may be relied on by Council and the Trustee for the purposes of calculating the voting entitlement of such Holder. On a poll votes may be given either personally or by Representative and a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

- 13.4** 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.
- 13.5** 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.
- 13.6** A poll demanded on the election of a chairman other than the nominee of the Trustee or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at such time (not being more than 30 days after the date of the meeting) and place as the chairman may direct. 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.
- 13.7** 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.
- 13.8** In the case of joint Holders, the vote of the senior who tenders a vote whether in person or by Representative 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.
- 13.9** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by Council at its registered office, in the case of the Trustee, or principal office in the case of Council, before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.



- 13.10** A Holder may:
- (a) 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) 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 Council 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 Council 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.
- 13.11** Council or, in the case of a meeting involving Retail Holders, the Authorised Person for that meeting (as applicable) must:
- (a) collect together all of those votes received by it;
  - (b) in relation to each resolution to be voted on at that meeting, count the number of Holders (entitled to vote and) voting for and against the resolution and the number of votes cast for and against the resolution by each Holder;
  - (c) sign a certificate that it has carried out the duties set out in paragraphs 13.11(a) and (b) above and that sets out the results of the counts required by paragraph 13.11(b); and
  - (d) ensure that the certificate required by paragraph 13.11(b) above is presented to the chairman.
- 13.12** No Holder will be entitled to be present or to vote on any question, either personally or by Representative, and no person will be entitled to be present or to vote by Representative for any Holder at any meeting or on a poll or be included in a quorum in respect of any Bonds held by such Holder, whether alone or jointly, while any call or other sum is due and payable to Council in respect of any such Bonds.

## **14. EXTRAORDINARY RESOLUTIONS**

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- 14.1** Without limiting the rights conferred on the Trustee by this Deed, a meeting of Holders will, in addition to all other rights which by this Deed are specified as exercisable by Extraordinary Resolution, have the following rights exercisable by Extraordinary Resolution, namely the right to:
- (a) sanction either unconditionally or upon any conditions the release of Council from the payment of all or any part of the moneys payable pursuant to this deed, any Supplemental Trust Deed or the Bonds;
  - (b) sanction the exchange of all or any of the Bonds for, or the conversion of all or any of the Bonds into, shares, stock, debentures, debenture stock or other obligations or securities of Council or any company or entity formed or to be formed;



- (c) postpone, or with the concurrence of Council accelerate, the day when the Principal Amount of any Bonds becomes payable and to suspend or postpone for a time the payment of interest on any Bonds;
- (d) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of any Holders against Council or its assets however those rights arise;
- (e) assent to any variation or addition to or waiver of the provisions contained in this deed or any Supplemental Trust Deed or any other deed or other instrument collateral or supplemental thereto, or the conditions attaching to any of the Bonds, proposed or agreed to by Council (and, where relevant, the Trustee);
- (f) give any sanction, assent, release or waiver of any breach or default by Council under any of the provisions of this Deed;
- (g) discharge, release or exonerate the Trustee from all liability in respect of any act or omission for which the Trustee has or may become responsible under this deed or any Supplemental Trust Deed;
- (h) sanction any scheme for the reconstruction of Council or for the amalgamation of Council with any other person or entity where such sanction is necessary;
- (i) authorise or direct the Trustee to concur in and execute any supplemental deed or other document embodying such sanction, authority, compromise, approval, assent, release, waiver, direction or request.

**14.2** 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 and the Trustee (subject to the provisions of its indemnity contained in this Deed) will be bound to give effect to that resolution. The passing of any such resolution will, as between the Trustee 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.

**14.3** Anything that may be done by resolution or Extraordinary Resolution at a meeting of Holders may be done without a meeting or the requirement for any prior notice by means of a written resolution signed by at least 75% of Holders holding in aggregate at least 75% in Principal Amount of Bonds and entitled to vote on that resolution, provided that the person or persons promoting that resolution have given the Trustee, Council and all other Holders at least three business days' prior notice of the proposed resolution. Any such resolution may consist of several documents in similar form (including letters, electronic mail or similar means of communication), each signed by, or on behalf of, one or more Holders.

## **15. MINUTES TO BE KEPT**

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**15.1** Minutes of all resolutions and proceedings at every meeting of Holders will be made by Council or, if Council 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 Council. The chairman must ensure that

a certificate of votes under paragraph 13.11 of this schedule 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.



### SCHEDULE 3

#### REPORTING CERTIFICATE

I, [**name**] the Chief Executive of the Auckland Council (**Council**) certify to the best of my knowledge and belief for the purposes of the Master Trust Deed dated [ ] (**Master Trust Deed**):

1. Since the date on which the last Reporting Certificate containing this certification was given [*or in the case of the first Reporting Certificate, since the date of the Master Trust Deed*]:

(a) all interest due on the Retail Bonds [has/has not] been paid;

(b) all Retail Bonds which have fallen due for repayment [*have/have not*] been repaid;

[*details of any non-payment*];

(c) [*no/the following*] Event of Default has occurred and remains unremedied;

[*details of any Event of Default*]

2. As at [*the end of the financial year of Council or other date in respect of which the Reporting Certificate is being given*] the aggregate Principal Amount of the Retail Bonds Outstanding is \$[ ].

3. Council [*has/has not*] complied with the Act in connection with the Master Trust Deed and the Agency Agreement.

[*details of non-compliance*].

4. On the basis of such information as to the financial position and prospects of Council as is generally received by me in my capacity as Chief Executive (including reports from Council's financial managers), I am not aware of any reason why Council will not be able to meet its liabilities in relation to the Retail Bonds and interest thereon which are anticipated to fall due or to become payable during the twelve months from the date of this Certificate.

5. [For the purposes of paragraph 4 of this Certificate, I have considered in particular:

(a) the liability of Council under the Retail Bonds issued with a floating nominal amount;

(b) the likelihood of the liabilities in relation to those Retail Bonds being called on; and

(c) the ability of Council to recover or recoup from other parties in relation to any payments that Council would be required to make in respect of those Retail Bonds.]

**[Delete this paragraph if no Retail Bonds have been issued with a floating nominal amount.]**

6. Since the date on which the last Reporting Certificate containing this certification was given [*or in the case of the first Reporting Certificate, since the date of the Master*

Trust Deed] Council has complied in all material respects with all the material provisions, covenants and obligations under the Master Trust Deed, and I am not aware of any reason [*am aware of the following reasons / of reasons which have already been advised to the Trustee*] why in the period of twelve months from the date of this Certificate Council will not so comply with such provisions, covenants and obligations.

7. This Certificate is given by me as Chief Executive of Council in good faith on behalf of Council and I will have no personal liability in connection with the issuing of this Certificate.

Dated:

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Chief Executive  
Auckland Council





## SCHEDULE 4

### AUDITOR

1. **Appointment:** The Issuer must, before recommending the appointment or reappointment of a person as an auditor of Council:
  - (a) 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;
  - (b) ensure that any comments of the Trustee concerning the proposed Auditor are brought to the attention of the persons appointing or reappointing the Auditor;
  - (c) 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;
  - (d) 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:
    - (i) at the beginning of such engagement, any issues or concerns relevant to the exercise or performance of the Trustee's powers or duties; and
    - (ii) matters arising in the performance of such engagement and to answer any questions the Trustee may have concerning such engagement.
2. **Resignation:** 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.



