

**VECTOR LIMITED**

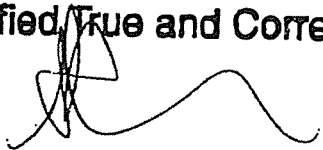
**Company**

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**NEGATIVE PLEDGE DEED**

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**Certified True and Correct**



**RUSSELL McVEAGH**

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DEED dated

13 October

2004

## PARTIES

VECTOR LIMITED ("Company")

## INTRODUCTION

- A. The Company and various Subsidiaries of the Company are, and may in future be, liable to the Lenders in respect of indebtedness under credit or other financial accommodation facilities provided to them by the Lenders.
- B. The Company has agreed that in consideration of the provision or continuation of such credit or other financial accommodation they will give to the Lenders the negative pledge, guarantee and other undertakings contained in this deed.
- C. It is contemplated that from time to time other Subsidiaries of the Company may become Guaranteeing Subsidiaries.

## COVENANTS

The Company and the Guaranteeing Subsidiaries covenant in favour of the Lenders as follows:

### 1. INTERPRETATION

- 1.1 Definitions: In this deed unless the context otherwise requires:

"Companies Act" means the Companies Act 1993 of New Zealand.

"Credit Facility" means any agreement, instrument or arrangement, whether in writing or not, between any one or more Lenders and any one or more Guarantors, pursuant to which any Indebtedness is owing or may be incurred by a Guarantor, or which constitutes or records the terms of any Indebtedness, or pursuant to which any other liability, whether actual or contingent, for money borrowed or raised or other financial accommodation has been or may be incurred by a Guarantor, and, for the avoidance of doubt, includes a derivative contract, a Note, and any agreement or arrangement pursuant to which any derivative contract or Note has been or may be created or issued.

"Deed of Acknowledgement" means a deed in or to the effect of the form set out in schedule 1 executed in favour of, or any other written acknowledgement purporting to extend the benefit of this deed to, a Lender pursuant to clause 8.1.

"Directors" means the directors of the Company acting as the board of directors in accordance with the constitution of the Company.

"Extraordinary Resolution" has the meaning given to that term in schedule 4.

"Financial Year" means a financial year of the Company ending on its annual balance date provided that if at any time the Company alters the date upon which its financial year ends and as a result produces financial statements in respect of a period greater or less than 12 months that greater or lesser period shall be a Financial Year.

"Group" means the Company and its Subsidiaries.

**"Group Financial Statements"** means, at any time and in relation to either the Group or the Guaranteeing Group, consolidated financial statements of that group prepared as at that date in accordance with NZ GAAP and on a basis consistent with the most recent audited consolidated financial statements of that group, except to the extent (if any) expressly disclosed in the notes to such statements or otherwise disclosed to the Lenders, provided that in relation to any consolidated financial statements of the Guaranteeing Group, Subsidiaries which are not members of the Guaranteeing Group shall be accounted for as though they were associates rather than Subsidiaries.

**"Guaranteeing Group"** means the Company and the Guaranteeing Subsidiaries.

**"Guarantor"** means, at any date, a company which is a member of the Guaranteeing Group.

**"Guaranteeing Subsidiaries"** means, at any date, each Subsidiary which has become a Guaranteeing Subsidiary after the date of this deed pursuant to clause 6.2, but excluding any Subsidiary which has been released from liability under this deed.

**"Indebtedness"** means in respect of any Guarantor and in relation to any Lender:

- (a) if the Deed of Acknowledgement issued to that Lender is expressed to relate to a specified Credit Facility, indebtedness under, or in respect of, that Credit Facility;
- (b) in any other case, all indebtedness of that Guarantor for the payment or repayment of money to that Lender, whether incurred before or after the date of this deed, and whether matured or not, and whether incurred by the relevant Guarantor alone or jointly with any other party, and whether as principal or surety, and whether absolute or contingent, including (for the avoidance of doubt) Note Indebtedness and indebtedness under, or in respect of, any derivative contract,

and when used without reference to a particular Guarantor means the Indebtedness of the Guaranteeing Group to the Lenders, or to any one or more of them, as the context may require.

**"Intangible Assets"** means, at any date, in relation to either the Group or the Guaranteeing Group, assets which according to NZ GAAP should be classified as intangible assets of that group in Group Financial Statements if they were prepared for that group as at that date.

**"Lenders"** means each of the persons who is from time to time a party to, or entitled to the benefit of, any Credit Facility and to whom the Company has issued a Deed of Acknowledgment or to whom the Company has otherwise expressly extended in writing the benefit of this deed and includes each Noteholder and any person who is entitled to the benefit of this deed pursuant to clause 8.3 but does not include any person who is also a Guarantor or any Related Person.

**"Note"** means a note, promissory note, bill of exchange, bond, certificate of deposit or other similar instrument, whether negotiable or not and whether payable to bearer or otherwise and whether represented in certificated, electronic or other form, which has been drawn, made, issued, accepted, endorsed or guaranteed by any Guarantor and which is expressed, whether on the Note itself or in any other document or instrument, to have the benefit of this deed, and includes any interest coupon attached thereto or issued therewith.

**"Noteholder"** means a holder for the time being of a Note.

**"Note indebtedness"** means the liability of a Guarantor for payment of an amount payable pursuant to a Note, whether as drawer, maker, issuer, acceptor, endorser or guarantor of the Note or otherwise.

**"NZ GAAP"** means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993.

**"Permitted Security Interest"** means:

- (a) a Security Interest created or permitted to subsist with the prior approval of an Extraordinary Resolution of Lenders; or
- (b) a Security Interest arising by operation of law or securing taxes or other governmental or regulatory levies, duties or imposts, so long as the payment of the money secured is not in default or the liability for payment is being contested in good faith by appropriate proceedings; or
- (c) a Security Interest consisting of a retention of title to, or other purchase money security interest in respect of the acquisition of, goods or services purchased in each case in the ordinary course of normal business and where the amount secured is not outstanding for more than 90 days; or
- (d) a Security Interest consisting of rights of netting, set-off (but not including any such right relating to a dedicated cash collateral account or other arrangement having similar effect), combination or consolidation of accounts; or
- (e) a Security Interest that is created or provided for by (i) a lease (other than a finance lease or a lease under a sale and lease-back transaction) for a term of more than one year in respect of which a Guarantor is the lessee; or (ii) a commercial consignment in respect of which a Guarantor is the consignee; or (iii) a transfer or purchase of an account receivable or chattel paper in respect of which a Guarantor is the transferor or vendor, and, in each case, that does not secure payment or performance of an obligation; or
- (f) a Security Interest solely over assets acquired, developed or constructed (in each case being an acquisition, development or construction after the date of this deed) to secure no more than the cost of that acquisition, development or construction of that asset where the financier's right of action to enforce repayment of the amount secured is limited to a right of action or claim against such assets and/or any of the assets, revenues, contracts, licences and similar rights derived from or relating to such acquisition, development or construction; or
- (g) a Security Interest over assets on the date that they were acquired, provided that such Security Interest was not created in anticipation of such acquisition, the principal amount of any indebtedness capable of being secured by such Security Interest is not increased and such Security Interest is discharged within six months of the date of acquisition; or
- (h) a Security Interest over the assets of a person which becomes a Guaranteeing Subsidiary if:
  - (i) the Security Interest is in existence or the person is contractually obliged to create that Security Interest at the time that person becomes a Guaranteeing Subsidiary; and
  - (ii) provided that the principal amount of any indebtedness capable of being secured by such Security Interest is not increased and that

Security Interest is discharged within six months of the person becoming a Guaranteeing Subsidiary; or

- (i) a Security Interest created in favour of co-venturers or partners pursuant to any agreement related to an unincorporated joint venture or partnership over interests in or assets of that unincorporated joint venture or partnership; or
- (j) in addition to any Security Interest permitted by (a)-(i), any other Security Interest if the aggregate amount secured by all Security Interests under this paragraph (j) does not exceed five percent of the Total Tangible Assets of the Group.

**"Related Person"** means, a person, other than a Guarantor, who:

- (a) is a related company (as defined in section 2(3) of the Companies Act except that a reference to a "company" or "companies" shall also include a company as defined in this deed) of a Guarantor; or
- (b) is a company which, in accordance with NZ GAAP, is considered to be an associate company of a Guarantor; or
- (c) beneficially owns, directly or indirectly, more than 20% of the voting securities (as defined in the Securities Amendment Act 1988) of the Company or any Guaranteeing Subsidiary.

**"Security Interest"** includes any mortgage, pledge, charge, encumbrance, lien, security interest (as construed in the Personal Property Securities Act 1999), finance lease, sale and lease back, sale and repurchase, deferred purchase, title retention arrangement, flawed asset arrangement, and any other security or arrangement having like economic effect (in terms of securing payment or performance of an obligation) over any property, assets or revenues.

**"Short Term Notes"** means promissory notes having a tenor of 364 days or less.

**"Subsidiary"** means, at any time:

- (a) a company which is a subsidiary, within the meaning of section 5 of the Companies Act, of the Company; or
- (b) a company which in accordance with NZ GAAP is considered to be an "in-substance subsidiary" of the Company.

**"Total Assets"** means, at any date and in relation to either the Group or the Guaranteeing Group, the aggregate amount on a consolidated basis of all assets of that group at that date which would be disclosed by Group Financial Statements if they were prepared for that group as at that date.

**"Total Tangible Assets"** means, at any date and in relation to either the Group or the Guaranteeing Group, Total Assets less Intangible Assets as at that date.

**"Voting Amount"** means, in relation to a Lender, the amount expressed in New Zealand Dollars which is the greater of:

- (a) the principal amount of all indebtedness actually or contingently owing, or which is estimated to be actually or contingently owing, by the Guaranteeing Group to the relevant Lender under Credit Facilities at that date, excluding indebtedness in respect of Short Term Notes unless, in any case, such indebtedness is required to be included pursuant to clause 9.6; or

- (b) the aggregate maximum principal amount of the committed accommodation facilities available to the Guaranteeing Group from the relevant Lender at that date under Credit Facilities and intended to form part of the Indebtedness (including any part thereof which is then actually or contingently owing),

in either case as certified or estimated by the relevant Lender in a written statement provided to the Company at its request not later than two business days before the relevant date or, in the absence of such a statement, as certified or estimated by the Company, any such statement or estimate to be conclusive for the purposes of this deed in the absence of manifest error. For the purposes of this definition, the Voting Amount pertaining to:

- (c) a derivative contract shall be as certified by the relevant Lender in accordance with its usual procedures and criteria for determining the maximum amount of the assessed exposure for credit purposes in relation to the net Indebtedness represented thereby or, in the absence of any such certification, by the Company on a "mark to market" basis;
- (d) a Note shall be the face value or principal amount of the Note or, if stated in the terms and conditions applicable to such Note or otherwise expressly agreed by the Company and the relevant Lender, the agreed redemption value or present value thereof.

**"Wholly Owned Subsidiary"** means a Subsidiary all the issued shares in which are held and/or beneficially owned by the Company and/or other Subsidiaries of the Company which comply with this definition.

**1.2 References:** Except to the extent that the context otherwise requires, in this deed:

any reference to the "assets" of any company shall be construed as a reference to the whole or any part of its business, undertaking, property and assets, present or future, including uncalled capital and called but unpaid capital, present and future.

an "authorisation" includes:

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

**"company"** means a company, body corporate or association, wherever incorporated or domiciled, and where the context so admits includes an individual, an unincorporated body of persons (including a trust, partnership, or joint venture) and any other unincorporated entity.

**"derivative contract"** means an interest rate or currency swap, futures contract, hedging contract, option or swaption contract, forward exchange contract, forward rate agreement, or other agreement or instrument substantially similar in nature to any one or more of the foregoing.

**"dispose"** means to make a disposal and "disposal" includes any sale, assignment, exchange, transfer, concession, loan, lease, surrender of lease, licence, reservation, waiver, compromise, release, security or dealing with, or the granting of any option or right or interest whatsoever, or any agreement for any of the same.

a "governmental agency" includes any government or any governmental, semi-government or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law.

a "guarantee" means any guarantee, indemnity, letter of credit or suretyship, or any other obligation whatever called and of whatever nature to pay, to purchase, to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of, or to indemnify against the consequences of default in the payment of, any obligation or indebtedness, any dividend, capital or premium on shares or stock, or on the insolvency or because of the financial condition, of any other person.

"person" includes a company, and words importing persons include companies.

### 1.3 Miscellaneous:

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

### 1.4 Group covenants

In this deed, any covenant or undertaking from the Company or any other Guarantor to ensure that any other member of the Group that is not a Wholly-Owned Subsidiary does or omits to do any act, matter or thing, that covenant or undertaking shall be construed to be an obligation to exercise its voting rights as shareholder to procure (to the extent it is able to do so) that the relevant Subsidiary takes such action and/or, to the extent that it is lawfully able to do so, to direct the directors of the Subsidiary appointed by the Company or any other Guarantor to cause the Subsidiary to do or omit to do such act, matter or thing. Each Lender acknowledges that (a) if any Subsidiary that is not a Wholly-Owned Subsidiary is a listed company, that Subsidiary will be obliged to comply with all applicable listing rules and (b) each of the directors of a non Wholly-Owned Subsidiary have duties at law to act in the best interests of all shareholders and the ability of the Company or any other Guarantor to control the activities of such a Subsidiary will be limited accordingly.



## 2. **NEGATIVE PLEDGE**

- 2.1 **Negative pledge:** No Guarantor shall during the continuance of this deed create, or permit to arise or subsist, any Security Interest over all or any part of its assets, other than a Permitted Security Interest.

## 3. **OTHER UNDERTAKINGS**

- 3.1 **Ranking of Indebtedness:** Each Guarantor shall ensure that its payment obligations in respect of its Indebtedness are at all times direct, unconditional and unsecured indebtedness of that Guarantor ranking *pari passu* without any preference, and at least equally and rateably in all respects with all its other unsecured and unsubordinated indebtedness except for indebtedness preferred by law.
- 3.2 **Disposal of assets:** No Guarantor shall, without the prior consent of an Extraordinary Resolution of Lenders, whether by a single transaction, or a series of transactions whether related or not, within any period of 12 consecutive months during the continuance of this deed, sell, transfer or otherwise dispose of the whole or any part of its assets if the value of such assets when aggregated with all other disposals required to be taken into account under this clause by the Guaranteeing Group exceeds 10% of the Total Assets of the Group (determined as at the date of disposal), provided that the following disposals shall not be required to be taken into account under this clause:
- (a) disposals in the ordinary course of business;
  - (b) disposals of obsolete assets or assets no longer required for the purpose of the relevant company's business;
  - (c) a disposal by the payment of cash as consideration for the acquisition of any asset to be employed in the business of the Group;
  - (d) the exchange of assets for other assets of a similar nature and value;
  - (e) the disposal of assets on normal commercial terms for cash or other consideration which is to be used to purchase similar assets or reduce indebtedness of the Group, or otherwise employed in the business of the Group;
  - (f) the payment or reinvestment of distributions in respect of shares, stock, options or other debt or equity securities;
  - (g) the payment of taxes;
  - (h) the temporary application of funds not immediately required in the business of the relevant Guarantor;
  - (i) disposals required by law; and
  - (j) a disposal of assets to another Guarantor.
- 3.3 **Compliance by Subsidiaries:** Subject to clause 1.4, the Company shall use its voting powers in, and representation on the board of directors of, each Guaranteeing Subsidiary in such a manner as to ensure to the extent possible full observance and compliance at all times by each of the Guaranteeing Subsidiaries with its obligations under or pursuant to this deed and to prevent any act or omission on the part of any Guaranteeing Subsidiary in breach of, or which could lead to a breach of, the provisions of this deed.

3.4 **Register:** The Company shall maintain at its registered office a register in which shall be recorded:

- (a) the name and address of each Lender (other than Lenders who are solely holders of bearer Notes and Lenders particulars of whom are recorded in a register kept by a recognised securities registrar);
- (b) brief particulars of the Credit Facilities of each Lender, including the currency of account; and
- (c) if the Indebtedness to any Lender is limited to a maximum principal amount, that maximum principal amount,

and shall upon request by any Lender provide to that Lender a copy of the information recorded in the register.

#### 4. CROSS-GUARANTEES

4.1 **Guarantee of Indebtedness:** Each Guarantor unconditionally and irrevocably guarantees to the Lenders the due and punctual payment of the Indebtedness of each other Guarantor as and when the same becomes due and payable in accordance with the respective terms of such Indebtedness and the due observance and performance by each other Guarantor of all its obligations in respect of the Indebtedness.

4.2 **Payment:** Whenever any default has been made by a Guarantor in payment of all or any part of its Indebtedness the other Guarantors shall forthwith pay such moneys to the Lender or Lenders to whom they are due.

4.3 **Liability not prejudiced:** The liability of each Guarantor under this guarantee shall not be abrogated, prejudiced or affected by any of the following:

- (a) the granting of time, credit or any indulgence or other concession to any other Guarantor by the Lenders or any of them or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any securities, documents of title, assets or of any of the rights of the Lenders or any of them against that Guarantor or any other Guarantor or by anything done or omitted or neglected to be done by the Lenders or any of them in exercise of the authorities, powers and discretions vested in them by this deed;
- (b) the liability of any other Guarantor ceasing from any cause whatsoever (including release or discharge by the Lenders or any of them or pursuant to clause 7);
- (c) any other person joining in this or giving any similar guarantee;
- (d) the liquidation or dissolution of any other Guarantor;
- (e) any other Guarantor or other guarantor being incompetent to give this guarantee or any other guarantee, or failing to become or remain legally bound in whole or in part under any of them respectively;
- (f) any guarantee (including any guarantee given pursuant to this deed) held or taken by any Lender being void, defective or informal;
- (g) any Subsidiary which is required to become a Guarantor failing or being incompetent to become or remain a Guarantor;

(h) any alteration or addition to this deed made pursuant to section 9 of this deed, or by any other dealing, matter or thing which but for this provision might operate to abrogate, prejudice or affect this guarantee.

- 4.4 **Principal obligation:** This guarantee shall be a principal obligation and shall be treated as in addition to and not in substitution for, or collateral to, any other right (including any other guarantee) which any of the Lenders may have in respect of any part of the Indebtedness, to the intent that this guarantee may be enforced against any Guarantor without first having recourse to any such rights and notwithstanding that any other right may be in whole or in part unenforceable by reason of any rule of law or equity.
- 4.5 **Continuing guarantee:** Subject to clause 7, this guarantee is a continuing guarantee and accordingly shall be irrevocable and shall remain in full force and effect with respect to each Lender until the whole of the Indebtedness owing to that Lender has been paid or satisfied and all Credit Facilities between that Lender and the Guarantors have expired or been cancelled.
- 4.6 **Payments in gross:** All moneys from time to time received by the Lenders in reduction of the Indebtedness from or on account of any Guarantor (including any dividends upon the liquidation of any Guarantor) or from any other person and capable of being applied in reduction of the Indebtedness shall be regarded as payments in gross, without any right on the part of any other Guarantor to stand in the place of any Lender in respect of, or to claim the benefit of, any moneys so received as against that Guarantor until the whole of the Indebtedness has been paid or satisfied so that in the event of the liquidation of any Guarantor the Lenders shall be entitled to prove against it for the whole of the Indebtedness.
- 4.7 **No competition:** In the event of the liquidation of any Guarantor none of the other Guarantors shall prove in such liquidation in competition with the Lenders and each Guarantor hereby authorises each Lender to prove for all moneys which the relevant Guarantor has paid hereunder or are otherwise owing to it and have not been repaid to it by any other Guarantor and to retain and to carry to a suspense account and appropriate at the discretion of such Lender any amount received until the Lender shall have received one hundred cents in the dollar in respect of the Indebtedness owing to it.
- 4.8 **Waiver of rights:** Each Guarantor hereby waives in favour of the Lenders all rights whatsoever against each other Guarantor or their or its estate and assets so far as may be necessary to give effect to anything contained in this guarantee.
- 4.9 **No rights to security:** This guarantee shall not prejudicially affect, or be prejudicially affected by, any other right or guarantee now or hereafter held by any of the Lenders in respect of the Indebtedness and no Guarantor shall, as against the Lenders, in any way claim the benefit or seek the transfer of any such right or guarantee or any right of recourse.
- 4.10 **Reinstatement:** If any payment made to any Lender by or on behalf of any Guarantor is avoided by law or required to be repaid, such payment shall be deemed not to have discharged or affected the liability of any other Guarantor in respect thereof and in that event the Lenders and the Guarantors shall be restored to the respective positions 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.
- 4.11 **Subrogation:** The Guarantors shall, in respect of any sums paid by them hereunder and in respect of any other rights which may accrue howsoever to them in respect of any sums so paid, rank and be entitled to enforce the same only after the whole of the Indebtedness has been duly paid and satisfied.

4.12 **Liable as principal debtor:** Although as between each of the Guarantors and any other Guarantor by whom any part of the Indebtedness may be payable the liability of each of the Guarantors to the Lenders may be that of surety only, nevertheless as between each of the Guarantors and the Lenders the liability of the Guarantors shall be deemed to be the liability of a principal debtor and such liability shall not be affected or diminished by any of the matters hereinbefore mentioned or by any other act, indulgence or omission which, but for this present provision, would have operated to release the Guarantors wholly or partly from their liability hereunder to the Lenders.

4.13 **Liability joint and several:** The liability of each of the Guarantors under this guarantee for the obligations of any other Guarantor shall be joint and several with each other Guarantor from time to time.

4.14 **Unenforceability of obligations:** As a separate and continuing undertaking, each Guarantor unconditionally and irrevocably undertakes to the Lenders that, should the Indebtedness not be recoverable from any Guarantor for any reason, including any provision of this deed or any Credit Facility being or becoming void, voidable, unenforceable or otherwise invalid, and whether or not that reason is or was known to the Lenders, and whether or not that reason is:

- (a) a defect in, or lack of, powers of a Guarantor, or the irregular exercise of those powers; or
- (b) a defect in, or lack of, authority by a person purporting to act on behalf of a Guarantor; or
- (c) a legal or other limitation (whether under the Limitation Act 1950 or otherwise), disability or incapacity of a Guarantor,

each Guarantor shall, as a sole and independent obligation, pay the Indebtedness to the Lenders on demand and indemnify each of the Lenders for and against any loss incurred by it as a result.

4.15 **Gross-up: If:**

- (a) any Guarantor is required by law to make any deduction or withholding from any amount paid or payable by that Guarantor under this deed; or
- (b) any Lender is required by law to make any payment on or in relation to any amount received or receivable by that Lender under this deed, whether on account of tax (other than tax on overall net income of that Lender, unless that Lender would not have been required to make such payment had the amount been received from the principal debtor) or otherwise,

then:

- (c) the relevant Guarantor shall ensure that any such deduction or withholding does not exceed the legal minimum and shall pay the amount required to be so deducted, withheld, or paid to the relevant authority before the date on which penalties attach thereto;
- (d) the amount payable by the relevant Guarantor in respect of which that deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that after that deduction, withholding or payment is made that Lender receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which that Lender would have received and so retained had no such deduction, withholding or payment been made; and

- (e) the relevant Guarantor shall promptly deliver to that Lender a receipt issued by the applicable authority evidencing that such deduction or withholding has been made.

4.16 **Tax credit:** Any tax credit or refund received by any Lender which is specifically identifiable as being in relation to an additional amount paid by any Guarantor to that Lender under clause 4.15 of this deed shall, immediately on receipt thereof, be refunded to the relevant Guarantor unless the relevant Lender determines that it would be prejudiced as a result of such payment. Nothing in this clause, however, shall interfere with any Lender's right to arrange its taxation affairs in whatever manner it deems fit and, in particular, no Lender shall, whether by virtue of this clause or otherwise, be under any obligation to claim relief from its corporation, profits or similar tax liability in respect of any deduction, withholding or payment referable to this agreement, in priority to any other reliefs, claims, credits or deductions available to it. The certificate of the relevant Lender as to any such tax credit or refund shall be conclusive and binding on the Guarantors.

## 5. REPRESENTATIONS AND WARRANTIES

5.1 **Representations and warranties:** Each Guarantor represents and warrants with respect to itself that:

- (a) **Status:** it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) **Power and authority:** it has:
  - (i) the power and authority to own its assets and to carry on its business as, and in such place or places as, it is now being conducted;
  - (ii) the power to enter into and exercise its rights and perform and comply with its obligations under this deed; and
  - (iii) taken all necessary action to authorise the entry into this deed and the performance of all the obligations thereunder;
- (c) **Obligations:** this deed constitutes legal, valid and binding obligations of it, enforceable in accordance with its terms;
- (d) **No laws violated:** neither the entry into this deed, nor the exercise of any right or the performance or observance of any obligation under this deed, nor any transactions contemplated thereby, will:
  - (i) violate or contravene any law to which it is subject;
  - (ii) conflict with, or result in a breach of, any agreement, obligation or duty to which it is a party, or by which it is or any of its assets may be bound; or
  - (iii) violate any of the documents constituting it or cause any limitation on any of its powers, or on the right or ability of its directors to exercise those powers, to be exceeded; or
- (e) **Authorisations:** all authorisations required by it, or otherwise appropriate for it to obtain, in connection with this deed, and the transactions contemplated by this deed, have been obtained or effected and are in full force and effect, and

there are no qualifications or limitations affecting those authorisations which have not been notified to the Lenders.

- 5.2 **Repetition:** The representations and warranties contained in clause 5.1 are given solely for the benefit of the Lenders and shall be deemed to be repeated by each Guarantor in favour of each Lender at the time of each drawing, utilisation or other incurring of indebtedness (other than interest) under any Credit Facility provided by that Lender, by reference to the facts and circumstances existing on those dates.

## 6. FURTHER GUARANTEEING SUBSIDIARIES

- 6.1 **Guaranteeing Group ratio:** At all times the Total Tangible Assets of the Guaranteeing Group must represent not less than 85% of the Total Tangible Assets of the Group.
- 6.2 **Method of joining:** The Company may at any time procure that a Subsidiary becomes a Guaranteeing Subsidiary by executing a deed in or to the effect of the form prescribed in schedule 2 agreeing to become bound by the provisions of this deed.
- 6.3 **Copy of deed:** The Company shall, following execution by a Subsidiary of a deed of the nature referred to in clause 6.2, give to each Lender (other than Lenders who are solely Noteholders) a copy of that deed and a copy of a legal opinion, addressed to the Lenders, confirming that the obligations of that Subsidiary under this deed are legal, valid, binding and enforceable.

## 7. RELEASE OF GUARANTEEING SUBSIDIARIES

- 7.1 **When Guaranteeing Subsidiary may be released:** Any Guaranteeing Subsidiary may, subject to clause 7.2, be released from all its obligations and liabilities as a Guaranteeing Subsidiary under this deed, if:
- (a) the Guaranteeing Subsidiary will cease to be a Subsidiary upon the disposal of the shares in its capital by the Guaranteeing Group and if two Directors certify in writing for the benefit of Lenders that in their opinion the disposal of shares is commercially desirable and that the consideration being obtained is satisfactory having regard to the terms and circumstances of the sale; or
  - (b) the Guaranteeing Subsidiary is to be liquidated or dissolved and all of its assets available for distribution will be distributed to another Guarantor; or
  - (c) the consent of an Extraordinary Resolution of Lenders has been obtained to the release of that Guaranteeing Subsidiary.
- 7.2 **Conditions precedent to release:** No Guaranteeing Subsidiary may be released pursuant to clause 7.1:
- (a) if any breach of the provisions of this deed or any Credit Facility (including, without limitation, clause 6.1) has occurred and remains unremedied or will occur as a result of such release; and
  - (b) unless all Indebtedness of that Guaranteeing Subsidiary under any Credit Facility (other than Indebtedness arising solely by virtue of the guarantee by that Guaranteeing Subsidiary given under or pursuant to this deed) has, to the satisfaction of the Lenders to whom it was owed by that Guaranteeing Subsidiary, been repaid or satisfied, or such Lenders have consented to the release.

- 7.3 **Method of release:** Release of a Guaranteeing Subsidiary pursuant to clause 7.1 shall be effected by the Company and the relevant Guaranteeing Subsidiary executing a deed of release in or to the effect of the form set out in schedule 3.
- 7.4 **Effect of release:** No release pursuant to any of the provisions of clause 7.1 shall operate to release the relevant Guaranteeing Subsidiary or any other Guarantor from liability for the payment or fulfilment of any Indebtedness or other obligation for which it is liable or obligated to a Lender independently of this deed.
- 7.5 **Advice to Lenders:** The Company shall provide a copy of each deed of release executed pursuant to clause 7.3, together with (in the case of a release pursuant to clause 7.1(a) a copy of the relevant Directors' certificate):
- (a) to each Lender (except Lenders who are solely Noteholders, unless the Company has expressly agreed otherwise in writing as a term of issue of the relevant Notes or otherwise), within 14 days after execution of the deed of release; and
  - (b) to each Noteholder, promptly upon request by that Noteholder.

## 8. BENEFIT OF DEED

- 8.1 **Lenders:** The Company may at any time extend the benefit of this deed to any person (other than a Related Person) who has entered into or acquired, or agreed to enter into or acquire, a Credit Facility with any Guarantor, by executing a Deed of Acknowledgment in favour of such person, or by otherwise acknowledging in writing that such person is intended to have the benefit of the provisions of this deed, whereupon such person shall become a Lender and be entitled to all the benefits of the negative pledge, guarantees and other covenants of the Guaranteeing Group given under or pursuant to this deed.
- 8.2 **Privity of contract:** Each Guarantor acknowledges and declares for the purposes of the Contracts (Privity) Act 1982 that the negative pledge, guarantees and other undertakings given or made by such Guarantor under or pursuant to this deed constitute promises that confer, and are intended to confer, benefits on each of the Lenders and may be relied upon and enforced by each Lender against such Guarantor as if that Lender were a party to this deed.
- 8.3 **Successors and assigns:** The benefit of this deed shall extend to the successors and permitted assigns of each of the Lenders in respect of all or any part of the Indebtedness of each Guarantor (in the case of a Noteholder, whether that Noteholder has obtained title to the relevant Note by delivery, assignment, transfer, or otherwise) provided that, in the case of Indebtedness other than Note Indebtedness, notice in writing of such succession or assignment has been given to the Guarantor by whom the relevant Indebtedness is owed.
- 8.4 **Modified application:** Any provision in any Credit Facility or other documentation entered into between, or binding upon, any Guarantor and any Lender or any class of Lenders which:
- (a) provides (expressly or by implication) for the rights or benefits of that Lender or class of Lenders under or arising out of this deed (including without limitation in respect of the giving of notices, reporting requirements, voting entitlements, waivers or modifications) to be exercised or held by or through any specified persons (whether as trustee, agent or otherwise), and/or that any such rights or benefits are to be held or exercised only by or with the consent of any particular quorum or number of such Lenders or subject to any other

qualification or limitation, and/or for such actions to bind all Lenders of the relevant class; or

- (b) otherwise regulates (expressly or by implication) the mode of application, entitlement or exercise by such Lender or class of Lenders of their rights and benefits hereunder,

shall have full effect and this deed shall be read and construed accordingly.

- 8.5 **Consent by trustee, agent or manager:** Any consent or approval given by any person acting as trustee, agent or manager on behalf of any Noteholders or syndicate of lenders or financiers shall for the purposes of this deed be deemed to have been validly given on behalf of, and to bind, those Noteholders, lenders or financiers and no Guarantor shall be obliged to enquire or ascertain whether the trustee, agent or manager has obtained consent of the Noteholders, lenders or financiers or observed any other formalities required by the terms of issue of the relevant Notes, or the provisions of the relevant syndicate agreement, prior to giving such consent or approval.
- 8.6 **Validity of acknowledgement:** No Lender shall be concerned or obliged to enquire whether any Deed of Acknowledgement has been given, or any Indebtedness incurred, in contravention of any provision of this deed. Every Deed of Acknowledgement shall be deemed to be validly given and to entitle the person to whom it is given to the benefit of the provisions of this deed in accordance with the terms of that Deed of Acknowledgement notwithstanding that it may subsequently be determined that the giving of the Deed of Acknowledgement, or the incurring of any Indebtedness to which it relates, was in breach of any provision of this deed.
- 8.7 **Authority of Company:** Each Guaranteeing Subsidiary acknowledges that the execution by the Company of a Deed of Acknowledgement given or made by that Guaranteeing Subsidiary under or pursuant to this deed shall be binding on that Guaranteeing Subsidiary in all respects as though such Deed of Acknowledgement had been executed by that Guaranteeing Subsidiary.
- 8.8 **Meetings of Noteholders:** If in respect of any class of Noteholders:
  - (a) no provision exists in the Credit Facility or other documentation relating to those Noteholders for consent or approval to be given on behalf of those Noteholders through any specified person (whether as trustee, agent, or otherwise) or for consent or approval to be given by resolution passed at a meeting of those Noteholders; or
  - (b) a provision of the nature referred to in subclause (a) exists, but is not applicable in circumstances in which any consent or approval is sought from Noteholders for any purpose of this deed, or any trustee, agent, or similar person declines to convene a meeting of Noteholders or otherwise give effect to that provision,

then a meeting of Noteholders of that class may be convened and held in accordance with the provisions of schedule 4, and an Extraordinary Resolution giving such consent or approval shall be deemed to constitute the consent or approval of all Noteholders of that class.

## 9. VARIATIONS AND WAIVERS

- 9.1 **Variations and waivers:** The Guarantors may, with the consent of an Extraordinary Resolution of Lenders (subject to clause 9.6, other than Lenders who are solely Noteholders of Short Term Notes, unless expressly agreed otherwise in writing by the



Company, whether as a term of issue of the relevant Short Term Notes or otherwise), make any modification or amendment (a "variation") to any provision of this deed, or procure a waiver of any breach or prospective breach of any provision of this deed.

- 9.2 **Notice:** Notice of any proposed variation or waiver shall be given by the Company to each Lender (other than Lenders who are solely Noteholders of Short Term Notes, unless expressly agreed otherwise in writing by the Company, whether as a term of issue of the relevant Short Term Notes or otherwise) not less than 14 days before the date on which it is intended that such variation or waiver take effect but the non receipt of notice by any Lender shall not affect the validity of any such variation or waiver.

- 9.3 **When effective:** Any such variation or waiver shall take effect upon the later of the following dates:

- (a) in the case of a variation, the date of execution by the Guarantors of a deed embodying such variation; and
- (b) in the case of a variation or a waiver, the date on which an Extraordinary Resolution of Lenders consents in writing to the variation embodied in the deed of variation, or to the waiver, as the case may be.

- 9.4 **Advice to Lenders:** After any variation or waiver takes effect the Company shall promptly notify each Lender (other than Lenders who are solely Noteholders, unless expressly agreed otherwise in writing by the Company, whether as a term of issue of the relevant Notes or otherwise) accordingly and provide to each Lender, and to each Noteholder upon request, a copy of the executed deed embodying the variation.

- 9.5 **Effect:** Subject to clause 9.6, any variation or waiver made pursuant to this section 9 shall thereafter bind all Lenders from time to time whether or not they have consented to the variation or waiver, and the rights and entitlements of all Lenders under this deed shall thereafter be read and construed accordingly.

- 9.6 **Short Term Notes:** A variation or waiver made pursuant to this section 9 shall not be binding on a Noteholder in respect of Short Term Notes held by that Noteholder on the date on which the variation or waiver is notified to all Lenders pursuant to clause 9.4, or which that Lender is at that date committed to purchasing, unless for the purposes of obtaining the relevant Extraordinary Resolution:

- (a) notice of the proposed variation or waiver has been given to all Noteholders; and
- (b) Lenders who are solely Noteholders are permitted to vote on the Extraordinary Resolution; and
- (c) Indebtedness includes Note Indebtedness.

## 10. MEETINGS OF LENDERS

- 10.1 **Convened on Lenders' request:** The Company shall convene a meeting of Lenders upon a request in writing of Lenders, the aggregate of whose Voting Amounts is not less than 10% of the aggregate Voting Amounts of all Lenders. For the purpose of this clause (subject to clause 9.4) "Lenders" does not include Lenders who are solely Noteholders of Short Term Notes.

- 10.2 **Convened by Company:** The Company may at any time, of its own volition, convene a meeting of Lenders.

- 10.3 **Conduct of meetings:** All meetings of Lenders shall be convened and held in accordance with the provisions set out in Schedule 4.

## 11. CANCELLATION

- 11.1 When the Guaranteeing Group has finally repaid and discharged all its Indebtedness to a Lender and all Credit Facilities between that Lender and the Guaranteeing Group have expired or been cancelled, the entitlement of that Lender to the benefit of this deed shall thereupon cease and be deemed to have been cancelled, subject always to the rights of reinstatement in clause 4.10.

## 12. NOTICES

- 12.1 **In writing:** Each notice or other communication to be given or made to any Guarantor or Lender under this deed shall:

- (a) **Writing:** be given or made in writing by facsimile or letter and be signed by an authorised officer of the sender;
- (b) **Address:** be given or made to the party to be notified, at the address or facsimile number, and marked for the attention of the person (if any), from time to time specified by that party for the purposes of this deed or, in the case of a Lender, for the purposes of any Credit Facility provided by that Lender to that Guarantor; and
- (c) **Deemed delivery:** not be effective until received by the party to be notified, and any such communication or notice shall be deemed to be received by that party:
  - (i) (if given or made by letter) when left at the address of that party or five working days (in the place of intended receipt) after being sent by post (airmail if to another country), postage prepaid, and addressed to that party at that address; or
  - (ii) (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 intended recipient.

- 12.2 **Initial address etc of Guarantors:** The initial address, facsimile number and person so designated by each Guarantor is:

Address: 101 Carlton Gore Road  
PO Box 99882  
AUCKLAND

Facsimile: (09) 978 7799

Attention: Treasury Manager

- 12.3 **Initial addresses etc of Lenders:** The initial address, facsimile number and person so designated by each Lender shall be deemed to be the address, facsimile number and person (if any) specified by, or in relation to, the relevant Lender from time to time for the purpose of notices under the relevant Credit Facility, or (where relevant in respect of notices to be given to any Lender or class of Lenders by publication) publication in the manner specified in the documentation relating to the relevant Credit Facility.

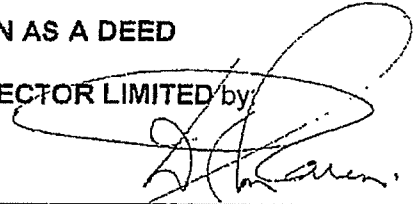
- 12.4 **When effective:** Any notice or other communication given by facsimile after 5pm on any business day, or on a day which is not a business day, in the place where the recipient is situated, shall be deemed to have been given at 9am on the next succeeding business day.

13. **GOVERNING LAW**


- 13.1 **Governing law:** This deed shall be governed by, and construed in accordance with, the laws of New Zealand.

**EXECUTION AS A DEED**

VECTOR LIMITED by

  
\_\_\_\_\_  
Signature of director

D.G. MCLAREN  
\_\_\_\_\_  
Name of director

  
\_\_\_\_\_  
Signature of director

MARK FRANKLIN  
\_\_\_\_\_  
Name of director

**SCHEDULE 1**  
**Form Of Deed Of Acknowledgement**  
**(Clause 1.1)**

**DEED OF ACKNOWLEDGMENT**  
**VECTOR LIMITED**

**DEED OF ACKNOWLEDGMENT** given by **VECTOR LIMITED** ("Company") to  
 [ ] ("Lender") pursuant to a certain Negative Pledge Deed dated  
 [ 2004 ] made by the Company and certain of its Subsidiaries as such deed may  
 have been modified, supplemented or amended from time to time ("Negative Pledge Deed").  
 Terms defined in the Negative Pledge Deed have the same meaning in this deed.

The Company hereby acknowledges to the Lender that the Lender is entitled to the benefit of the  
 negative pledge, guarantees and other undertakings of the Company and the Guaranteeing  
 Subsidiaries contained in the Negative Pledge Deed in respect of [all Indebtedness from time to  
 time owing by the Guaranteeing Group to the Lender] [the Indebtedness described in the  
 schedule].

**DATED:** [ 20 ]

**[SCHEDULE]**

**VECTOR LIMITED by:**

\_\_\_\_\_  
 Signature of director

\_\_\_\_\_  
 Name of director

[ ] **LIMITED by:**

\_\_\_\_\_  
 Signature of director

\_\_\_\_\_  
 Name of director

\_\_\_\_\_  
 Signature of director

\_\_\_\_\_  
 Name of director

\_\_\_\_\_  
 Signature of director

\_\_\_\_\_  
 Name of director

**SCHEDULE 2**  
**Form Of Deed Joining New Guaranteeing Subsidiary**  
**(Clause 6.2)**

DEED made the       day of       20

BY       [       ] a company incorporated under the laws of [       ]  
 ("Subsidiary")

**INTRODUCTION**

- A. The Subsidiary is a subsidiary of VECTOR Limited ("Company").
- B. The Company and certain of its other subsidiaries are parties to a Negative Pledge Deed dated [       2004 ] ("Negative Pledge Deed") under or pursuant to which they have each given negative pledges, guarantees and other undertakings for the benefit of each of the Lenders (as defined therein).
- C. At the request of the Company the Subsidiary is desirous of executing this deed (being a deed supplemental to the Negative Pledge Deed and in or to the effect of the form prescribed in schedule 2 to the Negative Pledge Deed) in order to become a Guarantor in accordance with the provisions of the Negative Pledge Deed.
- D. The directors of the Subsidiary have resolved that it is in the Subsidiary's interests that the Subsidiary become a Guaranteeing Subsidiary under the Negative Pledge Deed and accordingly:
  - (a) give a negative pledge and other covenants to the Lenders in terms of the Negative Pledge Deed;
  - (b) guarantee the due payment by each other Guarantor of all Indebtedness (as defined in the Negative Pledge Deed) from time to time owing or payable to the Lenders by each other Guarantor; and
  - (c) guarantee the other obligations of each other Guarantor in respect of the Indebtedness.

**COVENANTS**

- 1. **Definitions:** To the extent to which the same are applicable the definitions and provisions contained in clause 1 of the Negative Pledge Deed shall apply to, and be incorporated in, this deed.
- 2. **Acknowledgement:** The Subsidiary acknowledges that credit or other financial accommodation has been, and will hereafter be, provided by one or more of the Lenders to one or more Guarantors on the condition and in part consideration that the Subsidiary will give, or has given, to the Lenders the guarantee hereinafter contained and the negative pledge and other covenants contained in the Negative Pledge Deed.
- 3. **Guarantee:** The Subsidiary unconditionally and irrevocably guarantees to the Lenders, jointly and severally with each other Guarantor, the due and punctual payment by each other Guarantor of the Indebtedness as and when the same shall become due and payable and the due observance and performance by each other Guarantor of all its obligations under the Negative Pledge Deed and the provisions of section 4 of the Negative Pledge Deed shall apply to the guarantee given by the Subsidiary under this

deed in the same manner, and to the same extent, as if the same had, with all necessary modification, been set out in full in this deed and made applicable to the guarantee given under this deed.

4. **Implied provisions:** Pursuant to Section 8 of the Property Law Act 1952 of New Zealand it is hereby declared that there shall be deemed to be incorporated in this deed all the covenants, representations, warranties and other provisions of the Negative Pledge Deed in the same manner and to the same extent as if those covenants, representations, warranties and other provisions had been set out in full in this deed (with all necessary modifications) and made applicable to the Subsidiary as though it were a Guaranteeing Subsidiary and the Subsidiary accordingly covenants and agrees, jointly and severally, with each other Guarantor, to perform, observe and be bound by the said covenants, representations, warranties and other provisions.
5. **Authority of Company to bind Subsidiary:** The Subsidiary hereby acknowledges that the execution by the Company of a Deed of Acknowledgement or other document purporting to extend the benefit of the negative pledge, guarantee and other undertakings given or made by the Subsidiary under or pursuant to this deed shall be binding on the Subsidiary in all respects as though such Deed of Acknowledgement or other document had been executed by the Subsidiary.
6. **Governing law:** This deed shall be governed by, and construed in accordance with, the laws of New Zealand.
- [ 7. **Submission to jurisdiction:** The Subsidiary hereby submits to the [non-exclusive] jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this deed and for the purpose of any such proceedings hereby appoints the Company at the registered office of the Company as its agent for the service of process in connection therewith.]

#### EXECUTION AS A DEED

[                      ] LIMITED by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

**SCHEDULE 3**  
**Form Of Deed Of Release Of Guaranteeing Subsidiary**  
**(Clause 7.3)**

**SUPPLEMENTAL DEED**

20

BY **VECTOR LIMITED ("Company")**AND [ ] ("**Guaranteeing Subsidiary**")**INTRODUCTION**

- A. The Company, the Guaranteeing Subsidiary and certain other subsidiaries of the Company are parties to a Negative Pledge Deed dated [ ] 2004] ("**Negative Pledge Deed**") under or pursuant to which they have each given to the Lenders (as therein defined) a negative pledge, a guarantee and other undertakings.
- B. The Guaranteeing Subsidiary is not otherwise indebted to any of the Lenders under any Credit Facility and wishes to be released and discharged from all its obligations and liabilities as a Guarantor under the Negative Pledge Deed.

**COVENANTS**

1. To the extent to which the same are applicable the definitions and provisions contained in clause 1 of the Negative Pledge Deed shall apply to, and be incorporated in, this deed.
2. The Company and the Guaranteeing Subsidiary each undertake and warrant for the benefit of the Lenders that:

#[(a) the Guaranteeing Subsidiary has ceased to be a subsidiary upon the disposal of the shares in its capital by the Guaranteeing Group and two Directors have certified in writing that in their opinion the disposal of shares is commercially desirable and that the consideration obtained is satisfactory having regard to the terms and circumstances of the sale;]

#[(a) the Guaranteeing Subsidiary is to be liquidated or removed from the register and all of its assets available for distribution are to be distributed to another Guarantor;]

#[(a) the Lenders have by Extraordinary Resolution consented to the release of the Guaranteeing Subsidiary;]

# include whichever sub-clause (a) is the applicable one

\*[(b) all Indebtedness of the Guaranteeing Subsidiary to the Lenders under any Credit Facility (other than Indebtedness arising solely by virtue of the guarantee by the Guaranteeing Subsidiary contained in the Negative Pledge Deed) has, to the satisfaction of the Lenders to whom it was owed, been repaid or satisfied; and]

\*[(b) no Indebtedness (other than Indebtedness arising solely by virtue of the guarantee by the Guaranteeing Subsidiary contained in the Negative Pledge Deed) is owing by the Guaranteeing Subsidiary to any Lender; and]

\*[(b) the Lender or Lenders to whom Indebtedness is owing by the Guaranteeing Subsidiary have consented in writing to the execution of this deed of release; and]

\* include whichever sub-clause (b) is the applicable one

(c) no breach of the provisions of the Negative Pledge Deed or any Credit Facility has occurred and remains unremedied;

(d) the ceasing of the Guaranteeing Subsidiary to be a Subsidiary will not cause a contravention of the provisions of clause 6.1 of the Negative Pledge Deed.

3. The Guaranteeing Subsidiary is, by the execution of this deed, released and discharged from its guarantee, negative pledge and other undertakings under or arising out of the Negative Pledge Deed subject always to the provisions of clause 7.4 of the Negative Pledge Deed.

4. This deed is governed by, and shall be construed in accordance with, the laws of New Zealand.

#### EXECUTION AS A DEED

**VECTOR LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

[ ] LIMITED by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director



## CERTIFICATE

WE, the undersigned, being Directors of [  
knowledge and belief, each of the warranties by [  
true and correct.

], hereby certify that to the best of our  
] in clause 2 of the foregoing deed is

DATED: [                      ]

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

**SCHEDULE 4**  
**Meetings Of Lenders**  
**(Clause 10)**

**1. DEFINITIONS**

1.1 In this schedule, unless the context otherwise requires:

"**Bearer Note**" means a Note which is, or is expressed to be, transferable by delivery.

"**Extraordinary Resolution**" means a resolution passed:

(a) at a meeting of Lenders duly convened and held and carried by a majority consisting of not less than 66⅔ % of the persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than 66⅔ % of the votes given on such poll; or

(b) in accordance with clause 13 of this schedule.

"**Lender**" means, in relation to any meeting, a Lender of the class of Lenders for which the meeting is convened in terms of clause 2.1 of this schedule.

"**Representative**" means:

(c) in the case of a Lender being an individual, a person appointed by an instrument by way of proxy or by a power of attorney;

(d) in the case of a Lender being a company, a person appointed by an instrument of proxy or power of attorney, or a person authorised pursuant to the Companies Act 1993 or pursuant to its constitution or any other empowering provision.

"**Voting Authority**" means a voting authority issued in accordance with clause 6.3 of this schedule.

1.2 For the purposes of these provisions, "Lenders" excludes Lenders who are solely Noteholders of Short Term Notes, unless expressly agreed otherwise in writing by the Company, whether as a term of issue of the relevant Short Term Notes or otherwise, except as provided in clause 9.6 of this deed.

**2. MEETINGS**

2.1 The Company may at any time convene a meeting of the Lenders or any class of Lenders. The determination of the Company as to what constitutes a class of Lenders shall be conclusive.

2.2 Each meeting shall be held in Auckland.

**3. NOTICE OF MEETINGS**

3.1 Notice of a meeting shall be given in the manner provided in this schedule to each Lender.

3.2 Notices to Lenders shall be given in the manner prescribed by clause 14 of this deed or, in the case of Noteholders, by the documents governing the issue of the relevant Notes, and if no such manner is prescribed then:

- (a) to holders of registered Notes, by sending the notice, in the case of a holder who has supplied to the Company a registered address within New Zealand, by fast post to that address, and in the case of a holder who has supplied to the Company a registered address outside New Zealand, by first class air mail post to that address; and
- (b) to holders of Bearer Notes, by advertising the same once at least in the New Zealand Gazette and in one daily newspaper published in each of the cities of Auckland, Wellington, Christchurch and Dunedin, and any notice so given shall be deemed to be served on the day following that on which the last of such advertisements appears.

3.3 At least 14 days' notice of every meeting shall be given to every person entitled to receive notice of the meeting. The notice shall be exclusive of the day on which it is given or deemed to be given and of the date for which it is given. The notice shall specify the place, day and hour of the meeting, the nature of the business to be transacted, and the terms of any resolution to be proposed at the meeting.

3.4 The accidental omission to give notice to, or the non-receipt of notice by, any person entitled to receive notice shall not invalidate the proceedings at any meeting.

#### 4. QUORUM

4.1 No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

4.2 The quorum for passing an Extraordinary Resolution shall be Lenders present in person or by Representative holding or representing a majority of the aggregate Voting Amounts of all Lenders.

4.3 The quorum for the transaction of business at any other meeting shall be Lenders present in person or by Representative holding in aggregate at least 10% of the aggregate of the Voting Amounts held by the Lenders entitled to vote at that meeting.

4.4 If within 15 minutes after the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to such day and time, not being less than 14 days thereafter, and to such place, as may be appointed by the chairperson, and at such adjourned meeting the Lenders present in person or by Representative shall be a quorum for the transaction of business.

4.5 Notice of any such adjourned meeting shall be given in the same manner (except in respect of the period of notice) as of an original meeting and such notice shall state that the Lenders present in person or by Representative at the adjourned meeting, whatever their number and whatever the Voting Amounts held by them, shall be a quorum.

#### 5. PROCEDURE

5.1 Any Director or executive of, or solicitor for, the Company, or any other person authorised in that behalf by the Company, may attend any meeting and all such persons shall have the right to speak at the meeting.

5.2 A person nominated in writing by the Company shall act as chairperson of each meeting and if no such person is nominated, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Lenders present shall choose one of their number to be chairperson.

5.3 The chairperson may, with the consent of any meeting at which a quorum is present and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.

5.4 No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

## 6. AUTHORITY TO VOTE

6.1 A Lender who is an individual may vote personally or by Representative and a Lender which is a company may vote by Representative.

6.2 The following persons shall be exclusively entitled to attend and vote in person or by Representative at a meeting:

- (a) the persons registered as Lenders;
- (b) the bearer of a Bearer Note, upon presentation thereof at the meeting;
- (c) the bearer of a Voting Authority issued in respect of a Bearer Note, upon presentation thereof at the meeting;

and the presence of any such person shall for all purposes be deemed to be the presence in person of the Lender concerned.

6.3 The holder of a Bearer Note may, upon presentation of it to any registered bank, request that bank to issue a Voting Authority and upon lodgment of the Bearer Note with such bank, the bank may issue to that holder a Voting Authority in, or to the effect of, the following form:

[ ] Limited

Voting Authority for the meeting of Lenders to be held on 20 .

Serial number(s) of Notes:

Principal amount of Notes:

The undersigned certifies that the above Bearer Note(s) has/have been deposited with the undersigned and will not be released until the surrender of this Voting Authority.

Signed on behalf of

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

6.4 A voting Authority shall be valid only for the specific meeting to which it refers and any adjournment thereof.

## 7. PROXIES

7.1 The instrument appointing a proxy shall be in writing signed by the appointor or by an attorney duly authorised in writing by the appointor or, if the appointor is a company, either under its seal or signed by an officer or attorney so authorised or by any director, secretary, general manager, investment manager or other person who has authority to appoint a proxy on behalf of such company.

7.2 A person appointed to act as a proxy need not be a Lender.

7.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed (or a copy of such power or authority certified by a solicitor or notary public) shall be deposited at such place as the Company appoints in the notice convening the meeting or (if no such place is appointed) then at the registered office of the Company, not less than 48 hours (or such shorter period as the Company may nominate in the notice convening the meeting) before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

7.4 An instrument of proxy may be in any common form or any other form approved by the Company, and may make provision for directions to be given by the appointor to vote in favour of, or against, any proposed resolution.

7.5 A proxy shall, unless the contrary is stated on the instrument of appointment, be valid for the meeting to which it relates and for any adjournment thereof and need not be witnessed.

7.6 An instrument of proxy which is expressed to be in favour of:

- (a) the chairperson of the Company; or
- (b) the chairperson; or
- (c) the chairperson of the meeting,

shall be as valid and effectual as if it were in favour of a named person and shall in the case of paragraph (a) constitute the person holding the office of the chairperson of the Company and in the case of paragraphs (b) and (c) constitute the person who chairs the meeting for which the proxy is used, or any adjournment thereof, as the case may be, the lawful proxy of the appointor.

## 8. ATTORNEYS AND CORPORATE REPRESENTATIVES

8.1 Any Lender may by power of attorney duly executed in the presence of at least one witness appoint an attorney (who need not be a Lender) to vote and act on behalf of the Lender at any meeting. An attorney shall be entitled to produce evidence of appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting or for the taking of the poll at which the attorney proposes to vote. An attorney, if so empowered, may appoint a proxy for the person granting the power of attorney.

8.2 A person authorised pursuant to the Companies Act 1993, or pursuant to any other enactment or applicable empowering provision, by a Lender which is a company, to act for it at any meeting shall in accordance with that authority (until it is revoked by that Lender) be entitled to exercise the same powers on behalf of that Lender as that Lender could exercise if it were an individual, and shall be entitled to produce evidence of that authority to act at any time before the time appointed for the holding of, or at, the

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

## **9. RIGHTS OF REPRESENTATIVES**

- 9.1 A Representative shall have the right to speak at a meeting and to demand or join in demanding a poll and shall (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 appointor.
- 9.2 A vote given in accordance with the terms of an instrument of proxy, power of attorney, or other form of appointment shall be valid, notwithstanding the previous death, insanity or (in the case of a company) liquidation of the principal, or revocation of the proxy, power of attorney or other form of appointment, or of the authority under which the proxy was executed, or the transfer of the Indebtedness in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, power of attorney, or other form of appointment, is used.

## **10. VOTING PROCEDURE**

- 10.1 A resolution put to the vote at a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or by a Lender or Lenders holding not less than 5% of the aggregate of the Voting Amounts held by Lenders. Unless a poll is so demanded, a declaration by the chairperson that a resolution has been carried unanimously, or by a particular majority, or lost, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 10.2 If a poll is duly demanded it shall be taken in such manner as the chairperson directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.
- 10.3 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote in addition to any other votes to which he or she may be entitled.
- 10.4 A poll demanded on the election of a chairperson other than the nominee of the Company, or on a question of adjournment, shall be taken either immediately or at such time (not being more than 30 days after the date of the meeting) and place as the chairperson directs. The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded. No notice need be given of a poll not taken immediately.
- 10.5 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 10.6 On a poll:
- (a) votes may be given either personally or by a Representative;
  - (b) a person entitled to more than one vote need not use all the votes to which that person is entitled, or cast in the same way all the votes which that person casts.

- 10.7 Every Lender who is present at a meeting and entitled to vote (whether personally or by Representative) shall, on a show of hands, be entitled to one vote and on a poll, be entitled to one vote for every \$1 of Voting Amount held by that Lender, provided always that any Indebtedness for the time being owing to the Company or any Subsidiary shall not, whilst so held, confer any right to vote.

- 10.8 In the case of joint holders the vote of the senior who tenders a vote, whether in person or by Representative, shall be accepted to the exclusion of the votes of other joint holders and for this purpose seniority shall be determined by the order in which the names stand in the register.

## **11. EXTRAORDINARY RESOLUTIONS**

- 11.1 An Extraordinary Resolution passed at a meeting which is duly convened and held in accordance with this schedule shall be binding upon all Lenders, whether present or not, or entitled to be present or not, at the meeting and the passing of any such resolution shall be conclusive evidence that the circumstances justify the passing thereof, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of the resolution.

## **12. MINUTES OF MEETINGS**

- 12.1 Minutes of all resolutions and proceedings at every meeting shall be made by the Company. Minutes purporting to be signed by the chairperson of a meeting shall be prima facie evidence of the matters stated in those minutes and, until the contrary is proved, the meeting in respect of which the minutes were made shall be deemed to have been duly convened and held and all resolutions passed or proceedings had at the meeting to have been duly passed and had.

## **13. RESOLUTION IN WRITING**

- 13.1 A resolution in writing signed by or on behalf of Lenders who hold 66% or more of the aggregate Voting Amounts for the time being held by the Lenders entitled to vote on that resolution shall be as valid and effectual as if it has been passed at a meeting duly convened and held, and shall be deemed to constitute an Extraordinary Resolution of Lenders. Any such resolution may consist of several documents in like form, each signed by or on behalf of one or more Lenders.

## **14. FURTHER REGULATIONS**

- 14.1 Subject to all other provisions contained in this schedule, the Company may without the consent of Lenders, prescribe such further regulations in respect of the convening and holding of meetings, attendance and voting thereat and other matters incidental thereto as the Company may in its sole discretion determine.