

Deed poll in relation to Kiwibank Subordinated Notes

Kiwibank Limited

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DEED POLL dated 27 November 2020

PARTIES

Kiwibank Limited

("Kiwibank")

INTRODUCTION

- A. Kiwibank proposes to issue Notes.
- B. Notes issued by Kiwibank under this deed will be issued in registered form by inscription in the Register and constituted by this deed.

COVENANTS

1. INTERPRETATION

- 1.1 **Incorporation of defined terms:** Terms which are defined in the terms and conditions attached as schedule 1 ("**Conditions**") have the same meaning when used in this deed.
- 1.2 **Interpretation:** Clause 18.2 of the Conditions applies to this deed as if fully set out in this deed and as if a reference to the Conditions were a reference to this deed.

2. THE NOTES

- 2.1 **Creation of Notes:** The obligations of Kiwibank under the Notes are constituted by, and specified in, this deed (including the Conditions).
- 2.2 **Covenant to pay:** Kiwibank undertakes with each Holder:
 - (a) to pay, in respect of each Note held by the Holder, the Face Value and interest in respect of each Note in accordance with the Conditions; and
 - (b) otherwise to comply with the Conditions.

3. RIGHTS AND OBLIGATIONS OF HOLDERS

- 3.1 **Benefit and entitlement:** This deed is executed as a deed poll. Each Holder has the benefit of, and is entitled to enforce, the provisions of this deed even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed.
- 3.2 **Rights independent:** Each Holder may enforce its rights under this deed independently from the Registrar and each other Holder.
- 3.3 **Holders bound:** Each Note will be issued and held subject to this deed, which shall be for the benefit of, and binding on, Kiwibank and each Holder and all persons claiming under or

through them. Each Holder and all persons claiming under or through them are deemed to have notice of all the provisions of this deed (including the Conditions).

4. MEETINGS OF HOLDERS

- 4.1 Meetings of Holders are to be convened and held in accordance with the Meeting Provisions attached as schedule 2 to this deed.

5. GOVERNING LAW AND SUBMISSION TO JURISDICTION

- 5.1 **Governing law:** This deed (including the Conditions) and the Notes are governed by and shall be construed in accordance with the laws of New Zealand.
- 5.2 **Submission to jurisdiction:** Kiwibank has irrevocably agreed, and each Holder is taken to have irrevocably agreed, that the courts of New Zealand are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Notes and accordingly Kiwibank has submitted, and each Holder is taken to have submitted, to the non-exclusive jurisdiction of the courts of New Zealand and Kiwibank waives, and each Holder is taken to have waived, any objection to the courts of New Zealand on the grounds that they are an inconvenient or inappropriate forum.

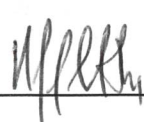
EXECUTED AS A DEED POLL BY

KIWIBANK LIMITED by:


 Signature of authorised signatory
 GEOFF MARTIN
 Name of authorised signatory



 Signature of authorised signatory
 EDWARD MCELREA
 Name of authorised signatory

In the presence of:


 Signature of witness
 NICK GRIFFITHS
 Name of witness

SOLICITOR
 Occupation

WELLINGTON
 City/town of residence


 Signature of witness
 NICK GRIFFITHS
 Name of witness

SOLICITOR
 Occupation

WELLINGTON
 City/town of residence

SCHEDULE 1
Kiwibank Subordinated Notes – Conditions

Kiwibank Subordinated Notes - Conditions

1. FORM AND FACE VALUE

- 1.1 **Form:** Kiwibank Subordinated Notes are fully paid subordinated debt securities ("**Notes**") in the form of unsecured notes issued by Kiwibank. The Notes are issued in registered form by entry in the Register. They are issued, and may be Redeemed or Written Off, according to these Conditions.
- 1.2 **Face Value:** The **Face Value** of each Note is NZ\$1.
- 1.3 **No certificates:** No certificates will be issued to Holders unless Kiwibank determines that certificates should be available or if certificates are required by any applicable law or directive.
- 1.4 **Quotation:** Kiwibank agrees to use all reasonable endeavours to procure that the Notes are quoted on the NZX Debt Market until all Notes have been Redeemed or Written Off.
- 1.5 **Independent obligations:** Each entry in the Register constitutes a separate and individual acknowledgement to the relevant Holder of the obligations of Kiwibank to the relevant Holder under these Conditions. Without prejudice to any provision requiring a resolution or Special Resolution of Holders, the Holder to whom those obligations are owed is entitled to enforce them without having to join any other Holder or any predecessor in title of a Holder.

2. STATUS

- 2.1 **Status and ranking:** The Notes constitute direct and unsecured obligations of Kiwibank, which are subordinated in right of repayment to all depositors and unsubordinated creditors of Kiwibank, and rank:

- (a) equally among themselves;
- (b) equally with all Equal Ranking Instruments;
- (c) behind all claims of Unsubordinated Creditors; and
- (d) ahead of all Junior Ranking Instruments.

The Notes do not limit the amount of senior debt, deposits or any other obligations ranking in priority to, equally with or junior to the Notes that may be incurred or assumed by Kiwibank at any time.

- 2.2 **Solvency condition to payment:** At any time before the liquidation of Kiwibank:

- (a) the payment by Kiwibank of interest on the Notes on a Scheduled Interest Payment Date is conditional upon Kiwibank and the Kiwibank Group being Solvent on the relevant Scheduled Interest Payment Date, and Kiwibank must not pay any such amount to a Holder except to the extent that Kiwibank and the Kiwibank Group will remain Solvent immediately after paying the amount; and
- (b) the Redemption of the Notes on any day before the Maturity Date is conditional upon Kiwibank and the Kiwibank Group being Solvent on the relevant Redemption Date and Kiwibank must not pay any amount to a Holder in Redemption of a Note

unless Kiwibank and the Kiwibank Group will remain Solvent immediately after paying the amount.

- 2.3 **Amounts unpaid remain debts:** Any amount not paid due to clause 2.2 accumulates and remains a debt owing to the Holder by Kiwibank, payable on the first date on which the solvency condition in clause 2.2 is satisfied (whether or not such date is otherwise a payment date), until either the amount is paid, or the Notes are Written Off in accordance with clause 5 (whichever happens first).
- 2.4 **Nature of obligations:** The Notes are not guaranteed or insured by any government, Government Agency or compensation scheme in New Zealand or any other jurisdiction, and are not guaranteed by any person.

3. INTEREST

3.1 The Notes bear interest:

- (a) Subject to clause 3.1(b), interest on each Note accrues daily on the Face Value at the Interest Rate during the period from (and including) the Issue Date to (but excluding) the Redemption Date.
- (b) No interest accrues on a Note that is required to be Written Off in the period from (and including) the Interest Payment Date (or the Issue Date if no Interest Payment Date has occurred) that immediately precedes the Trigger Event Write Off Date to the Trigger Event Write Off Date.

3.2 **Interest Payment Dates:** Subject to clause 2.2, interest accrued on each Note is payable by Kiwibank quarterly in arrear on the following dates (each an "**Interest Payment Date**"):

- (a) each of 11 March, 11 June, 11 September and 11 December commencing on 11 March 2021 until (but not including) the Maturity Date (each a "**Scheduled Interest Payment Date**"); and
- (b) the Maturity Date.

3.3 **Interest Rate:** The **Interest Rate** during a Fixed Rate Period is the sum of the Margin and the Swap Rate for the Fixed Rate Period, where:

"**Swap Rate**" means, in respect of a Fixed Rate Period:

- (a) the mid-market swap rate for an interest rate swap with a term of 5 years commencing on the first day of the Fixed Rate Period, as calculated by Kiwibank at or about 11am on the Rate Set Date in accordance with market convention with reference to Bloomberg page 'ICNZ4' (or its successor page); or
- (b) if a rate is unable to be determined in accordance with (a) above or if Kiwibank forms a view, on reasonable grounds, that the rate so determined is not an accurate reflection of market rates, the average of the mean bid and offered swap rates quoted by each of the Reference Banks at or about 11am on the Rate Set Date for an interest rate swap with a term of 5 years commencing on the first day of the Fixed Rate Period,

in each case expressed on a percentage basis, adjusted for quarterly payments and rounded, if necessary, to the nearest two decimal places with five being rounded up.

"Margin" means the margin (expressed as a percentage per annum) determined by Kiwibank in consultation with the Joint Lead Managers following the Bookbuild and announced by Kiwibank via NZX on the first Rate Set Date.

If the rate determined in accordance with this clause 3.3 is less than 0% per annum, the Interest Rate will be deemed to be 0% per annum.

- 3.4 **Calculation of Interest on the Notes:** The amount of interest payable in respect of each Note on each Interest Payment Date is calculated in accordance with the following formula:

$$\text{Amount of interest} = \frac{\text{Interest Rate} \times \text{Face Value}}{4}$$

- 3.5 **Notification of Interest Rate and other items:**

- (a) Kiwibank must notify Holders of the Interest Rate for each Fixed Rate Period.
- (b) Kiwibank must give notice under this clause 3.5 as soon as practicable after it makes its determination and by no later than the fourth Business Day after the start of the Fixed Rate Period.

- 3.6 **Determination final:** Kiwibank's determination of all dates, rates and amounts under these Conditions is, in the absence of wilful default, bad faith or manifest error, final and binding on Kiwibank and each Holder.

- 3.7 **Interest continues to accrue:** Notwithstanding clauses 3.1 and 3.2:

- (a) if payment of the Face Value of a Note is not paid when due for any reason, interest will continue to accrue (after as well as before any demand or judgment) on the Face Value of the Note at the Interest Rate in the manner provided in this clause 3 to the date on which payment in full of the Face Value is made; and
- (b) if any interest is not required to be paid because of the solvency condition to payment in clause 2.2 or is not paid when due for any reason, then such unpaid interest will earn interest at the Interest Rate, accruing daily until paid. Such accrued interest is payable on the date on which the relevant unpaid interest amount is paid.

4. REDEMPTION

- 4.1 **Redemption on Maturity Date:** Kiwibank agrees to Redeem each Note on the Maturity Date by payment of its Face Value and all accrued but unpaid interest, unless the Note has previously been Redeemed or Written Off.

- 4.2 **Early redemption at the option of Kiwibank:**

- (a) Subject to clauses 2.2 and 4.7, Kiwibank may Redeem all (but not some) of the Notes before their Maturity Date by payment of their Face Value and all accrued but unpaid interest on the Optional Redemption Date or on any Scheduled Interest Payment Date after that date.

- (b) However, Kiwibank may only Redeem Notes under (a) above if Kiwibank has given at least 30 days' (and no more than 60 days') notice to the Holders, the Registrar and NZX.

4.3 Early redemption following a Tax Event:

- (a) Subject to clauses 2.2 and 4.7, Kiwibank may Redeem all (but not some) of the Notes on a Scheduled Interest Payment Date following the occurrence of a Tax Event by payment of (i) the greater of their Face Value and Market Value and (ii) all accrued but unpaid interest.
- (b) However, Kiwibank may only Redeem Notes under (a) above if:
 - (i) Kiwibank has given at least 30 days' (and no more than 60 days') notice to the Holders, the Registrar and NZX; and
 - (ii) the Scheduled Interest Payment Date on which the Notes are Redeemed is no more than 6 months after the date on which Kiwibank determines that a Tax Event has occurred.

4.4 Early redemption following a Regulatory Event:

- (a) Subject to clauses 2.2 and 4.7, Kiwibank may Redeem all (but not some) of the Notes on a Scheduled Interest Payment Date following the occurrence of a Regulatory Event by payment of (i) the greater of their Face Value and Market Value and (ii) all accrued but unpaid interest.
- (b) However, Kiwibank may only Redeem Notes under (a) above if:
 - (i) Kiwibank has given at least 30 days' (and no more than 60 days') notice to the Holders, the Registrar and NZX; and
 - (ii) the Scheduled Interest Payment Date on which the Notes are Redeemed is no more than 6 months after the date on which Kiwibank determines that a Regulatory Event has occurred.

4.5 No early redemption at the option of Holders: A Holder cannot require Kiwibank to Redeem all or some of the Notes held by the Holder before their Maturity Date.

4.6 Effect of notice of redemption: Subject to the occurrence of a Non-Viability Trigger Event, a notice of Redemption given under this clause 4 is irrevocable.

4.7 Approval of RBNZ: Kiwibank may only elect to Redeem Notes under clauses 4.2, 4.3 or 4.4 if:

- (a) either:
 - (i) before or concurrently with the Redemption Kiwibank replaces the Notes with a Capital Instrument which is of the same or better quality (for the purposes of the RBNZ's prudential standards as they are applied to the Kiwibank Group at the relevant time) and the replacement is done under conditions that are sustainable for the income capacity of the Kiwibank Group; or

- (ii) Kiwibank obtains confirmation from the RBNZ that the RBNZ is satisfied, having regard to the capital position of the Kiwibank Group, that Kiwibank does not have to replace the Notes; and
 - (b) the RBNZ has given prior written approval for the Redemption. Approval is at the discretion of RBNZ and may or may not be given.
- 4.8 **Effect of Redemption on Holders:** On the Redemption Date the only right Holders will have in respect of Notes will be to obtain the amount payable in accordance with clause 4.1, 4.2, 4.3 or 4.4 (as applicable) and upon payment of that amount, all other rights conferred, or restrictions imposed, by Notes will no longer have effect.
- 4.9 **Market Value Determination:** If the Market Value of the Notes is required to be determined, the Market Value will be determined as follows:
- (a) Kiwibank must appoint an Independent Valuer as soon as practicable after it has given the relevant notice under clause 4.3 or 4.4 (as applicable).
 - (b) The Independent Valuer must be instructed by Kiwibank to determine the market value of each Note (adjusted to exclude the value attributable to the next scheduled but unpaid interest payment) as at the date two Business Days before the relevant notice under clause 4.3 or 4.4 (as applicable) was given to Holders ("**Valuation Date**"), and the amount so determined by the Independent Valuer will be the Market Value.
 - (c) If the Notes are quoted on the NZX Debt Market and have traded on the NZX Debt Market on at least 5 of the 10 days prior to (but excluding) the Valuation Date on which the NZX Debt Market was open for trading (such 10 days period, the "**Valuation Period**"), the Independent Valuer must determine the market value by:
 - (i) determining the aggregate price paid for all such Notes traded on the NZX Debt Market in the Valuation Period (adjusted to exclude the value attributable to the next scheduled but unpaid interest payment); and
 - (ii) dividing that aggregate price by the total number of such Notes traded in that Valuation Period.

5. MANDATORY WRITE OFF ON NON-VIABILITY TRIGGER EVENT

5.1 **Application of clause 5:** This clause 5 shall cease to apply if a Non-Viability Trigger Event has not occurred before the Transition Date.

5.2 **Non-Viability Trigger Event:**

- (a) A **Non-Viability Trigger Event** means:
 - (i) a direction is given, by notice in writing, to Kiwibank by the RBNZ under section 113 of the RBNZ Act, on the basis that the financial position of Kiwibank is such that it meets any of the grounds in subsections 113(1)(a)-(e) of the RBNZ Act, requiring Kiwibank to convert or write off a class of Capital Instruments that includes the Notes; or

- (ii) Kiwibank is made subject to statutory management by an Order in Council issued pursuant to section 117 of the RBNZ Act and the statutory manager announces his or her decision (by publishing a notice on Kiwibank's website or in another suitable public forum) to convert or write off a class of Capital Instruments that includes the Notes.
- (b) If a Non-Viability Trigger Event occurs before the Transition Date, Kiwibank immediately shall Write Off on the Trigger Event Write Off Date:
 - (i) all of the Notes; or
 - (ii) where the RBNZ or the statutory manager of Kiwibank does not require all of the relevant class of Capital Instruments to be converted or written off, so many of the Notes as is sufficient (as determined by Kiwibank in accordance with clause 5.3(b)) to satisfy the RBNZ or the statutory manager of Kiwibank that Kiwibank is viable without further conversion or write off.

5.3 **Trigger Event Write Off Date:**

- (a) The **Trigger Event Write Off Date** means the date on which:
 - (i) Kiwibank receives the direction issued by the RBNZ as contemplated in clause 5.2(a)(i); or
 - (ii) the statutory manager of Kiwibank announces his or her decision (by publishing a notice on Kiwibank's website or in another suitable public forum) as contemplated in clause 5.2(a)(ii),

to convert or write off a class of Capital Instruments that includes the Notes following the occurrence of a Non-Viability Trigger Event.
- (b) Where clause 5.2(b)(ii) applies, in determining the number of Notes which must be Written Off on the Trigger Event Write Off Date, Kiwibank will:
 - (i) first, convert into Ordinary Shares or write off in accordance with their terms such number of:
 - (aa) Kiwibank's \$150,000,000 of perpetual subordinated bonds issued under a deed poll dated 30 April 2014; and
 - (bb) any other Capital Instruments whose terms require or permit them to be converted or written off before Write Off of the Notes,

as is sufficient to satisfy the requirements of clause 5.2(b)(ii);
 - (ii) second, if conversion into Ordinary Shares or write off of Capital Instruments under (b)(i) above is not sufficient to satisfy the requirements of clause 5.2(b)(ii), Write Off Notes and convert into Ordinary Shares or write off, other Capital Instruments whose terms require or permit them to be converted or written off, on an approximately pro-rata basis or in a manner that is otherwise, in the opinion of Kiwibank, fair and reasonable,

(subject to such adjustment as Kiwibank may determine to take into account the effect on marketable parcels and the need to round to whole numbers the number of those Ordinary Shares and any Notes or other Capital Instruments remaining on issue),

provided that such determination does not impede the immediate Write Off of the relevant number of Notes.

- (c) On the Trigger Event Write Off Date Kiwibank must determine which Notes will be Written Off and in making that determination may make any decisions with respect to the identity of the Holders at that time as may be necessary or desirable to ensure Write Off occurs immediately in an orderly manner, including disregarding any transfers of Notes that have not been settled or registered at that time and provided that such determination does not impede the immediate Write Off of the relevant number of Notes.
- (d) If a Non-Viability Trigger Event occurs:
 - (i) Kiwibank must give notice as soon as practicable that Write Off has occurred to Holders, NZX and the Registrar;
 - (ii) the notice must specify the date on which the Non-Viability Trigger Event occurred; and
 - (iii) the notice must specify the details of the Write Off process, including any details which were taken into account in relation to the effect on marketable parcels, and the impact on any Notes remaining on issue.

Failure to undertake any of the steps in (i) to (iii) above does not prevent, invalidate or otherwise impede Write Off.

5.4 **Priority of Write Off obligations:** A Write Off required because of a Non-Viability Trigger Event takes place on the date, and in the manner required by clauses 5.3 and 5.5, notwithstanding any other provision for Redemption in these Conditions, and is irrevocable.

5.5 **Meaning of Written Off:** If a Note held by a Holder is required to be **Written Off**, that means all of the Holder's rights in relation to the Note are terminated with effect from the Trigger Event Write Off Date and the Note automatically is cancelled.

6. HOLDER ACKNOWLEDGEMENTS

6.1 Each Holder irrevocably acknowledges that:

- (a) the RBNZ's approval for a Redemption of Notes is at the discretion of the RBNZ and may not be given;
- (b) a Holder has no right to request a Redemption before the Maturity Date;
- (c) a Holder has no right to vote in respect of a Write Off of Notes; and

- (d) a Holder has no right to compensation from, or any other remedies against, Kiwibank or any other member of the Kiwibank Group if Notes held by the Holder are Written Off.

7. TITLE AND TRANSFER

7.1 Title: Title to a Note passes when the details of a transfer of the Note are entered in the Register.

7.2 Register conclusive as to ownership: An entry in the Register of a person as a Holder of a Note constitutes conclusive evidence that the person so entered is the absolute owner of the Note subject to correction for fraud or error.

7.3 Non-recognition of interests:

- (a) Except as required by law or directive and as provided in these Conditions, Kiwibank and the Registrar must treat the person whose name is entered in the Register as the Holder of a Note as the absolute owner of the Note.
- (b) No notice of any trust, encumbrance or other interest in, or claim to, any Note will be entered in the Register. Neither Kiwibank nor the Registrar need take notice of any trust, encumbrance or other interest in, or claim to, any Note, except as ordered by a court of competent jurisdiction or required by law, and no trust, encumbrance or other interest in, or claim to, any Note will in any way affect any provision of these Conditions.
- (c) This clause 7.3 applies whether or not a payment has been made when scheduled on a Note and despite any notice of ownership, trust or interest in a Note.

7.4 Joint holders: Where two or more persons are entered in the Register as the joint Holders of a Note, they are taken to hold the Note as joint tenants with rights of survivorship, but the Registrar is not bound to register more than three persons as joint Holders of a Note.

7.5 Offer restrictions:

- (a) The LDD only constitutes an offer of Notes to retail investors in New Zealand and to institutional investors in accordance with the Selling Restrictions. Kiwibank has not and will not take any action which would permit a public or regulated offering of the Notes, or possession or distribution of any offering material, in any country or jurisdiction where action for that purpose is required (other than New Zealand).
- (b) By its purchase of Notes, each Holder is taken to have agreed that Notes may only be offered for sale or sold in conformity with the Selling Restrictions.
- (c) By its purchase of Notes, each Holder agrees to indemnify Kiwibank, the Registrar, each Syndicate Member and their respective directors, officers, employees and agents in respect of any loss, cost, liability or expense sustained or incurred by Kiwibank, the Registrar, the Syndicate Member or their respective directors, officers, employees or agents as a result of the breach by the Holder of the Selling Restrictions.

7.6 **Holder absolutely entitled:** Upon a person acquiring title to a Note by virtue of becoming a Holder in respect of the Note, all rights and entitlements arising by virtue of the Conditions in respect of the Note vest absolutely in the Holder, such that no person who has previously been the Holder in respect of the Note has or is entitled to assert against Kiwibank or the Registrar or the Holder for the time being and from time to time any rights, benefits or entitlements in respect of the Note.

7.7 **Transfers:**

- (a) Subject to these Conditions, a Holder may transfer a Note:
 - (i) in accordance with the rules of any system declared to be a designated settlement system ("**Settlement System**") under section 156N of the RBNZ Act; or
 - (ii) by any proper or sufficient instrument of transfer of marketable securities under applicable law which must be delivered to the Registrar with any evidence the Registrar reasonably requires to prove title to or the right to transfer Notes.
- (b) No transfer of any part of a Holder's holding may be effected if such transfer would result in the transferor or the transferee holding or continuing to hold a Non-marketable Parcel of Notes.
- (c) The Registrar must register a transfer of a Note to or by a person who is entitled to make or receive the transfer as a consequence of:
 - (i) death, bankruptcy, liquidation or winding-up of a Holder, upon production of such evidence as to that entitlement as the Registrar considers sufficient; or
 - (ii) a vesting order by a court or other body with power to make the order on receiving the evidence that the Registrar or Kiwibank requires.

7.8 **Reliance of documents:** Kiwibank and the Registrar shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective, unless Kiwibank or the Registrar had actual notice of such forgery or defect at the time of registration of such instrument of transfer.

7.9 **Settlement System:** While the Notes remain quoted on the NZX Debt Market:

- (a) the rights and obligations of a person holding any Notes; and
- (b) all dealings in relation to the Notes, including transfers, transmissions and payments,

will be subject to and governed by the NZX Listing Rules and the rules of the Settlement System operated by NZX.

7.10 **Notification by Holders:** Any change of name or address of a Holder or any change in any other information required to be inserted in the Register in respect of a Holder shall

immediately be notified to the Registrar in writing by the Holder, or if a joint holding by all the joint Holders.

- 7.11 **Dealings in whole:** A Note can only be held or transferred in whole and cannot be held or transferred in part.

8. PAYMENTS

- 8.1 **Payments to Holders:** Each payment in respect of a Note will be made to the person that is recorded in the Register as the Holder of that Note as at the close of business on the Record Date for the payment.

- 8.2 **Payments to accounts:** Payments will be made by crediting on the relevant payment date the amount due to a NZ dollar bank account maintained in New Zealand with a financial institution, specified by the Holder to the Registrar by close of business on the Record Date for that payment.

- 8.3 **Uncompleted payments:** If:

- (a) a Holder has not notified the Registrar by close of business on the Record Date of a NZ dollar bank account maintained in New Zealand with a financial institution to which payments in respect of the Note may be credited; or
- (b) the transfer of any amount for payment to the credit of the nominated account does not complete for any reason,

Kiwibank will send a notice to the address most recently notified by the Holder advising of the uncompleted payment. In that case, the amount of the uncompleted payment will be held as a deposit in a non-interest bearing, special purpose account maintained by Kiwibank or the Registrar until the first to occur of the following:

- (i) the Holder nominates a suitable NZ dollar account maintained in New Zealand with a financial institution to which the payment may be credited;
- (ii) claims may no longer be made in respect of that amount, in which case the monies shall be paid to and be the property of Kiwibank; or
- (iii) Kiwibank becomes entitled or obliged to deal with the amount in accordance with the law relating to unclaimed monies.

No additional interest is payable in respect of any delay in payment.

- 8.4 **Time limit on claims:** A claim against Kiwibank for a payment under a Note is void unless made within 5 years from the date on which payment first became due.

- 8.5 **Rounding:** For the purposes of any calculations required under these Conditions, unless otherwise specified in these Conditions:

- (a) all percentages resulting from the calculations must be rounded, if necessary, to the nearest one ten-thousandth of a percentage point (with 0.00005% being rounded up to 0.0001%);

- (b) all figures must be rounded to four decimal places (with 0.00005 being rounded up to 0.0001); and
- (c) all amounts that are due and payable must be rounded to the nearest one cent (with one half of a cent being rounded up to one cent).

8.6 **Joint Holders:** A payment to any one joint Holder of a Note will discharge Kiwibank's liability in respect of the payment.

8.7 **No set-off:**

- (a) A Holder does not have any right to set-off any amounts owing to it by Kiwibank in connection with the Notes against any amount owing by it to Kiwibank in connection with the Notes or otherwise.
- (b) Kiwibank does not have any right to set-off any amounts owing to it by a Holder against any amount owing by it to the Holder in connection with the Notes.

8.8 **Payments subject to law:** All payments are subject to applicable law, but without prejudice to the provisions of clause 9.

8.9 **Payments on Business Days:** If a payment:

- (a) is due on a Note on a day which is not a Business Day, then the due date for payment will be postponed to the next day that is a Business Day; or
- (b) is to be made to an account on a Business Day on which banks are not open for general banking business in the place in which the account is located, then the due date for payment will be the next day on which banks are open for general banking business in that place,

and in either case, the Holder is not entitled to any additional payment in respect of that delay.

9. TAXATION

9.1 **Withholdings and deductions:** All payments in respect of Notes must be made without any withholding or deduction in respect of Taxes, unless the withholding or deduction is required by law or permitted by this clause 9.

9.2 **Deductions:**

- (a) Kiwibank may deduct from any payment of interest or any other amount payable in accordance with these Conditions the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such amount. Deductions of any such Tax will be made at the maximum rates from time to time applicable unless a Holder provides evidence satisfactory to the Registrar that a lesser rate is applicable.
- (b) If any such deduction has been made and the amount of the deduction accounted for by Kiwibank to the relevant revenue authority and the balance of the interest

payable has been paid to the relevant Holder, the full amount payable to such Holder shall be deemed to have been duly paid and satisfied by Kiwibank.

- (c) If New Zealand non-resident withholding tax ("**NRWT**") is required to be deducted from payments of interest (or payments deemed by law to be interest):
 - (i) if Kiwibank is satisfied that the application of the approved issuer levy as defined in section 86F of the Stamp and Cheque Duties Act 1971 (New Zealand) ("**AIL**") in relation to payments of interest (or payments deemed by law to be interest) to a Holder would result in NRWT applying at the rate of 0%, Kiwibank will not deduct NRWT but will instead apply the AIL regime unless the Holder requests the Registrar in writing no later than five Business Days before the relevant payment date that NRWT be deducted from such interest (or deemed interest) instead of applying the AIL regime. If Kiwibank applies the AIL regime Kiwibank will: (A) apply the zero rate under the AIL regime to the extent Kiwibank is able to do so; and (B) to the extent Kiwibank is not able to do so, pay AIL. Kiwibank will pay any such AIL to the appropriate authority and will deduct the amount paid from any payments of interest (or payments deemed by law to be interest) payable to that Holder in lieu of deducting NRWT at the rate otherwise applicable from that payment;
 - (ii) if Kiwibank does not apply the AIL regime, or if the application of the AIL regime does not result in NRWT applying at the rate of 0%, Kiwibank will deduct NRWT at the rate applicable to that payment.
- (d) New Zealand resident withholding tax ("**RWT**") will be deducted from payments of interest (or payments deemed to be interest) in respect of which RWT is required by law to be deducted. If RWT would be required to be deducted unless the Holder has RWT-exempt status (as defined in the Tax Act), RWT will be deducted unless the Holder notifies the Registrar of such status no later than five Business Days before the relevant payment date. In the case of a New Zealand resident deriving the interest jointly with a non-resident, NRWT will be deducted at the RWT rate.
- (e) Kiwibank shall pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring any penalty under the applicable law and shall, if required by any Holder, deliver to that Holder a copy of any relevant receipt issued by the revenue authority (to the extent issued) without delay after it is received by Kiwibank.
- (f) A Holder must notify the Registrar of: (i) its country of residence for tax purposes; (ii) if the Holder is not a New Zealand tax resident, whether the Holder is engaged in business in New Zealand through a fixed establishment (as that term is defined in the Tax Act) in New Zealand and whether the Holder holds the Notes for the purposes of a business carried on through that fixed establishment; and (iii) any other information requested by the Registrar in order to determine the payment or withholding obligations of Kiwibank. A Holder must also notify the Registrar prior to any Interest Payment Date of any change in circumstances from those previously notified that could affect the payment or withholding obligations of Kiwibank. A Holder must also provide any other information reasonably requested by Kiwibank to allow Kiwibank to comply with its reporting and record keeping obligations for Tax purposes.

- (g) By accepting payment of any interest or any other amount payable in accordance with these Conditions, the Holder indemnifies Kiwibank for all purposes in respect of any liability Kiwibank may incur for not deducting any amount from such payment on account of NRWT or RWT.

If, in relation to any Note, Kiwibank becomes liable to make any payment of or on account of tax payable by the Holder, Kiwibank is indemnified by the Holder in relation to such liability. Any moneys paid by Kiwibank in relation to any such liability may be recovered from the Holder as a debt due to Kiwibank and may be withheld from further payments to that Holder. Nothing in this clause prejudices or affects any other right or remedy of Kiwibank.

9.3 **FATCA:**

- (a) Kiwibank, in its absolute discretion, may withhold or deduct payments to a Holder where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of Notes may be subject to FATCA, and may deal with such payment and the Holder's Notes in accordance with FATCA.
- (b) Kiwibank, in its absolute discretion, may require a Holder to provide it with information to determine the applicability of any withholding under or in connection with FATCA. Kiwibank may provide any such information to the IRS or any other relevant authority.
- (c) If any withholding or deduction arises under or in connection with FATCA, Kiwibank will not be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of Notes for or in respect of any such withholding or deduction.

10. **EVENTS OF DEFAULT**

10.1 **Events of Default:** An **Event of Default** occurs:

- (a) if either:
 - (i) Kiwibank does not pay any Face Value due in respect of the Notes within 7 days of its due date; or
 - (ii) Kiwibank does not pay any interest due in respect of the Notes within 15 days of its due date,(a **"Payment Default"**); or
- (b) on Commencement of Liquidation.

10.2 **Consequences of an Event of Default:** If an Event of Default occurs and is continuing:

- (a) in the case of a Payment Default, a Holder may bring proceedings:

- (i) to recover any amount then due and payable but unpaid on its Notes (subject to Kiwibank being able to make the payment and remain Solvent);
- (ii) to obtain an order for specific performance of any other obligation in respect of its Notes; or
- (iii) for the liquidation of Kiwibank.

To the extent that a payment is not required to be made because of the solvency condition to payment in clause 2.2, the amount is not due and payable and a Payment Default cannot occur; or

- (b) in the case of a Commencement of Liquidation, in addition to the rights specified in clause 10.2(a) above, the Face Value of each Note (together with all interest accrued to the date of payment determined as if the date of payment were an Interest Payment Date, but with accrued interest for the period from (and including) the previous Interest Payment Date (or the Issue Date if no Interest Payment Date has occurred) calculated on a daily basis) will immediately become due and payable, and subject to clause 11, Holders may prove in the liquidation of Kiwibank for that amount.

The Holders may not exercise any other remedies (including any right to sue for damages which has the same economic effect as acceleration) as a consequence of an Event of Default or other default other than as specified in this clause 10.2.

- 10.3 **Notification:** If an Event of Default occurs, Kiwibank must promptly after becoming aware of it notify the Registrar, the Holders and NZX of the occurrence of the Event of Default (specifying details of it).

11. SUBORDINATION

- 11.1 **Acknowledgment:** Each Holder, by its subscription for or purchase of a Note, is taken to acknowledge that Kiwibank's obligations in respect of the Note are subordinated to the payment of the Unsubordinated Debt to Unsubordinated Creditors, in the manner provided in clause 11.2.

11.2 Subordination:

- (a) In a liquidation of Kiwibank, a Holder's claim for an amount owing by Kiwibank in connection with a Note is subordinated to the claims of Unsubordinated Creditors of Kiwibank, in that:
 - (i) all claims of Unsubordinated Creditors must be paid in full before the Holder's claim is paid; and
 - (ii) until the Unsubordinated Creditors have been paid in full, the Holder must not claim in the liquidation in competition with the Unsubordinated Creditors so as to diminish any distribution, dividend or payment which, but for that claim, the Unsubordinated Creditors would have been entitled to receive.

- (b) Each Holder irrevocably acknowledges and agrees that:
 - (i) in accordance with section 313(3) of the Companies Act, it is accepting a lower priority in relation to the debt represented by each Note than that which it would otherwise have under section 313 of the Companies Act; and
 - (ii) nothing in sections 310 or 313 of the Companies Act will prevent these Conditions from having effect in accordance with their terms.
- (c) Each Holder must not exercise its voting rights as an unsecured creditor in the liquidation or voluntary administration of Kiwibank to defeat the subordination in this clause 11.2.
- (d) Each Holder irrevocably acknowledges and agrees that the subordination effected by this clause 11.2 is not affected by any act or omission of Kiwibank or an Unsubordinated Creditor which might otherwise affect it at law or in equity.
- (e) Each Holder irrevocably acknowledges and agrees that it must pay or deliver to the liquidator any amount or asset received on account of its claim in the liquidation of Kiwibank in connection with a Note in excess of its entitlement under clause 11.2(a) above.
- (f) Nothing in this clause 11.2 shall be taken to require the consent of any Unsubordinated Creditor to any amendment of this clause 11.2.

11.3 **Unsecured:** The Notes are unsecured.

12. MEETINGS OF HOLDERS

12.1 **Meetings:** Meetings of Holders may be held in accordance with the Meeting Provisions. A meeting may consider any matter affecting the interests of Holders, including any amendment to the Deed Poll proposed by Kiwibank in accordance with clause 13.

12.2 **No voting rights:** A Note does not entitle its Holder to vote at a general meeting of Kiwibank.

13. AMENDMENT OF THESE CONDITIONS

13.1 Amendments without consent:

- (a) Subject to complying with all applicable laws and to obtaining notice of non-objection from the RBNZ where required in accordance with clause 13.3, Kiwibank may without the authority, assent or approval of the Holders, amend the Deed Poll (including these Conditions) if Kiwibank is of the opinion that the amendment:
 - (i) is of a formal, minor or technical nature;
 - (ii) is made to cure any ambiguity or correct any manifest error;
 - (iii) is necessary or expedient for the purpose of enabling the Notes to be quoted or to remain quoted on a stock exchange or to be lodged or to

remain lodged in a clearing system or to be offered for sale or for subscription under the laws for the time being in force in any place;

- (iv) is necessary or expedient for the purpose of complying with the provisions of any statute, the requirements of any statutory authority, the NZX Listing Rules or the listing or quotation requirements of any securities exchange on which Kiwibank may propose to seek a listing or quotation of the Notes;
- (v) is necessary or expedient for the purpose of enabling the Notes to continue to qualify as "Tier 2" capital under the RBNZ's prudential standards with effect from the Transition Date, provided the amendment does not result in:
 - (aa) any change to a date on which a payment is required to be made to Holders;
 - (bb) any reduction in an amount that is specified to be payable to Holders on a particular date;
 - (cc) the loss of an express right of the Holders under the Notes; or
 - (dd) the imposition of a new obligation on the Holders under the Notes; or
- (vi) is not materially prejudicial to the interests of Holders as a whole.

13.2 **Amendment with consent:** Without limiting clause 13.1, Kiwibank may amend the Deed Poll if the amendment or addition has been approved by a Special Resolution and subject to obtaining notice of non-objection from the RBNZ where required in accordance with clause 13.3.

13.3 **Requirement for RBNZ notice of non-objection:** No amendment to the Deed Poll is permitted if such amendment may affect the eligibility of the Notes as "Tier 2 Capital" for Kiwibank under the RBNZ's prudential standards at the relevant time unless, prior to the amendment being made, the RBNZ has not objected to the amendment.

13.4 **Meaning of amend and amendment:** In this clause 13, **amend** includes modify, cancel, alter or add to and **amendment** has a corresponding meaning.

14. FURTHER ISSUES AND NO OTHER RIGHTS

14.1 **Further issues:** Without limiting any other provision of these Conditions, each of the following is expressly permitted and authorised by these Conditions and does not affect, or constitute a modification or variation of, the rights or privileges attaching to the Notes then on issue:

- (a) the issue of securities of any kind, or the conversion of existing securities into securities of any kind ranking equally with or in priority to, or having different rights from, the Notes;

- (b) a redemption, buy-back or return or distribution of capital in respect of any share capital of Kiwibank; and
- (c) the Write Off of Notes.

14.2 **No other rights:** A Holder of the Notes has no right to participate in the issue of any other securities of Kiwibank.

15. NOTICES

15.1 Notices to Holders

All notices, certificates, consents, approvals, waivers and other communications in connection with a Note to the Holders must be in writing and may be:

- (a) so long as the Notes are quoted on the NZX Debt Market, by publication of an announcement on NZX;
- (b) given by an advertisement published in the Dominion Post or the New Zealand Herald, or any other newspaper nationally circulated within New Zealand;
- (c) sent by prepaid post (airmail if appropriate) or left at the address of the relevant Holder (as shown in the Register at the close of business on the day which is 3 Business Days before the date of the relevant notice or communication); or
- (d) sent to an email address provided by the Holder for the purposes of receiving such notices.

15.2 **Notices to Kiwibank and the Registrar:** All notices, and other communications to Kiwibank and the Registrar must be in writing and may be sent by prepaid post or left at the address of the registered office of Kiwibank or the Registrar or such other address as is notified to Holders from time to time.

15.3 **When effective:** Communications take effect from the time they are received or taken to be received (whichever happens first) unless a later time is specified in them.

15.4 **Receipt – publication on NZX:** If published by an announcement on NZX, communications are taken to be received when the announcement is made on NZX.

15.5 **Receipt – publication in newspaper:** If published in a newspaper, communications are taken to be received on the first date that publication has been made in all the required newspapers.

15.6 **Receipt – postal:** Unless a later time is specified in it, a notice, if sent by post, is taken to be received on the next succeeding Business Day in the place of the addressee.

15.7 **Receipt – left at address:** If left at the address of a Holder, a notice is taken to be received when given unless received after 5pm in the place of receipt or on a day that is not a Business Day, in which case it is taken to be received at 9am on the next Business Day.

15.8 **Receipt – email:** If sent by email, communications are taken to be received on completion of transmission of the email in readable form to the recipient's email address, provided that if such completion of transmission occurs on a day that is not a Business Day, or after 5pm on

a Business Day, the communication shall be taken to have been received on the next Business Day.

15.9 **Non-receipt of notice:** If there are two or more Holders, the non-receipt of any notice by, or the accidental omission to give any notice to, a Holder does not invalidate the giving of that notice.

15.10 **Notification of a Non-Viability Trigger Event:** Nothing in this clause 15 applies to the notification of a Non-Viability Trigger Event by the RBNZ or the statutory manager of Kiwibank.

16. PRIVACY

16.1 Clause 7.5 is intended to confer a benefit on, and may be enforced by, each Syndicate Member and the Registrar under the Contract and Commercial Law Act 2017.

17. POWER OF ATTORNEY

17.1 Each Holder appoints each of Kiwibank and its Authorised Officers (each an "**Attorney**") severally to be the attorney of the Holder with power in the name and on behalf of the Holder to sign all documents and transfers and do any other thing as may in the Attorney's opinion be necessary or desirable to be done in order for the Holder to observe or perform the Holder's obligations under these Conditions including, but not limited to, effecting any transfers of Notes or making any entry in the Register.

17.2 The power of attorney given in this clause 17 is given for valuable consideration and to secure the performance by the Holder of the Holder's obligations under these Conditions and is irrevocable.

18. INTERPRETATION AND DEFINITIONS

18.1 Definitions:

AIL has the meaning given in clause 9.2(c)(i).

Attorney has the meaning given in clause 17.1.

Authorised Officers means each director and officer of Kiwibank and any person delegated on the authority of the board of directors of Kiwibank to exercise the power of attorney conferred by clause 17.

Bookbuild means the process conducted before the Offer opens where invited parties bid for Notes and on the basis of those bids Kiwibank sets the initial Interest Rate and determines the Margin.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in Wellington and Auckland.

Capital Instrument means an instrument that is either a Tier 1 Capital Instrument or a Tier 2 Capital Instrument.

Commencement of Liquidation means the commencement of liquidation of Kiwibank under:

- (a) section 241(5) or section 317 of the Companies Act; or
- (b) under any other legislation under which Kiwibank will irrevocably cease to be duly incorporated or to validly exist in New Zealand.

Companies Act means the Companies Act 1993.

Conditions means these terms and conditions of issue of the Notes.

Conditions of Registration means the conditions imposed on Kiwibank by the RBNZ under section 74 of the RBNZ Act, as amended from time to time.

Deed Poll means the deed poll made by Kiwibank in relation to the Notes, to which these Conditions are attached as schedule 1.

Equal Ranking Instruments means all securities which rank or are expressed to rank equally with the Notes in a liquidation of Kiwibank, present and future.

Event of Default has the meaning given in clause 10.1.

Face Value has the meaning given in clause 1.2.

FATCA means Sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended ("the Code") (or any consolidation, amendment, re-enactment or replacement of those sections and including any current or future regulations or official interpretations issued, agreements entered into pursuant to Section 1471(b) of the Code or non-US laws enacted or regulations or practices adopted pursuant to any intergovernmental agreement in connection with the implementation of those sections).

Fixed Rate Period means:

- (a) the period from (and including) the Issue Date to (but excluding) the Optional Redemption Date ("**first Fixed Rate Period**"); and
- (b) the period from (and including) the Optional Redemption Date to (but excluding) the Maturity Date ("**second Fixed Rate Period**").

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Holder means a person for the time being registered in the Register as the holder of a Note.

Independent Valuer means a person that:

- (a) Kiwibank considers has the expertise to determine the market value of the Notes; and
- (b) is independent of Kiwibank.

Interest Payment Date has the meaning given in clause 3.2.

Interest Rate has the meaning given in clause 3.3.

IRS means the United States Inland Revenue Service or any authority succeeding to its powers and responsibilities.

Issue Date means the date on which the Notes are issued.

Joint Lead Managers means the persons specified as such in the LDD.

Junior Ranking Instruments means:

- (a) all securities which rank or are expressed to rank after the Notes in a liquidation of Kiwibank, present or future; and
- (b) all shares of Kiwibank (including ordinary and preference shares), present and future.

Kiwibank means Kiwibank Limited.

Kiwibank Group has the meaning given to "banking group" in the Conditions of Registration.

LDD means the limited disclosure document for the Offer.

Margin has the meaning given in clause 3.3.

Market Value means the amount determined to be the Market Value of each Note in accordance with clause 4.9.

Maturity Date means 11 December 2030.

Meeting Provisions means the provisions for the convening of meetings of, and passing of resolutions by, Holders set out in schedule 2 of the Deed Poll.

Non-Viability Trigger Event has the meaning given in clause 5.2(a).

Non-marketable Parcel of Notes means a parcel of Notes registered in the same name or same joint names, the aggregate Face Value of which is less than NZ\$5,000 or is not a multiple of NZ\$1,000.

Notes has the meaning given in clause 1.1.

NRWT has the meaning given in clause 9.2(c).

NZX means NZX Limited, and includes any person or authority which may in the future assume and perform the functions of NZX Limited.

NZX Debt Market means the debt market operated from time to time by NZX.

NZX Listing Rules means the listing rules of NZX, as amended, varied or waived (whether in respect of Kiwibank or generally) from time to time.

Offer means the invitation made under the LDD by Kiwibank for persons to subscribe for Notes.

Optional Redemption Date means 11 December 2025.

Ordinary Share means a fully paid ordinary share in the capital of Kiwibank.

Payment Default has the meaning given in clause 10.1(a).

Rate Set Date means:

- (a) for the first Fixed Rate Period, the date specified as such in the LDD; and
- (b) for the second Fixed Rate Period, the date specified as the "Rate Reset Date" in the LDD.

RBNZ means the Reserve Bank of New Zealand or any successor body responsible for prudential regulation of Kiwibank in New Zealand.

RBNZ Act means the Reserve Bank of New Zealand Act 1989 (New Zealand).

Record Date means, in the case of:

- (a) payments of interest, the date which is 10 calendar days before the Interest Payment Date (or as otherwise prescribed by the NZX Listing Rules or if not prescribed by the NZX Listing Rules, a date determined by Kiwibank and notified to NZX); and
- (b) payments of any other amount, a date determined by Kiwibank and notified to NZX (or such other date as may be prescribed by NZX).

If a Record Date is a day which is not a Business Day, then the Record Date will be the immediately preceding Business Day. For the purposes of determining the Record Date for an Interest Payment Date, the Business Day convention in clause 8.9 shall be disregarded.

Redemption means, in relation to a Note, the redemption of the Note in accordance with these Conditions and **Redeem**, **Redeemable** and **Redeemed** have corresponding meanings.

Redemption Date means the date on which Notes are to be redeemed in accordance with these Conditions.

Register means a register of Holders of Notes established and maintained by the Registrar.

Reference Banks means ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand and Westpac New Zealand Limited, or any additional or replacement reference banks selected by Kiwibank from time to time.

Registrar means Link Market Services Limited or any other person who from time to time maintains the Register on behalf of Kiwibank.

Regulatory Event means:

- (a) a determination by Kiwibank to the effect that:

- (i) there has been a change in New Zealand law, regulation or directive (including by way of the imposition of any New Zealand law, regulation or directive) that applies, or is to apply, after the Issue Date;
- (ii) there has been a change in the interpretation or administration of any New Zealand law, regulation or directive by any authority (including the RBNZ) that applies, or is to apply, after the Issue Date; or
- (iii) Kiwibank is or will be required to comply with any change in New Zealand law, regulation or directive or changed interpretation or administration,

that adversely affects, or will adversely affect, Kiwibank in relation to its regulatory capital treatment of the Notes provided such event is not minor and was not anticipated as at the Issue Date; or

- (b) a determination by Kiwibank, as a result of the occurrence of an event or circumstance that is not minor and was not anticipated as at the Issue Date, that some or all of the Notes are not, or will not be, Tier 2 Capital.

RWT has the meaning given in clause 9.2(d).

Scheduled Interest Payment Date has the meaning given in clause 3.2.

Selling Restrictions means the restrictions contained in section 10 of the LDD.

Solvent means satisfying the solvency test contained in section 4 of the Companies Act. In interpreting this definition in relation to the Kiwibank Group, it shall be applied to the Kiwibank Group as if the Kiwibank Group was a single entity and due account will be taken of the ability and willingness of members of the Kiwibank Group to meet the debts of other members of the Kiwibank Group.

Special Resolution has the meaning given in regulation 1.1 of the Meeting Provisions.

Swap Rate has the meaning given in clause 3.3.

Syndicate Member means each person named as arranger or joint lead manager in the LDD.

Tax Act means the Income Tax Act 2007 (New Zealand).

Taxes means taxes, levies, imposts, deductions, charges or withholdings and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties and expenses in connection with them.

Tax Event means a determination by Kiwibank to the effect that:

- (a) there has been a change in New Zealand law, regulation or directive (including by way of the imposition of any New Zealand law, regulation or directive) that applies, or is to apply, after the Issue Date;
- (b) there has been a change in the interpretation or administration of any New Zealand law, regulation or directive by any authority (including the New Zealand Inland Revenue Department) that applies, or is to apply, after the Issue Date; or

- (c) Kiwibank is or will be required to comply with any change in New Zealand law, regulation or directive or changed interpretation or administration,

that directly or indirectly affects the taxation treatment in relation to the Notes and that would result in more than a minimal increase in Kiwibank's costs in respect of the Notes, provided such event is not minor and could not have been anticipated when the Notes were issued.

Tier 1 Capital Instrument means an instrument that Kiwibank is able to treat as "Tier 1 Capital" (or any equivalent successor term) for the purposes of its Conditions of Registration.

Tier 2 Capital Instrument means an instrument that Kiwibank is able to treat as "Tier 2 Capital" (or any equivalent successor term) for the purposes of its Conditions of Registration.

Transition Date means 1 July 2021 or such later date on which the changes to the eligibility criteria for "Tier 2 Capital" in the RBNZ's prudential standards (including no longer permitting Tier 2 Capital instruments to include contractual features that give rise to conversion or write-off at the point of non-viability) take effect as part of the capital reforms described in the document published by the RBNZ in 2019 entitled "Capital Review Decisions 2019".

Trigger Event Write Off Date has the meaning given in clause 5.3(a).

Unsubordinated Creditor means a creditor (including a depositor) of Kiwibank to whom Kiwibank is indebted in respect of Unsubordinated Debt.

Unsubordinated Debt means all present and future claims against Kiwibank (including but not limited to claims of all depositors of Kiwibank) which:

- (a) would be entitled to be admitted in the liquidation of Kiwibank; and
- (b) do not rank and are not by their terms expressed to rank equally with, or behind, the claims of the Holders.

Valuation Date has the meaning given in clause 4.9(b).

Valuation Period has the meaning given in clause 4.9(c).

Written Off has the meaning given in clause 5.5 and **Write Off** has a corresponding meaning.

18.2 Interpretation:

- (a) Unless otherwise specified, a reference to a clause or paragraph is a reference to a clause or paragraph of these Conditions.
- (b) Headings and boldings are for convenience only and do not affect the interpretation of these Conditions.
- (c) The singular includes the plural and vice versa.
- (d) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

- (e) Unless otherwise specified in these Conditions and, without limitation, other than in relation to a Non-Viability Trigger Event and a Write Off on a Trigger Event Write Off Date, if an event under these Conditions must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day.
- (f) A reference to NZ dollars, NZ\$ or NZ cents is a reference to the lawful currency of New Zealand.
- (g) Calculations, elections and determinations made by or on behalf of Kiwibank under these Conditions are binding on Holders in the absence of manifest error.
- (h) Any provisions which refer to the requirements of the RBNZ or any other prudential regulatory requirements will apply to Kiwibank only if Kiwibank is an entity, or the holding company of an entity, subject to regulation and supervision by the RBNZ at the relevant time.
- (i) Any provisions which require the RBNZ's consent, approval or non-objection will apply only if the RBNZ requires that such consent, approval or non-objection be given at the relevant time.
- (j) Any provisions in these Conditions requiring the prior consent, approval or non-objection of the RBNZ for a particular course of action to be taken do not imply that the RBNZ has given its consent, approval or non-objection to the particular action as of the Issue Date. Where under these Conditions, RBNZ approval is required, for any act to be done or not done, that term does not imply that RBNZ consent, approval or non-objection has been given as at the Issue Date.
- (k) The terms "holding company" and "subsidiary", when used in these Conditions have the meanings given in the Companies Act.
- (l) A reference to a party to an agreement or deed includes a reference to a replacement or substitute of the party according to that agreement or deed.
- (m) A reference to an agreement or deed includes a reference to that agreement or deed as amended, amended and restated, varied, supplemented, replaced or novated from time to time.
- (n) The words "includes" or "including", "for example" or "such as" do not exclude a reference to other items, whether of the same class or genus or not.
- (o) Words importing any gender include all other genders.
- (p) A reference to any term defined by the RBNZ (including, without limitation, "Tier 2 Capital") shall, if that term is replaced or superseded in any of the RBNZ's applicable prudential regulatory requirements or standards, be taken to be a reference to the replacement or equivalent term.
- (q) A reference to a term defined by the NZX Listing Rules shall, if that term is replaced in those rules, be taken to be a reference to the replacement term.
- (r) Where Kiwibank is required to give or serve a notice by a certain date under these Conditions, Kiwibank is required to despatch the notice by that date (including at

Kiwibank's discretion, by posting or lodging notices with a mail house) and delivery or receipt (or deemed delivery) is permitted to occur after that date.

- (s) Where a Holder is required to give or deliver a notice to Kiwibank by a certain date under these Conditions, the notice must be received by Kiwibank by that date.
- (t) A reference to time is to New Zealand standard time.
- (u) If Kiwibank is declared to be subject to statutory management, a reference in these Conditions to Kiwibank includes, where the context requires, the statutory manager exercising Kiwibank's rights under these Conditions.

SCHEDULE 2 Meeting Provisions

1. DEFINITIONS

1.1 In these provisions:

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

"Class" means a category of Notes which constitutes a separate class of Notes being any category of Notes having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of Kiwibank at any particular time, for any particular purpose, constitutes a separate class of Notes.

"Class of Holders" means the Holders of a Class of Notes.

"Proxy Closing Time" means 48 hours before the Appointed Time of the relevant meeting of Holders or taking of a poll of Holders or such other time approved by Kiwibank.

"regulation" means a clause of this schedule.

"Representative" means:

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

"Special Resolution" means a resolution approved by Holders holding Notes with a Face Value of no less than 75% of the aggregate Face Value of the Notes held by those persons who are entitled to vote and who vote on the question.

"working day" has the meaning given in section 29 of the Interpretation Act 1999.

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

2. CONVENING

- 2.1 **Meeting required by law:** Kiwibank shall, whenever required to do so pursuant to the Financial Markets Conduct Act 2013 or any other applicable law, convene a meeting of the Holders.
- 2.2 **By Holders:** Kiwibank shall, at the request in writing of Holders holding not less than 5% of the aggregate Face Value of the Notes then outstanding, convene a meeting of the Holders. The request must state the nature of the business proposed to be dealt with at the meeting concerned.
- 2.3 **By Kiwibank:** Kiwibank may at any time of its own volition convene a meeting of the Holders.
- 2.4 **Place of meeting:** Each meeting will be held in Wellington or at such other place and/or in such manner (including, but not limited to, use of telephone, video or internet conferencing technology) as designated by Kiwibank.
- 2.5 **Regulations:** Meetings of Holders shall be convened and held in accordance with the provisions of this schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this schedule, as Kiwibank may determine from time to time.

3. NOTICE OF MEETINGS

- 3.1 **Notice:** Kiwibank must ensure that written notice of the time and place of a meeting of Holders is sent to the following at least 15 working days before the meeting:
- (a) every Holder entered in the Register as at the close of business 5 working days prior to the despatch of the notice that is entitled to receive notice of the meeting;
 - (b) the Registrar; and
 - (c) every director of Kiwibank.
- 3.2 **Contents of Notice:** The notice must state:
- (a) 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;
 - (b) the text of any Special Resolution to be submitted to the meeting; and
 - (c) the right of a Holder to appoint a proxy.
- 3.3 **Accidental omission:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Holder does not invalidate the proceedings at that meeting.
- 3.4 **Adjourned meeting:** 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.

4. QUORUM

- 4.1 **Quorum required:** No business may be transacted at a meeting of Holders if a quorum is not present.
- 4.2 **Quorum for Special Resolution:** A quorum for a meeting of Holders at which a Special Resolution is to be submitted is present if Holders or their Representatives are present who hold Notes with a combined Face Value of no less than 25% of the Face Value of the Notes held by those persons who are entitled to vote on the business to be transacted by the meeting, and in any case at least 2 Holders or their Representatives must be present.
- 4.3 **Quorum for other business:** A quorum for any other business at a meeting of Holders is present if Holders holding at least 10% of the Face Value of the Notes are present in person or by their Representative and in any case at least 2 Holders or their Representatives must be present.
- 4.4 **Quorum not present:** Despite regulation 4.1, if a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called under regulation 2.2, the meeting is dissolved; and
 - (b) in the case of any other meeting, the meeting is adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as Kiwibank may appoint. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their Representatives present are a quorum.
- 4.5 **Present by audio and other means:** To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum if the form of that audio, audio and visual or electronic communication has been approved by the chairperson of the meeting.

5. CHAIRPERSON

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

6. RIGHT TO ATTEND AND SPEAK

- 6.1 Any:
- (a) director, officer or solicitor, auditor or accountant of Kiwibank;
 - (b) person appropriately authorised by Kiwibank;
 - (c) Holder or Holder's Representative; or
 - (d) the Registrar,
- may attend any meeting and all such persons will have the right to speak at the meeting.

7. ADJOURNMENT

7.1 **Chairperson may adjourn:** The chairperson of the meeting may, with the consent of the meeting at which a quorum is present, and will, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

7.2 **Business at adjourned meeting:** No business will be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

8. ONLY PERSONS ON REGISTER RECOGNISED

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

9. AUTHORITY TO VOTE

9.1 **Voting:** An individual Holder may vote personally or by their Representative and a Holder which is a corporation may vote by its Representative. A Holder may appoint more than one Representative, each such Representative being authorised to act on behalf of the Holder in respect of a specified Face Value of Notes.

9.2 **Entitlement:** The persons named in the Register as Holders at the Proxy Closing Time, or the Representative(s) or the personal representatives or assignees in bankruptcy of any such Holder will be exclusively entitled to vote in person or by Representative in respect of the Notes recorded as owned by them.

10. PROXIES

10.1 **In writing:** The instrument appointing a proxy must be in writing signed by the appointer or their attorney or, if the appointer is a corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.

10.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder. A holder of a proxy will have the right to speak at the meeting.

10.3 **Deposit of proxy:** The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a solicitor or in any other manner approved by Kiwibank, must be deposited at the place and in the manner specified by Kiwibank in the notice convening the meeting (or, if no such place is appointed, then at the registered office of Kiwibank) not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless Kiwibank, in its absolute discretion, elects to accept any instrument of proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.

10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form approved by Kiwibank and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.

10.5 **Proxy valid for meeting:** An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any

provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.

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

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

(however expressed) will be valid and effectual as though it were in favour of a named person and will, in the case of paragraph (a) above, constitute the person holding the office of the chairperson of Kiwibank or, in the case of paragraph (b) above, the person who chairs the meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointer. If the Holder gives the proxy discretion in any such instrument of proxy or does not make an election in respect of a resolution, the Holder will be deemed to be directing the proxy to vote in favour of the relevant resolution(s).

11. HOLDER MAY APPOINT ATTORNEY

11.1 Except where a Holder is a member of the Kiwibank Group, any Holder may by power of attorney appoint an attorney (who need not be a Holder) to vote and act on their behalf at any meeting. An attorney will be entitled to produce evidence of their appointment at any time before the Proxy Closing Time. An attorney who is so empowered may exercise the Holder's right to appoint a proxy.

12. CORPORATE REPRESENTATIVES

12.1 **Authority:** A Representative of a Holder which is a corporation or a corporation sole will, until their 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 their authority to act at any time before the Appointed Time of, or at, the meeting or adjourned meeting or for the taking of a poll at which the Representative proposes to vote.

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

13. VOTING PROCEDURE AND POLLS

13.1 **Show of hands:** A resolution (other than a Special Resolution) put to the vote of a meeting will be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by:

- (a) the chairperson of the meeting;
- (b) Kiwibank or any representative of Kiwibank; or
- (c) one or more Holders or their Representatives holding or representing not less than 5% in aggregate Face Value of the Notes.

A declaration by the chairperson of the meeting that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded.

- 13.2 **Special Resolution:** A Special Resolution put to the vote of a meeting will be decided on a poll.
- 13.3 **Number of votes:**
- (a) On a show of hands each person present at the meeting and entitled to vote (whether personally or as a Representative) will have one vote only. On a poll every Holder who is present in person or by a Representative will have one vote for every Note of which that person is the Holder as at the date of the meeting.
 - (b) 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 their votes or cast all the votes they use in the same way.
 - (c) Neither Kiwibank nor any other member of the Kiwibank Group will be entitled to vote in relation to any Notes held by them.
- 13.4 **Poll:** If a poll is demanded in accordance with regulation 13.1 or required under regulation 13.2, it will be taken in the manner directed by the chairperson of the meeting and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 13.5 **Chairperson has no casting vote:** The chairperson of any meeting will not have a casting vote in addition to the votes (if any) to which the chairperson may be entitled as a Holder or on behalf of Holders.
- 13.6 **Time for poll:** A poll demanded on the election of a chairperson of the meeting or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and in a place appointed by the chairperson. 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 **No disturbance:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.
- 13.8 **Joint Holders:** 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 **Disqualification:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Notes in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by Kiwibank at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.

14. SPECIAL RESOLUTIONS

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

- (a) sanction either unconditionally or upon any conditions the release of Kiwibank from the payment of all or any part of the moneys payable pursuant to the Conditions or the Notes;
- (b) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against Kiwibank or its assets however those rights arise;
- (c) assent to any amendment to the terms of the Conditions proposed or agreed to by Kiwibank and to authorise Kiwibank to execute any supplemental deed embodying any such amendment;
- (d) give any sanction, assent, release or waiver of any breach or default by Kiwibank under any of the provisions of the Conditions; or
- (e) sanction any scheme for the reconstruction of Kiwibank or for the amalgamation of Kiwibank with any other corporation where such sanction is necessary.

However, no such amendment, alteration, modification, waiver, variation, compromise or arrangement may be made or entered into with respect to the Conditions (whether by Special Resolution or otherwise) that would affect, or potentially affect, the eligibility of the Notes as "Tier 2 Capital" under the RBNZ's prudential standards at the relevant time unless the RBNZ has been notified of the proposal and has not objected to it.

14.2 **Binding on Holders:** A Special Resolution passed by Holders in accordance with this schedule will be binding upon all the Holders whether or not they were present or entitled to be present at the relevant meeting, or signed the relevant resolution pursuant to regulation 16, as the case may be, and all Holders will be bound to give effect to that resolution. The passing of any such resolution will, as between Kiwibank and the Holders, be conclusive evidence that the circumstances justify the passing thereof. Notwithstanding the foregoing a resolution which affects a particular Holder only, rather than the rights of all Holders generally, or of a particular Class of Holders generally, will not be binding on such Holder unless such Holder agrees to be bound by the terms of such resolution:

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

held meetings of the Holders of each Class so affected or pursuant to regulation 16.

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

15. MINUTES TO BE KEPT

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

16. RESOLUTIONS IN WRITING

- 16.1 **Special Resolution:** Anything that may be done by Holders by a Special Resolution passed at a meeting of Holders may be done by a resolution in writing signed by Holders who hold Notes with a combined Face Value of no less than 75% of the Face Value of the Notes held by those Holders entitled to vote on the resolution at a meeting of Holders.
- 16.2 **Counterparts:** Any such resolution may consist of several documents in similar form, each signed by one or more Holders.
- 16.3 **Execution:** Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.
- 16.4 **Notice of proposed resolution:** Kiwibank must ensure:
- (a) that a proposed resolution under this regulation 16 is dated with the date on which the proposed resolution is first sent to a person entitled to vote for the purpose of signing (the "circulation date");
 - (b) that the proposed resolution is sent to every person entitled to vote;
 - (c) as far as is reasonably practicable, the proposed resolution is sent under paragraph (b) on the circulation date; and
 - (d) that a proposed resolution sent under paragraph (b) is accompanied by a statement of the effect of regulation 16.5 below.
- 16.5 **Lapse of proposed resolution:** A proposed resolution under this regulation lapses if it is not passed under this regulation 16 within 3 months after the circulation date.

- 16.6 **Non-receipt of notice:** The accidental omission to send a proposed resolution or statement under regulation 16.5 above to a person entitled to vote does not invalidate a resolution passed under this regulation 16.
- 16.7 **Copies:** Kiwibank must, within 5 working days after a resolution is passed under this regulation 16, send a copy of the resolution to every person entitled to vote who did not sign the resolution and on whose behalf the resolution was not signed.