

Security Trust Deed

Arvida Limited (*Borrower*)

The entities listed in Part I of
Schedule 1 (*Initial Obligors*)

The financial institutions listed in
Part II of Schedule 1 (*Initial Banks*)

The entities listed in Part III of
Schedule 1 (*Initial Hedging Banks*)

The entities listed in Part IV of
Schedule 1 (*Initial Transactional
Banks*)

ANZ Bank New Zealand Limited
(*Agent*)

NZGT Security Trustee Limited
(*Security Trustee*)



CONTENTS

1	DEFINITIONS AND CONSTRUCTION	1
1.1	Defined Terms	1
1.2	References	12
1.3	Miscellaneous	13
1.4	Rights and Obligations of Beneficiaries	14
1.5	Security Trustee as Trustee	14
1.6	Provision Relating to Future Beneficiary Representatives	14
1.7	Security Sharing Deeds:	14
1.8	Future Obligor	15
2	DECLARATION OF TRUST	15
2.1	Trust	15
3	PAYMENTS BEFORE ENFORCEMENT	16
3.1	Payments Prior to Enforcement	16
3.2	Application of Receipts	16
4	PAYMENTS AFTER ENFORCEMENT	16
4.1	Distribution of Security Proceeds	16
4.2	Pari Passu Ranking	17
4.3	Trust	17
4.4	Failure of Trust	18
4.5	Set-Off Rights	18
4.6	Payments Deemed to Include Deductions	19
4.7	Certificate as to Secured Money	19
4.8	Unwinding	20
4.9	Contingent Liabilities	20
5	ENFORCEMENT	20
5.1	Default Events	20
5.2	Enforcement	21
5.3	Notification of Enforcement – No USPP	21
5.4	Consultation – No USPP	21
5.5	Direction to Enforce – No USPP	21
5.6	Direction to Enforce – USPP Outstanding	22
5.7	Powers of Sale	24
5.8	Administrator appointed to Obligor	24
6	FURTHER FUNDING	25
6.1	Approval Notice	25
6.2	Procedure for Approval	25
6.3	Additional Approved Funding	25
6.4	Accession Deed	26
7	ASSIGNMENT	27
8	SECURITY RELEASES, RESIGNATION OF AN OBLIGOR AND INSURANCE PROCEEDS	27



8.1	Repayment of Total Secured Money	27
8.2	Release of Security Interests and Support Obligations	28
8.3	Resignation of an Obligor	29
8.4	Insurance Proceeds	29
9	SECURITY TRUSTEE'S POWERS, OBLIGATIONS AND LIABILITY	29
9.1	Custody of Security Documents	29
9.2	Appointment of Security Trustee	29
9.3	Remuneration	30
9.4	Security Trustee's Duties	31
9.5	Rights and Discretions of Security Trustee	31
9.6	Responsibility for Documentation	32
9.7	No Responsibility to Monitor	32
9.8	Security for Liability	32
9.9	Reliance by Security Trustee	33
9.10	Credit Approval and Appraisal	33
9.11	Additional Powers	33
9.12	Indemnity from Beneficiaries	34
9.13	Security Trustee May Decline to Act	34
9.14	No Liability for Security Documents	34
9.15	Investment of Funds	34
9.16	Delegation by Security Trustee	35
9.17	Security Trustee's General Undertakings	35
9.18	Representations and Warranties by the Security Trustee	35
9.19	Security Trustee as Beneficiary	36
10	APPOINTMENT OF NEW SECURITY TRUSTEE, REMUNERATION, ETC.	36
10.1	Appointment	36
10.2	Removal of Security Trustee	36
10.3	Resignation	36
10.4	Costs and Documentation	36
10.5	Accountability	37
11	COVENANTS	37
11.1	Protection of Purchaser	37
11.2	No Action to Detriment	37
11.3	Beneficiaries to consult	37
12	REGISTER	38
13	NOTICE	38
13.1	Method	38
13.2	Addresses	38
13.3	Receipt	38
13.4	Electronic communication	39
14	WAIVERS AND REMEDIES	40
14.1	Exercise of Rights	40
14.2	Amendments and Waivers	40
14.3	Determinations	42



14.4	Abstentions	42
14.5	Transferees bound	43
14.6	Limitations on revocation	43
14.7	Failure to respond	43
14.8	Disenfranchisement of Beneficiaries	43
15	RELEASE AND REINSTATEMENT	43
15.1	Release and Discharge	43
15.2	Reinstatement	43
16	INDEMNITIES	44
16.1	General indemnities	44
16.2	Indemnity to the Security Trustee	44
17	RESTRICTIONS ON HEDGE COUNTERPARTIES AND TRANSACTIONAL BANKS	45
17.1	Hedging Banks	45
17.2	Transactional Banks	45
18	MISCELLANEOUS PROVISIONS	46
18.1	Partial Invalidity	46
18.2	Indemnities and reimbursements	46
18.3	Counterparts	46
18.4	Governing Law	46
18.5	Delivery by Obligors	46
18.6	Perpetuity Period	46
18.7	Modified application	47
18.8	Consent by Beneficiary Representative	47
18.9	Costs and Expenses	47
18.10	Trusts Act 2019	47
19	ANTI-MONEY LAUNDERING	48
19.1	Anti-Money Laundering	48
19.2	Information	48
19.3	Not a Trustee	49
19.4	Declaration	49
20	SECURITY TRUSTEE LIMITATION OF LIABILITY	49
21	BOND TRUSTEE LIMITATION OF LIABILITY	50
SCHEDULE 1		52
Parties		52
SCHEDULE 2		56
Approval Notice		56
SCHEDULE 3		57
Form of Accession Deed		57

**SCHEDULE 4**

Obligor Accession and Supplemental Security Deed

59

59

SCHEDULE 5

Form of Resignation Letter

63

63



SECURITY TRUST DEED

Date: 17 September 2020 (as most recently amended and restated on 25 January 2021)

PARTIES

Arvida Limited (*Borrower*)

The entities listed in Part I of Schedule 1 (*Initial Obligors*)

The financial institutions listed in Part II of Schedule 1 (*Initial Banks*)

The entities listed in Part III of Schedule 1 (*Initial Hedging Banks*)

The entities listed in Part IV of Schedule 1 (*Initial Transactional Banks*)

ANZ Bank New Zealand Limited (*Agent*)

NZGT Security Trustee Limited (*Security Trustee*)

BACKGROUND

- A Certain of the Beneficiaries have provided, or agreed to provide and may in the future provide, financial accommodation to the Obligors.
- B The Obligors have granted certain Security Interests and guarantees in favour of the Security Trustee (and the Obligors may in the future grant or agree to grant additional Security Interests to the Security Trustee) and guarantees in respect of their indebtedness to the Beneficiaries.
- C The Obligors and the Beneficiaries have agreed that the Security Rights and Support Obligations (other than any Direct Guarantee) among other things shall be held by the Security Trustee for the benefit of the Beneficiaries.
- D The Borrower, the Initial Obligors, the Initial Banks, the Initial Hedging Banks, the Initial Transactional Banks, the Agent and the Security Trustee have agreed to enter into this deed to record arrangements agreed by them.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms

In this deed, unless the context requires otherwise:

1992 ISDA Master Agreement means the Master Agreement (Multicurrency – Cross Border) as published by the International Swaps and Derivatives Association, Inc.

2002 ISDA Master Agreement means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.



Accession Deed means an accession deed substantially in the form set out in Schedule 3.

Affiliate means, in relation to any entity, a subsidiary of that entity or a holding company of that entity or any subsidiary of that holding company or any person controlled by or under the control of that entity.

Agent means ANZ Bank New Zealand Limited acting in its capacity as agent under the Bank Facility Agreement or any successor or replacement agent appointed in accordance with the Bank Facility Agreement.

AML/CTF Law means the Financial Transactions Reporting Act 1996, the Terrorism Suppression Act 2002, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and any other anti-money laundering, counter-terrorism financing, economic or trade sanctions laws or regulations including without limitation, any laws or regulations imposing "know your customer" or other identification checks or procedures, that apply in any jurisdiction.

Approval Notice means an approval notice substantially in the form set out in Schedule 2 issued by the Borrower to the Security Trustee pursuant to clause 6.1.

Approved Financial Accommodation means:

- (a) all loans and facilities provided by a Beneficiary under or pursuant to the Bank Facility Agreement;
- (b) all Transactional Banking Facilities and all loans and other financial accommodation provided by a Transactional Bank that is a Bank or former Bank (or Affiliate of a Bank or former Bank) to an Obligor under or pursuant to any Transactional Banking Document;
- (c) all Treasury Products provided and Hedging Transactions entered into pursuant to any Hedging Agreement between a Hedging Bank that is a Bank or former Bank (or Affiliate of a Bank or former Bank) and the Borrower, and all Hedging Liabilities owing or payable thereunder;
- (d) all bonds or notes issued under the Bond Documents;
- (e) all bonds or notes issued under the USPP Lending Documents; and
- (f) any other loans, facilities, debt security issuance, Treasury Products, Hedging Transactions or financial accommodation entered into or obtained by an Obligor and approved from time to time under clause 6.

Bank means, at any time:

- (a) each Initial Bank;
- (b) any bank or other financier which is party to the Bank Facility Agreement at that time; and



- (c) any bank or other financier and which has become party to this deed in accordance with clause 6.4,

and which, in any case, is party to the Bank Facility Agreement as a 'Lender' (as defined in the Bank Facility Agreement) at that time.

Bank Facility Agreement means the facilities agreement dated 10 July 2017 as amended and/or restated from time to time between, amongst others, the Borrower, the Initial Obligors, the Initial Banks and the Agent as the same may be modified, novated, supplemented, varied or replaced from time to time.

Bank Facility Default Event means an Event of Default as defined in the Bank Facility Agreement.

Bank Financing Documents means the Bank Facility Agreement, each "Finance Document" as defined in the Bank Facility Agreement and any document which the Borrower notifies the Security Trustee in writing as having been designated as such by the Agent and the Borrower in writing.

Beneficiary means:

- (a) the Security Trustee (on its own account and as security trustee under this deed);
- (b) the Agent;
- (c) each Bank;
- (d) each Hedging Bank;
- (e) each Transactional Bank;
- (f) the Bond Trustee (if any);
- (g) each Bondholder (if any);
- (h) each USPP Noteholder (if any); and
- (i) each person that becomes a Beneficiary pursuant to clause 6 of this deed,

and *Beneficiaries* means any one or more of them, as the context requires.

Beneficiary Representative means:

- (a) the Agent (as agent of the Banks);
- (b) each Bond Trustee (as bond trustee for the relevant Bondholders) and which has acceded to this deed as a Beneficiary Representative by executing and delivering to the Security Trustee an Accession Deed; and



- (c) any other person acting as trustee, agent or manager on behalf of any syndicate or group of other Beneficiaries and which has acceded to this deed as a Beneficiary Representative by executing and delivering to the Security Trustee an Accession Deed.

Bond Default Event means an event of default (howsoever defined) under the Bond Documents.

Bond Documents means the wholesale and/or retail bond issuance documents which the Borrower notifies the Security Trustee in writing as having been designated as such by the relevant Bond Trustee and the relevant Obligor in writing.

Bondholder means any holder of one or more Bonds from time to time.

Bonds means bonds issued by an Obligor under the Bond Documents.

Bond Transactions means the bond transactions entered into by the Borrower or an Obligor pursuant to the Bond Documents and, when referring to the "Bond Transactions" of a particular Bondholder, means the "Bond Transactions" of that Bondholder, and *Bondholder Transaction* shall have a corresponding meaning.

Bond Trustee means, following its accession to this deed in such capacity, each trustee or supervisor under the Bond Documents or any successor or replacement trustee or supervisor appointed in accordance with the Bond Documents.

Business Day means a day (other than a Saturday or Sunday) on which registered banks are generally open for business in Auckland, New Zealand.

Commitment means, in relation to a Beneficiary on any date, the NZD Equivalent of the total amount which as at that date that Beneficiary has agreed to make available under all of its Approved Financial Accommodation to the extent that amount has not been cancelled or otherwise reduced (except where such cancellation or reduction has occurred following a Default Event in which case the Commitment of the relevant Beneficiary shall be the aggregate of its Secured Money).

Composite Guarantee and General Security Deed means the composite guarantee and general security deed dated 17 December 2014 as amended and/or amended and restated from time to time granted by each Obligor in favour of the Security Trustee.

Credit Participation means, on any date:

- (a) where the Beneficiary Representative or Unrepresented Beneficiary is a Bank (or, in the case of a Beneficiary Representative, represents a Bank) and the relevant decision relates to a waiver, amendment or consent request only and no Default Event is subsisting, the NZD Equivalent (as determined by the Security Trustee) of the aggregate amount of its Commitments (or, in the case of a Beneficiary Representative, the Commitments of the Banks that it represents) on that date; or,



- (b) in any other case, in relation to a Beneficiary Representative or Unrepresented Beneficiary, the NZD Equivalent (as determined by the Security Trustee) of the aggregate principal amount of its Secured Money (or, in the case of a Beneficiary Representative, the Secured Money of the Beneficiaries that it represents) on that date,

in each case, as certified in writing to the Security Trustee by the relevant Beneficiary Representative or Unrepresented Beneficiary.

For the purposes of this definition, the Secured Money of a Beneficiary in relation to Hedging Liabilities and Secured Money under Transactional Banking Documents shall only be counted for decisions relating to the exercise of any Security Rights or the enforcement of any Support Obligations and shall be as certified to the Security Trustee by the relevant Beneficiary and, with respect to Hedging Liabilities, calculated as the net amount (if any) that would be payable on the relevant date by an Obligor to such Beneficiary calculated in accordance with section 6(e) of the 2002 ISDA Master Agreement, section 6(e) of the 1992 ISDA Master Agreement or the equivalent provisions of any other framework agreement used to document a Treasury Product (as applicable) if all Treasury Products provided by that Beneficiary to an Obligor were closed out in full for default by the Beneficiary and if such amount is negative, the relevant Secured Money shall be deemed to be zero.

Default Event means a Bank Facility Default Event, a Bond Default Event or a USPP Default Event.

Direct Guarantee means any guarantee, indemnity or resolve pledge granted by an Obligor in favour of a Beneficiary other than the Security Trustee in respect of obligations of one or more other Obligors to that Beneficiary.

Distribution Date means each day on which moneys available for distribution under clause 4.1 are to be applied in accordance with that clause.

Enforcement means the exercise by the Security Trustee or any Beneficiary of any Security Right or the enforcement by the Security Trustee of any Support Obligations.

Financing Documents means:

- (a) the Bank Financing Documents;
- (b) the Bond Documents;
- (c) the USPP Lending Documents;
- (d) each Hedging Agreement;
- (e) each Transactional Banking Document;
- (f) each other document evidencing any Approved Financial Accommodation;



- (g) the Security Documents; and
- (h) any other document which the Borrower notifies the Security Trustee in writing as having been designated as such by each Beneficiary Representative, each Unrepresented Beneficiary and the Borrower in writing.

Hedging Agreement means any swap or other hedging agreement which is entered into between a Hedging Bank and the Borrower. It includes any master agreement and any Treasury Product, transaction or confirmation under it.

Hedging Bank means:

- (a) each Initial Hedging Bank;
- (b) each other Bank or former Bank (or Affiliate of a Bank or former Bank) that is a party to a Hedging Agreement with the Borrower and which has become party to this deed in accordance with clause 6.4; and
- (c) any other person that provides, or agrees to provide, Treasury Products to the Borrower provided that those Treasury Products have been approved in accordance with clause 6 and the relevant person has acceded to this deed by executing and delivering to the Security Trustee an Accession Deed in accordance with clause 6.4.

Hedging Liabilities means, on any date in relation to any Hedging Bank, the net amount (if any) payable on that date by the Borrower to that Hedging Bank calculated in accordance with section 6(e) of the 2002 ISDA Master Agreement, Section 6(e) of the 1992 ISDA Master Agreement or the equivalent provision of any other framework agreement used to document a Treasury Product (as applicable) following close-out of all Hedging Transactions then outstanding between the Borrower and that Hedging Bank.

Hedging Transactions means all transactions that are Treasury Products entered into by the Borrower with any Hedging Bank, whether prior to, on or after the date of this deed and Hedging Transaction shall have a corresponding meaning.

Insolvency Event means in relation to an Obligor at any time:

- (a) an application is made to a court for an order, or an order is made or an effective resolution is passed for the dissolution, liquidation, re-organisation or winding-up of any Obligor or a notice of intention to remove the Obligor from the register is given, in each case except for the purpose of a reconstruction or voluntary liquidation previously approved in writing by the Security Trustee (acting on the instructions of all the Majority Beneficiaries); or
- (b) an encumbrancer (including a statutory supervisor) takes possession or a receiver, statutory manager, administrator, trustee, liquidator, provisional liquidator or similar officer is appointed of the whole or any part of the assets or undertaking of any Obligor;



- (c) a distress, attachment, execution or other legal process is levied or enforced or is attempted (including by a court or other authority) or an order to execute a judgment (however described) is made against any Obligor or any of the assets of the Obligor, for an amount of or in excess of NZ\$1,000,000 in aggregate (or its equivalent in any other currency), and is not discharged or stayed within 14 Business Days (other than where contested in good faith by appropriate proceedings where an adequate reserve has been created and is being maintained and which, in the opinion of the Security Trustee, could reasonably be expected to be successful); or
- (d) any Obligor:
 - (i) is declared or becomes insolvent, is unable or admits inability to pay its debts as they fall due, or is presumed to be unable to pay its debts when they fall due;
 - (ii) suspends or threatens to suspend or stop payments generally on any of its debts;
 - (iii) commences negotiations or convenes a meeting with any one or more of its creditors with a view to the general compromise, readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors other than with the written consent of the Security Trustee (acting on the instructions of the Majority Beneficiaries);
 - (iv) seeks or obtains protection from its creditors under any statute or any other law; or
- (e) any Obligor is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989 or any recommendation is made by the Financial Markets Authority to the Minister of Justice that the Obligor, be placed in statutory management under that Act; or
- (f) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) – (e) above happens under the laws of any applicable jurisdiction in respect of that person;

Major Default means the occurrence of any of the following:

- (a) default by an Obligor in the payment when due of:
 - (i) the principal amount of any Secured Money on the maturity date or other scheduled date for repayment thereof and the default continues for a period of 5 Business Days (or such longer grace period as may apply under the terms of the relevant Financing Document) after the date when due;
 - (ii) any interest payable in respect of Secured Money on the relevant interest payment date and the default continues for a period of 5



Business Days (or such longer grace period as may apply under the terms of the relevant Financing Document) after the date when due; or

- (b) an Insolvency Event; or
- (c) the Security Trustee (acting on the instructions of the Majority Beneficiaries), determines that, in respect of any asset of an Obligor subject to the Security Documents having a value of \$1,000,000 or more:
 - (i) any Security Interest over the asset (other than a Security Interest created by the Security Documents) is enforced or becomes enforceable;
 - (ii) the Security Interest created by the Security Documents cease for any reason to have the priority ranking contemplated by its terms or is invalid or unenforceable; or
 - (iii) the asset is liable to forfeiture, cancellation or, due to the occurrence of any act or omission of an Obligor, is at risk of a material deterioration in the value of the asset; or
- (d) default by an Obligor under any financial undertaking or ratio in any Financing Document (and any relevant cure period has expired); or
- (e) any other event which the Borrower and the Security Trustee (acting on the instructions of the Majority Beneficiaries) agree is a Major Default for the purposes of this deed.

Majority Beneficiaries means, at any time, Beneficiary Representatives and Unrepresented Beneficiaries whose Credit Participations at that time aggregate to more than 66.66% of the total Credit Participations at that time.

NZD Equivalent means, in relation to an amount denominated in a currency other than NZ\$, the amount of NZ\$ exchangeable from that currency on the relevant date at the exchange rate determined by the Reserve Bank of New Zealand and published on that date on the Reuters Monitor System at page RBNZB1 at or about 10am (NZ time) on the relevant date and, in relation to an amount denominated in NZ\$, that amount or if no such rate is published, as determined by the Security Trustee acting reasonably.

Obligor has the meaning given to that term in the Composite Guarantee and General Security Deed.

PPSA means the Personal Property Securities Act 1999.

Relevant Obligation has the meaning given in clause 6.1.

Represented Beneficiary means a Beneficiary that is represented by a Beneficiary Representative as that Beneficiary's agent, trustee or manager.



Resignation Letter means a letter substantially in the form set out in Schedule 5 (*Form of Resignation Letter*).

Secured Money means, in relation to a Beneficiary, all indebtedness actually or contingently owing or payable by the Obligors to that Beneficiary from time to time (whether principal, interest, premium, make-whole amount, a close-out amount or otherwise) under a Financing Document.

Secured Obligations means all present and future obligations which an Obligor (whether alone or with any other person and in any capacity) has or owes to the Security Trustee or any other Beneficiary (whether alone or with any other person and in any capacity) under a Financing Document, other than obligations to pay or deliver any Secured Money.

Secured Property means the assets of the Obligors which are subject to Security Interests created under the Security Documents.

Security Documents means this deed, the Composite Guarantee and General Security Deed, the Security Sharing Deeds, each mortgage granted by an Obligor in favour of the Security Trustee and any additional Security Interest (or document recording the same) granted from time to time by an Obligor to the Security Trustee (in its capacity as such).

Security Interest means any security interest as defined in section 17(1) of the PPSA or other security for payment of money, performance or obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements) and includes any agreement to create any of them or allow them to exist.

Security Proceeds means all amounts received, realised or recovered by or on behalf of a Beneficiary or the Security Trustee under any Security Document or pursuant to the exercise of any Security Right or enforcement of any Support Obligation, or as the context may require, the balance of those amounts remaining undisbursed under clause 4.1 and includes moneys applied by a Beneficiary in reduction of the Secured Money to that Beneficiary in the circumstances contemplated by clause 4.5.

Security Rights means all powers, rights, actions, remedies or procedures available to a Beneficiary or the Security Trustee by way of enforcement or realisation of any Secured Property secured subject to any Security Document (including, without limitation, the right to appoint a receiver, the right to apply moneys in reduction of the Secured Money to that Beneficiary in the circumstances contemplated by clause 4.5) but excludes any right of acceleration or set-off available to a Beneficiary or the Security Trustee, or the application of close-out netting in respect of any Hedging Liabilities, and *Security Right* shall have a corresponding meaning.



Security Sharing Deeds means:

- (a) the security sharing deed dated 10 July 2017 (as amended and supplemented from time to time) between, each entity listed in Schedule 1 thereto as an initial operator, the Security Trustee and Covenant Trustee Services Limited as statutory supervisor;
- (b) the security sharing deed dated 30 July 2019 (as amended and supplemented from time to time) between, each entity listed in Schedule 1 thereto as an initial operator, the Security Trustee and Anchorage Trustee Services Limited as statutory supervisor; and
- (c) any other document agreed in writing by the Borrower and the Security Trustee to be a Security Sharing Deed for the purposes of this deed.

Standstill Expiry Date means the earliest to occur of:

- (a) the Agent declaring that the amounts owing under the Bank Facility Agreement are prematurely due and payable;
- (b) the Security Trustee enforcing any Security Rights or Support Obligations;
- (c) the Security Trustee (acting on the instructions of the Majority Beneficiaries) confirming in writing to the parties to this deed that the Standstill Expiry Date has occurred; or
- (d) the Agent confirming that all amounts outstanding under the Bank Facility Agreement have been repaid in full and all commitments under the Bank Facility Agreement have been cancelled.

Standstill Period means a period starting on the date that a Default Event occurs and ending on the earlier to occur of:

- (a) the date that Default Event ceases to continue; or
- (b) the Standstill Expiry Date.

Support Obligation means an obligation or offer to provide funds (including by subscription or purchase) or otherwise be responsible in respect of an obligation or indebtedness, or the financial condition or insolvency, of another person granted by an Obligor in favour of the Security Trustee under any Financing Document, including a guarantee, indemnity, letter of credit or legally binding letter of comfort, or an obligation or offer to purchase an obligation or indebtedness of another person and, for the avoidance of doubt, includes the guarantee, undertaking and indemnity given by each Obligor in favour of the Security Trustee (for itself and on behalf of each Beneficiary) under clause 6 of the Composite Guarantee and General Security Deed.

Total Secured Money means the aggregate of each Beneficiary's Secured Money.



Transactional Bank means, at any time:

- (a) each Initial Transactional Bank;
- (b) any other Bank or former Bank (or Affiliate of a Bank or former Bank) that is party to any Transactional Banking Document with an Obligor and which has become party to this deed in accordance with clause 6.4; and
- (c) any other person that provides, or agrees to provide, Transactional Banking Facilities to any Obligor, provided that those Transactional Banking Facilities have been approved in accordance with clause 6 and the relevant person has acceded to this deed by executing and delivering to the Security Trustee an Accession Deed in accordance with clause 6.4

Transactional Banking Document means any document recording or governing the terms of any Transactional Banking Facilities provided by a Transactional Bank to an Obligor.

Transactional Banking Facilities means any day to day banking facilities considered transactional in accordance with standard market practice in New Zealand (including any day to day banking, overdraft, cash management, set-off or credit card facilities) and made available to the Group by a bank or other financial institution.

Treasury Product means a currency or interest rate swap, interest cap collar or floor agreement, currency or interest rate option, foreign currency transaction or dealing line, or any combination of the above or any similar or substitute hedging, currency or interest rate risk management or other treasury product entered into for hedging and not speculative purposes.

Trusts Act means the Trusts Act 2019.

Unrepresented Beneficiary means:

- (a) each Hedging Bank (in its capacity as such);
- (b) each Transactional Bank (in its capacity as such);
- (c) each USPP Noteholder (if any); and
- (d) any other Beneficiary that is not represented by a Beneficiary Representative as the Beneficiary's agent, trustee or manager and which has acceded to this deed as an Unrepresented Beneficiary by executing and delivering to the Security Trustee an Accession Deed.

USPP means any private placement of debt securities made by the Borrower or an Obligor to investors in the United States of America from time to time.

USPP Default Event means any Event of Default under and as defined in the USPP Note Agreement.



USPP Lending Documents means each USPP Note Agreement, the associated USPP Notes and any Direct Guarantee given by an Obligor in relation to any USPP Transactions.

USPP Note Agreement means each note purchase agreement entered into by the Borrower with one or more USPP Noteholder, pursuant to which the Borrower issues USPP Notes, as the same may be modified, novated, supplemented, varied or replaced from time to time.

USPP Noteholder means any holder of USPP Notes from time to time.

USPP Notes means the notes issued under a USPP Note Agreement from time to time.

USPP Required Holders means, at any time and in respect of any USPP Transaction, the holders of more than 50% in principal amount of the USPP Notes at the time outstanding under that USPP Transaction (exclusive of the USPP Notes then owned by the Borrower or any of its Affiliates (as defined in the relevant USPP Note Agreement)).

USPP Transaction means a USPP transaction entered into by the Borrower pursuant to USPP Lending Documents in relation to that transaction and, when referring to the "USPP Transactions" of a particular USPP Noteholder, means the transaction documented under the associated USPP Lending Documents.

1.2 **References**

Except to the extent that the context otherwise requires, any reference in this deed to:

indebtedness includes:

- (a) any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) relating to the payment or repayment of money and includes all moneys in the nature of principal, interest, costs, fees, premium, make-whole amount, close out amount, charges and expenses; and
- (b) the net amount (if any) that is payable on the relevant date by an Obligor to a Beneficiary in relation to a Treasury Product calculated in accordance with section 6(e) of the 2002 ISDA Master Agreement, section 6(e) of the 1992 ISDA Master Agreement or the equivalent provisions of any other framework agreement used to document a Treasury Product (as applicable) as a result of the Treasury Products provided by that Beneficiary to an Obligor being closed out in full (and/or such net amount that would otherwise be payable if such Treasury Products were closed out in full, as applicable); and
- (c) the maximum amount (if any) payable by an Obligor to any Beneficiary in respect of any bond, guarantee, letter of credit, bill of exchange or similar instrument issued at the request of an Obligor by that Beneficiary.



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

A *receiver* includes a receiver and manager.

A *subsidiary* of any person means:

- (a) any subsidiary of such person within the meaning given to that term in section 5 of the Companies Act 1993; or
- (b) any "in substance subsidiary" of that person in accordance with generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013; or
- (c) any limited partnership, regardless of which jurisdiction's laws it is organised under, the general partner of which is a subsidiary of any person within the meaning of paragraph (a) and/or (b) above.

tax means any tax, levy, impost, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.3 **Miscellaneous**

- (a) References to a person shall be deemed to include references to their respective successors and permitted assigns (or, in respect of the Agent, the Security Trustee or the Bond Trustee, any predecessor in title);
- (b) The headings in this deed are inserted for convenience only and shall be ignored in construing this deed;
- (c) Unless otherwise specified references to a part, clause, sub-clause, paragraph or schedule are to a part, clause sub-clause, paragraph or schedule of this deed;
- (d) Unless the context otherwise requires, words (including defined words) denoting the singular include the plural and vice versa;
- (e) References to any document (however described) shall include references to that document as modified, novated, supplemented, varied or replaced from time to time;
- (f) A Default Event or a Major Default *continues* or *subsists* until either remedied to the Security Trustee's satisfaction or waived by the relevant Beneficiary/ies in writing in accordance with the relevant Financing Documents; and
- (g) References to a law includes present or future common or customary law and any statute, statutory instrument, subordinate legislation, regulation, by-law, order or other legislative measure or any judgment or judicial or administrative order or determination or decision, in any jurisdiction.



1.4 **Rights and Obligations of Beneficiaries**

(a) ***Several obligations***

The obligations of each Beneficiary Representative and Unrepresented Beneficiary under this deed are several. The failure of a Beneficiary Representative or Unrepresented Beneficiary to perform its obligations under this deed will not relieve any other Beneficiary Representative or Unrepresented Beneficiary of its obligations under this deed. No Beneficiary Representative or Unrepresented Beneficiary will be responsible for the obligations of any other Beneficiary Representative or Unrepresented Beneficiary under this deed except as expressly provided in this deed.

(b) ***Enforcement by Security Trustee***

No Beneficiary is entitled to enforce any Security Document (other than this deed and any Direct Guarantee) other than through the Security Trustee.

(c) ***Enforcement by Beneficiary Representative***

No Beneficiary who is represented by a Beneficiary Representative is entitled to enforce this deed or any rights under this deed other than through its Beneficiary Representative.

1.5 **Security Trustee as Trustee**

In this deed, unless otherwise provided to the contrary:

- (a) a reference to the Security Trustee is a reference to the Security Trustee in its capacity as trustee of the trust constituted under clause 2.1 only, and in no other capacity; and
- (b) a reference to the property of the Security Trustee is a reference to the property of the Security Trustee only in the capacity described in paragraph (a) above.

1.6 **Provision Relating to Future Beneficiary Representatives**

Any provisions in this deed requiring any party to enter into discussions or consultation with, give or receive notices to or from, or otherwise deal with a Beneficiary Representative (other than the Agent) shall not take effect until the date that Beneficiary Representative has acceded to this deed as a Beneficiary Representative by executing and delivering to the Security Trustee an Accession Deed and the Security Trustee countersigning that Accession Deed.

1.7 **Security Sharing Deeds:**

The Beneficiaries acknowledge that:

- (a) as contemplated by the Security Sharing Deeds, certain Obligors have granted security in favour of a statutory supervisor;
- (b) the Security Trustee has entered into and is bound by the Security Sharing Deeds and that the Beneficiaries' entry into and rights under this deed will not vary, discharge, terminate or affect in any way the rights and obligations of the Security Trustee under the Security Sharing Deeds; and



- (c) the Security Trustee must act in accordance with the Security Sharing Deeds and, to the extent of any inconsistency between this deed and the Security Sharing Deeds in respect of obligations owing to the Beneficiaries, the Security Sharing Deeds will prevail.

1.8 **Future Obligors**

- (a) Following the acquisition or incorporation of any company which is a subsidiary of the Borrower, the Borrower may procure (and shall if required to do so by any Financing Document) that subsidiary to:
 - (i) deliver a duly executed accession and supplemental security deed to the Security Trustee, such deed to be substantially in the form set out in Schedule 4;
 - (ii) procure from another secured party such deeds of priority and subordination as the Security Trustee may require; and
 - (iii) produce to the Security Trustee such resolutions, director's certificates, documents, legal opinions or other evidence as the Security Trustee may require in order to be satisfied as to the validity and enforceability of that accession and supplemental security deed or deed of priority and subordination.
- (b) The Security Trustee shall provide a copy of each accession and supplemental security deed to the Beneficiaries (or, where represented by a Beneficiary Representative, that person) promptly on receipt.

2 **DECLARATION OF TRUST**

2.1 **Trust**

The Security Trustee shall hold the benefit of all assets it holds or acquires in its capacity as trustee of the security trust established under this deed, including (without limitation):

- (a) the Security Documents (other than any Direct Guarantee) and the Security Interests granted thereunder;
- (b) the Security Rights and the Support Obligations (other than in respect of any Direct Guarantee);
- (c) any obligations expressed to be given by an Obligor in favour of the Security Trustee (as trustee of the security trust established under this deed); and
- (d) any proceeds of the above (including Security Proceeds) or any investment of the proceeds,

in trust for the benefit of the Beneficiaries on the terms and conditions contained in this deed.



3 PAYMENTS BEFORE ENFORCEMENT

3.1 Payments Prior to Enforcement

Prior to the date of Enforcement, all moneys received by and payment made to a Beneficiary or a Beneficiary Representative from an Obligor in payment or reduction of the Secured Money, shall, except for the circumstances contemplated by clause 15.2, be and be deemed to have been received or paid absolutely to or on behalf of that Beneficiary or relevant Beneficiary Representative and shall not be subject to the provisions of this deed preserving rights to *pari passu* distribution following the date of Enforcement.

3.2 Application of Receipts

Prior to the date of Enforcement, moneys received by a Beneficiary Representative or by or on behalf of a Beneficiary from an Obligor in payment of Secured Money to a Beneficiary under any Financing Document must be applied in reduction of the Secured Money to the relevant Beneficiary in the manner (if any) required under or pursuant to the relevant Financing Document.

4 PAYMENTS AFTER ENFORCEMENT

4.1 Distribution of Security Proceeds

On and after the date of Enforcement, the Security Proceeds shall be applied by the Security Trustee as follows:

- (a) *first*, in or towards satisfaction of the annual fees or other remuneration and indemnity payments (if any) and all other amounts payable to the Security Trustee (including any former Security Trustee) in its capacity as Security Trustee and any costs, charges, liabilities and expenses so incurred by the Security Trustee in its capacity as Security Trustee under the provisions of the Financing Documents to which it is a party, together with interest and any goods and services tax payable thereon (if applicable) as provided for therein;
- (b) *second*, in or towards the payment of any costs, charges, losses, liabilities and expenses of and incidental to the appointment of any receiver and the exercise of the receiver's rights including its remuneration and all outgoings paid by the receiver together with any goods and services tax payable thereon (if applicable) as provided for therein;
- (c) *third*, in or towards payment pro rata of any Secured Money payable to the Beneficiaries. All payments in respect of Secured Money payable to a Represented Beneficiary shall be made to its Beneficiary Representative for distribution in accordance with the relevant Financing Documents; and
- (d) *fourth*, if any surplus remains, to the relevant Obligor or to such other persons entitled to it.

All payments to be paid by the Security Trustee pursuant to this clause shall be made at such times as the Security Trustee in its absolute discretion determines to be as soon as reasonably practical, having regard to the particular circumstances.



However, where the Security Trustee is aware that any amounts are the proceeds of any Secured Property which is subject to any Security Interest or other interest that to any extent ranks ahead of any Security Interest arising under a Security Document, the Security Trustee shall apply those proceeds as between the holder of that Security Interest and the amounts referred to above in the order required by law.

In sub-paragraph (a) amounts to be applied for the benefit of the present Security Trustee and any former Security Trustees rank equally despite any lien or charge in favour of a former Security Trustee.

If the Security Trustee pays the total amount referred to in sub-paragraph (c) and (d) to the credit of an account in the name of the relevant holder of a Security Interest, Obligor or other party with any bank carrying on business in New Zealand, the Security Trustee or receiver will be under no further liability in respect of it.

Nothing in sub-paragraphs (c) and (d) renders the Security Trustee a trustee for anyone other than the Beneficiaries.

4.2 **Pari Passu Ranking**

The provisions of clause 4.1 shall apply notwithstanding:

- (a) the dates moneys are advanced or re-advanced by the Beneficiaries under the Financing Documents; or
- (b) the respective dates of execution or order of registration of any Financing Document; or
- (c) the partial repayment of the Secured Money to a Beneficiary; or
- (d) anything contained in any Financing Document; or
- (e) any rule of law or equity, or any other matter or thing whatsoever,

and on the basis that, as between the Beneficiaries, the Secured Money to each Beneficiary and the Security Documents shall be deemed to rank on a pari passu basis in point of priority as running and continuing securities for all Secured Money to each Beneficiary.

4.3 **Trust**

If, on or after the date of Enforcement, a Beneficiary Representative or a Beneficiary receives Security Proceeds (other than pursuant to clause 4.1 or in the circumstances contemplated in clause 4.5) or any other payment from an Obligor, the Beneficiary so receiving such moneys shall:

- (a) pending distribution hold such moneys for and on behalf of the other Beneficiaries for their respective entitlements under clause 4.1 (and to the extent such moneys are payable to the other Beneficiaries, in trust for the other Beneficiaries); and



- (b) pay such moneys to the Security Trustee as soon as reasonably practicable for distribution to the appropriate Beneficiaries.

Without prejudice to the obligations of the Beneficiary Representatives and the Beneficiaries pursuant to this clause 4, the trust created by this clause 4.3 shall have a perpetuity period of 80 years from the date of this deed but shall cease to apply upon payment of all the Secured Money to the Beneficiaries (in respect of which a release and discharge signed pursuant to clause 15.1 shall be conclusive evidence).

For the purposes of clause 4.3, the Security Trustee shall be entitled to deal with the Bond Trustee only on behalf of the Bondholders.

4.4 **Failure of Trust**

If, and to the extent that, the trust created by clause 4.3 is for any reason not properly constituted or is otherwise not effective, each Beneficiary agrees (on an indemnity basis) forthwith upon demand to pay to the Security Trustee on behalf of the other Beneficiaries the money so received as described in clause 4.3.

4.5 **Set-Off Rights**

If, on or after the date of Enforcement, a Beneficiary (other than a Bondholder) has any rights under or pursuant to any Financing Document to apply:

- (a) credit balances on any account of an Obligor with that Beneficiary; or
- (b) any term deposits of an Obligor with that Beneficiary (other than amounts held in the name of an Obligor in trust for any other person),

in each case against or in reduction of indebtedness to that Beneficiary, or:

- (c) otherwise has rights of set-off, combination of accounts, liens or other rights at law or in contract which have the same effect once exercised (not being rights that arise pursuant to operation of the close-out netting provisions of the 2002 ISDA Master Agreement, the 1992 ISDA Agreement or the equivalent provisions of any other framework agreement used to document Treasury Products),

and any such rights are exercised, and, as a result, that Beneficiary receives or recovers moneys or the relevant indebtedness to it is reduced (such moneys or reduction in indebtedness, *Recovered Moneys*) then:

- (d) that Beneficiary shall immediately advise the Security Trustee in writing of the receipt of the Recovered Moneys;
- (e) that Beneficiary shall pay an amount equivalent to the Recovered Moneys to the Security Trustee, such payment to be made within one Business Day of receiving a request from the Security Trustee;
- (f) the Security Trustee shall distribute the payment in respect of the Recovered Moneys in accordance with clause 4.1; and



- (g) the Recovered Moneys shall be treated as having been paid to the Beneficiaries pursuant to clause 4.1(c) rather than to the particular Beneficiary receiving the amount of or reduction in respect of Recovered Moneys in the first instance.

If any part of the Recovered Moneys has to be refunded by the Beneficiary first receiving the amount of or reduction in respect of Recovered Moneys (*Initial Recipient*) each Beneficiary which has received a distribution pursuant to paragraph (f) above shall within one Business Day of request being made by the Initial Recipient pay to the Initial Recipient its proportionate share of the amount to be refunded together with any interest required to be paid by the Initial Recipient whether for all or part of the period from the date of distribution to the date of reimbursement to the Initial Recipient.

4.6 **Payments Deemed to Include Deductions**

As between the Beneficiaries, a Beneficiary shall be deemed to have received from the Security Trustee any amount which the Security Trustee is at any time required by law to deduct or withhold on account of tax from any payment made by the Security Trustee to that Beneficiary under this deed. However, this shall not prejudice any right which that Beneficiary may have against an Obligor or any other person (whether under a grossing up clause or otherwise). If the Security Trustee is required to make any such deduction or withholding, the Security Trustee shall promptly deliver to the relevant Beneficiary Representatives or Unrepresented Beneficiaries evidence of that deduction or withholding and (where remittance is required) of the remittance thereof to the relevant taxing or other authority.

4.7 **Certificate as to Secured Money**

- (a) The Security Trustee may from time to time request from a Beneficiary Representative or any Unrepresented Beneficiary (and that Beneficiary Representative or Unrepresented Beneficiary shall promptly deliver to the Security Trustee) a certificate of the amount, currency and nature of any amounts actually or contingently owed to it (or, in the case of a Beneficiary Representative, the Beneficiary or the Beneficiaries it represents) at a date nominated by the Security Trustee for such purpose and as to such other matters as the Security Trustee may deem necessary or desirable to enable it to determine the amount of any Commitment, Credit Participation, Secured Money or any other amount, or the composition of the Majority Beneficiaries, for any purpose in connection with this deed.
- (b) The Borrower undertakes to the Security Trustee that it will:
 - (i) on at least a semi-annual basis and at any other time on request by the Security Trustee verify to the Security Trustee the then-current details set out in the register maintained by the Security Trustee under clause 12 (and provide the Security Trustee with up-to-date details as necessary); and
 - (ii) on request by the Security Trustee at any time, provide the Security Trustee with such other information concerning the financial condition or affairs of the Obligors (including in relation to any of their related



entities) as may reasonably be requested for the purpose of the Security Trustee exercising its rights and performing its duties and obligations under this deed.

- (c) The Security Trustee shall be entitled to rely on any such certificate or other information provided in accordance with this clause 4.7, and shall not be liable or responsible to the Beneficiaries or any other person for so relying.

4.8 Unwinding

Any appropriation which later transpires to have been, or is determined by the Security Trustee to have been, invalid shall be deemed never to have been made (to the extent that such appropriation is unwound) and any distribution which has to be refunded shall be refunded and shall be deemed never to have been made.

4.9 Contingent Liabilities

When distributing moneys owed in accordance with clause 4.1, if any amount is contingently owing to any Beneficiary the Security Trustee shall be entitled to retain an amount equal to that contingent indebtedness and shall place such amount upon deposit with a registered bank until that contingent indebtedness becomes actually due and payable or otherwise ceases to be contingently owed (at which point such amount shall be applied in accordance with the terms of clause 4.1). Any Beneficiary receiving sums in respect of a contingent liability shall place such sums upon deposit on behalf of the Borrower bearing a commercial rate of interest and, in the event that such contingent liability or any part thereof shall fail to mature, shall return the relevant sums (together with any interest earned) to the Security Trustee for distribution in accordance with clause 4.1.

5 ENFORCEMENT

5.1 Default Events

Each Beneficiary Representative and Unrepresented Beneficiary undertakes to the other Beneficiary Representatives and each other Unrepresented Beneficiary that it shall promptly notify the Security Trustee (who shall promptly give such notification to each other Beneficiary Representative and each other Unrepresented Beneficiary) of:

- (a) the occurrence of any Bank Facility Default Event, any USPP Default Event or any Bond Default Event or other Default Event (as applicable) of which any of its officers administering the relevant Bank Facility Agreement, USPP Transaction or Bond Transactions (as applicable) has actual notice or knowledge and provide reasonable details of the relevant Default Event to the Security Trustee (who shall promptly give such information to each other Beneficiary Representative and each other Unrepresented Beneficiary); and
- (b) the subsequent waiver or remediation of any Bank Facility Default Event, any USPP Default Event or any Bond Default Event or other Default Event (as applicable).



5.2 **Enforcement**

- (a) If at the time that a Default Event occurs, there is no USPP issued and outstanding, clauses 5.3 to 5.5 inclusive shall apply and clause 5.6 shall not apply.
- (b) If at the time that a Default Event occurs, there are USPP issued and outstanding, clause 5.6 shall apply and clauses 5.3 to 5.5 inclusive shall not apply.

5.3 **Notification of Enforcement – No USPP**

If, following the occurrence of:

- (a) a Bank Facility Default Event, the Agent;
- (b) a Bond Default Event, the Bond Trustee; or
- (c) any other Default Event, the relevant Beneficiary Representative or Unrepresented Beneficiary,

is of the view that, to the extent permitted, Security Rights should be exercised and/or Support Obligations enforced, then that party must, in addition to complying with the obligation under clause 5.1, promptly notify the Security Trustee in writing of such view (who shall promptly give such written notification to each other Beneficiary Representative and each other Unrepresented Beneficiary).

5.4 **Consultation – No USPP**

Following the giving of a written notice by the Security Trustee pursuant to clause 5.3, and unless the relevant Default Event is a Major Default which is subsisting (in which case, no consultation is required under this clause 5.4), each Beneficiary Representative and Unrepresented Beneficiary must (and so undertakes to each other to) consult with the other Beneficiary Representatives and Unrepresented Beneficiaries for a period of at least 10 Business Days from the date of such notice with a view to agreeing appropriate action in the circumstances to protect the mutual interests of the Beneficiaries (including the best means of achieving an orderly realisation on enforcement of Security Rights and/or Support Obligations to the advantage of the Beneficiaries and with a view to maximising recovery of the Total Secured Money).

5.5 **Direction to Enforce – No USPP**

- (a) Where clause 5.4 applies, following the minimum period of consultation contemplated in clause 5.4, the Majority Beneficiaries may provide written notice to the Security Trustee setting out enforcement steps the Security Trustee is required to take.
- (b) If the relevant Default Event is a Major Default then:
 - (i) where the relevant Major Default has occurred under a Bank Financing Agreement, the Agent; or



- (ii) where the relevant Major Default has occurred under the Bond Documents, the Bond Trustee,

may provide written notice to the Security Trustee setting out the enforcement steps it requires the Security Trustee to take.

- (c) Upon receiving instructions from the relevant Beneficiaries (in this clause 5.5 the "**Instructing Beneficiaries**") under clause 5.5(a) or 5.5(b) as the case may be, the Security Trustee shall:
 - (i) if applicable, notify each other Beneficiary (or its Beneficiary Representative) of any enforcement steps it has been instructed to take pursuant to clause 5.5(b); and
 - (ii) subject to clause 5.5(d), proceed to exercise the relevant Security Rights and enforce the relevant Support Obligations in the manner required by the Instructing Beneficiaries.
- (d) If a Major Default has occurred under both the Bank Facility Agreement and a Bond Document and more than one Instructing Beneficiary provides a notice to the Security Trustee under clause 5.5(b) and there is a conflict or inconsistency between the instructions so given as to how (but not whether) the Security Rights should be exercised and/or Support Obligations enforced then the Security Trustee shall act on the instructions of the Instructing Beneficiaries representing the Beneficiary Representatives and / or Unrepresented Beneficiaries with the greater aggregate Credit Participations. If any Instructing Beneficiaries requires Security Rights to be exercised and/or Support Obligations enforced, then (notwithstanding any instructions of other Instructing Beneficiaries to not take such action) the Security Trustee must take enforcement action and cannot cease doing so without the consent of the Instructing Beneficiaries who required that action to be taken.
- (e) For the purposes of determining whether clause 5.5(d) applies, the Security Trustee may rely on each written notice received from an Instructing Beneficiary no later than eleven Business Days after the Security Trustee first gives any notice pursuant to clause 5.1 (or, if applicable, such lesser period as may be necessary to ensure the Security Rights are exercised within any applicable 'decision period' under section 239ABL of the Companies Act 1993) and shall not be liable or responsible to the Beneficiaries or any other person for so acting or for failing to act on any notice received from an Instructing Beneficiary after that date.

5.6 **Direction to Enforce – USPP Outstanding**

- (a) If at the time that a Default Event occurs, there are USPP issued and outstanding then:
 - (i) where the relevant Default Event occurs under a Bank Financing Agreement or is an Insolvency Event, the Agent; or



- (ii) where the relevant Default Event occurs under the USPP Lending Documents or is an Insolvency Event, the relevant USPP Required Holders; or
- (iii) where the relevant Default Event occurs under the Bond Documents or is an Insolvency Event, the Bond Trustee,

may provide written notice to the Security Trustee and to each other Beneficiary (or its Beneficiary Representative) setting out the enforcement steps it requires the Security Trustee to take.

- (b) Upon receiving instructions from the relevant Beneficiaries (in this clause 5.6 the "**Instructing Beneficiaries**") under clause 5.6(a), the Security Trustee shall:
 - (i) notify each other Beneficiary (or its Beneficiary Representative) of any enforcement steps it has been instructed to take pursuant to clause 5.6(a); and
 - (ii) subject to clause 5.6(c), proceed to exercise the relevant Security Rights and enforce the relevant Support Obligations in the manner required by the Instructing Beneficiaries.
- (c) If a Default Event occurs under more than one of the Bank Facility Agreement, the USPP Lending Documents and the Bond Documents and more than one Instructing Beneficiary provides a notice to the Security Trustee under clause 5.6(a) and there is a conflict or inconsistency between the instructions so given as to how (but not whether) the Security Rights should be exercised and/or Support Obligations enforced then the Security Trustee shall act on the instructions of the Instructing Beneficiaries representing the Beneficiary Representatives and / or Unrepresented Beneficiaries with the greatest aggregate Credit Participations. If any Instructing Beneficiaries requires Security Rights to be exercised and/or Support Obligations enforced, then (notwithstanding any instructions of other Instructing Beneficiaries to not take such action) the Security Trustee must take enforcement action and cannot cease doing so without the consent of the Instructing Beneficiaries who required that action to be taken.
- (d) For the purposes of determining whether clause 5.6(c) applies, the Security Trustee may rely on each written notice received from an Instructing Beneficiary no later than eleven Business Days after the Security Trustee first gives any notice pursuant to clause 5.1 (or, if applicable, such lesser period as may be necessary to ensure the Security Rights are exercised within any applicable 'decision period' under section 239ABL of the Companies Act 1993) and shall not be liable or responsible to the Beneficiaries or any other person for so acting or for failing to act on any notice received from an Instructing Beneficiary after that date.



5.7 **Powers of Sale**

In exercising any power of sale under a Security Document the Security Trustee must exercise the powers and discretions conferred on it in a manner which ensures that the duties of a mortgagee exercising enforcement rights are complied with but, subject to those requirements, the Security Trustee shall have the following rights and powers:

- (a) to take independent legal and/or commercial advice;
- (b) to obtain such valuations and reports as it considers prudent in the circumstances;
- (c) to exercise the Security Rights and/or enforce the Support Obligations for and on behalf of the Beneficiaries in such manner as the Security Trustee determines in its discretion will best achieve an orderly realisation to the advantage of the Beneficiaries and with a view to maximising recovery of the Total Secured Money (including sale prices, terms of sale, timing of sales, management and use of the Secured Properties pending sale, and application of receivables); and
- (d) to be paid its costs and expenses properly incurred (including legal and valuation costs) on distribution of Security Proceeds in accordance with clause 4.1.

5.8 **Administrator appointed to Obligor**

Without limiting clause 9.5, if:

- (a) the Security Trustee is notified by a party to this deed or under the Companies Act 1993 that an administrator has been appointed (other than by the Security Trustee) to an Obligor; and
- (b) the Security Trustee is entitled under section 239ABL of the Companies Act 1993 to enforce Security Rights over that Obligor's Secured Property within the decision period provided for under that section,

then:

- (c) the Security Trustee shall promptly notify the Beneficiary Representatives and Unrepresented Beneficiaries and seek instructions from them as to whether or not it should enforce the Security Rights and Support Obligations within that decision period; and
- (d) unless it receives instructions from the Majority Beneficiaries not to enforce by a time which it considers to be the latest time by which instructions should be received in order for it to be able to arrange the enforcement of the Security Documents within that period, then the Security Trustee must (subject to clauses 9.5(d) and 9.13)) enforce those Security Rights, Support Obligations and the relevant Security Documents.



6 FURTHER FUNDING

6.1 Approval Notice

The Borrower may, if permitted to do so under the Financing Documents, at any time after the date of this deed execute and deliver an Approval Notice to the Security Trustee designating a loan, facility, other debt issuance or financial accommodation with any party or a transaction that is a Treasury Product entered or to be entered into by an Obligor (a *Relevant Obligation*) as Approved Financial Accommodation.

For the avoidance of doubt:

- (a) all loans and facilities provided by any Banks pursuant to the Bank Facility Agreement; and
- (b) all Treasury Products provided by a Hedging Bank that is a Bank or former Bank (or Affiliate of a Bank or former Bank) pursuant to a Hedging Agreement; and
- (c) all loans, facilities and other financial accommodation provided by a Transactional Bank that is a Bank or former Bank (or Affiliate of a Bank or former Bank) pursuant to a Transactional Banking Document,

shall automatically constitute Approved Financial Accommodation and no Approval Notice shall be required to be executed under this clause 6.1 in respect of the same.

6.2 Procedure for Approval

At the same time as it delivers the Approval Notice under clause 6.1 the Borrower will provide:

- (a) a summary of the relevant finance or transaction (together with a copy of the Approval Notice) to the Security Trustee, each Beneficiary Representative and each Unrepresented Beneficiary (copying the Security Trustee) together with evidence that the issue of the Approval Notice is permitted under each Financing Document and any other information as the Security Trustee, a Beneficiary Representative or an Unrepresented Beneficiary reasonably requires (it being agreed that such summary need not include, and may not be requested to include, information of a sensitive nature as between the Obligors and the proposed financier); and
- (b) a certificate to the Security Trustee from representative director and either the chief executive officer or chief financial officer of the Borrower certifying that the incurrence of the Relevant Obligation is permitted under the Financing Documents.

6.3 Additional Approved Funding

Where:

- (a) any Approval Notice is delivered pursuant to clause 6.1 and 6.2; and



- (b) the Borrower has complied with its obligations under clause 6.2 in respect of that Approval Notice (including by delivering to the Security Trustee the certificate referred to therein):

then, following the completion of any steps required under clause 6.4 (if applicable), the Security Trustee will (subject to the Security Trustee not having received notice that a Default Event has occurred) enter the details of the Relevant Obligation on the register maintained by it under clause 12 and with effect from that date the additional indebtedness of the relevant Obligor to the proposed Beneficiary shall:

- (c) constitute Approved Financial Accommodation for the purposes of this deed;
- (d) form part of the Secured Money to the relevant Beneficiary for the purposes of this deed and rank and be secured on the same basis as specified in clause 4.2; and
- (e) be included and be taken into account as part of the Secured Money to the relevant Beneficiary for the purposes of distributions under clause 4.1

6.4 **Accession Deed**

Where:

- (a) the Borrower:
 - (i) has delivered an Approval Notice pursuant to clause 6.1, relating to a loan, facility, other debt security issuance or financial accommodation entered into by an Obligor with a counterparty that is not a Beneficiary;
 - (ii) has satisfied its obligations under clause 6.2 in respect of that Approval Notice and has delivered a certificate to the Security Trustee confirming the same; and
 - (iii) delivers to the Security Trustee an Accession Deed duly executed by the relevant counterparty; or
- (b) the Borrower or a Beneficiary Representative delivers to the Security Trustee an Accession Deed duly executed by a transferee of Secured Money or Commitments under a Financing Document and the applicable requirements to transfer those Secured Money or Commitments have been satisfied in accordance with the terms of the applicable Financing Document (and the Borrower or Beneficiary Representative has delivered a certificate to the Security Trustee confirming the same);
- (c) the Borrower or Agent delivers to the Security Trustee an Accession Deed duly executed by a bank or other financier that has become party to the Bank Facility Agreement as a 'Lender' in accordance with its terms (including as a result of any amendment or supplement to the Bank Facility Agreement) (and the Borrower or Agent has delivered a certificate to the Security Trustee confirming the same); or



- (d) the Borrower delivers to the Security Trustee an Accession Deed duly executed by a Bank or an Affiliate of a Bank that intends to provide Treasury Products to the Borrower or Transactional Banking Facilities to an Obligor in accordance with the terms of the Bank Facility Agreement (and the Borrower has delivered a certificate to the Security Trustee confirming the same),

then:

- (e) each Beneficiary irrevocably and unconditionally authorises and instructs the Security Trustee to execute such Accession Deed and the Security Trustee shall, as soon as reasonably practicable after receipt by it (but subject to its receipt of any information required under clause 19.2), execute and accept the same if the Accession Deed appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this deed, and provide a copy of the same to the Borrower; and
- (f) upon receipt, the Borrower shall provide a copy of the signed Accession Deed to each Beneficiary Representative and each Unrepresented Beneficiary.

7 ASSIGNMENT

- (a) No Obligor may create or allow to exist a Security Interest over its interest in this deed or assign or otherwise dispose of or deal with its right under this deed, other than pursuant to a Security Document.
- (b) Subject to any restrictions in the relevant Financing Documents, a Beneficiary may assign and transfer all or part of its rights under the Financing Documents to which it is party and/or of which the Beneficiary has the benefit, to any person and upon execution and delivery of an Accession Deed and the Security Trustee countersigning the same (or, in the case of a Bondholder, such assignment or transfer being recorded in a recognised securities register) such person shall become a Beneficiary for purposes of this deed. Each Beneficiary (except for a Bondholder) that assigns or transfers all or part of its rights in accordance with this clause (or, as applicable, its Beneficiary Representative) undertakes to inform the Security Trustee of such assignment or transfer and all related information as required by the Security Trustee to maintain the register of Beneficiaries in accordance with clause 12.

8 SECURITY RELEASES, RESIGNATION OF AN OBLIGOR AND INSURANCE PROCEEDS

8.1 Repayment of Total Secured Money

If the Security Trustee has received written notice from each Beneficiary Representative and Unrepresented Beneficiary that the Total Secured Money have been repaid, that the total Commitments of all Beneficiaries have been cancelled in full and that no payment made by an Obligor to any Beneficiary is likely to be voided under any provision or enactment relating to insolvency or liquidation or for any other reason, the Security Trustee shall deliver releases of the Security Documents



(other than any Direct Guarantee) executed by the Security Trustee to the relevant Obligor (as relevant).

8.2 Release of Security Interests and Support Obligations

If:

- (a) the Security Trustee sells or otherwise disposes of or deals with (or is to sell or otherwise dispose of or deal with) any Secured Property in accordance with instructions received under clause 5.5 or 5.6; or
- (b) an Obligor disposes (or intends to dispose) of any Secured Property or otherwise deals with (or intends to deal with) any Secured Property in any manner that requires the consent of the Security Trustee:
 - (i) where:
 - (A) the Agent has confirmed in writing to the Security Trustee that the disposal or dealing is permitted by the terms of the Bank Facility Agreement and that any conditions relating to that disposal or dealing or release have been or will be satisfied or waived to the satisfaction of the Agent; and
 - (B) the Security Trustee has received from a director of the Borrower a written confirmation (with a copy delivered by the Borrower to each other Beneficiary Representative and Unrepresented Beneficiary), in a form reasonably acceptable to the Security Trustee, that the disposal or dealing will not result in any breach of the terms of any Financing Document and that any conditions relating to that disposal or dealing have been satisfied or waived to its satisfaction; or
 - (ii) at the request of the Security Trustee (on instructions received under clause 5.5 or 5.6) where the disposal or dealing is consistent with those instructions,

the Security Trustee is authorised by the Beneficiaries to, and the Security Trustee shall, execute, without the need for any further referral to or authority from the Beneficiaries, any release of the Security Interests created by the Security Documents over that Secured Property (or, in the case of clause 8.3 (below), all Secured Property of that Obligor) and, where the shares in an Obligor are being (directly or indirectly) disposed of, or clause 8.3 (below) applies, any release of the Support Obligations granted by the relevant Obligor(s) and, where receipt of some or all of the disposal proceeds by the Security Trustee is a condition of the disposal, against the receipt of the relevant disposal proceeds.

The Security Trustee, each Beneficiary Representative and each Unrepresented Beneficiary agree to respond promptly to any request for confirmation under this clause 8.2.



8.3 **Resignation of an Obligor**

- (a) The Borrower may request that an Obligor (other than the Borrower) ceases to be an Obligor by delivering to the Security Trustee a Resignation Letter.
- (b) The Security Trustee shall accept a Resignation Letter and notify the Borrower each Beneficiary Representative and each Unrepresented Beneficiary of its acceptance if both:
 - (i) the Borrower has confirmed to the Security Trustee that no Default Event is continuing or would result from the acceptance of the Resignation Letter; and/or
 - (ii) the Majority Beneficiaries have consented in writing to the Borrower's request,

whereupon that company shall cease to be an Obligor and shall have no further rights or obligations under the Financing Documents as an Obligor.

8.4 **Insurance Proceeds**

If any event occurs which, pursuant to the terms of the Financing Documents, results in the insurance proceeds under any of the insurance policies over Secured Property effected by an Obligor being required to be paid to one or more Beneficiaries, then the following will apply:

- (a) prior to the date of any Enforcement, the proceeds payable under such insurance policies must be applied in accordance with each of the relevant Financing Documents and/or Security Sharing Deeds;
- (b) on or after the date of Enforcement, unless the Majority Beneficiaries agree in writing to the application of insurance proceeds as set out in paragraph (c) (below), the proceeds payable under such insurance policies must be applied in the same manner as contemplated by clause 4.1 (as if the Beneficiaries were exercising Security Rights and/or enforcing Support Obligations); and
- (c) on or after the date of Enforcement, if the Majority Beneficiaries agree to the relevant Obligor applying such insurance payments towards reinstatement of the relevant Secured Property, such insurance proceeds must be applied solely for that purpose and, pending application for such purpose, be held in trust (on behalf of the Obligors and the Beneficiaries) by the Security Trustee.

9 **SECURITY TRUSTEE'S POWERS, OBLIGATIONS AND LIABILITY**

9.1 **Custody of Security Documents**

The original Security Documents (other than any Direct Guarantee), to the extent provided, shall be held by the Security Trustee on behalf of the Beneficiaries and subject to the terms of this deed.

9.2 **Appointment of Security Trustee**

- (a) Subject to clause 10, each Beneficiary:



- (i) appoints the Security Trustee to act as its security trustee under the Security Documents (other than any Direct Guarantee) on the terms and conditions of this deed; and
- (ii) irrevocably authorise the Security Trustee to:
 - (A) enter into the Security Documents (other than any Direct Guarantee) on its behalf; and
 - (B) perform its obligations and exercise its powers expressly set out in this deed and the Security Documents (other than any Direct Guarantee) together with any other rights, powers, discretions or remedies that are reasonably incidental to those obligations and powers.
- (b) Without limiting the generality of clause 9.2(a) but subject to the Security Documents, the Security Trustee shall act as security trustee for the Beneficiaries in:
 - (i) entering into the Security Documents (other than any Direct Guarantee) to which it is a party;
 - (ii) making demand or claim for any moneys payable under any Security Document (other than any Direct Guarantee);
 - (iii) exercising the Security Rights and enforcing the Support Obligations (in each case, other than in respect of any Direct Guarantee) against the Obligors;
 - (iv) enforcing or attempting to enforce the Security Documents (other than any Direct Guarantee) or any part of them; and
 - (v) issuing and receiving notices under the Security Documents (other than any Direct Guarantee) on behalf of the Beneficiaries.

9.3 **Remuneration**

The Obligors agree:

- (a) to pay the Security Trustee, as and when due, such remuneration for the performance by the Security Trustee of its obligations and exercise of its powers under this deed as is agreed between them in writing from time to time; and
- (b) to pay to the Security Trustee on demand an amount equal to its costs, charges, liabilities and out-of-pocket expenses and legal costs (on a full indemnity basis) properly incurred (or, in the case of subparagraphs (i) and



(ii) and prior to the date of Enforcement, reasonably incurred) by the Security Trustee (as applicable) in connection with:

- (i) the performance of its obligations and exercise of its powers under this deed, any other Security Document or by law;
- (ii) the preparation and execution of this deed and any other Financing Document to which it is a party, and, in each case, any amendment to it; and
- (iii) any breach or default in the observance or performance by any Obligor of its obligations under this deed or any other Financing Document,

except, in each case, to the extent that they arise directly from the Security Trustee's fraud, dishonesty, gross negligence or wilful misconduct.

9.4 **Security Trustee's Duties**

The Security Trustee shall have only those duties and obligations which are expressly specified in this deed and any other Financing Document to which it is a party and those duties and obligations are solely of a mechanical and administrative nature and shall not have or be deemed to have any duty, obligation or responsibility to or relationship of trust or agency with any Obligor or any other person.

9.5 **Rights and Discretions of Security Trustee**

- (a) In the exercise of its rights under this deed or any other Financing Document, the Security Trustee will act in accordance with the instructions of the Majority Beneficiaries or, where clause 5.5(b) or clause 5.6 applies, on the instructions of the Instructing Beneficiaries, or otherwise as expressly specified. No Beneficiary has any right to instruct the Security Trustee to act or refrain from acting other than the Majority Beneficiaries or, where clause 5.5(b) or clause 5.6 applies, the Instructing Beneficiaries, or otherwise as expressly specified.
- (b) In the absence of such instructions the Security Trustee may act as it considers to be in the best interest of all the Beneficiaries or may refrain from taking any (or any further) action or exercising any right under or in respect of this deed or any other Financing Document to which it is a party until it has received instructions from the Majority Beneficiaries or, where clause 5.5(b) or clause 5.6 applies, the Instructing Beneficiaries, or otherwise as expressly specified.
- (c) Actions taken by the Security Trustee in accordance with this clause will be binding on all the Beneficiaries and the Security Trustee will not be liable to any Beneficiary for so acting (even if a Beneficiary's interests are prejudiced as a result).
- (d) Notwithstanding paragraphs (a) to (c) (inclusive) above, the Security Trustee is not obliged to take, or refrain from taking, action under this deed or any other Financing Document until it is first indemnified, secured or paid to its



satisfaction in accordance with clause 9.8 and/or 9.12 and unless the Security Trustee's liability is limited in the same manner as set out in clause 20.

- (e) Except where this deed or any other Financing Document to which it is a party expressly provides, the Security Trustee is not obliged to consult with any Beneficiary before giving a consent or making a determination under this deed or any other Financing Document.

9.6 Responsibility for Documentation

The Security Trustee will not be responsible to any Beneficiary or any Obligor for:

- (a) the execution, genuineness, validity, enforceability or sufficiency of this deed, the other Financing Documents or any other documents;
- (b) the collectability of amounts payable under any Financing Document; or
- (c) the accuracy of any statements (whether written or oral) made by any other party in or in connection with any Financing Document or any other communication or document.

9.7 No Responsibility to Monitor

- (a) The Security Trustee is not obliged to monitor or enquire as to whether or not any Default Event has occurred and will not be deemed to have knowledge of the occurrence of any Default Event. If however the Security Trustee receives notice from an Obligor or Beneficiary (excluding any Bondholder) of any Default Event it shall promptly notify the Beneficiary Representatives and each Unrepresented Beneficiary.
- (b) The Security Trustee is not obliged to monitor or enquire as to the accuracy or completeness of the details set out at any time in the register maintained by it under clause 12, and in maintaining that register is entitled to rely on all information provided to it for that purpose by any Obligor or Beneficiary (excluding any Bondholder).
- (c) The Security Trustee is not obliged to monitor or enquire as to whether the Majority Beneficiaries have complied with their obligations under clause 11.3 to consult with each other Beneficiary Representative and Unrepresented Beneficiary and, in receiving instructions from the Majority Beneficiaries where the Majority Beneficiaries are required to consult, is entitled to assume that the Majority Beneficiaries have complied with such consultation obligations and shall not be liable for any breach or non-compliance of the Majority Beneficiaries of their obligations to consult.

9.8 Security for Liability

The Security Trustee may require the receipt of security satisfactory to it, whether by way of payment in advance or otherwise, against any liability or loss which it will or may incur in taking any proceedings or action arising out of or in connection with any Security Document (other than any Direct Guarantee) before it commences those proceedings or takes that action. The Security Trustee will not be liable to any Beneficiary for any action taken or not taken by it under or in connection with any



Security Document unless directly caused by its fraud, dishonesty, gross negligence or wilful misconduct. No Beneficiary may take any proceedings against any officer, employee or agent of the Security Trustee in respect of any claim that it might have against the Security Trustee or in respect of any act or omission of any kind (including fraud, dishonesty, gross negligence or wilful misconduct) by that officer, employee or agent in relation to any Security Document.

9.9 Reliance by Security Trustee

The Security Trustee may:

- (a) rely on any notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
- (b) rely on any statement made or certificate given by a director or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify; and
- (c) engage, pay for and rely on legal or other professional advisers selected by it (including those in the Security Trustee's employment and those representing a Beneficiary other than the Security Trustee), and the Security Trustee shall not be liable or responsible to the Beneficiaries or any other person for any loss or damage arising from any act, default, omission or misconduct on the part of any such person selected by it in good faith and with due care.

9.10 Credit Approval and Appraisal

Each Beneficiary confirms that:

- (a) it has made its own independent investigation and assessment of the financial condition and affairs of each Obligor and their related entities in connection with its participation in this deed and has not relied on any information provided to it by the Security Trustee or any other Beneficiary;
- (b) it will continue to make its own independent appraisal of the credit worthiness of each Obligor and their related entities while any amount is or may be outstanding under a Financing Document;
- (c) neither the Security Trustee nor any Beneficiary has any duty either initially or on a continuing basis to provide any Beneficiary with any credit or other information concerning the financial condition or affairs of any Obligor or any of their related entities whether coming into its possession before, on or after the date of this deed; and
- (d) the Security Trustee has made no representations or warranties upon which the Beneficiary has relied, except to the extent set out in this deed.

9.11 Additional Powers

The rights and trusts conferred upon the Security Trustee by this deed and the Security Documents shall be in addition to any which may from time to time be vested in the Security Trustee by the general law.



9.12 Indemnity from Beneficiaries

- (a) Without limiting the liability of any Obligor under the Financing Documents, and in the case of the Bond Trustee subject always to clause 21, each Beneficiary (treating the Bondholders for this purpose as a single Beneficiary, acting through the Bond Trustee) shall, severally, forthwith on demand indemnify the Security Trustee for its proportion of any liability or loss incurred by the Security Trustee in any way relating to or arising out of this deed, any other Financing Document or the Security Trustee's acting as the Security Trustee, except to the extent that the liability or loss arises directly from the Security Trustee's fraud, dishonesty, gross negligence or wilful misconduct.
- (b) A Beneficiary's proportion of any liability under this clause 9.12 will be the proportion which its Credit Participation bears to the total Credit Participations at that time, or if the Credit Participations have been reduced to zero, immediately prior to the time they were reduced to zero. For the avoidance of doubt, this indemnity is a personal and non-assignable covenant to the Security Trustee from each Beneficiary and for the purposes of the Contract and Commercial Law Act 2017 confers no right or benefit enforceable by any creditor of the trust created pursuant to clause 2.1 of this deed and no creditor shall be entitled to subrogate itself to the Security Trustee's rights under this indemnity against the Beneficiaries.

9.13 Security Trustee May Decline to Act

Notwithstanding any other provision of this deed or any other Financing Document, the Security Trustee may refrain from doing anything which might, in its opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or be otherwise actionable at the suit of any person, and may do anything which, in its opinion, is necessary or desirable to comply with any such law, regulation or duty. The Security Trustee need not disclose any information relating to any Obligor or any of their related entities if the disclosure might, in the opinion of the Security Trustee, constitute a breach of any law or regulation or any duty of secrecy or confidentiality or be otherwise actionable at the suit of any person.

9.14 No Liability for Security Documents

The Security Trustee in its capacity as trustee or otherwise, any predecessor security trustee or any Beneficiary:

- (a) shall not be liable for any failure, omission, or defect in perfecting the security constituted by any Security Document or any security created thereby; and
- (b) may accept without enquiry such title as an Obligor may have to the Secured Property or any property which is intended to be Secured Property.

9.15 Investment of Funds

All moneys which are received by the Security Trustee in its capacity as trustee or otherwise may be invested in the name of or under the control of the Security Trustee in any investment for the time authorised by New Zealand law for the investment by trustees of trust money or in any other investments which may be selected by the Security Trustee on the instructions of the Majority Beneficiaries. Additionally, such moneys may be placed on deposit in the name of or under the control of the Security Trustee at such bank or institution and upon such terms as



the Security Trustee may think fit. The income from those investments shall be credited to the relevant account when received by the Security Trustee.

9.16 Delegation by Security Trustee

The Security Trustee may, with the prior written consent of the Majority Beneficiaries, delegate to any person any of the duties or obligations which are for the time being exercisable by the Security Trustee under this deed or the Security Documents. The Security Trustee shall not be liable or responsible to the Beneficiaries or any other person for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate.

9.17 Security Trustee's General Undertakings

The Security Trustee undertakes to the Beneficiaries that it will:

- (a) act honestly and in good faith in the performance of its functions as Security Trustee, and show the degree of care and diligence required of a trustee having regard to the extent of its rights and obligations under this deed;
- (b) act continuously as Security Trustee until this deed is terminated, or it retires or is removed in accordance with this deed;
- (c) hold, and account for, the Security Documents and any rights or proceeds relating thereto separate from any other property owned or administered by it; and
- (d) not sell or otherwise dispose or part with possession of any part of the Secured Property, except to the extent contemplated by this deed.

9.18 Representations and Warranties by the Security Trustee

The Security Trustee represents and warrants for the benefit of each Beneficiary that:

- (a) it is duly registered and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of the Financing Documents to which it is a party does not violate its constitution;
- (c) it has the power, and has taken all corporate and other action required, to enter into the Financing Documents to which it is party (and the transactions contemplated by them) and to authorise the execution and delivery of this deed and the performance of its obligations under this deed; and
- (d) this deed constitutes its valid and legally binding obligations and is enforceable in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping and registration.



9.19 Security Trustee as Beneficiary

Nothing in this deed will be deemed to prohibit the Security Trustee or any related company or director of the Security Trustee from being a Beneficiary or it or any of its subsidiaries from acting in any representative capacity for a Beneficiary provided that, in its capacity as a Beneficiary, neither the Security Trustee nor any such related company or director will enjoy any rights different to those enjoyed by any other Beneficiary.

10 APPOINTMENT OF NEW SECURITY TRUSTEE, REMUNERATION, ETC.

10.1 Appointment

The power of appointing a new Security Trustee shall, except as provided in this clause 10, be vested in the Majority Beneficiaries.

10.2 Removal of Security Trustee

The Majority Beneficiaries may at any time by notice in writing to the Borrower and the Security Trustee remove the Security Trustee for the time being under this deed and appoint a successor. The removal of a Security Trustee shall not become effective unless there remains a Security Trustee in office after such removal. The Security Trustee shall notify each Beneficiary Representative and each Unrepresented Beneficiary of its removal and/or the appointment of a new Security Trustee.

10.3 Resignation

- (a) The Security Trustee may resign by giving not less than one month's prior written notice to each Beneficiary Representative and each Unrepresented Beneficiary following receipt of which the Majority Beneficiaries shall appoint a successor Security Trustee.
- (b) If the Majority Beneficiaries have not, within one month after notice of the Security Trustee's resignation, appointed a successor Security Trustee which accepts the appointment, the Security Trustee may appoint a successor Security Trustee.
- (c) The resignation of the Security Trustee and the appointment of any successor Security Trustee will both become effective only upon the successor Security Trustee notifying each Beneficiary Representative and each Unrepresented Beneficiary that it accepts its appointment. On giving such notification, the successor Security Trustee will succeed to the position of the Security Trustee and thereafter the term Security Trustee (where used in this deed or any other Financing Document) will mean the successor Security Trustee.

10.4 Costs and Documentation

- (a) All reasonable costs and expenses associated with such change of Security Trustee will be borne by the Borrower.
- (b) The retiring Security Trustee shall make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under this deed. Upon its



resignation becoming effective this deed shall continue to benefit the retiring Security Trustee in respect of any action taken or not taken by it under or connection with this deed and the Security Documents while it was the Security Trustee and, subject to the obligations contained in the previous sentence of this clause 10.4(b), the retiring Security Trustee shall have no further obligations under this deed or the Security Documents.

10.5 Accountability

The Security Trustee shall not be accountable to any of the other Beneficiaries for any remuneration nor for any other payment of any nature (whether in respect of its costs, expenses or otherwise) which it has received or may receive from any person in respect of its acting as Security Trustee. The Security Trustee shall not by virtue of receiving such remuneration or other payment be deprived of any rights, powers, privileges or immunities under this deed or the Security Documents or under statute or at common law.

11 COVENANTS

11.1 Protection of Purchaser

A purchaser of any Secured Property dealing with the Security Trustee or any receiver appointed pursuant to any Security Document shall not be concerned in any way with the provisions of this deed but shall be entitled to assume that the Security Trustee is, or that receiver is, as the case may be, acting in accordance with the provisions of this deed or that Security Document.

11.2 No Action to Detriment

No Beneficiary shall do, nor permit to be done, any act or thing or enter into any agreement with any Obligor that would prejudice or affect in any way any of the arrangements recorded in this deed.

11.3 Beneficiaries to consult

Except where expressly provided otherwise, each Beneficiary Representative and each Unrepresented Beneficiary undertakes to each other Beneficiary Representative and Unrepresented Beneficiary that, prior to issuing instructions to the Security Trustee under any of clauses 9.5(a), 9.5(b), 9.15, 9.16, 14.2(a) or 14.2(b) as part of the Majority Beneficiaries, it will consult with each other Beneficiary Representative and Unrepresented Beneficiary for a period of 5 Business Days or any shorter period acceptable to the relevant Beneficiary Representative or Unrepresented Beneficiary in relation to the subject matter of the proposed instructions. For the avoidance of doubt and except for the purposes of clause 14.2(b), this undertaking is only to consult, and does not require the Majority Beneficiaries to reach an agreement with any Beneficiary Representative or Unrepresented Beneficiary before the Majority Beneficiaries give their instructions to the Security Trustee pursuant to the relevant clauses.



12 REGISTER

The Security Trustee shall maintain a register in which shall be recorded:

- (a) the name and address of each Beneficiary (other than Beneficiaries particulars of whom are recorded in a register kept by a recognised securities registrar); and
- (b) brief particulars of the Approved Financial Accommodation of each Beneficiary, including the original principal amount of the Approved Financial Accommodation, that Beneficiary's commitment under or in connection with the Approved Financial Accommodation, and currency of account,

and shall upon request by any Beneficiary (or, where one exists, its Beneficiary Representative) provide to that Beneficiary or Beneficiary Representative a copy of the information recorded in the register.

13 NOTICE

13.1 Method

Each notice, agreement and other communication (each a *communication*) to be given, delivered or made under this deed is to be in writing but may be sent by personal delivery, post (by airmail if to another country), facsimile or (subject to clause 13.4) email.

13.2 Addresses

Each communication under this deed is to be sent to the address of the relevant party which is:

- (a) in the case of the Initial Obligors, the Agent, the Initial Banks, the Initial Hedging Banks, the Initial Transactional Banks and the Security Trustee, set out in Schedule 1;
- (b) in the case of each new party to this deed, as notified to the Security Trustee on or prior to the date on which it becomes a party,

and in each case, to any other substitute address from time to time designated for that purpose by at least five Business Days' prior notice to the Security Trustee (or, in the case of notices to the Security Trustee, as designated by it to each other party).

13.3 Receipt

A communication under this deed will only be effective:

- (a) *Delivery:* in the case of personal delivery, when delivered;
- (b) *By Post:*
 - (i) if posted within the same country, five working days, in the place of receipt, after posting



- (ii) if posted to another country, eight working days after posting by airmail;
- (iii) if delivered to a document exchange, on delivery to the document exchange:

(c) *Email*: if sent by email, when delivered to the addressee in legible format,

provided that any communication received or deemed received after 5pm or on a day which is not a working day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next working day in that place.

13.4 **Electronic communication**

Any communication to be made between the parties to this deed under or in connection with this deed may be made by electronic mail or other electronic means. The parties:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) shall notify each other of any change to their address or any other such information supplied to them;
- (c) agree that an electronic communication made will be effective only when it is actually received in readable form and in the case of an electronic communication made to the Security Trustee, only if it is addressed in such a manner as the Security Trustee shall specify for this purpose;
- (d) agree that notwithstanding anything else in this deed, a certificate or other document required from an Obligor under this deed may not be served by e-mail unless the e-mail attaches a scanned copy of the signed certificate or other documents. If requested, the relevant Obligor must provide to the Security Trustee the original of the signed certificate or other document;
- (e) agree that in relation to any communication made to or received by, the Security Trustee (as the case may be) pursuant to this clause 13.4:
 - (i) has no obligation to investigate an instruction to check it was sent by the person it was purported to be sent by;
 - (ii) has no obligation to act on incorrect or incomplete instructions or instructions that do not follow the agreed process; and
 - (iii) is authorised to accept any email address advised to it by any authorised representative of the person making such communication.



14 WAIVERS AND REMEDIES

14.1 Exercise of Rights

Except as otherwise provided in this deed, all rights of the Security Trustee may be exercised at any time and from time to time at the absolute discretion of the Security Trustee. No failure on part of the Security Trustee to exercise, and no delay on its part in exercising, any right under this deed or any Security Document will operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies provided in this deed and the Security Documents are cumulative and not exclusive of any rights or remedies provided by law.

14.2 Amendments and Waivers

- (a) Subject to the terms of this deed, any provision of this deed or any Security Document (other than any Direct Guarantee) may be amended or supplemented or a waiver, consent or release given in respect of it only if the Borrower and the Security Trustee acting on the instructions of the Majority Beneficiaries agree in writing, but an amendment, supplement or waiver which:
- (i) changes or relates to clause 3, 4, 5, 6, 8.2, 9.5 or this 14.2 of this deed (or any of the defined terms directly or indirectly used therein);
 - (ii) changes the required majority or majorities of Beneficiaries (or any unanimity of Beneficiaries) necessary to enact any agreement, consent or waiver or deliver any instructions under this deed or any Security Document;
 - (iii) has the effect of permitting any release of any Secured Property, Support Obligation or Obligor from the Security Documents except as permitted by this deed prior to such amendment, supplement or waiver; or
 - (iv) expressly requires the consent of all of the Beneficiary Representatives and Unrepresented Beneficiaries,
- shall only be made or given by the Security Trustee acting on the instructions of all Beneficiary Representatives and Unrepresented Beneficiaries.
- (b) If any such proposed amendment, supplement, consent or waiver would have a material adverse effect on the Bondholders, any other group of Represented Beneficiaries or any Unrepresented Beneficiary or group of Unrepresented Beneficiaries or the Security Trustee, when compared with the effect it has on the other Beneficiaries, then solely for the purposes of giving instructions to the Security Trustee in relation to the relevant amendment, supplement, consent or waiver, any approval of the Majority Beneficiaries must also include the approval of the Bond Trustee or the relevant Beneficiary Representative, the other Unrepresented Beneficiary or group of Unrepresented Beneficiaries or the Security Trustee, as the case may be.
- (c) The Security Trustee may agree with the Obligors to make any amendment or supplement to, or give any consent or waiver in respect of, this deed or any Security Document (other than any Direct Guarantee), with the prior consent of the Majority



Beneficiaries but without the prior consent of the other Beneficiaries, if the amendment, supplement, consent or waiver (in the opinion of the Security Trustee):

- (i) is made to correct a manifest error; or
- (ii) is of a minor, administrative or technical nature; or
- (iii) is to comply with the requirements or a modification of the requirements of any applicable law or any rules of any stock exchange in New Zealand or elsewhere,

and, in any such case, the Security Trustee is of the opinion that such amendment, supplement, consent or waiver will not be materially prejudicial to the interests of the Beneficiaries generally or any Beneficiary or group of Beneficiaries individually. The Borrower shall provide notice of any such proposed amendment, supplement, consent or waiver to each Beneficiary Representative, each Unrepresented Beneficiary and the Security Trustee and, if no objection is received and notified to the Security Trustee within 10 Business Days, the Security Trustee may take all steps necessary to effect such amendment, supplement, consent or waiver (and the Security Trustee shall not be liable or responsible to the Beneficiaries or any other person for taking such steps where it is not notified of any objection within that 10 Business Day period).

- (d) An amendment, waiver or consent which has the effect of changing or which relates to:
 - (i) the rights or obligations of Hedging Banks, clause 17.1 (or any of the defined terms directly or indirectly used therein) or the definition of 'Hedging Agreement', 'Hedging Bank', 'Hedging Liabilities' or 'Treasury Product' in clause 1.1; or
 - (ii) the rights or obligations of Transactional Banks, clause 17.2 (or any of the defined terms directly or indirectly used therein) or the definition of 'Transactional Bank', 'Transactional Banking Facilities' or 'Transactional Banking Documents' in clause 1.1,

may not be effected without the prior written consent of the Majority Beneficiaries and:

- (iii) in the case of paragraph (i) above, each Hedging Bank; and
 - (iv) in the case of paragraph (ii) above, each Transactional Bank.
- (e) An amendment, supplement, consent or waiver that, in any way, affects the rights or obligations of an Obligor (and does not relate solely to the rights of the Beneficiaries as between themselves) shall require the written consent of the Borrower and relevant Obligor.



- (f) Any such amendment, supplement, consent or waiver and any consent or approval by the Security Trustee under this deed:
 - (i) shall not be effective unless it is in writing, may be given subject to any conditions thought fit by the person/s giving it, may be withdrawn or modified at any time, and shall be effective only in the instance and for the purpose for which it is given; and
 - (ii) in the case of an amendment, supplement, consent or waiver in accordance with clause 14.2(a) or 14.2(b) or 14.2(d), shall take effect upon the later of the following dates:
 - (A) the date of execution by the Security Trustee and the Borrower (and any other relevant party or parties to the relevant Security Document) of a deed or other document embodying such variation; and
 - (B) the date on which the Majority Beneficiaries, or, in the case of an amendment, supplement, consent or waiver which is specified in clause 14.2(a)(i)-(iv) (inclusive), of this deed, all Beneficiary Representatives and Unrepresented Beneficiaries, or, in the case of an amendment referred to in clause 14.2(b), the relevant materially adversely affected Beneficiaries, or, in the case of an amendment referred to in clause 14.2(d), the Hedging Banks or Transactional Banks (as applicable) consent(s) in writing to the variation embodied in the deed of variation, or to the waiver, consent or approval, as the case may be.
- (g) Any amendment, supplement, consent or waiver made pursuant to this clause 14.2 shall thereafter bind all Beneficiaries from time to time whether or not they have consented to the amendment, supplement, consent or waiver, and the rights and entitlements of all Beneficiaries under this deed shall thereafter be read and construed accordingly.
- (h) Where a decision is to be made by the Majority Beneficiaries or the Instructing Beneficiaries to take any action under this deed, or an instruction is to be given to the Security Trustee by the Majority Beneficiaries or the Instructing Beneficiaries under this deed, such decision or instruction shall be evidenced by a written instrument signed by or on behalf of the relevant Beneficiary Representatives and Unrepresented Beneficiaries. Any such instrument may consist of several documents in like form, each signed by or on behalf of one or more of the relevant Beneficiary Representatives and Unrepresented Beneficiaries.

14.3 Determinations

Any determination by the Security Trustee pursuant to this deed shall be conclusive save for manifest error.

14.4 Abstentions

In determining whether the Majority Beneficiaries or a group of Beneficiaries have given instructions or a consent, approval, waiver, amendment or other decision, a



Beneficiary will be deemed to have a Credit Participation of zero or no Credit Participation if it has so elected by notice to the Security Trustee.

14.5 Transferees bound

A consent, approval, waiver, amendment or other decision by a Beneficiary or any instruction to the Security Trustee by a Beneficiary binds that Beneficiary's assigns and successors unless revoked under clause 14.6.

14.6 Limitations on revocation

Any instructions, consent, approval, waiver, amendment or other decision by the Majority Beneficiaries may be revoked only by the Majority Beneficiaries, and may not be revoked if the decision has been acted upon.

14.7 Failure to respond

At any time while there are Bondholders, if any Beneficiary fails to respond to a request for instructions, consent, approval, waiver, amendment or other decision in relation to any Financing Document within 15 Business Days of that request (or any longer period agreed by the Borrower and the Security Trustee), that Beneficiary and its Credit Participations shall not be included for the purpose of calculating the total Credit Participations of all Beneficiaries when ascertaining whether all Beneficiaries or Beneficiaries with any relevant percentage of Credit Participation have responded to that request. This clause does not apply to a request for instructions, consent, approval, waiver, amendment or other decision or vote in relation to an amendment, supplement or waiver in respect of any of the matters referred to in clause 14.2(a).

14.8 Disenfranchisement of Beneficiaries

Where a Beneficiary Representative certifies that under a Financing Document, in ascertaining the Majority Beneficiaries or any given percentage (including for the avoidance of doubt, unanimity) of the Credit Participations of the Beneficiaries or a specified group of Beneficiaries all or part of the Credit Participations of a Beneficiary is to be disregarded, then that amount of Credit Participation is to be disregarded in calculating the Majority Beneficiaries or relevant percentage

15 RELEASE AND REINSTATEMENT

15.1 Release and Discharge

Except as otherwise expressly provided in this deed the respective obligations and liabilities of each party to this deed under this deed shall remain in full force and effect until the execution by the Security Trustee of a deed of release and discharge (in such form as may be agreed by those parties).

15.2 Reinstatement

Where, by reason of the operation of this deed or otherwise, any payment made to a Beneficiary by any Obligor or any Beneficiary is avoided, set aside or reversed under any law in force relating to liquidation or the relief of creditors or otherwise then notwithstanding the provisions of any document (including any discharge, receipt or other acknowledgement made or given by the relevant Beneficiary in receipt of such payment) that payment shall be deemed not to have been made and the rights and



remedies of that Beneficiary pursuant to this deed shall be reinstated and restored to the necessary extent.

16 **INDEMNITIES**

16.1 **General indemnities**

Without limiting any indemnity provided under any Financing Document, each Obligor shall, promptly indemnify each Beneficiary and any receiver or attorney appointed under a Security Document (and each officer, agent or employee of any of them) against any liability incurred by that Beneficiary (other than by reason of any fraud, dishonesty, gross negligence or wilful misconduct by a Beneficiary, receiver, attorney and officer, agent or employee of any of them) as a result of or in connection with:

- (a) the occurrence or continuance of any Default Event;
- (b) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under a Financing Document;
- (c) the exercise or attempted exercise of or the consideration of any right, power or remedy under any Financing Document or any failure to exercise the same;
- (d) the Secured Property or the existence of any interest in, or control, right, power or remedy under any Financing Document with respect to, the Secured Property;
- (e) a failure by an Obligor to pay any amount due under a Financing Document on its due date, including, any cost, expense, loss or liability arising as a result of clause 4;
- (f) security being provided by that Beneficiary to the Security Trustee under clause 9.8, including all costs and expenses in providing that security; or
- (g) an amount being paid or payable by that Beneficiary to the Security Trustee under clause 9.12.

16.2 **Indemnity to the Security Trustee**

Each Obligor shall promptly indemnify the Security Trustee against any liability incurred by the Security Trustee (other than by reason of the Security Trustee's fraud, dishonesty, gross negligence or wilful misconduct) as a result of:

- (a) investigating any event which it reasonably believes is a Default Event;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, investment bankers, tax advisers, valuers, surveyors, insolvency practitioners, or other experts or professional advisers as permitted under this deed.



17 RESTRICTIONS ON HEDGE COUNTERPARTIES AND TRANSACTIONAL BANKS

17.1 Hedging Banks

- (a) For the period on and from the date of this deed until the occurrence of the Standstill Expiry Date, no Hedging Bank may take any proceedings against any Obligor (including any proceedings for the dissolution, liquidation or administration of any Obligor) under any Hedging Agreement or take any action analogous to any of the foregoing under any Hedging Agreement.
- (b) During a Standstill Period, any amount payable to a Hedging Bank shall be deemed not to be a due debt (until the expiry of that Standstill Period) provided that such a standstill is without prejudice to:
 - (i) the accrual of default interest on such unpaid amount;
 - (ii) such unpaid amount (and default interest accrued thereon) being included in the calculation of "Credit Participation" of that Hedging Bank; and
 - (iii) any other rights of that Hedging Bank under this deed (including the right to any distribution under clause 4).
- (c) For the avoidance of doubt, this clause 17.1 shall not limit or prevent:
 - (i) any right accruing to, or the exercise of any right by, a Hedging Bank to terminate or close out any Hedging Transaction under a Hedging Agreement prior to its stated maturity; or
 - (ii) any right of a Hedging Bank to withhold or to receive and retain any payment under any Hedging Agreement.

17.2 Transactional Banks

- (a) For the period on and from the date of this deed until the occurrence of the Standstill Expiry Date, no Transactional Bank may take any proceedings against any Obligor (including any proceedings for the dissolution, liquidation or administration of any Obligor) under any Transactional Banking Document or take any action analogous to any of the foregoing under any Transactional Banking Document.
- (b) During a Standstill Period, any amount payable to a Transactional Bank shall be deemed not to be a due debt (until the expiry of that Standstill Period) provided that such a standstill is without prejudice to:
 - (i) the accrual of default interest on such unpaid amount;
 - (ii) such unpaid amount (and default interest accrued thereon) being included in the calculation of "Credit Participation" of that Transactional Bank; and



- (iii) any other rights of that Transactional Bank under this deed (including the right to any distribution under clause 4).
- (c) For the avoidance of doubt, this clause 17.2 shall not limit or prevent:
 - (i) any right accruing to, or the exercise of any right by, a Transactional Bank to cancel or terminate any Transactional Banking Document or Transactional Banking Facilities; or
 - (ii) any right of a Transactional Bank to withhold or to receive and retain any payment under any Transactional Banking Document.

18 MISCELLANEOUS PROVISIONS

18.1 Partial Invalidity

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable that illegality, invalidity or unenforceability shall not affect the ability of any party to enforce the remaining provisions of this deed.

18.2 Indemnities and reimbursements

All indemnities of each party (and any other payment obligations of any Obligor) in this deed and each Security Document are continuing and survive termination or discharge of any Security Document and termination of the trust created in clause 2.

18.3 Counterparts

This deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the deed.

18.4 Governing Law

This deed shall be governed by and construed in accordance with New Zealand law and by execution of this deed each party hereto accepts for itself and in respect of its property and assets, generally and unconditionally the non-exclusive jurisdiction of the courts of New Zealand.

18.5 Delivery by Obligors

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

- (a) physical delivery of an original of this deed, executed by the Obligors, into the custody of the Security Trustee or the Security Trustee's solicitors; or
- (b) transmission by the Obligors or their solicitors (or any other person authorised in writing by the Security Trustee) of a facsimile, photocopied or scanned copy of an original of this deed, executed by the Obligors, to the Security Trustee or the Security Trustee's solicitors.

18.6 Perpetuity Period

The perpetuity period for each trust created by this deed shall be 80 years from the date of this deed.



18.7 **Modified application**

Any provision in any Financing Document or other documentation entered into between, or binding upon, an Obligor and any Beneficiary or group of Represented Beneficiaries which:

- (a) provides (expressly or by implication) for the rights or benefits of that Beneficiary or group of Represented Beneficiaries 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 Beneficiary Representative, 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 Beneficiaries or subject to any other qualification or limitation, and/or for such actions to bind all Beneficiaries of the relevant class; or
- (b) otherwise regulates (expressly or by implication) the mode of application, entitlement or exercise by such Beneficiary or group of Represented Beneficiaries of their rights and benefits hereunder,

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

18.8 **Consent by Beneficiary Representative**

Any consent or approval given by a Beneficiary Representative shall for the purposes of this deed be deemed to have been validly given on behalf of, and to bind, the group of Represented Beneficiaries that the Beneficiary Representative represents, and none of the Obligors any other Beneficiary or the Security Trustee shall be obliged to enquire or ascertain whether the Beneficiary Representative has obtained consent of the relevant group of Represented Beneficiaries or observed any other formalities required by the terms of issue of the provisions of the relevant Financing Documents, prior to giving such consent or approval.

18.9 **Costs and Expenses**

- (a) The Obligors shall promptly on demand pay the Security Trustee the amount of all costs and expenses (including legal fees on a full indemnity basis) reasonably incurred by it in connection with the negotiation, preparation and execution of any this deed and any other Security Document.
- (b) If an Obligor requests an amendment, waiver or consent or makes or initiates a request under a Security Document, the Obligors shall promptly, reimburse the Security Trustee and each other Beneficiary for the amount of all costs and expenses (including legal fees on a full indemnity basis), reasonably incurred by the Security Trustee or the Beneficiary in dealing with or considering any request for any amendment, agreement or the, waiver or consent under a Secured Document in responding to, evaluating, negotiating or complying with that request or requirements.

18.10 **Trusts Act 2019**

- (a) For the avoidance of doubt, [with effect on and from 30 January 2021](#), the Security Trustee must comply with the mandatory duties imposed on it under



sections 23 to 27 of the Trusts Act, and any contrary provision in this deed shall be deemed to apply subject to those mandatory duties.

- (b) The parties agree that with effect on and from 30 January 2021:
 - (i) the trust constituted under clause 2.1 is intended to be a specified commercial trust for the purposes of the Trusts Act and (without limitation) the provisions of the Trusts Act set out in clauses 4(1), 4(2) and 4(3) of Schedule 3 of that Act are excluded and do not apply to that trust or the Security Trustee; and
 - (ii) the provisions of the Trusts Act set out in Schedule 2 of the Trusts Act that would otherwise be applicable to the trust constituted under clause 2.1 or the Security Trustee shall be excluded and do not apply to the trust constituted under clause 2.1 or the Security Trustee.

19 ANTI-MONEY LAUNDERING

19.1 Anti-Money Laundering

- (a) Notwithstanding any other provision of a Financing Document to the contrary:
 - (i) the Security Trustee is not obliged to do or omit to do anything in connection with a Financing Document if it would, or might in its reasonable opinion, constitute a breach of any AML/CTF Law; and
 - (ii) each Obligor agrees to provide any information and documents that are within its possession, custody or control reasonably required by the Security Trustee in order for the Security Trustee to comply with any AML/CTF Law in connection with a Financing Document.
- (b) If the Security Trustee forms the view that, in its reasonable opinion, it is required to disclose information obtained in connection with the Financing Documents to any person in order to comply with any AML/CTF Law, the parties agree that, to the extent permitted by law, such disclosure will not breach any duty of confidentiality owed by the Security Trustee to any other party to this document.
- (c) Each Obligor represents and warrants in favour of the Security Trustee that it is not acting as trustee or agent in entering into the Financing Documents, except to the extent expressly provided in the Financing Documents or disclosed in writing to the Security Trustee.
- (d) Each Obligor agrees to exercise its rights and perform its obligations under the Financing Documents in accordance with all applicable AML/CTF Law.

19.2 Information

Each party must provide all information to the Security Trustee which the Security Trustee reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in Australia, New Zealand or any other country. Each party agrees that



the Security Trustee may disclose any information concerning any other party to any law enforcement, regulatory agency or court where required by any such law or regulation in Australia, New Zealand or elsewhere. The Security Trustee may refuse or delay execution of any Accession Deed until it has received any information required by it under this clause 19.2.

19.3 Not a Trustee

Unless it has disclosed that it is acting in a trustee capacity or on behalf of another party, each party warrants in respect of itself that it is acting on its own behalf in entering into this deed.

19.4 Declaration

Each party declares and undertakes to the Security Trustee that the processing of any transaction by the Security Trustee in accordance with its instructions will not breach any laws or regulations relating to anti-money laundering in Australia, New Zealand or any other country.

20 SECURITY TRUSTEE LIMITATION OF LIABILITY

- (a) Without prejudice to the right of indemnity given by law to trustees generally, the Security Trustee will be indemnified out of the Secured Property against all costs, expenses, loss and liabilities incurred by it in performing any of its duties or exercising any of its powers under this deed or any other Financing Document to the extent that the costs, expense, loss or liability has been incurred by the Security Trustee in connection with the performance of its duties or the exercise of its powers under this deed or any other Financing Document but this indemnity does not extend to liabilities arising from the Security Trustee's fraud, dishonesty, gross negligence or wilful misconduct.
- (b) Notwithstanding any other provision of this deed:
 - (i) the Security Trustee will have no liability under or in connection with this deed or any other Financing Document (whether to the Beneficiaries, the Obligors or any other person) other than to the extent to which the liability is able to be satisfied in accordance with this deed out of the Secured Property from which the Security Trustee is actually indemnified for the liability; and
 - (ii) no person (including, without limitation, the Beneficiaries and the Obligors) may sue the Security Trustee in relation to this deed or any other Financing Document in any capacity other than as trustee of the trust constituted under clause 2.1, including seeking the appointment of a receiver (except in relation to the Secured Property), a liquidator, an administrator or similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee (except in relation to the Secured Property),

but provided that the limitations in paragraphs (i) and (ii) above will not apply to a liability of the Security Trustee to the extent that it is not satisfied because under this deed or by operation of law there is a reduction in the extent of the Security Trustee's indemnification out of the Secured Property as a result of the Security



Trustee's fraud, dishonesty, gross negligence or wilful misconduct. Nothing in this clause 20 or any similar provision in any other Financing Document limits, or adversely affects, the powers of the Security Trustee in respect of this deed or the Secured Property.

21 BOND TRUSTEE LIMITATION OF LIABILITY

The liability (if any) of the Bond Trustee hereunder shall not be unlimited and personal but shall be limited to its right of indemnity under the Bond Documents, to which shall be added such sum as represents the amount by which the Bond Trustee is not entitled to be indemnified by reason of its dishonesty, wilful misconduct, negligence or wilful breach of trust.



EXECUTED as a deed

[Execution blocks removed as this deed has been amended and restated pursuant to a deed of amendment and restatement.]



SCHEDULE 1

Parties

Part I – Initial Obligors

Name	Company number	Notice Details
Arvida Group Limited	4904500	Arvida Limited 39 Market Place Auckland Central Auckland 1010 Email: info@arvida.co.nz Attention: Jeremy Nicoll
Arvida Limited	5514632	
Aria Gardens Limited	1854219	
Aria Bay Retirement Village Limited	1260136	
Aria Bay Senior Living Limited	1244645	
Aria Park Retirement Village Limited	1260137	
Aria Park Senior Living Limited	1244644	
Ashwood Park Retirement Village (2012) Limited	3693117	
Ashwood Park Lifecare (2012) Limited	3693115	
Bainlea House (2013) Limited	4420958	
Bainswood Retirement Village Limited	1472196	
Bainswood House Rest Home Limited	1472197	
The Cascades Retirement Resort Limited	1211648	
Copper Crest Retirement Village Limited	6104827	
Glenbrae Village Limited	2410077	
Glenbrae Resthome and Hospital Limited	2410060	
Ilam Lifecare Limited	1194958	
Ilam Senior Living Limited	1202068	
Te Puna Waiora RV Limited	6949295	
Lansdowne Developments Limited	1295862	



Lansdowne Park Village Limited	1345746
Lauriston Park Retirement Village Limited	1930014
The Maples Retirement Village (2005) Limited	1722795
The Maples Lifecare (2005) Limited	1722792
Mayfair Retirement Village (2008) Limited	2165383
Mayfair Lifecare (2008) Limited	2165385
Molly Ryan Retirement Village (2007) Limited	1911273
Molly Ryan Lifecare (2007) Limited	1911274
Oakwoods Retirement Village (2012) Limited	4054479
Oakwoods Lifecare (2012) Limited	4054699
Olive Tree Village (2008) Limited	2159529
Olive Tree Apartments Limited	1938728
Olive Tree Holdings Limited	1273139
Park Lane Retirement Village Limited	2142866
Park Lane Lifecare Limited	3327514
Rhodes on Cashmere Healthcare Limited	3889277
Rhodes on Cashmere Lifecare Limited	3874836
St Albans Retirement Village Limited	917059
St Albans Lifecare Limited	828281
St Allisa Rest Home (2010) Limited	2408814
Views Lifecare Limited	3041925
Waikanae Country Lodge Village Limited	2233920
Waikanae Country Lodge Limited	567856



The Wood Retirement Village (2007) Limited	1906615
The Wood Lifecare (2007) Limited	1906622
Wendover Retirement Village 2006 Limited	1834013
Wendover Rest Home 2006 Limited	1834011
Waimea Plains Retirement Village Limited	6293729
Mary Doyle Healthcare Limited	1196461
Mary Doyle Trust Lifecare Complex Limited	619066
Strathallan Healthcare Limited	1121210
Strathallan Lifecare Village Limited	1121212
Bethlehem Country Club Village Limited	7579958
Bethlehem Shores Retirement Village Limited	7580696
Queenstown Country Club Village Limited	7580856
Copper Crest Living Well Limited	8022277
Good Friends (2020) Limited	8016956
Waimea Plains Living Well Limited	7377476

Part II –Initial Banks

Name	Notice Details
ANZ Bank New Zealand Limited	Level 25, ANZ Centre 23-29 Albert Street Auckland 1141 Facsimile: + 64 9 252 3511 Email: adam.crane@anz.com Attention: Adam Crane



Bank of New Zealand

Level 6, Deloitte Centre
80 Queen Street
Auckland 1010
Email: Kieran_Ryan@bnz.co.nz
Attention: Kieran Ryan

Part III – Initial Hedging Banks

Name	Notice Details
ANZ Bank New Zealand Limited	As in Part II
Bank of New Zealand	As in Part II

Part IV – Initial Transactional Banks

Name	Notice Details
ANZ Bank New Zealand Limited	As in Part II

Part V – Agent

Name	Notice Details
ANZ Bank New Zealand Limited	Level 25, ANZ Centre, 23-29 Albert Street, Auckland 1141 Facsimile: + 64 9 252 3476 Email: Isaoperations@anz.com , Attention: Head of Loan Syndications and Agency

Part VI – Security Trustee

Name	Notice Details
NZGT Security Trustee Limited	Level 8, 191 Queen Street Auckland Central Auckland 1010 New Zealand Email: ct-auckland@nzgt.co.nz Attention: Relationship Manager



SCHEDULE 2

Approval Notice

To: NZGT Security Trustee Limited (the *Security Trustee*)

With a copy to: each Beneficiary Representative and each Unrepresented Beneficiary

Arvida Limited (the *Borrower*) refers to the Security Trust Deed (the *Security Trust Deed*) dated [●] 2020 (as amended and/or restated from time to time).

Save as expressly defined herein or where the contrary intention appears, capitalised terms defined in the Security Trust Deed shall have the same meanings herein as therein.

The Borrower hereby requests that the Security Trustee (on behalf of the Beneficiaries) designates the [loan, other debt security issuance, [Treasury Product] or other financial accommodation or transaction] entered into by [the Obligor] described below as an Approved Financial Accommodation for the purposes of the Security Trust Deed.

The Borrower represents and warrants to the Security Trustee (on behalf of the Beneficiaries) that the execution and delivery of this notice and the borrowing (or raising or money under the [loan, facility, other debt security issuance, [Treasury Product] or financial accommodation or transaction] described below will not breach the terms of any Financing Document and the borrowing (or raising) of money under the identified transaction will not cause any financial covenant in any Financing Document to be breached.

[Description of loan, other debt security issuance, [Treasury Product] or other financial accommodation or transaction, including amount, currency, commitments, and all other relevant details of the relevant indebtedness]

Dated 20[]

Signed by Arvida Limited by:



SCHEDULE 3

Form of Accession Deed

Deed dated 20[]

BETWEEN [] (the *[New Beneficiary Representative]*
[New Unrepresented Beneficiary])

AND **NZGT Security Trustee Limited** (the *Security Trustee*)

This deed is supplemental to the Security Trust Deed (*Security Trust Deed*) dated [•] 2020 (as amended and/or restated from time to time) between, amongst others, Arvida Limited as Borrower and NZGT Security Trustee Limited as Security Trustee.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 ACCESSION

In accordance with the provisions of the Security Trust Deed the [New Beneficiary Representative] [New Unrepresented Beneficiary] [New Beneficiary] hereby affirms and ratifies the Security Trust Deed and by the execution of this Accession Deed agrees to observe and be bound by the terms and provisions of the Security Trust Deed as if it were an original party to the Security Trust Deed in the capacity of [Beneficiary Representative][Unrepresented Beneficiary] [Beneficiary]. [The Beneficiaries represented by that Beneficiary Representative are []]

2 INTEGRATION

This Accession Deed shall be read as one with the Security Trust Deed so that any reference therein to this "deed" and similar shall include and be deemed to include this Accession Deed.

3 INTERPRETATION

Save as expressly defined herein or where the contrary intention appears, capitalised terms defined in the Security Trust Deed shall have the same meanings herein as therein.

4 NOTICES

The initial address, email and person (if any) designated by the [New Beneficiary Representative] [New Unrepresented Beneficiary] [Beneficiary] for the purposes of clause 13 of the Security Trust Deed are as follows:



Address:

Attention:

Email:

5 GOVERNING LAW

This Accession Deed is governed by New Zealand law.

EXECUTED AS A DEED

**[NEW BENEFICIARY REPRESENTATIVE]
[NEW UNREPRESENTED
BENEFICIARY][NEW BENEFICIARY]**

Signed by **[New Beneficiary
Representative] [New Unrepresented
Beneficiary] [New Beneficiary]** by its
attorney [name]

in the presence of:

Name:

Occupation:

Address:

Security Trustee

NZGT Security Trustee Limited
by its two directors

Signature of director

Name of director

Signature of director

Name of director



SCHEDULE 4

Obligor Accession and Supplemental Security Deed

This Supplemental Deed is made on

BY

[] a duly incorporated company having its registered office at []
(the *Subsidiary*)

IN FAVOUR OF

Each Beneficiary as defined in the Security Trust Deed referred to below.

BACKGROUND:

- A The Subsidiary is a subsidiary of Arvida Limited (the *Borrower*).
- B The Borrower has entered into a security trust deed dated [•] 2020 (as amended and/or restated from time to time) (the *Security Trust Deed*).
- C The Borrower has also entered into a composite guarantee and general security deed dated 17 December 2014 (as amended and/or restated from time to time) (the *Composite Guarantee and General Security Deed*)
- D The Subsidiary now wishes to execute this Supplemental Deed in order to become an Obligor under and party to the Composite Guarantee and General Security Deed and party to the Security Trust Deed.

BY THIS DEED the Subsidiary agrees as follows:

- 1 **Definitions:** To the extent applicable, the definitions and provisions contained in clause 1 of the Composite Guarantee and General Security Deed apply to and are incorporated in this Supplemental Deed.
- 2 **Obligor:** The Subsidiary agrees and declares:
 - (a) for the benefit of the Security Trustee that it is an Obligor and will be deemed to be a party under the Composite Guarantee and General Security Deed which shall apply to the Subsidiary as an Obligor.
 - (b) for the benefit of each Beneficiary, that it is an Obligor and will be deemed to be a party under the Security Trust Deed which shall apply to the Subsidiary as an Obligor.
- 3 **Acknowledgement:** The Subsidiary acknowledges that the Secured Money has been permitted by the Beneficiaries to be incurred on the condition and in part



consideration that the Subsidiary will give or has given to them the guarantee and Security Interest hereinafter contained.

- 4 **Guarantee:** The Subsidiary jointly and severally with each other Obligor hereby irrevocably and unconditionally guarantees to the Security Trustee (for itself and on behalf of the Beneficiaries) the due and punctual payment by the Obligors of the Secured Money as and when the same shall become due and payable and the due observance and performance by the Obligor of all their Secured Obligations and agrees that the provisions of clause 6 of the Composite Guarantee and General Security Deed shall have effect and shall apply to it (as an Obligor) and to the guarantee given by it in this clause (as well as to each Obligor) as if that clause were set out in full in this clause 4.

- 5 **Security Interest:** To secure the due and punctual payment of its Secured Money and the due and punctual performance and observance of Secured Obligations the Subsidiary:

- (a) grants the Security Trustee a security interest in its Personal Property;
- (b) charges to the Security Trustee its Other Property; and
- (c) agrees to mortgage to the Security Trustee its present and future interests in any Real Property.

This security interest, charge and mortgage will be treated for purposes of the Composite Guarantee and General Security Deed as having been created pursuant to clause 3.1 of the Composite Guarantee and General Security Deed.

- 6 **Provisions of Composite Guarantee and General Security Deed to Apply:** There are deemed to be incorporated in this Supplemental Deed, all of the covenants powers obligations conditions and provisions of the Composite Guarantee and General Security Deed relating to or affecting the Obligor or the Security Interest created under or pursuant to the Composite Guarantee and General Security Deed in the same manner and to the same extent as if set out in full and made applicable to the Subsidiary. The Subsidiary covenants with the Security Trustee to duly and punctually to observe fulfil and perform and to be bound by all the covenants powers conditions and provisions imposed on or relating to it under this Supplemental Deed or the Composite Guarantee and General Security Deed.
- 7 **Provisions of Security Trust Deed to Apply:** There are deemed to be incorporated in this Supplemental Deed all of the provisions of the Security Trust Deed relating to or affecting the Obligor in the same manner and to the same extent as if set out in full and made applicable to the Subsidiary. The Subsidiary covenants with each Beneficiary duly and punctually to observe fulfil and perform and to be bound by all the provisions imposed on or relating to it under this Supplemental Deed or the Security Trust Deed.
- 8 **Property Law Act:** This Supplemental Deed is supplementary to the Composite Guarantee and General Security Deed and the Security Trust Deed and accordingly section 14 of the Property Law Act 2007 shall apply.



9 **Power Of Attorney:**

- (a) The Subsidiary irrevocably appoints the Security Trustee and each Receiver severally to be its attorney on the same terms as set out in clause 17.1 of the Composite Guarantee and General Security Deed.
- (b) For the purposes of facilitating the execution of any amendment to the Security Trust Deed or any other agreement to be delivered in relation to the Security Trust Deed, and in consideration of the Beneficiaries providing or continuing to or agreeing to provide any facilities to the Borrower, the Subsidiary hereby irrevocably appoints the Borrower and any director of the Borrower acting severally to be its lawful attorney and to agree the terms and form of, and to execute on its behalf, any amendment to the Security Trust Deed or other agreement which may in the opinion of such attorney be necessary or desirable and agrees to ratify any action taken or agreement executed by such attorney pursuant to the power hereby conferred.

10 **Delivery:** For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this document will be delivered by the Subsidiary immediately on the earlier of:

- (a) physical delivery of an original of this document, executed by the Subsidiary, into the custody of the Security Trustee or the Security Trustee's solicitors; or
- (b) transmission by the Subsidiary or its solicitors (or any other person authorised in writing by the Security Trustee) of a facsimile, photocopied or scanned copy of an original of this document, executed by the Subsidiary, to the Security Trustee or the Security Trustee's solicitors.

11 **Governing Law:** This Supplemental Deed is governed by New Zealand law.



EXECUTED as a Deed for and on behalf of

[*name of Subsidiary*] by:

Director

in the presence of:

Name:

Occupation:

Address:



SCHEDULE 5

Form of Resignation Letter

To: NZGT Security Trustee Limited as Security Trustee (*Security Trustee*)

From: [resigning Obligor] and Arvida Limited

Dated:

Arvida Limited – Security Trust Deed dated [] 2020 (as amended and/or restated from time to time) between, among others, Arvida Limited and the Security Trustee (as amended and/or amended and restated from time to time) (the *Security Trust Deed*)

- 1 We refer to the Security Trust Deed. This is a Resignation Letter. Terms defined in the Security Trust Deed have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
- 2 Pursuant to clause [8.3] (Resignation of an Obligor) of the Composite Guarantee and General Security Deed, we request that [resigning Obligor] be released from its obligations as an Obligor under the Financing Documents.
- 3 We confirm that no Default Event is continuing or would result from the acceptance of the Resignation Letter
- 4 This Resignation Letter [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by New Zealand law.

Arvida Limited [Subsidiary]

By: By: