

IT IS AGREED

1. Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

- **Attorney** means an attorney appointed under this Deed or any Collateral Security;
- **Collateral Security** means each security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any Secured Indebtedness or Secured Obligation;
- **Event of Default** means any event specified in clause 7.1 and any other event or circumstance that, with the giving of notice, lapse of time or fulfillment of another requirement, would constitute such an event;
- **Goods** means the Goods described in Part B of the Schedule to this Deed;
- **Group** means the Debtor and its subsidiaries for the time being and its holding company and any subsidiary of its holding company for the time being;
- **Group Member** means any member of the Group;
- **NZ GAAP** means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993;
- **PLA** means the Property Law Act 2007;
- **PPSA** means the Personal Property Securities Act 1999;
- **Receiver** means a person appointed as a receiver or receiver and manager under this Deed or any Collateral Security granted by the Debtor;
- **Relevant Documents** means this Deed, each Collateral Security and each other agreement, (present or future) evidencing or relating to Secured Indebtedness or Secured Obligations;
- **Relevant Party** means the Debtor and each other party to a Relevant Document (other than the Secured Party);
- **Secured Indebtedness** means all indebtedness of the Debtor to the Secured Party (including, for the purposes of sections 71 and 72 of the PPSA, future advances);
- **Secured Obligations** means all obligations (whether present or future but other than Secured Indebtedness) of the Debtor to the Secured Party; and
- **Secured Property** means all present and future right, title and interest (legal and equitable) of the Debtor arising out of, or in connection with, the Goods and all proceeds of such Goods;

1.2 Construction of certain references

In this Deed, unless the context otherwise requires:

- an **agreement** includes a contract, deed, licence, undertaking and other document (in each case, oral and written) and includes that agreement as amended, assigned, novated or substituted from time to time;
- a **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and, where payment is required in foreign currency, banks are open for business in the required place of payment;
- a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration;
- **control** has the meaning specified by NZ GAAP and controlled is to be construed accordingly;
- a **disposal** of property includes:
 - (a) assigning, leasing, lending, subordinating, varying the terms of, parting with possession of, granting an option in respect of or otherwise dealing with that property;

- (b) the payment of money or any distribution by way of dividend; and
- (c) an agreement for any of these, but excludes the creation of a security interest (and references to dispose are to be construed accordingly);
- **financial statements** has the meaning specified in section 8(1) of the Financial Reporting Act 1993;
- **group financial statements** has the meaning specified in section 9(1) of the Financial Reporting Act 1993;
- a **guarantee** includes an indemnity, letter of credit, legally binding letter of comfort, suretyship and other agreement the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;
- a **holding company** of a person includes a holding company as defined in section 5 of the Companies Act 1993;
- **indebtedness** includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;
- the **liquidation** of a person includes the dissolution, administration, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;
- something having a **material adverse effect** on a person is a reference to it having a material adverse effect:
 - (a) on that person's financial condition or operations or on the consolidated financial condition or operations of it and its subsidiaries; or
 - (b) on its ability to comply with its obligations under any Relevant Document, and references to material adverse change are to be construed accordingly;
- a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality);
- **property** includes the whole and any part of the relevant person's business, assets, undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;
- a **security interest** includes:
 - (a) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement and other arrangement of any kind, the economic effect of which is to secure a creditor; and
 - (b) a "security interest" as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor, but does not include:
 - (c) a lien arising solely by operation of law; or
 - (d) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that collateral, where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid within 60 days of supply; or
 - (e) a netting or set-off arrangement entered into in the ordinary course of a person's banking arrangements for the purpose of netting debit and credit balances;
- a **subsidiary** of a person includes:
 - (a) a subsidiary as defined in sections 5 and 6 of the Companies Act 1993; and

- (b) a subsidiary in terms of any financial reporting standard issued from time to time by the Institute of Chartered Accountants of New Zealand;
- **tax(es)** includes any tax, levy, impost, stamp or other duty and any other charge, deduction 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);
- a gender includes each other gender;
- the singular includes the plural and vice versa;
- any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and
- a party to this Deed or another agreement includes its successors and its permitted assignees and transferees.
- Headings and the table of contents are to be ignored in construing this Deed.

1.3 PPSA

The terms "accession", "attach", "collateral", "consumer goods", "debtor", "document of title", "goods", "equipment", "financing change statement", "financing statement", "future advance", "inventory", "motor vehicle", "personal property" and "secured party" have the respective meanings given to them in, or in the context of, the PPSA. The terms "aircraft" and "serial-numbered goods" have the meanings given to them in the Personal Property Securities Regulations 2001.

1.4 No postponement of attachment or subordination

Nothing in this Deed is to be construed as:

- (a) an agreement that a security interest under this Deed attaches at a later time than the time specified in section 40(1) of the PPSA; or
- (b) an agreement to subordinate a security interest under this Deed in favour of any person; or
- (c) authorisation of a dealing in any proceeds of the Goods.

2. Covenant to pay and comply

The Debtor will pay the Secured Indebtedness when due and will comply with the Secured Obligations.

3. Security

3.1 Security

To secure the due payment of the Secured Indebtedness and the compliance with the Secured Obligations, the Debtor grants to the Secured Party a security interest in the Secured Property.

3.2 Continuing security

This Deed and each security interest created under this Deed:

- (a) is a continuing security, notwithstanding intermediate payments, settlement of accounts or anything else; and
- (b) is in addition to, and not to be merged in, any Collateral Security.

3.3 Unconditionality of security

No security interest created under this Deed is discharged, nor are the obligations of the Debtor affected, by:

- (a) any time, indulgence, waiver or consent at any time given to a Relevant Party or another person; or
- (b) any amendment to a Relevant Document or to another security interest, guarantee or agreement (whether or not that amendment increases the liability of the Debtor); or

- (c) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from, any Relevant Document or other security interest, guarantee or agreement; or
 - (d) the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any Relevant Party or other person (or the commencement of steps to effect any of these); or
 - (e) anything else whatsoever.
- The Secured Party is not liable to the Debtor in relation to any of these matters, even though the Debtor's rights in subrogation or otherwise may be prejudiced as a result.

3.4 Further assurance

On the request of the Secured Party, the Debtor must, at its own cost, promptly execute and deliver to the Secured Party all documents, and do anything else that the Secured Party deems appropriate, to:

- (a) obtain the priority required by the Secured Party; or
- (b) perfect a security interest intended to be created under this Deed or a Collateral Security including, without limitation:
 - (i) providing serial numbers and other details of any Secured Property or of the Debtor required by the Secured Party; or
 - (ii) delivering possession of any Secured Property to the Secured Party; or
 - (iii) registering, or allowing the registration of, a financing statement or a financing change statement in respect of a security interest created under this Deed or a Collateral Security; or
- (c) vest any Secured Property in itself (or its nominee) or in a purchaser; or
- (d) secure to the Secured Party the full benefit of its rights under this Deed or a Collateral Security; or
- (e) assign absolutely to the Secured Party any account receivable due to the Debtor.

3.5 Collateral Security

The Debtor acknowledges that each Collateral Security entered into by the Debtor with the Secured Party shall secure all obligations under this Deed and vice versa. The Secured Party may exercise any of its rights under this Deed and any such other Collateral Security separately or concurrently.

3.6 Release of security

If, in the opinion of the Secured Party:

- (a) the Debtor has paid all the Secured Indebtedness and complied with all the Secured Obligations;
 - (b) the Secured Party is not required to make available any further financial accommodation in respect of any Secured Indebtedness; and
 - (c) there is no reasonable possibility that any Secured Indebtedness received by the Secured Party will have to be repaid under any applicable law,
- the Debtor may redeem the Secured Property. All documents that are necessary in connection with this redemption are to be in the form the Secured Party requires.

4. Representations

4.1 Representations relating to existing Secured Property

The Debtor represents that:

- (a) **Sole owner** it is the sole legal and beneficial owner of all the Secured Property;

- (b) **No security interests**
no security interest exists in any Secured Property except as created or permitted by this Deed or a Collateral Security;
- (c) **No foreign property**
at the date of this Deed, all the Secured Property is in the possession of the Debtor and is situated in New Zealand; and
- (d) **Serial-numbered goods**
it has provided in the Schedule to this Deed details of all the Debtor's motor vehicles and aircraft which form part of the Secured Property that are consumer goods or equipment.

4.2 Representations relating to future Secured Property

Whenever any Secured Property is acquired by the Debtor or comes into existence after the date of this Deed, the Debtor will be deemed to have given the representations set out in clause 4.1 in respect of that Secured Property.

4.3 General representations

- The Debtor represents that:
- (a) **Existence, power and authority**
it is incorporated, has full power and authority to enter into and comply with its obligations under the Relevant Documents and has taken all corporate and other action and obtained all consents needed to enable it to do so;
 - (b) **Obligations enforceable**
its obligations under the Relevant Documents are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application;
 - (c) **Financial statements**
its latest financial statements (and, if it has subsidiaries, its latest group financial statements) as delivered to the Secured Party:
 - (i) were prepared in accordance with NZ GAAP; and
 - (ii) give a true and fair view of its financial position and the consolidated financial position of it and its subsidiaries as at the date and for the period to which they relate,
 and there has been no material adverse change in respect of the Debtor or another Group Member since the last date as at which such financial statements were made up;
 - (d) **Litigation**
no litigation, arbitration or administrative proceeding is current, pending or, to its knowledge, threatened that has or could have a material adverse effect on it or on another Group Member or on the Secured Party's ability to exercise or enforce its rights under any Relevant Document;
 - (e) **Information**
 - (i) all information provided by it to the Secured Party in connection with the Relevant Documents was true in all material respects as at the date when that information was provided and remains so as at the date of this Deed; and
 - (ii) there are no facts or circumstances that have not been disclosed to the Secured Party that would make that information untrue or misleading in any material respect;
 - (f) No Event of Default
no Event of Default has occurred and is continuing;
 - (g) **Relevant Documents**
each representation in the Relevant Documents is true in all material respects; and
 - (h) **Other Group Members**
each representation in paragraphs (a) to (f) of this sub-clause would be true in all material respects if it were also expressed as being made in respect of each Group Member other than the Debtor.

4.4 Representations continuing

Each of the representations in this clause will be deemed to be repeated continuously so long as this Deed remains in effect by reference to the facts and circumstances then existing, except that each reference to financial statements is to be construed as a reference to the latest available financial statements of the relevant person.

5. Undertakings

5.1 Undertakings relating to the Secured Property

- The Debtor undertakes that it will:
- (a) **Dealings with Secured Property**
not, without the prior written consent of the Secured Party, dispose of any Secured Property;
 - (b) **No security interests**
not, without the prior written consent of the Secured Party, create or permit to exist a security interest in any Secured Property except as created or permitted by this Deed or a Collateral Security;
 - (c) **No accessions**
not allow any Secured Property to become an accession to any property that is not Secured Property, or to be affixed to any land;
 - (d) **Use**
ensure that the Secured Property is used only for the purpose for which it was designed and in accordance with the manufacturer's instructions;
 - (e) **Maintain and repair Secured Property**
maintain in good working order all Secured Property and, on request of the Secured Party, remedy every defect in the condition of any Secured Property;
 - (f) **Operation**
ensure that the Secured Property is only operated in a proper and careful manner and by a person who is qualified or otherwise fit to do so;
 - (g) **Consents**
maintain, and not agree to amend, or consent to any amendment of, any consent relating to any of the Secured Property;
 - (h) **Notice of Secured Property located abroad or moved**
promptly notify the Secured Party in writing of any Secured Property that:
 - (i) is located abroad; or
 - (ii) is to be moved from the jurisdiction where it was situated at the time the security interest under this Deed attached to it;
 - (i) **Documents of title**
upon request, deposit with the Secured Party all documents of title constituting or evidencing the Secured Property;
 - (j) **List of Secured Property**
promptly, upon the request of the Secured Party, provide to the Secured Party a full and complete list of the Secured Property, including the value and location of each item of the Secured Property;
 - (k) **Registration of security**
promptly register each security interest created under this Deed and each Collateral Security in each jurisdiction (other than New Zealand) in which registration may be required or advisable in order to ensure its enforceability, validity and priority;
 - (l) **Access**
provide to the Secured Party, and ensure that each person in possession of any Secured Property provides to the Secured Party, full access at all reasonable times to the Secured Property;
 - (m) **No security interests**
not, without the prior written consent of the Secured Party, create or permit to exist a security interest

in any Secured Property, except as created or permitted by this Deed or a Collateral Security;

- (n) **No disposals**
not dispose of any Secured Property;
- (o) **No prejudicial actions or omissions**
not do, omit to do or allow to occur anything that might:
 - (i) render any of the Secured Property or a security interest created under this Deed or any Collateral Security unenforceable or liable to forfeiture or cancellation; or
 - (ii) cause or contribute to a deterioration in the value of the Secured Property; or
 - (iii) otherwise adversely affect the security of the Secured Party under any Relevant Document;
- (p) **Identification**
upon request and at the Debtor's cost, affix to the Secured Property and any substantial part of the Secured Property capable of being separated from the Secured Property as a whole, a plate in the form required by the Secured Party drawing the Secured Party's interest in the Secured Property to the attention of other persons.

5.2 General undertakings

The Debtor undertakes that it will:

- (a) **Events of Default**
notify the Secured Party of the occurrence of any Event of Default and any event or circumstance that may have a material adverse effect on it, immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result;
- (b) **Conduct of business**
 - (i) pay all its indebtedness when due;
 - (ii) comply with all consents and all obligations binding on it by law, contract or otherwise;
- (c) **Maintenance of corporate existence**
do all things necessary to maintain its corporate existence and the corporate existence of each other Group Member and will not transfer its jurisdiction of incorporation without the prior written consent of the Secured Party;
- (d) **Maintain consents**
maintain in full effect all consents required to enable it to comply with its obligations under the Relevant Documents;
- (e) **Information to be true**
 - (i) ensure that all information provided by it to the Secured Party in connection with the Relevant Documents after the date of this Deed is true in all material respects as at the date that information is provided; and
 - (ii) not omit to state any fact or circumstance that would make that information untrue or misleading in any material respect; and
- (f) **Relevant Documents**
comply, and procure that each other Relevant Party complies, with its obligations under each Relevant Document to which it is a party.

5.3 Negative undertakings

The Debtor undertakes that it will not, and will procure that no other Group Member will:

- (a) **Guarantee**
give a guarantee; or
- (b) **Acquisition of shares**
purchase or subscribe for shares in another company; or
- (c) **Make loans**
except in the ordinary course of business and then only on arm's length commercial terms, lend money to another person; or

- (d) **Change of business**
make a substantial change in the nature or scope of its business as presently conducted; or
- (e) **Change of name**
change its name without giving at least 14 days prior written notice to the Secured Party; or
- (f) **Provide or accept services**
provide services to or accept services from a person other than on arm's length commercial terms; or
- (g) **Distributions**
make any distribution (as defined in section 2 of the Companies Act 1993) except:
 - (i) by a wholly-owned subsidiary of the Debtor to the Debtor; or
 - (ii) by way of dividends out of its profits after tax.

5.4 Financial and reporting undertakings

The Debtor undertakes that it will:

- (a) **Accounts**
as soon as available and in any event within 90 days after the end of its financial years and half-years, deliver to the Secured Party its financial statements and, if it has subsidiaries, its group financial statements as at the end of and for that financial year or half-year, audited in the case of financial statements as at the end of a financial year; and
- (b) **Other information**
promptly deliver to the Secured Party:
 - (i) details of any litigation, arbitration or administrative proceeding that, if it had been current, pending or, to its knowledge, threatened against it or another Group Member would render the relevant representation in this Deed incorrect if repeated;
 - (ii) any other information that the Secured Party reasonably requests with respect to the business or financial condition of the Debtor or another Group Member; and
 - (iii) details of any actual or proposed transfer or other dealing in respect of its shares, promptly on becoming aware of it.

6. Insurance

6.1 Insurance

The Debtor undertakes to the Secured Party that it will:

- (a) insure and keep insured all its insurable Secured Property against all risks that should prudently be insured against in accordance with the best commercial practice, in each case for the full replacement value or such lesser amount as the Secured Party agrees in writing;
- (b) take out and maintain insurance against third party liability that it is prudent to insure against in accordance with the best commercial practice; and
- (c) arrange for the name of the Secured Party to be endorsed as an interested party on all policies of insurance related to the Secured Property and for a copy of each such endorsed policy of insurance to be provided to the Secured Party; and
- (d) if required by the Secured Party, ensure that each insurance policy provides that:
 - (i) the Secured Party is named as co-insured for its interest;
 - (ii) the insurer will give to the Secured Party copies of all notices given by the insurer that affect the insurance cover or its terms; and

- (iii) no cancellation or change of insurance is effective until at least 14 days after receipt by the Secured Party of written notice to that effect.

6.2 Application of insurance proceeds

- (a) Money recoverable under any insurance on the Secured Property is to be applied, at the option of the Secured Party, either:
 - (i) in or towards rebuilding, repairing or replacing the relevant Secured Property or meeting the liability insured against; or
 - (ii) in reduction of the Secured Indebtedness.
- (b) Any such money released to or received by the Debtor is to be held by the Debtor on trust for the Secured Party until applied in the manner required by this clause.

6.3 Authority to Auditors

The Debtor authorises the Secured Party to discuss its financial statements and financial affairs at any time with the Debtor's auditors and financial advisers, and authorises and requests its auditors and financial advisers to participate in those discussions and provide any information the Secured Party requests.

7. Enforcement

7.1 Events of Default

An Event of Default occurs if, at any time and for any reason, whether or not within the control of a party:

- (a) **Non-payment**
the Debtor fails to pay on its due date any Secured Indebtedness; or
- (b) **Breach of undertaking**
the Debtor does not comply with any of its obligations under clause 5.1(a) or (b), 5.2(a) or 5.3; or
- (c) **Breach of other obligations**
the Debtor fails to comply with any of its other obligations under any Relevant Document and, in the case of a failure that is capable of remedy, that failure is not remedied to the satisfaction of the Secured Party within 14 days after notice of that failure has been given to it by the Secured Party or of the date the Debtor first became aware of it, whichever is earlier; or
- (d) **Breach of representation**
any representation or statement by the Debtor in or in connection with any Relevant Document is not true in all material respects or is or proves to have been untrue or misleading in any material respect when made or repeated or deemed to have been made or repeated; or
- (e) **Avoidance or repudiation**
 - (i) any Relevant Document ceases to be or is claimed not to be in full force and effect or its validity or enforceability is contested by any person (other than the Secured Party); or
 - (ii) a person (other than the Secured Party) repudiates, or does any thing evidencing an intention to repudiate, a Relevant Document; or
 - (iii) any meeting of directors or shareholders of the Debtor is called for the purpose of considering and, if thought fit, passing any resolution, the passing or the performance of which would cause an Event of Default; or
- (f) **Insolvency**
the Debtor:
 - (i) dies, is insolvent or commits an act of bankruptcy, has a receiver appointed or is unable to pay its indebtedness as it falls due or is deemed to be so under any law; or
 - (ii) stops or suspends payment of any of its indebtedness or

threatens to do so or begins negotiations or takes any proceedings to reschedule any of its indebtedness; or

- (iii) makes, or proposes to make, any compromise, assignment, arrangement or composition with, or for the benefit of, its creditors; or

(g) Enforcement

a distress, attachment, execution or other legal process is levied against property of the Debtor and is not discharged or stayed within five days or a receiver, trustee, manager, administrator or similar officer is appointed in respect of it or any of its property; or

(h) Amalgamation

the board of the Debtor passes any resolution for or in contemplation of any amalgamation of the Debtor with or involving another company then existing or yet to be formed; or

(i) Liquidation

(i) an order is made, resolution passed or other step taken by a person for the dissolution or liquidation of the Debtor, except for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Secured Party before that step is taken; or

(ii) an order is made against the Debtor requiring the Debtor to pay the whole or any part of claims made against another company that is in liquidation; or

(j) Corporations (Investigation and Management) Act

the Debtor is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989 or a statutory manager is appointed, or any step is taken with a view to any such appointment, in respect of it under that Act (including any recommendation by, or submission by any person to, the Securities Commission supporting such an appointment); or

(k) Cessation of business

the Debtor ceases or threatens to cease to conduct all or a substantial part of its business, or disposes of, or threatens or agrees to dispose of (either by a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary) all or a substantial part of its assets; or

(l) Material adverse change

in the reasonable opinion of the Secured Party, a material adverse change occurs in relation to the Debtor; or

(m) Enforcement of security

a present or future security interest in property of the Debtor becomes enforceable; or

(n) Cross default

any indebtedness of the Debtor:

- (i) is not paid when due; or
- (ii) becomes due, or capable of being declared due, before it would otherwise have been due; or

(o) Illegality

it is or will become unlawful for the Debtor to comply with any of its obligations under a Relevant Document in any material respect; or

(p) Other Group Members

one of the events specified in the preceding paragraphs occurs with respect to a Group Member other than the Debtor or the Debtor's holding company as if references in those paragraphs to the Debtor were to that other Group Member or the Debtor's holding company; or

(q) Relevant Documents

an event of default or termination event (however described) occurs under any other Relevant Document; or

(r) Change in control

without the prior written consent of the Secured Party, there is any change in the control of the Debtor or the Debtor's holding company.

7.2 Rights of Secured Party following default

To the extent permitted by law, if an Event of Default occurs:

- (a) each security interest created under this Deed or under any Collateral Security will become immediately enforceable;
- (b) the Secured Party may, at any time, by notice to the Debtor declare all or any part of the Secured Indebtedness to be due and payable immediately, upon demand or at a later date as the Secured Party may specify; and
- (c) the Secured Party:
 - (i) has all the rights of a natural person in relation to the Secured Property;
 - (ii) has all other rights conferred by law (including under Part 9 of the PPSA) in relation to the Secured Property;
 - (iii) may, if it does not have priority over all other secured parties in respect of any Secured Property, take possession of and sell that Secured Property; and
 - (iv) may, in the name of the Debtor or otherwise, at any time, do anything that the Debtor could do in relation to the Secured Property.

7.3 Waiver of rights

The Debtor:

- (a) has no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA; and
- (b) waives its rights to:
 - (i) receive a statement of account under section 116 of the PPSA;
 - (ii) receive notice of any proposal of the Secured Party to retain collateral under section 120(2) of the PPSA;
 - (iii) object to any proposal of the Secured Party to retain collateral under section 121 of the PPSA;
 - (iv) not have goods damaged if the Secured Party removes an accession under section 125 of the PPSA;
 - (v) receive notice of the removal of an accession under section 129 of the PPSA;
 - (vi) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA; and
 - (vii) (without affecting clause 3.5) redeem collateral under section 132 of the PPSA.

8. Receiver

8.1 Appointment of Receiver

The Secured Party may (in addition to and without prejudice to any of its other rights), at any time, appoint in writing (and remove, replace and fix the remuneration and other terms of appointment of) one or more Receivers (jointly and severally) in respect of any Secured Property on terms considered necessary or expedient by the Secured Party if:

- (a) an Event of Default occurs; or
- (b) the Debtor so requests; or
- (c) the Secured Party, in its sole discretion, believes that any Secured Property is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in contravention of this Deed.

8.2 Receiver agent of Debtor

A Receiver is the agent of the Debtor. The Debtor is solely responsible for the acts and defaults of a Receiver.

8.3 Receiver's rights

Subject to any restriction imposed by the Secured Party, a Receiver is to have:

- (a) all the rights conferred on receivers and managers by law (including under the Receiverships Act 1993); and
- (b) all the rights of the Secured Party under clause 7.2 (whether or not those rights are yet enforceable by the Secured Party).

9. Proceeds of enforcement

9.1 Proceeds of enforcement

All money arising from or in connection with the exercise of the enforcement rights of a Receiver or the Secured Party is to be applied in accordance with Part 9 of the PPSA.

9.2 Contingent amounts

If, at the time of distribution of any money under clause 9.1, any part of the Secured Indebtedness is contingently owing to the Secured Party, the Secured Party or a Receiver may retain an amount equal to all or part of that contingent indebtedness. This amount is to be placed in an interest-bearing deposit account until that contingent indebtedness becomes actually due and payable or otherwise ceases to be contingently owing.

10. Liability for the Secured Property

10.1 Liabilities and obligations

The Secured Party does not (and will not be deemed to) undertake any obligation of the Debtor in respect of the Secured Property by virtue of this Deed or a Collateral Security.

10.2 Performance of Debtor's obligations by Secured Party

Notwithstanding clause 10.1, and in default of the Debtor doing so, the Secured Party may (without being obliged to do so) perform any obligation of the Debtor in respect of any Secured Property. Each amount spent for that purpose (including costs and losses) must be reimbursed by the Debtor on demand by the Secured Party.

11. Protection provisions

11.1 Exercise of powers

Subject to any mandatory law, neither the Secured Party nor any Receiver will be liable:

- (a) in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the Secured Party or a Receiver of its rights under this Deed or conferred by law; or
- (b) to account as a mortgagee in possession in respect of any Secured Property if it, any person on its behalf or any Receiver takes possession of any Secured Property.

11.2 Protection of third parties

In relation to the exercise or purported exercise of the rights of the Secured Party or a Receiver under this Deed or conferred by law, no person:

- (a) need enquire:
 - (i) whether the relevant rights were exercised or are exercisable; or
 - (ii) about the propriety or regularity of any transaction or dealing; or
- (b) will be affected by notice that any such transaction or dealing is unnecessary or improper.

11.3 Indemnity

Subject to any mandatory law, the Debtor will indemnify the Secured Party, each Attorney and each Receiver against each cost and loss (including loss of profit or margin) incurred by it as a result of:

- the occurrence or continuance of an Event of Default; or
- anything done or omitted by it in the exercise of its rights under this Deed or conferred by law (whether or not arising by reason of mistake, oversight, negligence or error of judgment),

by payment to it on demand of the amount and in the currency that it certifies is required to compensate it for that cost or loss.

11.4 Currency indemnity

If any Secured Indebtedness has to be converted from the currency (the first currency) in which it is payable into another currency (the second currency) for the purpose of:

- making or filing a claim or proof against the Debtor; or
- obtaining an order or judgment in any court; or
- enforcing any order or judgment, then the Debtor shall indemnify the Secured Party by payment in immediately available funds upon demand, in the currency stipulated by the Secured Party, against each cost or loss incurred by the Secured Party as a result of any discrepancy between:
 - the rate of exchange used for that purpose to convert the sum in question from the first currency into the second currency; and
 - the rate of exchange at which the Secured Party may in the ordinary course of business purchase the first currency with the second currency.

Each amount due under this sub-clause is to be due as a separate debt and is not to be affected by, or merged into, any judgment obtained for other sums due.

11.5 Indemnities irrevocable

The above indemnities are unconditional and irrevocable and are to survive both termination of this Deed and payment of all other Secured Indebtedness and compliance with all Secured Obligations.

12. No obligation to marshal

The Secured Party is not required to marshal, enforce or apply under:

- any security interest, guarantee or other entitlement held at any time by it; or
- any money or property that it at any time holds or is entitled to receive.

13. Payments

13.1 Mode of payments

Each payment to the Secured Party under a Relevant Document is to be made on the due date in immediately available freely transferable funds in the manner that the Secured Party, by notice to the Debtor, specifies from time to time.

13.2 Payments to be free and clear

Each payment by the Debtor to the Secured Party under a Relevant Document is to be made:

- free of any restriction or condition; and
- free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on another account, whether by way of set-off, counterclaim or otherwise.

13.3 Reinstatement

If a payment made by the Debtor to the Secured Party pursuant to a Relevant Document is avoided by law:

- that payment will be deemed not to have discharged or affected the relevant obligation of the Debtor; and
- the Secured Party and the Debtor will be deemed to be restored to the position in which each would have been if that payment had not been made.

13.4 Gross-up

If:

- the Debtor is required by law to make a deduction or withholding for or on account of tax from an amount paid or payable by the Debtor to the Secured Party under a Relevant Document; or
- the Secured Party is required by law to make a payment on, or calculated by reference to, an amount paid or payable by the Debtor to the Secured Party under a Relevant Document (excluding tax on its overall net income),

the amount in respect of which that deduction, withholding or payment is required to be made is to be increased so that the Secured Party actually receives and retains (free from any liability in respect of any deduction, withholding or payment) a net amount equal to the amount that it would have received and retained had no deduction, withholding or payment been made.

14. Set-off

The Debtor authorises the Secured Party to apply (without prior notice or demand) any credit balance of the Debtor on any account in any currency and at any of the Secured Party's offices in or towards satisfaction of any indebtedness then due to the Secured Party under a Relevant Document and unpaid. If at any time following an Event of Default an amount is contingently due or an amount due is not quantified, the Secured Party may retain and withhold repayment of any such credit balance and the payment of interest or other money pending that amount becoming due and/or being quantified and may set off the maximum liability that may at any time be owing to the Secured Party by the Debtor. The Secured Party may use any credit balance to buy other currencies and may break any term deposit to effect that application.

15. Power of attorney

15.1 Appointment

The Debtor irrevocably appoints the Secured Party, each Receiver, each nominee of the Secured Party in whose name any Secured Property is held and each authorised officer or attorney of the Secured Party severally to be its attorney (with full power to appoint substitutes and to sub-delegate) on behalf of the Debtor and in its name or otherwise and at its expense to complete, execute and otherwise perfect all assignments, transfers, security interests and other documents, and generally to do all other acts and things, that the Debtor is obliged to do under this Deed or another Relevant Document.

15.2 Ratification

The Debtor hereby ratifies and confirms to each person dealing with the Secured Party, a Receiver and each Attorney whatever the Secured Party, a Receiver or that Attorney does in the exercise of any of the rights referred to in clause 15.1.

16. Assignment

16.1 Benefit and burden of this Deed

This Deed is binding upon and enures for the benefit of the parties and their respective successors and permitted assignees or transferees.

16.2 The Secured Party

The Secured Party may assign or transfer any of its rights or obligations under this Deed without the consent of the Debtor. Each assignee or transferee is to have the same rights against the Debtor under this Deed as if named in this Deed as the Secured Party.

16.3 Disclosure of information

The Secured Party may disclose, on a confidential basis, to a potential assignee, transferee or other person with whom contractual relations in connection with this Deed are contemplated, any information about the Debtor or another Group Member whether or not that information was obtained in confidence and whether or not that information is publicly available.

16.4 The Debtor

The Debtor may not assign or transfer any of its rights or obligations under any of this Deed without the prior written consent of the Secured Party.

17. Notices

17.1 Addresses and references

Each notice or other communication under this Deed is to be made in writing and sent by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party.

17.2 Deemed delivery

No communication will be effective until received. A communication to the Debtor is, however, deemed to be received:

- in the case of a letter, on the third business day after posting; and
- in the case of a facsimile, on the business day on which it is despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of despatch.

18. Costs

The Debtor will pay each cost or loss (including any tax) incurred by the Secured Party in connection with:

- the preparation, negotiation, entry into, registration and release of each Relevant Document or any related financing statement;
- each amendment to, or waiver in respect of, or discharge of, a Relevant Document; and
- the exercise, protection or enforcement of the Secured Party's rights under a Relevant Document, in each case on demand and on a full indemnity basis.

19. Remedies and waivers

19.1 Exercise of rights and waivers

Time is of the essence in respect of all dates and times for compliance by the Debtor with its obligations under this Deed. However, no failure to exercise, and no delay in exercising, a right of

the Secured Party under a Relevant Document will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Secured Party of its rights under a Relevant Document is effective unless it is in writing signed by the Secured Party.

19.2 Verification statement

The Debtor waives its right under section 148 of the PPSA to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by the Secured Party in respect of any Secured Property.

19.3 Remedies cumulative

The rights of the Secured Party under the Relevant Documents are cumulative and not exclusive of any rights provided by law.

20. Miscellaneous

20.1 Property Law Act

- The Covenants set out in clauses 3(2), 6(2) and 12 of part 2 of Schedule 2 to the PLA are excluded from this deed.
- To the extent that a mortgage of any real property (a **Mortgage**) forms part of any Collateral Security, the Covenants set out in clauses 3(2), 8(2), 16(2) and 18 of Part 1 of Schedule 2 to the PLA are excluded from the Mortgage.
- In the event of any conflict between the provisions of a Relevant Document and the provisions of Part 1 or Part 2 of schedule 2 to the PLA, the provisions of the Relevant Document shall apply.
- For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, this Deed will be delivered by the Debtor immediately on the earlier of:
 - physical delivery of an original of this Deed, executed by the Debtor, into the custody of the Secured Party or the Secured party's solicitors; or
 - transmission by the Debtor or its solicitors (or any other person authorised in writing by the Debtor) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the Debtor, to the Secured party or the Secured Party's solicitors.

20.2 Amendments

No amendment to this Deed will be effective unless it is in writing signed by both parties.

20.3 Partial invalidity

The illegality, invalidity or unenforceability of a provision of this Deed under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

20.4 Certificates conclusive

A certificate by the Secured Party of any amount payable under this Deed is to be conclusive evidence for all purposes, including for any proceedings.

20.5 Counterparts

This Deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

21. Governing law

This Deed is governed by and is to be construed in accordance with New Zealand law.