

# Trust Deed for Subordinated Bonds

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**PARTIES**

WEL Networks Limited

**Issuer**

The New Zealand Guardian Trust Company Limited  
**Supervisor**

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DEED dated 28 June 2018

## PARTIES

WEL Networks Limited ("**Issuer**")

The New Zealand Guardian Trust Company Limited ("**Supervisor**")

## INTRODUCTION

- A. The Issuer proposes to issue subordinated debt securities to retail investors in New Zealand and to certain institutional investors.
- B. The debt securities will be constituted by, and issued on terms set out in, this deed.
- C. The Supervisor has agreed, at the request of the Issuer, to act as supervisor for the holders of the debt securities on the terms and conditions of this deed.

## IT IS AGREED:

### 1. INTERPRETATION

1.1 **Definitions:** In this deed, unless the context otherwise requires:

"**Auditor**" means PricewaterhouseCoopers being the auditor of the Issuer as at the date of this deed or such other auditor appointed by the Issuer.

"**Authorised Officers**" means any person who is a director, a chief executive officer or chief financial officer of the Issuer (or such officer of the Issuer howsoever designated as may from time to time replace or succeed such officer), and any other officer of the Issuer formally appointed by the directors of the Issuer or their duly authorised delegates or attorneys and notified in writing to the Supervisor.

"**Bond Moneys**" means, in relation to a Bond at any time, the principal, interest and other moneys payable on, or in relation to, the Bond to the Holder of that Bond or at the direction of the Supervisor at that time under or pursuant to this deed, and a reference to "**Bond Moneys**" includes any part of them.

"**Class**" means a category of Bonds which constitutes a separate class of Bonds being any category of Bonds having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of the Issuer (in consultation with the Supervisor) at any particular time, for any particular purpose, constitutes a separate class of Bonds.

"**Class of Holders**" means the Holders of a Class of Bonds.

"**Conditions**" means the terms and conditions applicable to the Bonds which are set out in schedule 1.

this "**deed**" includes the Conditions.

"**Directors' Report**" means a report signed by two directors of the Issuer substantially in the form set out in schedule 3, or such other form as the Issuer and the Supervisor may agree in writing.

"**Financial Statements**" means, at any date or for any period, financial statements of the Issuer for that period, or as at that date, which comply with GAAP.

"**FMC Regulations**" means the Financial Markets Conduct Regulations 2014.

"**FR Act**" means the Financial Reporting Act 2013.

"**FMS Act**" means the Financial Markets Supervisors Act 2011.

"**GAAP**" means generally accepted accounting practice as defined in section 8 of the FR Act.

"**Issuer Obligations**" has the meaning given to it in the FMC Act.

"**Trust Powers**" means the trusts, powers, authorities and discretions vested in the Supervisor by this deed.

- 1.2 **Defined terms in the Conditions:** In addition, terms have the meanings given to them in the **Conditions**, unless the context otherwise requires.
- 1.3 **Interpretation and headings:** Conditions 1.2 and 1.3 apply to this deed as if fully set out in this deed and as if a reference to the Conditions was a reference to this deed.
- 1.4 **References to security and guarantors:** References in this deed to security for the Bonds or guarantors of the Bonds are included for compliance with the FMC Act only and do not affect the status of the Bonds as being unsecured and not guaranteed by any person or government.

## 2. CREATION OF THE BONDS

- 2.1 **Constitution:** The Bonds are constituted under this deed.
- 2.2 **Issue and creation:** The Bonds are issued and created by the Registrar entering in the Register the particulars of the Bonds.
- 2.3 **The Conditions:** The Bonds are issued and held with the benefit of and subject to the Conditions all of which are binding upon the Issuer, the Supervisor and the Holders. The Holders shall be deemed to have notice of this deed.
- 2.4 **Enforcement of Holders' rights:**
- (a) The Issuer acknowledges that this deed is made for the benefit of and, subject to clause 2.4(b), is intended to be enforceable by the Supervisor and any person who is from time to time a Holder.
  - (b) The Supervisor holds its rights and benefits under this deed in trust for, and for the benefit of, Holders. No Holder shall be entitled to enforce any of its rights or remedies under this deed directly against the Issuer unless the Supervisor fails to enforce such rights or remedies within a reasonable period after having become bound to do so in accordance with this deed.

2.5 **Conditions precedent:** The Issuer is not entitled to issue any Bonds until the Supervisor has confirmed to the Issuer in writing that it has received the following in form and substance satisfactory to it:

- (a) a duly executed original of this deed;
- (b) a copy of the duly executed Registry Services Agreement;
- (c) a copy of the Offer Document that has been lodged with the Registrar of Financial Service Providers;
- (d) a copy of the certificate of lodgement given by the Registrar of Financial Service Providers under the FMC Act in respect of the Offer Document;
- (e) evidence that this deed has been lodged with the Registrar of Financial Service Providers under the FMC Act;
- (f) confirmation from the solicitors to the Issuer that this deed and the Offer Document comply with the FMC Act, the FMC Regulations and all other applicable laws; and
- (g) a legal opinion from the solicitors to the Issuer as to the enforceability and due execution of this deed.

### 3. UNDERTAKING TO PAY

3.1 **Payments in accordance with Conditions:** The Issuer shall, as and when due and payable in accordance with the Conditions:

- (a) subject to clause 3.1(b), unconditionally pay or cause to be paid to, or to the order of, the Supervisor all amounts payable in respect of each Bond; and
- (b) notwithstanding clause 3.1(a), unless and until otherwise requested by the Supervisor and without the need for any Holder or the Supervisor on its behalf to give notice that payment is required, pay or cause to be paid to, or to the order of, the relevant Holder all amounts payable in respect of each Bond.

3.2 **Satisfaction of payments:** Each payment made by the Issuer in accordance with clause 3.1(b) shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 3.1(a).

### 4. REPRESENTATIONS AND WARRANTIES

4.1 **Representations and warranties:** The Issuer represents and warrants to the Supervisor and the Holders that:

- (a) *Status:* it is a company duly incorporated and validly existing under the laws of New Zealand;
- (b) *Power:* it has power to enter into and perform its obligations under this deed and to issue the Bonds;
- (c) *Authorisations:* it has all necessary authorisations and has taken all necessary corporate and other action to authorise the entry into, execution and delivery of this deed, the issue of the Bonds and the performance of all the obligations expressed to be binding on it under this deed;

- (d) *Binding obligations:* its obligations under this deed, and the Bonds when issued, are legal, valid, binding and enforceable against it, in each case in accordance with its terms, subject to applicable bankruptcy, re-organisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject also (as to enforceability) to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law;
- (e) *No violation:* to the best of its knowledge, the execution, delivery and performance by it of its obligations under this deed do not, and the Bonds when issued will not, violate:
  - (i) any law applicable to it;
  - (ii) its constitution; or
  - (iii) any agreement or other instrument binding upon it or any of its assets, breach of which would reasonably be expected to have a material adverse effect; and
- (f) *No Event of Default:* no Event of Default has occurred and is continuing.

4.2 **Repetition:** The representations and warranties in clause 4.1 shall be made on the date of this deed and on the Issue Date.

## 5. UNDERTAKINGS

5.1 **General undertakings:** The Issuer undertakes to the Holders and the Supervisor that it will, for so long as any Bonds are outstanding:

- (a) *Registry Services Agreement:* comply in all material respects with and perform all material obligations under the Registry Services Agreement;
- (b) *Registrar:* give, or procure that the Registrar gives, notice to the relevant Holders of any resignation or removal of the Registrar and the appointment of any replacement Registrar promptly following such event;
- (c) *Register:* use all reasonable endeavours to cause the Registrar to keep the Register pursuant to the Registry Services Agreement;
- (d) *Authorisations:* effect and promptly renew from time to time all material authorisations required under any applicable law to enable it to perform and comply fully with this deed or required on its part for the validity or enforceability of this deed;
- (e) *Notify Event of Default:* promptly upon becoming aware of the occurrence of any Event of Default, notify the Supervisor and the Holders of the occurrence;
- (f) *Send notices:* send copies to the Supervisor of all notices or other information given by it to Holders;
- (g) *FMC Act and other laws:* comply with the provisions of the FMC Act, the FMC Regulations and all other laws applicable to the Bonds;

- (h) *Quotation*: use its best endeavours to ensure that the Bonds are, within a reasonable time, quoted on the NZX Debt Market and that such quotation is maintained;
- (i) *Compliance with NZX Listing Rules*: for so long as the Bonds are quoted on the NZX Debt Market, comply with all obligations imposed by the NZX Listing Rules; and
- (j) *Offer Document*: not issue an Offer Document without consulting with the Supervisor, and not include any statement concerning the Supervisor in an Offer Document, or any advertisement (as defined in the FMC Act) without the prior written consent of the Supervisor (such consent not to be unreasonably withheld).

5.2 **Reports and information**: The Issuer covenants with the Supervisor that, so long as any Bonds are outstanding, the Issuer will deliver or cause to be delivered to the Supervisor:

- (a) *Annual Financial Statements*: not later than 90 days (or by such other time as is prescribed under the NZX Listing Rules) after the end of each of its financial years, a copy of the latest annual Financial Statements of the Issuer for the preceding financial year, made up as at the last day of that financial year and duly audited;
- (b) *Interim Financial Statements*: not later than 90 days (or such other time as is prescribed under the NZX Listing Rules) after the end of each of its financial half-years, a copy of the latest interim Financial Statements of the Issuer for the preceding financial half-year, made up as at the last day of that financial half-year;
- (c) *Directors' Report*: not later than the times of delivery of the latest Financial Statements pursuant to clauses 5.2(a) or 5.2(b), a separate Directors' Report signed by two directors of the Issuer, stating the matters referred to therein as at the end of and in respect of such year or half-year, as the case may be;
- (d) *Auditor's report*: at the same time as the latest Financial Statements for the Issuer are provided in accordance with clause 5.2(a), a report by the Auditor, stating:
  - (i) whether, in the course of performing their duties as Auditor, they have become aware of any of the circumstances described in sections 198 and 199(2) of the FMC Act and any other matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by this deed or by the FMC Act and the FMC Regulations or any other law, and if so giving particulars of those circumstances;
  - (ii) whether they, as Auditor, have audited the Register, and to the extent that the Auditor have audited the Register in accordance with the FMC Act and the FMC Regulations, whether in their opinion there is reasonable assurance that the Register has been duly maintained in accordance with the requirements of the FMC Act and in all material respects contains the information required by the FMC Act; and
  - (iii) any other matter agreed between the Issuer, the Supervisor and the Auditor from time to time.

The parties agree that the report provided by the Auditor must be provided in such form as agreed between the Issuer, the Supervisor and the Auditor from time to time;

- (e) *Register audit:* if the Auditor has not audited the Register in any financial year, at the same time as the latest Financial Statements for the Issuer are provided in accordance with clause 5.2(a) a report from an audit firm that is a "qualified auditor" for the purposes of the FMC Act (including by way of a collective audit pursuant to the FMC Regulations) confirming that the firm has audited the Register in accordance with the FMC Act and FMC Regulations, and whether in their opinion there is reasonable assurance that the Register has been duly maintained for the relevant financial year in accordance with the requirements of the FMC Act and, in all material respects, contains the information required by the FMC Act;
- (f) *Requested information and reports:* if requested by the Supervisor (or a person authorised by the Supervisor to exercise its powers), within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor:
  - (i) all documents and records relating to the Issuer; and
  - (ii) any other reports or information required by the Supervisor (or other authorised person).

The reports or information may be about any matter relevant to the performance of the Supervisor's functions and include forward-looking reports;

- (g) *Contravention or possible contravention of Issuer Obligations:* if it has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene any of its Issuer Obligations in a material respect, as soon as practicable details of the contravention or possible contravention and advise the Supervisor of the steps (if any) that it has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken; and
- (h) *Serious financial problems:* if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent (as defined in the FMC Act), as soon as practicable, all information relevant to that matter that is in the possession or under the control of the Issuer and that was obtained in the course of, or in connection with, the performance of its functions as Issuer and advise the Supervisor of the steps (if any) that it intends to take in respect of that matter and the date by which the steps are to be taken.

5.3 **Notices to Holders:** The Issuer undertakes to the Holders and the Supervisor that it will, for so long as any Bonds are outstanding, send to the Holders such statements or notices as may be required pursuant to applicable law or the NZX Listing Rules.

## 6. APPOINTMENT OF AUDITOR

6.1 **Consultation with Supervisor:** For so long as any Bonds are outstanding, the Issuer must:

- (a) before recommending the appointment or reappointment of a person as an Auditor:

- (i) consult with the Supervisor on the appointment or reappointment; and
  - (ii) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
- (b) notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
- (c) not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

6.2 **Specified engagement:** For so long as any Bonds are outstanding, the Issuer must, before recommending the appointment or reappointment of a person as the Auditor:

- (a) give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to the Issuer's compliance with this deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
- (b) consult with the Supervisor on the nature and scope of any such engagement.

6.3 **Terms of appointment:** For so long as any Bonds are outstanding, the Issuer must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:

- (a) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
- (b) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement.

## 7. APPOINTMENT OF SUPERVISOR

7.1 **Appointment:** The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor for the Holders on the terms and conditions contained in this deed including, without limitation:

- (a) acting on behalf of the Holders in relation to:
  - (i) the Issuer;
  - (ii) any matter connected with this deed or the terms of the regulated offer (within the meaning of the FMC Act) of the Bonds; and

- (iii) any contravention or alleged contravention of the Issuer Obligations; and
- (b) supervising the Issuer's performance:
  - (i) of its Issuer Obligations; and
  - (ii) in order to ascertain whether the assets of the Issuer and of each guarantor that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the Face Value, interest and other monies payable on, or in relation to the Bonds as they become due; and
- (c) performing or exercising any other functions, duties, and powers conferred or imposed on the Supervisor by or under the FMC Act, the FMS Act or this deed.

**7.2 Hold in trust:** The Supervisor shall hold the following in trust for the benefit of the Holders:

- (a) the right to enforce the Issuer's duty to repay, or to pay interest, under the terms of the Bonds;
- (b) any charge or security for repayment; and
- (c) the right to enforce any other duties that the Issuer, any guarantor, and any other person have under:
  - (i) the terms of the Bonds; or
  - (ii) the provisions of this deed or the FMC Act in relation to the Bonds.

**7.3 Duties of Supervisor:** The Supervisor:

- (a) must:
  - (i) act honestly in acting as supervisor under this deed;
  - (ii) in exercising its powers and performing its duties as supervisor, act in the best interests of the Holders;
  - (iii) exercise reasonable diligence in carrying out its functions as supervisor;
- (b) must do all the things it has the power to do to cause any contravention or alleged contravention of the Issuer Obligations in respect of the Bonds to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Holders;
- (c) subject to any court order made under section 210 of the FMC Act, must act in accordance with any direction given by a Special Resolution of Holders that is not inconsistent with any enactment, rule of law or this deed in relation to:
  - (i) seeking a remedy to a contravention or alleged contravention of the Issuer Obligations in respect of the Bonds; and
  - (ii) any other matter connected with the Supervisor's functions; and

- (d) in exercising its powers and performing its duties as supervisor, must exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor (as defined in the FMC Act) would exercise in the same circumstances.

The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction given to it by the Holders in accordance with this deed.

## 8. SUPERVISOR'S FEES, EXPENSES AND INDEMNITIES

8.1 **Fees:** The Issuer shall pay to the Supervisor such fees (plus goods and services tax (if any)) as may be from time to time agreed by them in writing.

8.2 **Expenses:** The Issuer shall pay all out of pocket expenses reasonably and properly incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation, execution and (if applicable) registration of this deed and each Offer Document;
- (b) the exercise of any Trust Power, including the taking of any expert advice deemed reasonably necessary or expedient by the Supervisor in connection with the exercise of such Trust Power;
- (c) the convening and holding, and carrying out of any directions or resolutions, of any meeting of Holders in accordance with the terms and conditions of this deed; and
- (d) any waiver, consent or other action requested by the Issuer.

8.3 **Enforcement:** The Issuer shall pay all expenses properly incurred by the Supervisor in connection with the enforcement or preservation of, or attempted enforcement or preservation of, any right under this deed or otherwise in the exercise of any Trust Power in relation to the Bonds, including the taking of any expert advice deemed reasonably necessary or expedient by the Supervisor in connection with the above matters.

8.4 **Indemnity by Issuer:** Without prejudice to the right of indemnity by law given to supervisors and trustees, but subject to any limitations placed on such rights of indemnity by law, the Issuer shall indemnify the Supervisor (and each of its officers, directors, employees and agents) for all expenses and liabilities (and for the avoidance of doubt excluding income tax on the Supervisor's remuneration) reasonably sustained or incurred in carrying out the Trust Powers or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this deed in relation to the Bonds, other than a claim for indemnification that is not permitted by clause 12.1.

8.5 **Indemnity by Holders:** The Supervisor is not required to take any action or exercise any Trust Power or comply with any request or direction pursuant to this deed (whether or not it is expressed to be bound to do so) unless, subject to clause 12.1, it has first been indemnified by the Holders to its satisfaction against all reasonable expenses and liabilities it may reasonably sustain or incur by so doing.

8.6 **Payments:** The fees, expenses, indemnities and other amounts payable under this deed to the Supervisor (excluding for the avoidance of doubt amounts payable in respect of the Bonds) shall be payable:

- (a) at the times agreed; or
- (b) in the absence of agreement, on demand.

## 9. SUPERVISOR'S POWERS

### 9.1 General powers

- (a) The powers, authorities and discretions conferred on the Supervisor by this deed shall be in addition to any powers, authorities and discretions which may from time to time be vested in supervisors and trustees by law in relation to the Bonds and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the holder of a Bond or any security for any Bond.
- (b) Where any authorisation or direction in respect of the taking of any action or other matter may, under the provisions of this deed, be given to the Supervisor by a Special Resolution of the Holders, the Supervisor may act in reliance upon such authorisation or (as the case may be) shall act in accordance with any such direction, and shall not be responsible for any costs, damages, expenses, liabilities or inconvenience that may result from the actions so taken in reliance thereon, provided that the Supervisor shall not be so bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, damages, expenses and liabilities which it may incur by so doing.

9.2 **The Bonds:** The Supervisor shall, in addition to any powers provided by law, have the following powers and duties in relation to the Bonds:

- (a) *Monitoring role:*
  - (i) The Supervisor must:
    - (aa) exercise reasonable diligence to ascertain whether any breach of this deed has occurred but, until it has received notice to the contrary from the Issuer, the Auditor or any Holder, is entitled to assume that no breach has occurred; and
    - (bb) take all reasonable steps available to it to cause any breach of those terms to be remedied (except if it is satisfied that the breach will not have a material adverse effect on the Holders).
  - (ii) The Supervisor must exercise reasonable diligence to ascertain whether or not the assets of the Issuer that are or may be available, whether by way of security (if any) or otherwise, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of the Bonds as they become due.
- (b) *Applications to court:* The Supervisor may, at any time, apply to the court for an order:
  - (i) under section 208 of the FMC Act, if the Supervisor is satisfied that:

- (aa) the Issuer and any guarantor are unlikely to be able to pay all money owing in respect of the Bonds as and when due; or
  - (bb) the Issuer is insolvent (as defined in the FMC Act) or the financial position or management of the Issuer is otherwise inadequate; or
  - (cc) there is a significant risk that the interests of Holders will be materially prejudiced for any other reason; or
  - (dd) the provisions of this deed are no longer adequate to give proper protection to the interests of the Holders; or
- (ii) under section 210 of the FMC Act and within 20 working days (or, with leave of the court, within any longer period) after the passing of a Special Resolution of Holders, directing it not to comply with a Special Resolution of Holders,

and it may support or oppose any application to the court made by or at the instance of the Financial Markets Authority or any Holder (where applicable). The Supervisor shall, subject to clause 12.1, be indemnified by the Issuer against all expenses incurred in relation to any such application or proceedings. The Supervisor must consult with the Issuer prior to making any such application before an Event of Default has occurred unless the Supervisor, acting reasonably, determines that such consultation would adversely affect, in a material respect, its rights under this clause in which case it will consult with the Issuer as soon as practicable after taking the relevant action.

- (c) *Material breach:* If any breach of this deed occurs or is likely to occur which the Supervisor reasonably considers is likely to be materially prejudicial to the interests of any Holders, the Supervisor shall be entitled in its absolute discretion to require the Issuer to report to the Holders the circumstances and the nature of such breach and any other relevant information concerning the Issuer which the Supervisor has received in relation to this deed and which it reasonably considers to be material to those Holders, and invite those Holders to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Trust Powers under this deed. If the Issuer fails to give that report within 30 days the Supervisor shall be entitled to do so itself.
- (d) *Represent Holders:* The Supervisor may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Holders, represent and act on behalf of the Holders in any manner concerning them generally.
- (e) *Investment:* Any money held by the Supervisor which is subject to the trusts created by this deed may, at the Supervisor's discretion, be invested in the name of the Supervisor or its nominee in any investments whatsoever with power to vary those investments and from time to time to deal with or dispose of them or any part of them. The income (less any commissions properly payable to the Supervisor) arising from all such investments made by the Supervisor will belong to the person on behalf of whom such money is held by the Supervisor.

- (f) *Power to remedy breach:* The Supervisor's powers to remedy any breach of this deed are subject to any other provision of this deed which is inconsistent with the exercise of such powers.
- (g) *Power to engage expert:* The Supervisor is entitled, in the performance of the Supervisor's functions under this deed or in connection with the Bonds, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:
  - (i) determine the financial position of the Issuer; or
  - (ii) review the business, operation, or management systems, or the governance, of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 9.2(g), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance. Without limiting clause 8, the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

9.3 **Distribution of funds:** All moneys received by the Supervisor from or on behalf of the Issuer following the occurrence of an Event of Default shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to the Bonds) be held and applied:

- (a) first, subject to any direction made by any court, in payment of all amounts due to the Supervisor under this deed (including all expenses, losses and liabilities sustained or incurred by the Supervisor under this deed and all fees payable to the Supervisor under this deed);
- (b) secondly, in or towards payment to the Holders, rateably in proportion to the Bond Moneys owing to them in respect of the Bonds held by them; and
- (c) thirdly, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

## 10. EXERCISE OF SUPERVISOR'S POWERS

10.1 **Discretion:** Except as otherwise expressly provided in this deed, the Supervisor:

- (a) has absolute and uncontrolled discretion as to the exercise or non-exercise of the Trust Powers and as to the conduct of any action, proceeding or claim (provided it has acted in accordance with sections 112 and 113 of the FMC Act);
- (b) may refrain from exercising any Trust Power until directed by Special Resolution of Holders or the affected Class of Holders to do so; and
- (c) will not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of any Trust Power.

10.2 **Reliance:** The Supervisor shall be entitled, without liability for loss, to obtain, accept and act on, or to decline and elect not to act on:

- (a) any communication or document (including any fax or email) reasonably believed by it to be genuine and correct;
- (b) any resolution which the Supervisor believes to have been properly passed at any meeting of Holders or the affected Class of Holders;
- (c) advice and statements of lawyers, accountants and other experts reasonably selected by it or the Issuer;
- (d) a certificate signed by or on behalf of the Issuer by at least one director of the Issuer or the chief executive officer or chief financial officer of the Issuer, as to any matters of fact which might reasonably be expected to be within the knowledge of the Issuer or that any particular transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Holders generally or of any Class of Holders, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and
- (e) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this deed, as conclusive evidence of the facts stated therein.

10.3 **Delegation:** The Supervisor, whenever it thinks it expedient in the interests of the relevant Holders to do so, may:

- (a) where permitted to do so by the FMC Act or as permitted by, and then subject to, conditions imposed under the FMS Act, delegate at any time to any person any of the Trust Powers (including the giving of power to sub-delegate) which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit provided any such delegation shall not relieve the Supervisor of its responsibilities under this deed or under the FMC Act; and
- (b) authorise any person as it thinks fit to act as its representative at any meeting.

10.4 **Supervisor's consent:** Any consent given by the Supervisor for the purposes of this deed may be given on such terms and conditions (if any) as the Supervisor thinks fit.

10.5 **Subscribers' money:** The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by subscribers for the Bonds.

10.6 **Safe custody:** The Supervisor may, at the expense of the Issuer, hold or place this deed and any other documents with a bank or any person whose business includes undertaking the safe custody of documents or with any solicitor or firm of solicitors (in each case reasonably considered by the Supervisor to be of good repute). The Supervisor is not responsible for or required to insure against any loss incurred in connection with a deposit made in accordance with this clause 10.6.

10.7 **Fiduciary relationship:** The Supervisor and any of its Related Companies and officers may (without having to account to the Issuer or any Holder) engage in any kind of business with the Issuer and its Related Companies (including being a Holder or holder of shares or other securities of the Issuer or any associated company of the Issuer and acting in any representative capacity for a Holder or any such holder of shares or other securities) and may accept fees or other consideration for services without having to account to the Holders.

- 10.8 **Confidentiality:** The Supervisor shall not (except to the extent required by this deed or law or by court order) be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by the Issuer.
- 10.9 **Binding on all Holders:** Any action taken by the Supervisor in accordance with this deed is binding on all of the Holders or all of the relevant Holders (as the case may be).
- 10.10 **No obligation to consult:** Except where expressly required otherwise in this deed, the Supervisor is not obliged to consult with the Holders before giving any consent, approval or agreement or making any determination under this deed.
- 10.11 **NZX Listing Rules:** Subject to compliance by the Supervisor with its obligations under the FMC Regulations, the Supervisor shall not be required to monitor compliance by the Issuer or any other party with the NZX Listing Rules and, in the absence of written notice to the contrary from the Issuer or NZX, shall be entitled to assume that the Issuer is so complying. In the event of non-compliance with the NZX Listing Rules, the Supervisor, in determining the action to be taken or not taken by it, shall be entitled to have regard to the actions of NZX in relation to that non-compliance by the Issuer.
- 10.12 **Knowledge of default:** The Supervisor:

- (a) may assume that the Issuer is complying with this deed; and
- (b) is not taken to have knowledge of the occurrence of an Event of Default,

unless any of its officers having responsibility for the transaction actually become aware of the relevant non-compliance or Event of Default or the Supervisor has received written notice from a Holder or the Issuer stating that the non-compliance or Event of Default has occurred and describing it.

## 11. REPLACEMENT OF SUPERVISOR

- 11.1 **Resignation or removal of Supervisor:** Subject, in the case of a resignation or removal under paragraph (a), (b) or (d), to clause 11.2:

- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice to the Issuer;
- (b) the Issuer may remove the Supervisor from office by giving not less than 90 days' written notice to the Supervisor;
- (c) the Supervisor may be removed by the Financial Markets Authority or the Issuer under Part 2 of the FMS Act; or
- (d) the Holders may remove the Supervisor from office upon the passing of a Special Resolution of Holders to that effect.

- 11.2 **Requirements for Retirement and Removal:** The Supervisor may not:

- (a) be removed or resign under clause 11.1(a), (b) or (d) unless:
  - (i) all functions and duties of the position have been performed;

- (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
    - (iii) the court consents; and
  - (b) be removed by the Issuer under clause 11.1(b) without the Financial Market Authority's consent.
- 11.3 **Appointment of a new Supervisor:** If any of the circumstances described in clause 11.1 occur, the Issuer will, subject to clauses 11.2(a)(i) and (iii) and 11.2(b) (where applicable), have the right to appoint a successor Supervisor, which must be a person who is authorised to act as a supervisor under the FMS Act. If a successor Supervisor has not been appointed by the Issuer or has not accepted an appointment within 60 days after any such notice, then the retiring Supervisor may, on behalf of the Issuer, appoint a successor Supervisor.
- 11.4 **Approval by Special Resolution:** Where the successor Supervisor is to be appointed under clause 11.3 the appointment shall be subject to approval by a Special Resolution of Holders.
- 11.5 **Successor Supervisor:** Where an appointment under this clause 11 is accepted by a successor Supervisor:
- (a) the successor Supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under this deed and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations;
  - (b) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this deed;
  - (c) the successor Supervisor shall execute all such documents which are necessary or appropriate and in such form as may be reasonably required by the Issuer, such that the successor Supervisor is bound by all the covenants on the part of the Supervisor under this deed from the date of such appointment; and
  - (d) the Issuer shall execute all such documents which are necessary or appropriate and in such form as may be reasonably required by the retiring Supervisor, such that the retiring Supervisor is indemnified to its satisfaction in respect of the effectiveness of its retirement and any actions of the successor Supervisor.
- 11.6 **Notice:** The Issuer agrees to notify all Holders of the appointment of any new supervisor as soon as reasonably practicable following the appointment and to lodge notice of the change in supervisor with the Registrar of Financial Service Providers within 5 working days after such change takes effect.

## 12. LIABILITY OF SUPERVISOR

- 12.1 **Supervisor not indemnified:** No provision of this deed shall have the effect of exempting the Supervisor from, or indemnifying the Supervisor against, liability in relation to the performance of the Supervisor's licensee obligations (as defined in section 4 of the FMS Act) where the Supervisor fails to comply with the duties set out in clause 7.3(a) or clause 7.3(d).

12.2 **Duty of care:** Notwithstanding any other provision of this deed, the Supervisor shall not be liable to any person (including the Issuer and any Holders) in any way except for wilful default, gross negligence or wilful breach of trust where the Supervisor has failed to show the degree of care and diligence required of it having regard to the provisions of this deed.

### 13. **BENEFIT OF DEED**

13.1 The Issuer acknowledges, in relation to the Holders, that this deed is made for the benefit of, and (subject to clauses 2.4(b)) is intended to be enforceable by, any person who is from time to time a Holder, the Registrar and the Supervisor.

### 14. **AMENDMENTS**

#### 14.1 **Amendments**

- (a) *Right to amend:* The provisions of this deed may not be amended or replaced unless the amendment or replacement is made:
- (i) with the consent of the Supervisor; or
  - (ii) (despite anything to the contrary in this deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this deed) under section 109 of the FMC Act, sections 22(7) or 37(6) of the FMS Act or any other power to amend or replace this deed under an enactment.
- (b) *Supervisor consent:* Subject to section 112(2)(b) of the FMC Act, the Supervisor must not consent to an amendment to, or a replacement of, this deed unless:
- (i) either:
    - (aa) the amendment or replacement is approved by, or is contingent on approval by, the Holders; or
    - (bb) the Issuer and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Holders; and
  - (ii) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.
- (c) *Holder consent:* The approval of the Holders for the purposes of clause 14.1(b)(i)(aa) must be the approval of a Special Resolution of:
- (i) the Holders; or
  - (ii) each Class of Holders that is or may be adversely affected by the amendment or replacement.
- (d) *Notice of proposed amendment:* Notice of any proposed amendment made in accordance with clause 14.1(c) must be given by the Issuer to each Holder or each affected Class of Holders not less than 14 days before the date on which it is

intended that such amendment will take effect. The non-receipt of notice by any such Holder will not affect the validity of any such amendment.

- 14.2 **Notice of amendment or replacement:** Within 5 working days after an amendment to, or replacement of, this deed, the Issuer must ensure that notice of the amendment or replacement and a copy of the certificate relating to such amendment or replacement, is lodged with the Registrar of Financial Service Providers.

## 15. WAIVER

- 15.1 **Waivers:** Subject to any applicable law and clause 14 (if applicable), the Supervisor may by notice to the Issuer waive any breach or anticipated breach by the Issuer of this deed either wholly or in part for a specified period or indefinitely and on such other terms and conditions as:

- (a) it deems expedient if it is satisfied that the waiver will not have a material adverse effect on the Holders and will not prejudice the rights of the Supervisor or the Holders in respect of any other breach; or
- (b) may be agreed by the Supervisor pursuant to clause 15.2; or
- (c) may be approved by Special Resolution of the Holders or each Class of Holders that is or may be adversely affected by the waiver.

- 15.2 **Exemptions:** If:

- (a) the Issuer is granted an exemption, or an exemption is applicable to the Issuer, in relation to any obligation imposed upon the Issuer by or pursuant to the FR Act, the FMC Act, the FMC Regulations or the NZX Listing Rules which is materially the same as or analogous to any obligation of the Issuer under this deed; and
- (b) two Authorised Officers certify that the proposed amendment, temporary variation or waiver will not have a material adverse effect on the Issuer or have a material adverse effect on any Class of Holders,

then, subject to clause 14 (if applicable), the Supervisor may agree to amend or temporarily vary this deed or waive any breach of anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

## 16. MEETINGS OF HOLDERS

- 16.1 **Meetings:** Meetings of Holders and any Class of Holders are to be convened and held in accordance with the provisions of schedule 3. Regulation 78 and Schedule 11 (other than clauses 2 and 5 of that Schedule) of the FMC Regulations do not apply to this deed.
- 16.2 **Resolutions of Holders:** Any matter relating to this deed or the Bonds may be agreed or approved by the Holders or relevant Class of Holders (as applicable) by signing (in any number of counterparts) a memorandum in writing, recording the matter so agreed or approved in accordance with regulation 16 of schedule 3.
- 16.3 **No voting by Group member:** Notwithstanding any other provision of this deed, where the Issuer or any other member of the Group is a Holder, neither the Issuer nor such other member may vote on any matter relating to the Bonds held by the Issuer or such other

member for the period that they are so held unless all of the Bonds or the relevant Class of Bonds are held by the Issuer or another member of the Group.

## 17. NOTICES

17.1 **To the Holders:** All notices, certificates, consents, approvals, waivers and other communications in connection with this deed or a Bond to the Holders must be in writing and may be:

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

17.2 **Notices to the Issuer, the Supervisor and the Registrar:** All notices, and other communications to the Issuer, the Supervisor and the Registrar must be in writing and may be sent by prepaid post (airmail if posted to an address overseas), or left at the address or sent to an email address of the Issuer, the Supervisor or the Registrar specified below (as applicable) or such other address as is notified to Holders from time to time:

- (a) The Issuer:  
  
P O Box 925, Hamilton 3240  
114 Maui Street, Te Rapa  
  
Attention: Group Chief Financial Officer  
Email: financetreasury@wel.co.nz

- (b) The Supervisor:  
  
Level 14  
191 Queen Street  
Auckland 1010  
  
Attention: Relationship Manager  
Email: ct-auckland@nzgt.co.nz

- (c) The Registrar:  
  
Level 17  
Deloitte Centre  
80 Queen Street  
Auckland 1010  
  
Attention: Managing Director

Email: enquiries@linkmarketservices.co.nz

- 17.3 **When effective:** Communications take effect from the time they are received or taken to be received (whichever happens first) unless a later time is specified in them.
- 17.4 **Receipt - publication on NZX:** If published by an announcement on NZX, communications are taken to be received when the announcement is made on NZX.
- 17.5 **Receipt - publication in newspaper:** If published in a newspaper, communications are taken to be received on the first date that publication has been made in all the required newspapers.
- 17.6 **Receipt - postal:** Unless a later time is specified in it, a notice, if sent by post, is taken to be received on the next Business Day, or the seventh succeeding Business Day in the case of overseas post, in the place of the addressee.
- 17.7 **Receipt - email:** If sent by email, communications are taken to be received on completion of transmission of the email in readable form to the recipient's email address, provided that if such completion of transmission occurs on a day that is not a Business Day, or after 5pm on a Business Day, the communication shall be taken to have been received on the next Business Day.
- 17.8 **Non-receipt of notice:** If there are two or more Holders, the non-receipt of any notice by, or the accidental omission to give any notice to, a Holder does not invalidate the giving of that notice.
- 17.9 **Joint Holders:** In the case of joint holders of Bonds, a notice given to the Holder whose name stands first in the Register in respect of such holding shall be sufficient notice to all the joint holders.
- 18. MISCELLANEOUS**
- 18.1 **Registration of deed:** The Issuer shall promptly, at its own cost, register this deed and any amendment thereto to the extent required by the FMC Act or any other applicable law and shall pay all costs and expenses incidental to doing so.
- 18.2 **Waivers and remedies:** Time shall be of the essence of this deed but no delay in acting, or failure to act, by the Supervisor or a Holder is a waiver of any of the Supervisor's or that Holder's rights, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights provided in this deed do not exclude any rights provided by law.
- 18.3 **Partial Invalidity:** An invalid provision in this deed shall not affect the enforceability of the remaining provisions of this deed.
- 18.4 **Further issues:** The Issuer may from time to time, without the consent of the Holders, issue Bonds or issue or guarantee other debt obligations on such other terms and conditions as the Issuer may think fit.
- 18.5 **No liability:** The Registrar will not be liable for any breach by the Issuer of any representation, obligation or undertaking (including the non-payment of any money due) nor will the Registrar be liable for any negligent act, error or omission on the part of the Issuer,

nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.

- 18.6 **Survival:** The indemnities given in this deed will survive the repayment of all the Bonds and the termination of this deed.
- 18.7 **Remedies cumulative:** The rights, powers and remedies provided in this deed are cumulative and not exclusive of any rights powers or remedies provided by law.
- 18.8 **Counterparts:** This deed may be executed in any number of counterparts, all of which together constitute one and the same instrument.
- 18.9 **Delivery:** For the purposes of section 9 of the Property Law Act 2007 and without limiting any other mode of delivery, this deed will be delivered by the Issuer immediately on the earlier of:
- (a) physical delivery of an original of this deed, executed by the Issuer, into the custody of the Supervisor or the Supervisor's solicitors; or
  - (b) transmission by the Issuer or its solicitors of a facsimile, photocopied or scanned copy of an original of this deed, executed by the Issuer, to the Supervisor or the Supervisor's solicitors.

## 19. RELEASE

- 19.1 Upon being indemnified to its reasonable satisfaction pursuant to clause 8.4 and upon proof being given to the reasonable satisfaction of the Supervisor that all sums owing or outstanding in respect of the Bonds or otherwise under this deed have been paid or satisfied or that provision for such payment or satisfaction has been made in accordance with the provisions of this deed and upon payment or retention of all costs, charges and expenses incurred by, or payable to, the Supervisor in relation to this deed and the remuneration of the Supervisor and all other money payable under this deed the Supervisor shall, at the request and cost of the Issuer, execute a deed of release of this deed and shall thereupon retire as Supervisor.

## 20. GOVERNING LAW

- 20.1 This deed shall be governed by and construed in accordance with New Zealand law.

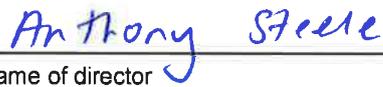
**EXECUTED AS A DEED**

**The Issuer**

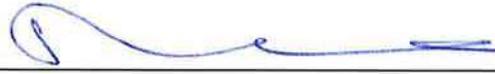
**EXECUTED for and on behalf of WEL  
NETWORKS LIMITED by:**

  
\_\_\_\_\_

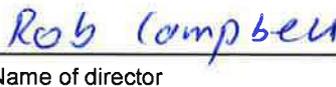
Signature of director

  
\_\_\_\_\_

Name of director

  
\_\_\_\_\_

Signature of director

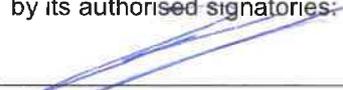
  
\_\_\_\_\_

Name of director

**The Supervisor**

**EXECUTED for THE NEW ZEALAND  
GUARDIAN TRUST COMPANY LIMITED**

by its authorised signatories:

  
\_\_\_\_\_  
Authorised signatory  
HRVOJE KOPRIVIC

\_\_\_\_\_  
Authorised signatory

  
\_\_\_\_\_  
Authorised signatory  
CALE BROWN

\_\_\_\_\_  
Authorised signatory

in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
City/town of residence

\_\_\_\_\_  
Occupation

**WITNESS TO BOTH SIGNATURES**

Full Name: Shobhita Chaturvedi  
Residential Address: Auckland  
Occupation: Operations Administrator  
Signature:

  
ACT 1502

## SCHEDULE 1

### Conditions

#### Terms and Conditions of the Bonds

*The following are the terms and conditions ("**Conditions**") which will be applicable to the Bonds.*

#### 1. INTERPRETATION

1.1 **Definitions:** The following words have these meanings in these Conditions unless the contrary intention appears:

"**Additional Interest Amount**" has the meaning given in Condition 6.7(a).

"**Approved Issuer Levy**" means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Bond, the levy payable by the Issuer in accordance with section 86J of the Stamp and Cheque Duties Act 1971.

"**Arranger**" means the person named as such in the Offer Document.

"**Bond**" means an unsecured subordinated debt security constituted by the Trust Deed and the Conditions.

"**Broken Interest Period**" means an Interest Period that either:

- (a) ends on (and excludes) a date that is not a Scheduled Interest Payment Date or the Maturity Date; or
- (b) commences on (and includes) a date that is not a Scheduled Interest Payment Date or the Issue Date.

"**Business Day**" means:

- (a) for the purposes of giving notices, a day which is a business day within the meaning of the NZX Listing Rules; and
- (b) for all other purposes, a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general banking business in Wellington and Auckland.

"**Capital Reduction**" means a reorganisation or restructure of the capital of the Issuer which results in a reduction in the number of Ordinary Shares on issue, and includes an acquisition by the Issuer of its Ordinary Shares made in accordance with the Companies Act.

"**Common Reporting Standard**" means the CRS applied standard as defined in the Tax Administration Act 1994.

"**Companies Act**" means the Companies Act 1993.

"**Conditions**" means these terms and conditions of the Bonds, and "**Condition**" means the correspondingly numbered condition in these Conditions.

"**Deferred Interest**" has the meaning given in Condition 6.6.

"**Early Redemption Notice**" has the meaning given in Condition 7.3.

**"Encumbrance"** means any mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust arrangement, any other security agreement or security arrangement (including any security interest under the Personal Property Securities Act 1999) and any other arrangement of any kind having the same effect as any of the foregoing.

**"Equal Ranking Securities"** means securities or other financial products or indebtedness that rank or are expressed to rank equally with the Bonds in a Liquidation, present or future.

**"Event of Default"** has the meaning given to it in Condition 8.1.

**"Face Value"** means NZ\$1.00 per Bond.

**"FATCA"** means Sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended (or any consolidation, amendment, re-enactment or replacement of those sections and including any current or future regulations or official interpretations issued, agreements entered into or non-US laws enacted in relation to those sections, including the Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA).

**"FMC Act"** means the Financial Markets Conduct Act 2013.

**"Group"** means the Issuer and its Subsidiaries from time to time.

**"Holder"** means a person whose name is for the time being entered in the Register as the holder of a Bond or, where a Bond is held jointly by two or more persons, the persons whose names appear in the Register as the joint holders of that Bond.

**"Insolvency Event"** means:

- (a) a Liquidation is commenced; or
- (b) a statutory manager is appointed in respect of the Issuer under the Corporations (Investigation and Management) Act 1989;
- (c) the Issuer is placed into voluntary administration under the Companies Act; or
- (d) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, inspector under any companies or securities legislation, or similar official, is appointed in respect of the Issuer or the whole or any part of its assets or undertakings.

**"Interest Deferral Condition"** means, in respect of an Interest Payment Date:

- (a) the Issuer would not satisfy the solvency test (as defined in section 4 of the Companies Act) immediately following the payment of accrued but unpaid interest on that Interest Payment Date; or
- (b) in an agreement made with or for the benefit of a Senior Creditor:
  - (i) the Issuer has breached a covenant or undertaking and the breach has not been remedied to the satisfaction of the Senior Creditor;
  - (ii) an event of default has occurred; or
  - (iii) a breach of covenant or undertaking or event of default would occur if accrued but unpaid interest on the Bonds was paid on the Interest Payment Date.

**"Interest Payment Date"** has the meaning given in Condition 6.2.

**"Interest Period"** means each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the following Interest Payment Date provided that the first Interest Period commences on (and includes) the Issue Date and the final Interest Period ends on (but excludes) the Redemption Date.

**"Interest Rate"** means the rate (expressed as a percentage per annum) determined by the Issuer on the Rate Set Date and announced by the Issuer via NZX on or before the Opening Date.

**"Issue Date"** means the date on which the Bonds are issued, as recorded in the Register.

**"Issuer"** means WEL Networks Limited.

**"Junior Ranking Securities"** means:

- (a) all securities or other financial products or indebtedness which rank or are expressed to rank junior to the Bonds in a Liquidation, present and future; and
- (b) Ordinary Shares.

**"Liquidation"** means the liquidation of the Issuer otherwise than for the purpose of, and followed by, an amalgamation in accordance with the Companies Act or a Solvent Reconstruction.

**"Manager"** means each person named in the Offer Document as arranger, lead manager or co-manager.

**"Maturity Date"** means 2 August 2023.

**"Meetings Provisions"** means the provisions for the convening of meetings of, and passing of resolutions by, Holders set out in schedule 2 of the Trust Deed.

**"Non-marketable Parcel"** means a parcel of Bonds registered in the same name or joint names which has an aggregate Face Value of less than NZ\$5,000 or not in multiples having an aggregate Face Value of NZ\$1,000.

**"NZ\$" means the lawful currency of New Zealand.**

**"NZX"** means NZX Limited in its capacity as a licensed market operator of the NZX Debt Market and NZX Main Board, and includes any person or authority which may in the future assume and perform the functions of NZX Limited as an operator of those markets.

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

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

**"NZX Main Board"** means the equity market operated from time to time by NZX.

**"Offer Document"** means the document under which the Bonds are offered to retail investors in New Zealand and to certain institutional investors in accordance with the requirements of the FMC Act.

**"Opening Date"** means the date specified as such in the Offer Document.

**"Ordinary Share"** means a fully paid ordinary share in the capital of the Issuer.

**"Payment Date"** means an Interest Payment Date, the Redemption Date or other date on which a payment is, or is to be, made on the Bonds.

**"Payment Default"** means the Issuer breaches its obligation to repay the Face Value or pay accrued but unpaid interest on a Payment Date in accordance with these Conditions, and that breach is not fully remedied within 10 days of the due date for payment.

**"Rate Set Date"** means the date specified as such in the Offer Document.

**"Record Date"** means, in the case of:

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

For the purposes of determining the Record Date for an Interest Payment Date:

- (c) the business day convention in Condition 9.4 shall be disregarded; and
- (d) if the Record Date would fall on a day that is not a Business Day, the Record Date will be the immediately preceding Business Day.

**"Redemption"** means, in relation to a Bond, the redemption of the Bond in accordance with Condition 7, and **"Redeem"** and **"Redeemed"** have corresponding meanings.

**"Redemption Date"** means:

- (a) in relation to the Redemption of a Bond in accordance with Conditions 7.2, the date specified in accordance with Condition 7.3(b); and
- (b) in relation to the Redemption of a Bond on the Maturity Date, the Maturity Date,

or, if the Bond is not Redeemed on that day, the day on which the Bond is Redeemed.

**"Register"** means the register of Holders established and maintained by or on behalf of the Issuer in accordance with the Trust Deed and the Registry Services Agreement.

**"Registrar"** means Link Market Services Limited or such other person appointed by the Issuer pursuant to the Registry Services Agreement to establish and maintain the Register on the Issuer's behalf from time to time.

**"Registry Services Agreement"** means each agreement entered into between the Issuer and the Registrar and any replacement of it and includes, for the avoidance of doubt, the agreement made on or about the date of this Trust Deed between the Issuer and Link Market Services Limited and any replacement of it.

**"Related Company"** has the meaning given in section 2(3) of the Companies Act.

**"Scheduled Interest Payment Date"** means each date during the term of the Bonds that is the numerically corresponding date to the Issue Date and which falls at 3-monthly intervals from the Issue Date.

**"Selling Restrictions"** means the restrictions contained in section 11 of the Offer Document.

**"Senior Creditors"** means all present and future creditors of the Issuer, whose claims are:

- (a) entitled to be admitted in a Liquidation; and
- (b) not in respect of Equal Ranking Securities or Junior Ranking Securities.

**"Settlement System"** means a system declared to be a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989.

**"Solvent Reconstruction"** means a scheme of amalgamation or reconstruction or an arrangement with similar effect, not involving a bankruptcy or insolvency, where the obligations of the Issuer in relation to the outstanding Bonds are assumed by the successor entity to which all, or substantially all of the property, assets and undertaking of the Issuer are transferred.

**"Special Resolution"** has the meaning given in the Meeting Provisions.

**"Subsidiary"** of an entity means:

- (a) another entity which is a subsidiary of the first within the meaning of section 5 of the Companies Act; or
- (b) another entity which is a subsidiary of or otherwise controlled by the first within the meaning of any applicable approved accounting standard.

**"Supervisor"** means The New Zealand Guardian Trust Company Limited or any replacement supervisor appointed by the Issuer in accordance with the Trust Deed from time to time.

**"Tax Event"** means a determination by the Issuer, after having received an opinion from a reputable legal counsel or tax adviser who is experienced in such matters, that:

- (a) there has been, or there will be, a change in law, regulation, ruling or directive that applies, or is to apply, after the Issue Date;
- (b) there has been, or there will be, a change in the application, interpretation or administration of any law, regulation, ruling or directive by any authority (including the New Zealand Inland Revenue) that applies, or is to apply, after the Issue Date; or
- (c) the Issuer is or will be required to comply with any change in law, regulation, ruling or directive or changed application, interpretation or administration that applies, or is to apply, after the Issue Date,

as a result of which:

- (a) the interest payable on the Bonds, including interest which has been deferred, is not fully deductible under the Income Tax Act 2007; or
- (b) the Issuer would be, or is likely to be, exposed to any other adverse tax consequence in relation to the Bonds.

**"Trust Deed"** means the trust deed made by the Issuer and the Supervisor in which these Conditions are included as schedule 1.

1.2 **Interpretation:** In these Conditions unless the contrary intention appears:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, body corporate, an unincorporated association or an authority;

- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (f) a reference to a document (however described) shall include a reference to that document as modified, novated, supplemented, varied or replaced from time to time;
- (g) a reference to a term defined by the NZX Listing Rules shall, if that term is replaced in those rules, be taken to be a reference to the replacement term;
- (h) a reference to accrued but unpaid interest includes all Deferred Interest and Additional Interest Amounts.

1.3 **Headings:** Headings are inserted for convenience and do not affect the interpretation of these Conditions.

## 2. FORM AND TITLE

2.1 **Constitution under Trust Deed:** The Bonds are registered debt obligations of the Issuer constituted by, and owing under, the Trust Deed and take the form of entries in the Register. Each entry in the Register constitutes a separate and individual acknowledgment to the relevant Holder of the indebtedness of the Issuer to the Holder.

2.2 **Independent obligations:** The obligations of the Issuer in respect of each Bond constitute separate and independent obligations which, subject to the Trust Deed, the Holder to whom those obligations are owed is entitled to enforce without having to join any other Holder or any predecessor in title of a Holder.

2.3 **Offer restrictions:**

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

2.4 **Effect of entries in the Register:** Subject to clause 3 of the Trust Deed, each entry in the Register in respect of a Bond constitutes:

- (a) an irrevocable undertaking by the Issuer to the Holder to:
  - (i) pay the Face Value, any interest and any other amount in accordance with the Trust Deed; and

- (ii) comply with the other Conditions; and
  - (b) an entitlement to the other benefits given to the Holder in respect of the Bond under the Trust Deed.
- 2.5 **Non-recognition of interests:**
- (a) Except as required by law or directive and as provided in these Conditions, the Issuer, the Supervisor and the Registrar must treat the person whose name is entered in the Register as the holder of a Bond as the absolute owner of that Bond. No notice of any trust, Encumbrance or other interest in, or claim to, any Bond will be entered in the Register. Neither the Issuer, the Supervisor nor the Registrar need take notice of any trust, Encumbrance or other interest in, or claim to, any Bond, except as ordered by a court of competent jurisdiction or required by law, and no trust, Encumbrance or other interest in, or claim to, any Bond will in any way affect any provision of these Conditions.
  - (b) This Condition 2.5 applies whether or not a payment has been made when scheduled on a Bond and despite any notice of ownership, trust or interest in the Bond.
- 2.6 **Joint Holders:** Where two or more persons are entered in the Register as the joint Holders of a Bond, they are taken to hold the Bond as joint tenants with rights of survivorship, but the Registrar is not bound to register more than three persons as joint Holders of a Bond.
- 2.7 **Holder absolutely entitled:** Upon a person acquiring title to a Bond by virtue of becoming a Holder in respect of the Bond, all rights and entitlements arising by virtue of the Trust Deed in respect of the Bond vest absolutely in the Holder, such that no person who has previously been the Holder in respect of the Bond has or is entitled to assert against the Issuer, the Supervisor or the Registrar or the Holder for the time being and from time to time any rights, benefits or entitlements in respect of the Bond.
- 2.8 **Location of Register:** The Register will be established and maintained in New Zealand.
- 2.9 **Confirmations:** If required by the FMC Act, any other applicable law or the NZX Listing Rules, the Issuer shall, or shall procure the Registrar to, issue a confirmation which contains the information required under, and which otherwise complies with the FMC Act, any other applicable law and the NZX Listing Rules and is in the form agreed between the Issuer and the Registrar. A confirmation issued in respect of a Bond will not constitute a document of title.
- 2.10 **Settlement System:** The Bonds will be quoted on the NZX Debt Market. While the Bonds remain quoted on the NZX Debt Market:
- (a) the rights and obligations of a person holding Bonds; and
  - (b) all dealings in relation to the Bonds, including transfers, transmissions and payments,
- will be subject to and governed by the Settlement System operated by NZX.
- 2.11 **Disclosure and inspection of Register:**
- (a) The Issuer shall ensure that, if a Holder so requests, the Registrar makes available for inspection, and provides a copy of the Register, or copies of extracts from the Register, which relates to the Bonds registered in the name of that Holder and all other information and matters required by the FMC Act and other applicable laws.

- (b) Subject to the terms of the Registry Agreement, the Issuer and the Supervisor may, at all reasonable times during the office hours of the Registrar and subject to any applicable laws, inspect and take extracts from the Register.
- (c) The Issuer will procure that the Register is available for inspection in accordance with the requirements of sections 221 to 224 of the FMC Act and otherwise to the extent required by law.

2.12 **Notification by Holders:** Any change of name or address of a Holder or any change in any other information required to be inserted in the Register in respect of a Holder shall immediately be notified to the Registrar in writing by the Holder, or if a joint holding by all the joint Holders.

### 3. TRANSFERS

3.1 **Title:** Title to a Bond passes when details of the transfer are entered in the Register.

3.2 **Transfer:**

- (a) A Holder may transfer a Bond:
  - (i) while the Bond is quoted on the NZX Debt Market, in accordance with the Settlement System operated by NZX; or
  - (ii) by any proper or sufficient instrument of transfer of marketable securities under applicable law which must be delivered to the Registrar with any evidence the Registrar reasonably requires to prove title to or the right to transfer the Bond.
- (b) No transfer of any part of a Holder's holding may be effected if such transfer would:
  - (i) result in the transferor or the transferee holding or continuing to hold a Non-marketable Parcel of Bonds; or
  - (ii) not comply with all applicable laws and regulations.
- (c) The Registrar must register a transfer of a Bond to or by a person who is entitled to make or receive the transfer as a consequence of:
  - (i) death, bankruptcy, liquidation or winding-up of a Holder, upon production of such evidence as to that entitlement as the Registrar considers sufficient; or
  - (ii) a vesting order by a court or other body with power to make the order on receiving the evidence that the Registrar or the Issuer requires.

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

3.4 **Dealings in whole:** At all times, the Bonds may be held or transferred only in whole Bonds.

#### 4. RANKING AND SUBORDINATION

4.1 **Ranking of payments:** The Bonds rank in respect of payment of interest and Face Value:

- (a) in priority to Junior Ranking Securities;
- (b) equally and without any preference amongst themselves and with all Equal Ranking Securities; and
- (c) junior to the claims of all Senior Creditors.

4.2 **Rights on a Liquidation:** In a Liquidation, a Bond confers upon its Holder the right to payment in cash of an amount equal to the Face Value and accrued but unpaid interest on a subordinated basis in accordance with Condition 4.3, but no further or other right to participate in the assets of the Issuer or a return of capital in the Liquidation.

4.3 **Ranking in a Liquidation:** The Bonds rank in respect of payment of the Face Value and accrued but unpaid interest in a Liquidation:

- (a) in priority to the claims of the holders of Junior Ranking Securities;
- (b) equally and without any preference amongst themselves and with the claims of the holders of Equal Ranking Securities; and
- (c) junior to the claims of all Senior Creditors with respect to priority of payment in a Liquidation in that:
  - (i) all claims of Senior Creditors must be paid in full before the claims to the Holders are paid; and
  - (ii) until the Senior Creditors have been paid in full, the Holders must not claim in the Liquidation in competition with the Senior Creditors so as to diminish any distribution or payment which, but for that claim, the Senior Creditors would have been entitled to receive.

4.4 **No charge:** Nothing in Condition 4.3 shall be taken to:

- (a) create a charge or security interest on or over any right of the Holder; or
- (b) require the consent of any Senior Creditor to any amendment of these Conditions made in accordance with Condition 15.

4.5 **Agreement of Holders as to subordination:** Each Holder irrevocably agrees:

- (a) that Condition 4.3 is an agreement by the Holder to accept a lower priority in respect of a debt for the purposes of section 313(3) of the Companies Act and that nothing in sections 310 or 313 of the Companies Act will prevent these Conditions from having effect according to their terms;
- (b) not to exercise any voting or other rights as a creditor in a Liquidation in any jurisdiction:
  - (i) until after all Senior Creditors have been paid in full; or
  - (ii) otherwise in a manner inconsistent with the subordination contemplated by Condition 4.3;
- (c) that it must pay or deliver to the liquidator any amount or asset received on account of its claim in a Liquidation in respect of a Bond in excess of its entitlement under Condition 4.3; and

- (d) that the subordination effected by Condition 4.3 is not affected by any act or omission of the Issuer or a Senior Creditor which might otherwise affect it at law or in equity.

4.6 **No set-off:** A Holder does not have any right to set-off any amounts owing to it by the Issuer in respect of Bonds against any amount owing by it to the Issuer in connection with the Bonds or otherwise.

## 5. BENEFIT OF CONDITIONS

5.1 Condition 4 is intended to confer a benefit on the Senior Creditors and may be enforced by the Senior Creditors or any of them under section 12 of the Contract and Commercial Law Act 2017.

## 6. INTEREST

6.1 **Interest Payments:** Subject to these Conditions, each Bond bears interest on its Face Value from (and including) the Issue Date to (but excluding) the Redemption Date.

6.2 **Interest Payment Dates:** Subject to these Conditions, interest on each Bond accrues daily at the Interest Rate and is payable in arrear on the following dates (each an "**Interest Payment Date**"):

- (a) each Scheduled Interest Payment Date until (but excluding) the date on which the Bond is Redeemed; and
- (b) the Redemption Date.

### 6.3 Calculation of interest

(a) The amount of interest that is payable for each Interest Period in respect of each Bond is calculated according to the following formulae:

- (i) For each Interest Period other than a Broken Interest Period:

$$\text{Interest payment} = \frac{(\text{Face Value} \times \text{Interest Rate})}{N}$$

- (ii) For each Interest Period that is a Broken Interest Period:

$$\text{Interest payment} = \text{Face Value} \times \text{Interest Rate} \times \text{Day Count}$$

- (b) For the purposes of this Condition 6.3:

**Day Count** means the actual number of days in the Interest Period in respect of which payment is being made divided by 365.

**N** means the number of Scheduled Interest Payments during each calendar year.

### 6.4 Interest - supplemental provisions

(a) *Notification of Interest Rate:* The Issuer will notify the Registrar and the Holders of each Interest Rate determined by it as soon as practicable after such determination or calculation but in any event not later than the second Business Day after its determination.

(b) *Determination final:* The determination by the Issuer of all amounts, rates and dates falling to be determined by it pursuant to these Conditions (including, without limitation, the amount of interest payable for any Interest Period in respect of any

Bond) is, in the absence of manifest error, final and binding on the Issuer, the Supervisor, each Holder and the Registrar.

- (c) *Accrual of interest.* Interest accrues on the Face Value of each Bond. Interest ceases to accrue as from the due date for Redemption unless the relevant payment is not made in which case interest will continue to accrue thereon (as well after as before any demand or judgment) at the Interest Rate until the date on which the relevant payment is made or, if earlier, the 7th day after the date on which the Registrar receives the funds required to make such payment except to the extent that there is failure in the subsequent payment thereof to the relevant Holder.

## 6.5 Deferral of interest

- (a) *Deferral of interest:*
- (i) Subject to Condition 6.5(c) the Issuer shall not pay interest on an Interest Payment Date if an Interest Deferral Condition exists on the Interest Payment Date.
  - (ii) The Issuer shall notify the Holders and the Supervisor as soon as practicable of (subject as provided below) any Interest Payment Date on which, pursuant to the provisions of this Condition 6.5, interest will not be paid.
- (b) *Not default:* Notwithstanding any other provision in these Conditions:
- (i) any payment of interest which for the time being is not made on the Bonds by virtue of Condition 6.5(a); or
  - (ii) failure to give notice under Condition 6.5(a)(ii),
- does not constitute a default for any purpose (including, but without limitation, Condition 8.1) on the part of the Issuer and does not give the Supervisor or any Holder any claim or remedy.
- (c) *No deferral of interest on a Redemption Date:* The Issuer shall pay all accrued but unpaid interest on the Bonds on the Redemption Date, regardless of whether an Interest Deferral Condition exists.

## 6.6 Deferred Interest - optional and compulsory payments

- (a) Any interest in respect of Bonds not paid on an Interest Payment Date by virtue of Condition 6.5(a) so long as the same remains unpaid, constitutes "**Deferred Interest**".
- (b) All Deferred Interest (together with all corresponding Additional Interest Amounts) will automatically become immediately due and payable in whole upon the earliest of the following dates:
- (i) the first Interest Payment Date on which no Interest Deferral Condition exists;
  - (ii) if an Event of Default has occurred and the Supervisor has declared the Bonds to be immediately due and payable in accordance with Condition 8.2, the date of the Supervisor's declaration; or
  - (iii) the Redemption Date or the date fixed for any purchase of Bonds by or on behalf of the Issuer pursuant to Condition 7.6.

## 6.7 **Additional Interest Amount**

- (a) Interest will accrue on each amount of Deferred Interest at the Interest Rate, and such amount of interest (the "**Additional Interest Amount**") will become due and payable pursuant to Condition 6.6(b) and shall be calculated by the Issuer by applying the Interest Rate to the amount of Deferred Interest.
- (b) All Additional Interest Amounts accrue and are payable on the same basis as interest on a Bond, subject to deferral on the same basis as interest under Condition 6.5.

## 6.8 **Restrictions on the Issuer in the case of deferral of interest:**

- (a) If by virtue of Condition 6.5(a), interest is not paid in full on an Interest Payment Date the Issuer must not, without the approval of a Special Resolution:
  - (i) resolve to pay or pay any dividend on, or make any other payment (including, without limitation, a Capital Reduction) on or with respect to, Junior Ranking Securities; or
  - (ii) make any payments on or with respect to any other Equal Ranking Securities (unless the payment is made with respect to such other Equal Ranking Securities and a pro rata payment is made in respect of the Bonds at the same time).
- (b) The restrictions in Condition 6.8(a) shall apply for so long as any Deferred Interest and Additional Interest Amount remains unpaid.

## 7. **REDEMPTION AND PURCHASE**

7.1 **Redemption on maturity:** Unless previously Redeemed, each Bond shall be Redeemed on the Maturity Date.

7.2 **Redemption for Tax Event:** The Issuer may, subject to the other provisions of this Condition 7, elect to Redeem all (but not some only) of the Bonds following the occurrence of a Tax Event.

### 7.3 **Early Redemption Notice:**

- (a) The Issuer may only Redeem under Condition 7.2 if the Issuer has given to Holders and the Supervisor a notice in accordance with Condition 7.3(b) of its election to do so ("**Early Redemption Notice**") not less than 15 Business Days prior to the proposed Redemption Date.
- (b) The Early Redemption Notice must specify the date on which it is proposed the Redemption will occur, which must be the following Interest Payment Date, unless the Issuer determines an earlier date having regard to the best interests of Holders as a whole and the Tax Event.

7.4 **Redemption:** Bonds will be Redeemed by payment on the Redemption Date to the Holder of the Face Value together with any accrued but unpaid interest as at the Redemption Date.

7.5 **Effect of Redemption on Holders:** On the Redemption Date the only right Holders will have in respect of Bonds will be to obtain the amounts payable under Condition 7.4 and upon such payment, all other rights conferred, or restrictions imposed, by the Bonds will no longer have effect.

7.6 **Purchase of Bonds:** Bonds may at any time be purchased in the open market or otherwise and at any price by the Issuer or any Related Company of the Issuer subject to Condition 7.7 and the following conditions:

- (a) While held by the Issuer, the Bonds will be capable of being cancelled at any time by the Issuer by notice in writing to the Supervisor and Registrar.
- (b) Any purchase or cancellation is subject to compliance with all legal and regulatory requirements.
- (c) For the purposes of the Meetings Provisions, in determining whether the provisions relating to quorum, meeting and voting procedures are complied with, any Bonds held by a member of the Group will be disregarded.

7.7 **Condition to early Redemption or purchase:** No Bonds shall be Redeemed under Condition 7.2 or purchased under Condition 7.6 if an event of default has occurred under an agreement made with or for the benefit of a Senior Creditor or would occur if the Redemption or purchase was made.

## 8. EVENTS OF DEFAULT

8.1 **Events of Default:** An event of default ("**Event of Default**") occurs if:

- (a) a Payment Default occurs;
- (b) an Insolvency Event occurs; or
- (c) the Issuer fails to comply with Condition 6.8.

8.2 **Consequences of an Event of Default:** If an Event of Default occurs, the Supervisor may in its discretion, and shall immediately upon being directed to do so by a Special Resolution, by notice to the Issuer declare that the Bonds are immediately due and payable at their Face Value together with accrued but unpaid interest and, subject to Condition 4.3, may prove in the Liquidation for an amount equal to such amount.

## 9. PAYMENTS

9.1 **Record Date:** Payments to Holders will be made according to the particulars recorded in the Register at 5.00pm (New Zealand time) on the relevant Record Date.

9.2 **Joint holders:** When a Bond is held jointly, payment will be made to the holders in their joint names unless requested otherwise.

9.3 **Method of payments:** Payments in respect of each Bond will be made by crediting on the Payment Date the amount then due to an account previously notified by the Holder in respect of that Bond to the Registrar. If the Holder has not notified the Registrar of such an account by close of business on the relevant Record Date or upon application by the Holder to the Registrar no later than close of business on the relevant Record Date, payments in respect of the relevant Bond will be made by cheque, mailed on the Business Day immediately preceding the relevant Interest Payment Date in the case of payments of interest or on the due date for redemption, in the case of payments of principal, at the Holder's risk to the Holder (or to the first named of joint registered holder) of such Bond at the address appearing in the Register as at the Record Date. Cheques to be despatched to the nominated address of an Holder will in such cases be deemed to have been received by the Holder on the relevant Payment Date and no further amount will be payable by the Issuer in respect of the relevant Bond as a result of payment not being received by the Holder on the due date.

9.4 **Business Days:** If a payment:

- (a) is due on a Bond on a day which is not a Business Day, then the due date for payment will be postponed to the next day that is a Business Day; or

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

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

9.5 **Payment subject to fiscal laws:** Payments (whether in respect of principal, interest or otherwise) in respect of the Bonds are subject in all cases to applicable provisions of fiscal and other laws, regulations and directives.

9.6 **Reinstatement:** Subject to Condition 12, if any payment made to a Holder by, or on behalf of, the Issuer is subsequently rescinded, avoided or otherwise restored to the Issuer, that payment will be deemed not to have discharged or affected the liability of the Issuer in respect of which that payment was made. In that event the relevant Holder and the Issuer will be restored to the position in which each would have been, and be entitled to exercise all the rights which each would have had, if such payment had not been made.

9.7 **Rounding:** Unless otherwise specified in these Conditions, for the purposes of any calculations required under these Conditions:

- (a) all figures must be rounded to four decimal places (with halves being rounded up); and
- (b) all amounts that are due and payable in respect of a Holder's aggregate holding of Bonds must be rounded to the nearest cent (with halves being rounded up).

## 10. TAXES

10.1 **Deductions or withholdings:** All sums payable under these Conditions must be paid:

- (a) free of any restriction or condition; and
- (b) free and clear of, and (except to the extent required by law or as provided in this Condition 10) without any deduction or withholding on account of, any taxes or any other amount whether by way of set-off or otherwise.

10.2 **Non-resident withholding tax:** Where New Zealand's non-resident withholding tax regime applies to a payment made to a Holder ("**Offshore Holder**"):

- (a) Subject to Condition 10.2(b), New Zealand non-resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to the Offshore Holder.
- (b) Unless otherwise stated in the Offer Document:
  - (i) If the Issuer is lawfully able to make the relevant filings to enable New Zealand non-resident withholding tax to be imposed at 0% without payment of Approved Issuer Levy, or with Approved Issuer Levy imposed at 0%, in respect of the payment to the Offshore Holder, the Issuer may elect to do so in respect of the Bonds.
  - (ii) Where the Issuer cannot or does not make the election under Condition 10.2(b)(i) (for whatever reason), and unless the relevant Offshore Holder notifies the Issuer that it elects that non-resident withholding tax be deducted from payments to it instead of Approved Issuer Levy, if the Issuer is lawfully able to pay Approved Issuer Levy (which is, at the date of this deed, 2%) to enable New Zealand non-resident withholding tax to apply at the rate of 0% in respect of any payment to an Offshore Holder, and elects

to do so in respect of the Bonds, the Issuer, or the Registrar on its behalf, shall pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the payment in lieu of deducting New Zealand non-resident withholding tax from that payment.

- 10.3 **Resident withholding tax:** Where New Zealand's resident withholding tax regime applies to a payment to any Holder, New Zealand resident withholding tax will be deducted from such payment unless the relevant Holder is able to establish to the satisfaction of the Issuer, or the Registrar on its behalf, either by means of an appropriate exemption certificate or otherwise before the Record Date for the relevant payment that no such tax need be deducted.
- 10.4 **No gross-up:** The Issuer will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds under this Condition 10. If, in respect of any Bond, the Registrar or the Issuer becomes liable to make any payment of, or on account of, tax payable by or in respect of any Holder (including, if applicable, any other person who derives interest under the relevant Bond), then the Registrar and the Issuer shall be indemnified by the relevant Holder in respect of such liability, together with any interest or penalties in relation thereto. Any moneys paid by the Registrar or the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Registrar or the Issuer and may be withheld from any further payments to that Holder. Nothing in this Condition 10.4 will prejudice or affect any other right or remedy of the Registrar or the Issuer.
- 10.5 **Maximum rate:** Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder (or, if applicable, any person who derives interest under the relevant Bond) provides evidence to the Issuer or the Registrar (acceptable to it) that a lesser rate is applicable.
- 10.6 **Tax status and information:** A Holder must, no later than two Business Days prior to the first Record Date, notify the Issuer of its country of residence for tax purposes and, if the Holder is not tax resident in New Zealand, whether the Holder is engaged in business in New Zealand through a fixed establishment in New Zealand and whether the Holder holds the Bonds in connection with that fixed establishment. A Holder must notify the Issuer prior to any subsequent Record Date of any change in circumstances from those previously notified, or provide any other information that could affect the payment or withholding obligations of the Issuer. The Issuer and the Registrar shall be entitled for the purposes of this Condition 10 to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Holder in relation to that Holder's tax status or tax residency, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who derive interest under, the relevant Bonds.
- 10.7 **FATCA and the Common Reporting Standard:**
- (a) The Issuer, in its absolute discretion, may withhold or deduct payments to a Holder (including, if applicable, any other person who beneficially derives interest under the relevant Bond) where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of Bond may be subject to FATCA, and may deal with such payment and the Holder's Bonds in accordance with FATCA.
  - (b) If any withholding or deduction arises under or in connection with FATCA, the Issuer will not be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of Bonds for or in respect of any such withholding or deduction.
  - (c) Each Holder (including, if applicable, any other person who derives interest under the relevant Bond and/or is subject to due diligence requirements under FATCA or the Common Reporting Standard) will, within 10 Business Days of request by the Issuer, supply to the Issuer such forms, documentation and other information as the

Issuer reasonably requests for the purposes of the Issuer's compliance with FATCA or the Common Reporting Standard.

## 11. FURTHER ISSUES

- 11.1 The Issuer may from time to time, without the consent of any Holder, issue further debt securities having the same terms and conditions as the Bonds in all respects (or in all respects except for the first payment of interest, if any, on them, the date from which interest starts to accrue and/or their denomination) so as to form a single series with the Bonds.

## 12. TIME LIMIT FOR CLAIMS

- 12.1 A claim against the Issuer for a payment under a Bond is void unless such claim is made within 5 years from the due date of payment.

## 13. NOTICES

- 13.1 All notices, certificates, consents, approvals, waivers and other communications in connection with a Bond must be made in accordance with, and are subject to the provisions of, clause 17 of the Trust Deed.

## 14. MEETINGS OF HOLDERS

- 14.1 Meetings of Holders may be convened in accordance with the Meetings Provisions. Any such meeting may consider any matters affecting the interests of Holders, including, without limitation, the variation of the terms of the Bonds by the Issuer and the granting of approvals, consents and waivers, and the declaration of an Event of Default.

## 15. AMENDMENTS

- 15.1 **Amendments to the Conditions:** No amendment may be made to the Conditions unless the amendment is made in accordance with clause 14 of the Trust Deed.
- 15.2 **Registry Services Agreement:** The Issuer may amend or terminate the Registry Services Agreement without the consent of Holders.
- 15.3 **Meaning of "amend":** In this Condition 15, "amend" includes vary, novate, assign, modify, add to, cancel or alter and "amendment" has a corresponding meaning.

## 16. REGISTRAR

- 16.1 **Role of the Registrar:** In acting under the Registry Services Agreement in connection with the Bonds, the Registrar acts solely as agent of the Issuer and does not assume any obligations towards or relationship of agency or trust for or with any of the Holders save insofar as any funds received by the Registrar are required in accordance with the Registry Services Agreement, pending their application in accordance with the Registry Services Agreement, to be held by it in a segregated account on trust for the persons entitled thereto.
- 16.2 **Change of Registrar:** The Issuer reserves the right at any time to terminate the appointment of the Registrar in accordance with the Registry Services Agreement and to appoint a successor or additional registrar, provided, however, that the Issuer must at all times maintain the appointment of a registrar with its specified office in New Zealand. Notice of any such termination of appointment will be given to the Holders in accordance with Condition 13.

16.3 **Appointment of replacement Registrar:** If the then current Registrar ceases to be Registrar (whether as a result of termination under Condition 16.2 or otherwise), the Issuer must ensure that a replacement Registrar is appointed with effect from the relevant date.

**17. GOVERNING LAW**

17.1 The Bonds are governed by and construed in accordance with the law in force in New Zealand.

## SCHEDULE 2

### MEETING OF HOLDERS

#### 1 DEFINITIONS

1.1 In these provisions:

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

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

"**regulation**" means a clause of this schedule.

"**Representative**" means:

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

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

1.2 "**working day**" has the meaning given in the FMC Regulations.

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

#### 2 CONVENING

2.1 **Meeting required by law:** The Issuer shall, whenever required to do so pursuant to the FMC Act or any other applicable law, convene a meeting of the Holders.

2.2 **By Holders:** The Issuer shall, at the request in writing of Holders holding not less than 5% of the aggregate Face Value of the Bonds then outstanding, convene a meeting of the Holders. The request must state the nature of the business proposed to be dealt with at the meeting concerned.

2.3 **By Issuer:** The Issuer may at any time of its own volition convene a meeting of the Holders.

2.4 **By Supervisor:** In relation to any Class of Bonds, the Issuer shall, at the request in writing by the Supervisor, convene a meeting of Holders of that Class of Bonds. The Supervisor

may at any time of its own volition (after such consultation with the Issuer which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting) convene a meeting of Holders of that Class of Bonds. The Supervisor shall not be obliged to convene a meeting of the relevant Holders pursuant to this regulation until it has been indemnified to its satisfaction (acting reasonably) against all costs and expenses to be incurred in relation to that meeting.

2.5 **Place of meeting:** Each meeting will be held in Auckland or at such other place and/or in such manner (including, but not limited to, use of video conferencing technology) as designated by the Issuer.

2.6 **Regulations:** Meetings of Holders shall be convened and held in accordance with the provisions of this schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this schedule, as the Supervisor and the Issuer may agree from time to time.

### 3 NOTICE OF MEETINGS

3.1 **Notice:** The Issuer must ensure that written notice of the time and place of a meeting of Holders is sent to the following at least 15 working days before the meeting:

- (a) every Holder entered in the Register as at the close of business 5 working days prior to the despatch of the notice that is entitled to receive notice of the meeting;
- (b) the Supervisor; and
- (c) every director of the Issuer and the Auditor.

3.2 **Contents of Notice:** The notice must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;
- (b) the text of any Special Resolution to be submitted to the meeting; and
- (c) the right of a Holder to appoint a proxy.

3.3 **Special Resolution at meeting:** If a Special Resolution is to be submitted to the meeting:

- (a) a draft of the proposed notice of the meeting (including any explanatory memorandum) must be given to the Supervisor at least 10 working days before the notice is given under regulation 3.1 (or any lesser period approved by the Supervisor); and
- (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to the Issuer at least 5 working days before the notice is given under regulation 3.1).

3.4 **Irregularity:** An irregularity in a notice of a meeting is waived if:

- (a) all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver; or

- (b) the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Holders.

3.5 **Accidental omission:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Holder does not invalidate the proceedings at that meeting.

3.6 **Adjourned meeting:** If a meeting of Holders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

## 4 QUORUM

4.1 **Quorum required:** No business may be transacted at a meeting of Holders if a quorum is not present.

4.2 **Quorum for Special Resolution:** A quorum for a meeting of Holders at which a Special Resolution is to be submitted is present if Holders or their proxies are present who hold Bonds with a combined Face Value of no less than 25% of the Face Value of the Bonds held by those persons who are entitled to vote on the business to be transacted by the meeting.

4.3 **Quorum for other business:** A quorum for any other business at a meeting of Holders is present if Holders holding at least 10% of the Face Value of the Bonds are present in person or by proxy and in any case at least 2 Holders or their proxies must be present.

4.4 **Quorum not present:** Despite regulation 4.1, if a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called under section 120(1)(b) of the FMC Act, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their proxies present are a quorum.

4.5 **Present by electronic means:** To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum if the form of that audio, audio and visual or electronic communication has been approved by the chairman of the meeting.

## 5 CHAIRMAN

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

## 6 RIGHT TO ATTEND AND SPEAK

6.1 Any:

- (a) director, officer or solicitor, auditor or accountant of the Issuer;
- (b) person appropriately authorised by the Issuer;
- (c) director, officer or solicitor of the Supervisor;
- (d) person appropriately authorised by the Supervisor;
- (e) Holder; or
- (f) the Registrar,

may attend any meeting and all such persons will have the right to speak at the meeting.

## 7 ADJOURNMENT

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

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

## 8 ONLY PERSONS ON REGISTER RECOGNISED BY COMPANY

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

## 9 AUTHORITY TO VOTE

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

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

## 10 PROXIES

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

- 10.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder. A holder of a proxy will have the right to speak at the meeting.
- 10.3 **Deposit of proxy:** The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a solicitor or in any other manner approved by the Issuer, must be deposited at the place and in the manner specified by the Issuer in the notice convening the meeting (or, if no such place is appointed, then at the registered office of the Issuer) not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless the Issuer, in its absolute discretion, elects to accept any instrument of proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.
- 10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form approved by the Issuer and the Supervisor and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- 10.5 **Proxy valid for meeting:** An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy.
- 10.6 **Proxy in favour of chairman:** An instrument of proxy in favour of:
- (a) the chairman of the Issuer;
  - (b) the chairman; or
  - (c) the chairman of the meeting,
- (however expressed) will be valid and effectual as though it were in favour of a named person and will, in the case of paragraph (a) above, constitute the person holding the office of the chairman of the Issuer or, in the case of paragraph (b) or (c) above, the person who chairs the meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointer. If the Holder gives the proxy discretion in any such instrument of proxy or does not make an election in respect of a resolution, the Holder will be deemed to be directing the proxy to vote in favour of the relevant resolution(s).

## 11 HOLDER MAY APPOINT ATTORNEY

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

## 12 CORPORATE REPRESENTATIVES

- 12.1 **Authority:** A Representative of a Holder which is a corporation or a corporation sole will, until his authority is revoked, be entitled to exercise the same powers on behalf of the

corporation as that corporation could exercise if it were an individual Holder and will be entitled to produce evidence of his authority to act at any time before the Appointed Time of, or at, the meeting or adjourned meeting or for the taking of a poll at which the Representative proposes to vote.

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

### 13 VOTING PROCEDURE AND POLLS

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

- (a) the chairman of the meeting;
- (b) the Supervisor;
- (c) the Issuer or any representative of the Issuer; or
- (d) one or more Holders holding or representing not less than 5% in aggregate Face Value of the Bonds.

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

- 13.2 **Number of votes:**

- (a) On a show of hands each person present at the meeting and entitled to vote (whether personally or as a Representative) will have one vote only. On a poll every Holder who is present in person or by a Representative will have one vote for every \$1 of Face Value of the Bonds of which that person is the Holder as at the date of the meeting.
- (b) On a poll votes may be given either personally or by Representative and a person entitled to more than one vote need not use all their votes or cast all the votes they use in the same way.

- 13.3 **Poll:** If a poll is demanded it will be taken in the manner directed by the chairman of the meeting and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

- 13.4 **Chairman has no casting vote:** The chairman of any meeting will not have a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Holder or on behalf of Holders.

- 13.5 **Time for poll:** A poll demanded on the election of a chairman of the meeting or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and in a place appointed by the chairman. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

- 13.6 **No disturbance:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.
- 13.7 **Joint Holders:** In the case of joint Holders the vote of the senior who tenders a vote whether in person or by Representative will be accepted to the exclusion of the vote of the other joint Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
- 13.8 **Disqualification:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.

#### 14 SPECIAL RESOLUTIONS

- 14.1 **Powers:** A meeting of Holders will, in addition to all other powers which by this deed are specified as exercisable by Special Resolution, have the following powers exercisable by Special Resolution, namely power to:
- (a) sanction either unconditionally or upon any conditions the release of the Issuer from the payment of all or any part of the moneys payable pursuant to this deed or the Bonds;
  - (b) sanction any request from the Issuer for the exchange of the Bonds for, or the conversion of the Bonds into, shares, stock, debentures, debenture stock or other obligations or securities of the Issuer or any other company formed or to be formed;
  - (c) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against the Issuer or its assets however those rights arise;
  - (d) assent to any amendment to the terms of this deed proposed or agreed to by the Issuer (and, where required, the Supervisor) and to authorise the Supervisor to execute any supplemental deed embodying any such amendment;
  - (e) give any sanction, assent, release or waiver of any breach or default by the Issuer or the Supervisor under any of the provisions of this deed;
  - (f) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation where such sanction is necessary;
  - (g) discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under this deed;
  - (h) subject to the provisions of this deed, remove any Supervisor and to approve the appointment of or appoint a new Supervisor;

- (i) consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in any of the foregoing paragraphs of this regulation 14.1, or as to any other matter which may be necessary to carry out and give effect to any Special Resolution; and
- (j) authorise or direct the Supervisor and if required, the Issuer to execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request.

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

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

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

## 15 MINUTES TO BE KEPT

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

## 16 RESOLUTIONS IN WRITING

- 16.1 **Special Resolution:** Anything that may be done by Holders by a resolution or Special Resolution passed at a meeting of Holders may be done by a resolution in writing signed by Holders who hold Bonds with a combined Face Value of no less than 75% of the Face Value of the Bonds held by those Holders entitled to vote on the resolution at a meeting of Holders.
- 16.2 **Counterparts:** Any such resolution may consist of several documents in similar form, each signed by one or more Holders.
- 16.3 **Execution:** Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.
- 16.4 **Notice of proposed resolution:** The Issuer must ensure:
- (a) that a proposed resolution under this regulation 16 is dated with the date on which the proposed resolution is first sent to a person entitled to vote for the purpose of signing (the "circulation date");
  - (b) that the proposed resolution is sent to every person entitled to vote;
  - (c) as far as is reasonably practicable, the proposed resolution is sent under paragraph (b) on the circulation date; and
  - (d) that a proposed resolution sent under paragraph (b) is accompanied by a statement of the effect of regulation 16.5 below.
- 16.5 **Lapse of proposed resolution:** A proposed resolution under this regulation lapses if it is not passed under this regulation 16 within 3 months after the circulation date.
- 16.6 **Non-receipt of notice:** The accidental omission to send a proposed resolution or statement under regulation 16.5 above to a person entitled to vote does not invalidate a resolution passed under this regulation 16.
- 16.7 **Copies:** The Issuer must, within 5 working days after a resolution is passed under this regulation 16, send a copy of the resolution to every person entitled to vote who did not sign the resolution and on whose behalf the resolution was not signed.

## SCHEDULE 3

## FORM OF DIRECTORS' REPORT

- 1 This report is given by the undersigned directors of WEL Networks Limited (**Issuer**) pursuant to clause 5.2(c) of the Trust Deed dated 28 June 2018 ("**Trust Deed**") between the Issuer and The New Zealand Guardian Trust Company Limited as supervisor.
- 2 Unless the context otherwise requires, terms defined in the Trust Deed have the same meaning herein.
- 3 We, the undersigned, hereby state that as at the last day of the financial {year} {half year} ending on { } ("**Reporting Date**"), to the best of our knowledge and belief having made all due inquiries, and, during the immediately preceding financial {year} {half year}:
  - 3.1 {Here state any matter, or state if there is no matter, which has arisen relating to the Issuer which would materially and adversely affect the ability of the Issuer to perform its obligations under the Trust Deed and the Bonds or which materially and adversely affects the relevant Holders};
  - 3.2 the Issuer has observed and complied with the Issuer Obligations, including the payment of all interest on, and the Face Value in respect of, the Bonds;  
{If the Issuer has not so complied and observed all of its payment obligations under the Trust Deed set out the particulars of the contravention and proposals to remedy the same}
  - 3.3 no Event of Default has occurred;  
{If any Event of Default has occurred, set out the particulars of the Event of Default and, if appropriate, details of how it has been, or is proposed to be, remedied.}
  - 3.4 the Face Value of Bonds (if any) which have been redeemed is \${ } , details of which are set out below:  
{set out details of any Bonds which have been redeemed in the immediately preceding financial year}
  - 3.5 all interest due on the Bonds has been paid;
  - 3.6 the Register has been duly maintained in accordance with the Trust Deed;  
{If the Register has not been duly maintained set out the particulars of the failure to maintain}
  - 3.7 either:
    - (a) for so long as the Issuer is relying upon the exemptions contained in the [**any exemption notices**], the Issuer has complied in all material respects during the most recently completed financial year/half-year with the obligations imposed on it under that notice, or
    - (b) the Issuer has not relied upon the exemptions contained in the [**any exemption notices**] during the most recently completed financial year/half-year. [**delete either (a) or (b)**]

- 4 As at the date of this certificate, having considered the financial position (including contingent liabilities) of the Issuer as a going concern (which the directors are satisfied will be the case) and such budgets, reports, projections, certificates and assurances as they deem necessary and the anticipated trading transactions and sources of finance arranged or capable of being arranged during the 12 months from the Reporting Date, to the best of our knowledge and belief the Issuer will be able to meet all its liabilities (including maturing Bonds and interest on Bonds) which fall due or are anticipated to become payable during the 12 months from the Reporting Date in accordance with accepted commercial practice.

This report is given on the day of { } 20[ ]

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Director of Issuer

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Director of Issuer