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Capital Notes Trust Deed

Allied Farmers Limited

Trustees Executors Limited

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PARTIES

Allied Farmers Limited an incorporated company having its registered office at Hawera, New Zealand (*Company*)

Trustees Executors Limited an incorporated company having its registered office at Wellington, New Zealand (*Trustee*)

BACKGROUND

- A The Company proposes to issue unsecured subordinated capital notes (*Notes*) which are to be convertible into Ordinary Shares of the Company in certain circumstances.
- B The Securities Act requires the appointment of a trustee in respect of the Notes and the execution by the Company and the Trustee of a trust deed.
- C The Trustee has agreed to act as trustee on behalf of the Noteholders on the terms and conditions of this document.
- D The Company enters into this document for the benefit of the Trustee and the Noteholders.

OPERATIVE PROVISIONS

1 Constitution and issue of Capital Notes

- 1.1 The Company may from time to time issue Notes in accordance with and subject to this document. The Company intends to issue Notes up to a maximum aggregate amount of \$20 million, with an option to accept over-subscriptions up to a maximum aggregate amount of \$10 million.
- 1.2 Notwithstanding the date on which this Deed is executed by the Company and the Trustee, the Company covenants and agrees with the Trustee that it will not constitute or issue any Capital Notes until after the Effective Date, which shall be a date notified by the Company to the Trustee after the Shareholders have approved the issue of Capital Notes by ordinary resolution passed at a special meeting of Shareholders called for that purpose.

Further issues

- 1.3 With the consent of the Trustee, and subject to, and in accordance with the Listing Rules and the Constitution, the Company may at any time, without the consent of the Noteholders, issue further Notes subject to this document, on terms similar to and ranking *pari passu* with the Notes issued under this document, or upon such other terms, including as to interest rate payment conversion or otherwise as the Company may determine at the time of issue. Any further Notes issued are to be constituted by a supplemental deed incorporating the Conditions applicable to such issue, and shall be executed by the Company and the Trustee in a form agreed between them. The consent of

the Trustee will not be required to the issue of any Notes which are not subject to this document.

Conditions of issue

- 1.4 Each Note shall be issued subject to the Conditions applicable to such Note (whether or not the Conditions are endorsed on the Certificate of the Note). The Conditions initially applicable to the Notes shall be substantially in the form set out in Schedule 2.

Conditions and this document binding

- 1.5 The Conditions and this document shall be binding on the Company, the Trustee, the Noteholders and all persons claiming through or under them respectively. Noteholders will be entitled to the benefit of, will be bound by and will be deemed to have notice of, all the provisions of this document and the Conditions.

Certificates

- 1.6 Subject to clause 1.7 the Company will issue to each Noteholder a Certificate in respect of that Noteholder's Notes. All Certificates shall be subject to the terms of this document and the Conditions (and the Conditions shall be endorsed on the Certificate or attached to it) and shall be issued as registered Certificates, serially numbered and transferable on registration as provided in the Conditions. Subject to this document and the Conditions, the Company may, upon such terms (if any) that it determines, issue to a Noteholder:
- 1.6.1 a new Certificate in substitution for one issued in an incorrect form, or for an incorrect number of Notes, or otherwise containing incorrect terms or Conditions;
 - 1.6.2 several new Certificates in substitution for a single Certificate and vice versa;
 - 1.6.3 a new Certificate in part substitution for a Certificate where some (but not all) of the Notes represented by the existing Certificate are cancelled, converted, transferred or have been subject to a transmission in accordance with this document and the Conditions; and
 - 1.6.4 a new Certificate where the Noteholder of a Note has, or is deemed to have, accepted the New Conditions offered by the Company in relation to that Note following a relevant Election Date.

All Certificates so issued will be signed by the Company in any manner provided by law for the execution of a deed or in a manner approved by the Trustee in writing from time to time.

- 1.7 Notwithstanding any other provision in this document or in the Conditions, if any or all of the Notes can be transferred, converted or traded under a system authorised or approved under the Securities Transfer Act 1991 of New Zealand that does not require a Certificate to be issued to or surrendered by Noteholders and there is no applicable statutory requirement to issue such

Certificate, or the Company is exempted from any such requirement (including by virtue of the Securities Act (Certificate for Securities Transferred Electronically) Exemption Notice 2003 of New Zealand or any replacement of that notice), then upon a Note becoming transferable, convertible or tradable on that system (and this being confirmed to the Trustee by the Company):

- 1.7.1 the Certificate relating to that Note is deemed to be void and of no effect; and
- 1.7.2 no provision in this document (including the schedules) shall require the Company to issue, or enter or procure the entry in the Register of details relating to, or require a Noteholder to surrender or yield up, a Certificate or replacement Certificate in respect of any Note transferable, convertible or tradable on that system for so long as such Note is transferable, convertible or tradable on that system and that system does not require Certificates to be issued.

Where no Certificates are issued, as soon as practicable after the Company records the transfer of any Note in the Register, it shall send to any new Noteholder a copy of the Conditions.

Payment of Issue Price brokerage or commission – issue at discount or premium

- 1.8 Each applicant for a Note must pay to the Company upon application the Application Price for the Note set out in the application for the Note. Subject to the acceptance of that application by the Company in full or part, the Company shall then issue that Noteholder with the appropriate number of Notes for which the application is accepted. The Company may determine the Issue Price for a Note in its sole discretion and may apply a different Issue Price to Notes issued at any other time.
- 1.9 The Company shall be at liberty to pay a commission, procuration, application or subscription fee or brokerage to any person in respect of subscribing for, underwriting the subscription of, or obtaining subscriptions for the Notes.
- 1.10 The Company shall be at liberty to issue any Notes at par or at a discount or premium to their Issue Price.

Validity of issued Notes

- 1.11 No person named as a Noteholder in any Certificate in relation to any Notes or on the Register shall be concerned or obliged to enquire whether any of the Notes purporting to be evidenced by such Certificate or entry in the Register have been issued in accordance with the provisions of this document. Any Note issued for consideration, the Certificate or entry in the Register for which indicates or in respect of which other evidence indicates that it has ostensibly been issued or was intended to be issued as a Note pursuant to the provisions of this document, shall be validly issued and constituted by this document notwithstanding that the issue of such Note was in breach of any provision of this document but without prejudice to the Trustee's rights under this document against the Company in respect of any such breach.

Covenant to observe Trust Deed and the Conditions

- 1.12 The Company acknowledges its indebtedness to the Noteholders and to the Trustee on behalf of the Noteholders in relation to payment or repayment of principal, interest and any other sums payable under the Notes upon and subject to the terms contained in this document and any Terms of Issue. The Company and the Company severally covenant with the Trustee to comply with, perform and observe those provisions of this document and the Conditions which are expressed to be binding on it.
- 1.13 Every payment in respect of the Notes made to the Noteholders or to the Trustee on behalf of the Noteholders, and every conversion of Notes into Ordinary Shares, in either case made in accordance with the Conditions, shall be in satisfaction of the relevant obligations of the Company in that regard.
- 1.14 The Trustee shall take and hold the benefit of the covenants given to it by the Company under this document in respect of the Notes, excluding only those relating to the Trustee's fees and expenses, indemnification of the Trustee, and any other matters referred to in clause 2.7.1 or which are intended to be for the benefit of the Trustee for its own account, for the benefit of Noteholders generally.

Cancellation on redemption, purchase or conversion

- 1.15 All Notes which are converted into Ordinary Shares or otherwise redeemed in accordance with the Conditions shall be cancelled and neither the Company nor the Trustee shall have any further obligations or liabilities in respect of such Notes.
- 1.16 Subject always to the Terms of Issue, the Company or any subsidiary of the Company may subscribe for Notes, and the Company or any subsidiary of the Company may at any time purchase Notes for their own account. Notes so subscribed for or purchased by the Company or any subsidiary of the Company may, subject to the Conditions applicable to the particular Notes, be cancelled or reissued, as the Company or the relevant subsidiary of the Company, as the case may be, elects but shall not, (other than is provided for in clause 1.17) for so long as held by the Company or any subsidiary of the Company, be convertible into Ordinary Shares of the Company.
- 1.17 Subject always to the Terms of Issue, nothing in this document shall prevent the Company or any of its subsidiaries subscribing for, purchasing Notes, converting Notes held by them, or voting or exercising any other rights in respect of Notes held by them, in their capacity as a personal representative or trustee unless the Company or its subsidiary has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.

Selling restrictions

- 1.18 The Company may only offer for subscription, issue or sale or sell any Note in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered. No information memorandum or any prospectus, circular, advertisement or other offering material in respect of any Note may be published, delivered or distributed in or from any country or

jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.

2 Status, subordination and distributions by Trustee

Status of Notes

- 2.1 All Notes shall constitute unsecured, subordinated obligations of the Company and shall rank *pari passu* and without priority or preference amongst themselves.

Other indebtedness permitted

- 2.2 Nothing in this document (other than the covenant in clause 4.3 (b)), shall in any way restrict the right of the Company (including any of its subsidiaries other than the Company) at any time, or the Company at any time up to the Commencement of Liquidation, to incur, vary or otherwise deal with any indebtedness or issue obligations of any nature ranking in priority to, or *pari passu* with, or subordinate to, the indebtedness and obligations of the Company in respect of the Notes. If any modification to this document, or any other documentation, consent or acknowledgement, is necessary or expedient to permit, facilitate or give effect to such ranking the Trustee is authorised to consent and execute the same on behalf of, and to be binding on, the Noteholders, provided that the Trustee must first be satisfied with the form and substance of any such document.

Subordination

- 2.3 In any distribution of assets of the Company in Liquidation (including by way of exercise of rights of set off) the rights of the Trustee and the Noteholders to the Issue Price of, and interest on the Notes, are to be subordinated to all monies payable by the Company to Senior Creditors, such that in any such distribution no payment will be made on account of the Issue Price of or interest on the Notes to the Trustee or the Noteholders until the Senior Creditors have been paid in full. The Noteholders and Trustee (in their respective capacities as such under this document) waive, to the fullest extent permitted by law, any right to prove in any such Liquidation as a creditor ranking for payment equally with any such Senior Creditors.
- 2.4 In any distribution of assets of the Company in Liquidation (including by way of exercise of rights of set off) the Company shall make payment in respect of Subordinated Creditors in priority to the holders of any equity securities issued by the Company.
- 2.5 The Trustee agrees and by purchasing a Note, each Noteholder will be deemed to agree that:
- 2.5.1 the provisions of this section 2 and of the equivalent Conditions shall apply notwithstanding any variation or amendment to any agreement creating or evidencing any Senior Debt;
 - 2.5.2 the provisions of the Contracts (Privity) Act 1982 of New Zealand shall apply (but subject to the limitations set out in this document

and in particular clause 2.5.3 below and the specified Conditions) to the benefits conferred in this section 2 (other than clause 2.11) and the equivalent Conditions upon the Senior Creditors and each Senior Creditor is to be considered a 'beneficiary' for the purposes of such Act and that such benefits are intended to be enforceable at the suit of any such person;

- 2.5.3 notwithstanding clause 2.5.2, the parties shall be entitled at any time to vary or discharge any provision of this Trust Deed (including the Conditions) without requiring the consent or agreement of the Senior Creditors (except to the extent that such variation alters or purports to alter section 2 or the equivalent Conditions relation to the ranking of, or entitlement to moneys in relation to, the Capital Notes as subordinated in point of priority to the rights of Senior Creditors upon or in relation to Liquidation of the Company but in compliance with the provisions of this document;
 - 2.5.4 in accordance with section 313(3) of the Companies Act, each Noteholder accepts a lower priority in respect of any amount payable to the Noteholder in respect of such Note than that which it would otherwise have under section 313 of the Companies Act; and
 - 2.5.5 nothing in section 313 of the Companies Act will prevent this document from having effect in accordance with its terms.
- 2.6 Until the Commencement of Liquidation of the Company shall be entitled to pay, and a Noteholder or the Trustee or any other person on behalf of a Noteholder shall be entitled to receive payment (including by way of set off or counterclaim or in any other manner) from or on behalf of the Company of any amount payable in respect of principal or interest on the Notes, or other sum payable in respect of the Notes and the Trustee shall be entitled to pay any sums received by it on behalf of Noteholders to or for the benefit of the Noteholder(s) or any other person on behalf of any Noteholder(s). The payment and receipt prior to the Commencement of Liquidation of the Company of any such amount shall not constitute a breach of clause 2.3 or be subject to clause 2.7 and such payment shall be received free of any obligation on the recipient to refund or return the same, or to hold the same in trust, pursuant to any of the provisions of this section 2.
- 2.7 Any amounts payable to, and/or received by, the Noteholders or by the Trustee on behalf of the Noteholders after the Commencement of Liquidation of the Company (as the case may be) and not paid to the Liquidator, will be received on trust subject to any direction of a court or as otherwise required by law to apply the same:
- 2.7.1 first, in payment of all costs, charges, expenses and liabilities properly incurred by on or on behalf of the Trustee (or any officer, employee, or agent of the Trustee) and remuneration payable including any other indemnified amounts and other moneys payable to the Trustee as provided for or referred to in this document;

- 2.7.2 second, in payment of claims of other creditors of the Company whose claims rank, on a Liquidation of the Company, in priority to those of Subordinated Creditors to the extent that such claims are admitted to proof in the Liquidation (not having been satisfied out of the other resources of the Company);
- 2.7.3 third, in or towards payment, *pari passu* and rateably, of the claims of the Subordinated Creditors of the Company to the extent that such claims are admitted to proof in the Liquidation (not having been satisfied out of the other resources of the Company); and
- 2.7.4 as to the balance (if any) to the Liquidator for the time being of the Company.
- 2.8 If, whether before or after the Commencement of Liquidation and notwithstanding clause 2.7, a Noteholder is or becomes entitled to exercise or exercises any rights of set-off, counterclaim or other such remedy in respect of any amount owing by the Noteholder to the Company, the Noteholder must pay to the Company an amount equal to the amount in respect of which such right is exercised, such amount to be held by the Company upon the trusts set out in clause 2.7 and, pending payment of any such amount to the Company, the Noteholder must hold that amount on trust to pay that amount to the Company to be held on the trusts constituted or to be constituted under this clause.
- 2.9 The trusts mentioned in clauses 2.7.2, 2.7.3, 2.7.4 and 2.8 may be performed by the Trustee paying over to the Liquidator of the Company the amount received (if any) in the case of the Trustee (less any amounts applied under clause 2.7.1) on terms that the Liquidator shall distribute them and the receipt by such Liquidator shall be a good discharge for the performance of such trusts; otherwise the Trustee shall have no other obligation in relation to such trusts.
- 2.10 The Trustee shall be entitled to accept as conclusive evidence a certificate from the Liquidator as to:
- 2.10.1 the amount of the claims of the other creditors or Subordinated Creditors (including, for the avoidance of doubt, Noteholders) referred to in clauses 2.7.2 and 2.7.3; and
- 2.10.2 the persons entitled to the amounts payable to or received by the Trustee pursuant to clause 2.7 and their respective entitlements.

No subordination of Trustee's entitlement

- 2.11 The provisions of this section 2 and of the equivalent Conditions apply only to payments or repayments by way of principal or interest on the Notes or any other sums due or payable in respect of Notes, and nothing in this section 2 or such Conditions or anything elsewhere in this document or the Conditions shall:
- 2.11.1 subordinate, defer in priority or point of payment, or otherwise affect or prejudice the payment or reimbursement of the costs, charges,

expenses, liabilities, remuneration, indemnities or other monies payable to the Trustee as described in clause 2.7.1, or the rights and remedies of the Trustee in respect of which shall be payable to the Trustee at the time and in the manner herein provided, and the payment of which may be claimed and/or enforced by the Trustee, free of the restrictions contained in this clause 2.7 or the Conditions;
or

- 2.11.2 impose upon the Trustee or oblige the Trustee to acknowledge any personal liability to pay any amount which has not first been received by the Trustee in its capacity as Trustee under this document, and any such liability shall cease in respect of any amount so received and disbursed by the Trustee in good faith in the reasonable belief that the disbursement is authorised under this document and, in particular, but without limiting the generality of the foregoing, the Trustee shall not be obliged to pay, or to account for or incur any other liability (whether as a constructive trustee or otherwise) in respect of, any amount which it receives and disburses to any Noteholders before the Trustee has received actual notice of the Commencement of Liquidation of the Company.

Termination of trusts

- 2.12 The trusts contained in this document in favour of the Senior Creditors shall terminate on the date which is 80 years less one day after the date of execution of this document, except to the extent that any interests under such trusts have vested at that date and without affecting the contractual rights and obligations of the Company and the Trustee hereunder, and any amounts which would, but for this provision, have been held on trust for the Senior Creditors shall be held on trust for the Company absolutely.

3 Register of Notes and exclusion of equities

Register of Notes

- 3.1 The Company shall maintain the Register or appoint a Registrar to establish and maintain the Register in accordance with this document and all legal requirements as to the maintenance of registers of securities. The Company may remove and appoint the Registrar on such terms and conditions as it thinks fit. The Company must forthwith advise the Trustee in writing of any appointment or removal of the Registrar.
- 3.2 The Register shall include:
- 3.2.1 the names and addresses of the Noteholders;
 - 3.2.2 the account to which all payments are to be made;
 - 3.2.3 the date such names are entered on the Register;
 - 3.2.4 all transfers or changes of ownership of Notes;

- 3.2.5 particulars of any new or substitute Certificate issued pursuant to this document or the Conditions;
 - 3.2.6 the serial number of each Certificate;
 - 3.2.7 details of all cancellations of Notes;
 - 3.2.8 the Issue Price of each Note;
 - 3.2.9 the Interest rate payable on each Note;
 - 3.2.10 the Issue Date, applicable to each Note for the purposes of the Conditions;
 - 3.2.11 the Interest Payment Dates applicable to the Notes;
 - 3.2.12 the Election Date applicable to each Note; and
 - 3.2.13 such other information as may be required by law, NZX, the Company.
- 3.3 Any change of name or address of any Noteholder or any change in any other information required to be inserted in any Register in respect of any Noteholder shall forthwith be notified to the Registrar in writing by the Noteholder or if a joint holding by all the joint Noteholders and the Register shall be altered accordingly.
- 3.4 The Trustee, the Noteholders, the Company and any person authorised in writing by any of such persons shall be at liberty at all reasonable times and upon giving reasonable notice during usual office hours on any business day to inspect the Register without charge and to take copies of and extracts from the same upon payment of a reasonable charge other than for the Trustee who may obtain copies without charge.
- 3.5 Subject to clause 3.6, the Company may from time to time on giving notice to NZX close the Register for any period or periods not exceeding, in aggregate, 30 days in any one year provided that the rights of the Trustee under clause 3.8 shall not be prejudiced by such closure.
- 3.6 The Company shall comply with and shall use reasonable endeavours to ensure that the Registrar complies with all statutory requirements, the Listing Rules and the requirements of this document and the Conditions relating to the keeping of the Register.
- 3.7 The Register shall be audited annually by the Auditors and at such other times following a request by the Trustee, on reasonable grounds and in any case on the terms of and as required under the Securities Act. For this purpose, if the Company advises the Trustee in writing prior to the audit taking place, the audit can be undertaken by the auditors of the Registrar instead of the Auditors of the Company.

Register conclusive

- 3.8 The Trustee and the Company shall:

- 3.8.1 be entitled to rely upon the entries in the Register as constituting the sole and conclusive record of all Notes and Certificates and the persons entitled to the Notes;
- 3.8.2 not be obliged or concerned to make further enquiry as to the status in relation to this document, or ownership, of any claim, entitlement or interest not so entered in the Register;
- 3.8.3 not be deemed to have accepted any liability for failure to make enquiry;
- (a) of, or in respect of, any claim, entitlement or interest not entered in the Register; or
- (b) of (in the case of the Trustee only) any trusteeship for the Noteholders not entered in the Register;
- 3.8.4 have power, in their respective absolute discretion, but in the case of the Trustee after having first consulted with the Company, to authorise the correction of the Register upon being satisfied that the Register is incorrect, in which case the Trustee shall be deemed to have accepted trusteeship in respect of Notes and on behalf of the Noteholders as shown by the Register so corrected as from such date as the Trustee shall determine; and
- 3.8.5 not be liable to each other (as the case may be) or any Noteholder or former Noteholder for accepting in good faith as valid any Certificate subsequently found to be forged, irregular or not authentic.
- 3.9 In the event of any conflict between the Certificate for a Note and the particulars recorded in the Register in respect of that Note, the Register is to prevail.

Joint Noteholders

- 3.10 Joint holders of a Note are entitled to only one Certificate. The Certificate will be, except where the joint holders otherwise direct, issued to the joint holder whose name appears first in the Register in relation to that joint noteholding.

Exclusion of equities

- 3.11 The Noteholders are to be regarded as the beneficial owners of the Notes registered in their names respectively and are to be regarded as exclusively entitled and the Company, the Registrar and the Trustee shall, notwithstanding any notice to the contrary, be entitled to treat the Noteholder of any Note as its absolute and beneficial owner and shall not be bound to recognise any trust or equity affecting such ownership, nor to enter in the Register notice of any trust, except as ordered by a court of competent jurisdiction.

Taxation indemnity by Noteholder

- 3.12 Whenever, in respect of any Notes, there shall by law be imposed any liability on the Trustee, the Company to make any payment of or on account of tax

payable by or in respect of any Noteholder or the Notes (except as payable by the Company under clause 4.2.8 or where primary liability for such rests with the Company), the Trustee, the Company respectively shall in respect of such liability be indemnified by such Noteholder and in the case of the Trustee alternatively by the Company (in respect of which the Company shall in turn be indemnified by the Noteholder) and any monies paid by the Trustee, the Company in respect of any such liability may be recovered by action from such Noteholder or the legal personal representative or successor of such Noteholder or the Company as a debt due to the Trustee, the Company. Nothing in this clause shall prejudice or affect any other right or remedy of the Trustee, the Company.

Unclaimed payments

- 3.13 If any payment made by the Company to any Noteholder at its address last entered in the Register is returned unclaimed and the amount concerned remains unclaimed for 12 months, the amount concerned shall (unless the Company has in the meantime received notice of a change of address to be entered in the Register) be paid to the Trustee to be held by it for the Noteholder concerned without any liability to invest or pay interest on that amount. Subject to the provisions of the Unclaimed Money Act 1971 or otherwise required by law, any money not so claimed within a period of 6 years from the original date of payment by the Company shall be returned to the Company together with interest (if any) thereon, less any deduction required by law and for reasonable fees and expenses customarily charged by the Trustee for holding money. The Company and the Trustee (once the Trustee has returned the money) shall have no further liability in respect of the amount concerned.

Reinstatement

- 3.14 If any payment made to the Trustee or to any Noteholder by, or on behalf of, the Company is avoided by law such payment shall be deemed not to have discharged or affected the liability of the Company in respect of which that payment was made. In that event the Trustee, the Noteholders and the Company shall 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.

4 Warranties and covenants

Representations and warranties

- 4.1 The Company represents and warrants to the Trustee that:
- 4.1.1 *Incorporation:* It is duly incorporated under the laws of New Zealand;
 - 4.1.2 *Power:* it has the power to enter into this document, issue the Notes, and perform all of its obligations under this document, any Terms of Issue and any Relevant Document;

- 4.1.3 *Consents and authorisations:* It has obtained all necessary consents and has taken all necessary corporate and other actions to authorise the execution and performance by it of this document and the Notes and any Relevant Document;
- 4.1.4 *Obligations legally binding:* Its obligations under this document and the Notes and any Relevant Document are legally binding and (subject to the limitations on enforcement of remedies expressly provided in this document) enforceable in accordance with their respective terms, subject to generally applicable limitations on the enforcement of remedies at law, general equitable principles and to bankruptcy, insolvency or other laws affecting creditors' rights generally; and
- 4.1.5 *No violation:* the execution and performance by the Company of its obligations under this document and the Notes and any Relevant Document do not violate in any respect any applicable provision of any law, decree or regulation of any governmental or other authority, agency or court to which they are subject, or any of its constitutional documents, or any agreement, charge or other instrument to which it is a party or which is or may be binding on it or any of its assets; and
- 4.1.6 *Ordinary Shares:* the Ordinary Shares issued in accordance with the Conditions will be validly issued.

Each representation and warranty set out in this clause 4.1 is deemed to be repeated by the Company on each occasion Notes are issued by the Company under this document by reference to the circumstances existing as at that date.

Company covenants

- 4.2 The Company covenants with the Trustee and each Noteholder that it shall at all times while any Notes are outstanding and until a discharge of this document is given under clause 9.2:
- 4.2.1 Promptly notify the Trustee and each Noteholder if interest will not be paid, or if the Company fails to make a payment of interest or any amount due in respect of the Notes, when payable;
- 4.2.2 Send copies to the Trustee of all notices given by it to Noteholders generally;
- 4.2.3 Whenever so requested, whether or not at the relevant time there are any Notes outstanding, give to the Trustee or any person authorised by the Trustee to receive it, such information as may reasonably be required with respect to all matters necessary for the purpose of the discharge of the duties, trusts and powers vested in the Trustee under this document or imposed upon it by law and for this purpose produce and facilitate the provision of information to the Trustee by the Auditors as required by any applicable law and for this purpose will procure and facilitate the provision of information to the

Trustee by the Auditors of the Company under the procedures contemplated by section 50 of the Securities Act;

- 4.2.4 Use all reasonable endeavours to maintain quotation of the Notes on NZDX;
- 4.2.5 Promptly notify the Trustee if the Company becomes aware that any provision of this document or any Terms of Issue has not been or, as the case may be, cannot be complied with by the Company;
- 4.2.6 If and to the extent that a Note can be transferred, converted or traded under a system authorised or approved under the Securities Transfer Act 1991, as contemplated by clause 1.7 at all times use reasonable endeavours to comply (or procure that the Registrar complies) with all material requirements of, or otherwise relating to, such system (including any applicable arrangement made between the Company and NZX or requirement imposed on the Company by NZX);
- 4.2.7 Advise the Trustee and each Noteholder in accordance with any Terms of Issue promptly upon becoming aware of a Takeover;
- 4.2.8 Pay all duties, registration fees, and other similar duties or fees, including penalties (if any) payable on or in connection with the constitution and issue of the Notes, the execution and registration of this document and the admissibility in evidence of the foregoing;
- 4.2.9 Carry on its business in a proper manner and with sufficient assets to meet all its obligations under this document and in respect of the Notes as they fall due;
- 4.2.10 Unless otherwise permitted by the Trustee:
 - (a) ensure that the net proceeds of the issue of the Notes are utilised in favour of or for the benefit of, the Company or any one or more of the Company's related companies; and
 - (b) not engage in any business or activities not permitted by the Company's constitution or other relevant laws applicable to its continued corporate existence;
- 4.2.11 Comply with the provisions of each of the Securities Act 1978 and the Listing Rules applicable to the Notes.
- 4.2.12 Comply with its obligations under the Conditions;
- 4.2.13 procure that, on or before the first Issue Date, the Auditors shall acknowledge in writing their obligations to provide the report mentioned in clause 4.5 in the form of Schedule 5 and shall acknowledge their other obligations under this document and under the Securities Act.

- 4.2.14 Send copies to the Trustee of all notices given by it to Noteholders generally;
- 4.2.15 Forward to the Trustee and all Noteholders (other than those to whom the same are sent as holders of Ordinary Shares) copies of all notices, reports and financial statements which it sends to holders of Ordinary Shares at the same time as those communications are distributed (which may be accompanied with a suitable explanatory letter advising Noteholders that they receive such material for their information only);
- 4.2.16 Promptly notify the Trustee if it intends not to, or fails to, comply with an obligation to allot and issue Ordinary Shares to Noteholders upon conversion or otherwise as provided in the Conditions;
- 4.2.17 Subject to the Conditions, take all necessary steps to ensure that it is able to issue Ordinary Shares upon the conversion of the Notes on an Election Date;
- 4.2.18 Allot and issue Ordinary Shares to Noteholders upon conversion or otherwise in accordance with the provisions of this document and the Conditions and use reasonable endeavours to seek such approvals and authorisations as may be necessary in order that it can issue such number of Ordinary Shares as could reasonably be expected to be necessary in order to enable the Ordinary Shares arising upon conversion or otherwise to be issued in full;
- 4.2.19 Use all reasonable endeavours to ensure that the Ordinary Shares issued upon conversion or otherwise shall, upon allotment, be quoted on NZX;
- 4.2.20 Use all reasonable endeavours to maintain listings for the Ordinary Shares on the NZSX, and to provide to NZX such information as it may require in accordance with its normal requirements, or in accordance with any arrangements for the time being made with NZX;
- 4.2.21 Deliver to the Trustee no later than the time for the delivery of the reports referred to in clause 4.5 a report signed by any 2 Directors, or 1 Director and the Chief Financial Officer of the Company in the form set out in Schedule 5 (or such other form as the Company and the Trustee shall agree), as at the end of and in respect of such year or half-year (as the case may be);

Financial and Restrictive Covenants

- 4.3 The Company covenants with the Trustee and each Noteholder that:
 - 4.3.1 it shall at all times while any Notes are outstanding and until a discharge of this document is given under clause 9.2 ensure that:
 - (a) External Secured Debt shall not exceed 1.50 times equity;

- (b) none of its wholly owned subsidiaries other than Allied Prime Finance Limited and any other finance company acquired or owned, either directly or indirectly, by the Company which issues secured debt securities in the ordinary course of its business, will issue Subsidiary Secured Debt;

4.3.2 at any time during which the payment of interest on the Notes is suspended in accordance with the Conditions it will not:

- (a) pay any dividend or make any other Distribution to shareholders;
- (b) provide any financial assistance (other than Permitted Financial Assistance);
- (c) make any payment on any securities or other indebtedness ranking behind the Notes.

4.4 Without limiting the provisions of clause 6, any breach of the Financial and Restrictive Covenants in clause 4.3 shall not give the Trustee or the Noteholders any remedies (including but without limitation the right of acceleration) other than the obligation of the Company to pay interest at the Default Rate payable in accordance with the Conditions.

Accounts and reports of directors

4.5 The Company covenants with the Trustee that, so long as any Notes are outstanding, the Company will, not later than 120 days after the end of its financial years and not later than 90 days after the end of its financial half-years, deliver to the Trustee:

- (a) a report signed by any 2 Directors, or 1 Director and the Chief Financial Officer or Secretary of the Company in the form set out in Schedule 4 (or such other form as the Company and the Trustee shall agree); and
- (b) a copy of the financial statements of each of the Company and a copy of the Company's consolidated financial statements, in each case, for the preceding financial year or half year (as the case may be) and audited in the case of the financial statements for a financial year only; and
- (c) a report from the Auditors in the form set out in Schedule 5 (or such other form as the Auditors and the Trustee shall agree)

5 The Trustee – its appointment, retirement, remuneration, duties, powers, liabilities and indemnity

Appointment of Trustee

- 5.1 The Company appoints the Trustee, and the Trustee accepts appointment, as trustee for the Noteholders in respect of the Notes with the rights, powers, duties and obligations set out in this document and in the Conditions.

Retirement or removal of Trustee

- 5.2 The Trustee may retire at any time without assigning any reason upon giving at least 90 days' written notice to the Company subject to the due appointment of a new trustee and the transfer to the new trustee of any money and investments (if any) held by the Trustee under this document.
- 5.3 The Company may at any time without assigning any reason upon giving at least 90 days written notice to the Trustee, remove the Trustee (including any new trustee appointed upon the retirement or discharge of any previous trustee).
- 5.4 The Noteholders may by way of Extraordinary Resolution remove the Trustee.
- 5.5 The power of appointing a new trustee shall be vested in the Company but shall be subject to the approval of Noteholders by an Extraordinary Resolution. Upon a vacancy in the office of Trustee arising the Company shall promptly call a meeting of Noteholders for the purpose of approving the appointment of a new trustee and, if approval is given, the Company shall exercise its power of appointment. Only a body corporate authorised in accordance with the provisions of the Securities Act shall be appointed as Trustee under this document.
- 5.6 The Company must notify all Noteholders of the identity of any new trustee appointed as soon as reasonably possible following such appointment.
- 5.7 Upon retiring the Trustee shall transfer to the new trustee all monies together with any investments and other income held by it under this document.

Remuneration and reimbursement of Trustee

- 5.8 The Trustee shall be entitled to, and the Company shall pay to the Trustee, by way of remuneration for its services as Trustee under this document, such remuneration in accordance with the terms of any current agreement contained in letters exchanged between the Company and the Trustee.
- 5.9 The Company shall also pay all expenses on a full indemnity basis (including travelling expenses) and other costs, charges and expenses which are properly incurred by the Trustee, including legal expenses, in connection with:
- 5.9.1 the preparation, execution and modification (and release when applicable) of this document, any Relevant Document and any prospectus, investment statement or information memorandum prepared in connection with the Notes and any registration costs in connection with any of them;

- 5.9.2 the exercise or attempted or purported exercise by the Trustee of any power or discretion conferred on the Trustee or upon any Noteholders by this document or in respect of the Notes or any Relevant Document, or the performance of its duties, including the taking of any expert advice deemed necessary or expedient by the Trustee;
 - 5.9.3 any breach, default or non-compliance by the Company of or with any obligation under this document, the Notes or any Relevant Document;
 - 5.9.4 any request by any party for clarification or interpretation of any provision of this document, any Terms of Issue or any Relevant Document and, if relevant, the convening and holding of any meeting of Noteholders and carrying out of any directions or resolutions of such a meeting;
 - 5.9.5 any application under the trusts and provisions of this document for its consent to, or approval of, any act or matter; and
 - 5.9.6 any waivers, consents, audits, certifications or other similar matter contemplated by this document, the Terms of Issue or any Relevant Document,
- and any registration costs and tax or duties in relation to any of them.
- 5.10 All remuneration arising annually under this section 5 shall accrue on the basis as agreed between the Company and the Trustee from time to time. All other fees and expenses shall be payable by the Company to the Trustee on demand.
 - 5.11 All remuneration and other payments provided for in this section 5 shall continue to be payable by the Company until the earliest of:
 - 5.11.1 the time at which the Trustee has executed a discharge of this document as referred to in clause 9.2; or
 - 5.11.2 the time at which proof has been given to the reasonable satisfaction of the Trustee that there are no Notes outstanding and it is not intended to issue any further Notes; or
 - 5.11.3 the time at which the trusts of this document are finally wound up or discharged, whether or not the Company shall be wound up or the trusts of this document are in the course of administration by or under the direction of a court.

Duties of Trustee

- 5.12 The Trustee shall exercise reasonable diligence to ascertain whether or not any breach of the terms of this document or of the Conditions of the Notes has occurred and, except where it is satisfied that the breach shall not materially prejudice the interests of the Noteholders shall do all such reasonable things as it is empowered to do to cause any breach of those terms to be remedied.

The Trustee's duties under this document as prescribed in clause 1 of the Fifth Schedule to the Securities Regulations 1983 shall be construed and interpreted to recognise and take into account the following characteristics of the Notes:

- 5.12.1 they are debt securities which have certain characteristics analogous to shareholders' equity rather than debt securities;
- 5.12.2 the Company (including its subsidiaries), may freely incur further indebtedness;
- 5.12.3 the subordination and the postponement in priority of the Notes to all Senior Debt;
- 5.12.4 that interest may be suspended in certain circumstances;
- 5.12.5 the limitations on the rights of the Noteholders and the Trustee on behalf of the Noteholders to compel or enforce payment of any principal, interest or other sums and the other limitations on the rights of the Noteholders or the Trustee (including in respect of any breach by the Company) provided in this document and the Conditions; and
- 5.12.6 the limitations on the rights of the Trustee to make any directions or otherwise interfere in the conduct of the business of the Company;

and shall, to the maximum extent possible, be limited accordingly.

All Noteholders shall be deemed to have knowledge of and to have accepted that the duties and obligations of the Trustee pursuant to clause 1 of the said Fifth Schedule shall be construed, interpreted and limited as provided above.

Without limiting the generality of the foregoing:

- 5.12.7 the Trustee may and is entitled to assume without enquiry, until the earlier of the Election Date or the date the Trustee receives actual notice of a Liquidation of the Company, that the Notes remain valid and (if not converted, redeemed or purchased in accordance with the Conditions) remain debt securities which are not due for payment;
- 5.12.8 the Trustee will not be bound to take steps to ascertain whether or not the Company has committed any breach of the provisions of this document or any of the Notes and cease to be entitled to assume without enquiry that no such breach is occurring or has occurred only upon either:
 - (a) the Trustee receiving specific advice that a breach has, or appears to have, occurred or threatens to occur, from the Directors of the Company or the Auditors; or
 - (b) the Trustee receives actual notice of a Liquidation of the Company.

- 5.13 The Trustee shall not be required to monitor compliance by the Company or any other party with the Listing Rules and, in the absence of notice to the contrary from the Company or NZX, shall be entitled to assume that they are complying. In the event of non-compliance with any Listing Rule the Trustee, 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 Company.
- 5.14 The Trustee shall be entitled to assume that all Relevant Documents are legal, valid and enforceable and have been duly and properly authorised and executed, unless and until it receives actual notice to the contrary.
- 5.15 The Trustee will not be obliged to take into account the actual or potential rights of any Noteholder, or Noteholders generally, under Condition 6 as to any decision that Noteholders may need to make regarding the election to convert their Notes when the Trustee is considering, or exercising, any of its rights, powers or duties under or in accordance with this document. Further, the Trustee is not required to take any action to inform or notify any Noteholder, or Noteholders generally, of his or her rights under Condition [6] or of any circumstances which do or may give rise to any such rights other than to monitor that the Company is complying with its obligations under those Conditions.
- 5.16 Nothing expressed in this document or implied by law shall prohibit the Trustee or any of its related companies (all hereinafter in this clause where the context permits being included in the expression 'the Trustee') or the officers of the Trustee from being a Noteholder, shareholder or creditor of, or having any other interest in, the Company or from acting in any representative fiduciary, agency or other capacity for a Noteholder or other persons (including other creditors) in relation to other engagements or transactions with the Company. The Trustee may enter into any transactions with the Company and shall not be accountable to the Company or the Noteholders for any profits arising from any such transactions.

Powers of Trustee

- 5.17 In addition to the provisions of the law and to facilitate the discharge of its duties, but subject to the provisions of the Securities Act, it is expressly declared that:
- 5.17.1 Any representative of the Trustee, being a person authorised to act for the purposes of this clause 5.17.1 by any director, general manager or secretary of the Trustee, shall be entitled to attend any annual meeting of the Company, and to be heard at any such meeting which he or she attends on any part of the business of the meeting which concerns the Trustee as such or the Noteholders.
- 5.17.2 Subject to any direction given by the Noteholders by Extraordinary Resolution, the Trustee may from time to time by notice in writing to the Company waive or authorise in part or in whole, for a specified period or completely, and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Company of any of the provisions of this document or the Conditions, provided

the Trustee is satisfied that the interest of the Noteholders generally will not be materially prejudiced as a result. Any such waiver or authorisation will not affect the rights of the Trustee and the Noteholders in respect of any other breach. The Trustee shall not be deemed to have given any such waiver or authorisation unless the waiver or authorisation is given by the Trustee in writing and subject only to clause 5.23 the Trustee shall not be responsible for any loss that may result from such waiver or authorisation or the refusal to give such.

- 5.17.3 The Trustee may delegate from time to time and at any time to any person or persons any of the trusts, powers or discretions hereby vested in the Trustee which cannot conveniently be exercised by it or through its employees upon such terms and conditions and under such regulations (including the power to sub-delegate) as the Trustee may in the interests of the Noteholders and in consultation with the Company think fit.
- 5.17.4 The Trustee may (at its own cost with the right to reimbursement after first consulting with the Company), without liability or loss, take and act on, or decline and elect not to act on:
- (a) the advice or opinion of or any information obtained from any barrister, solicitor, valuer, stockbroker, surveyor, accountant, chartered accountant, auditor or other expert whether obtained by the Trustee, the Company or otherwise, even though it may subsequently be found to contain some error or not be authentic;
 - (b) any certificate or report signed by any 2 Directors of the Company or 1 Director and the Chief Financial Officer or the Secretary (as the case may be) as to any fact or matter prima facie within the knowledge of the Directors or that any particular dealing, transaction, step or thing is expedient or commercially desirable as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing; and
 - (c) the statements contained in any certificate or any report given pursuant to this document as conclusive evidence of the facts stated therein.
- 5.17.5 Any monies held by the Trustee and subject to the trust hereof may, at the discretion of the Trustee, be invested in the name of the Trustee or its nominee in any investments whatsoever with power to vary or transpose such investments for others of a like nature and deal with or dispose thereof, and all income from such investments shall belong to the person in respect of which such monies are held by the Trustee.
- 5.17.6 Where, pursuant to this document, the Company may do or omit to do any act if it obtains the consent of the Trustee, the Trustee may

give its consent either unconditionally or on such terms and conditions as it in its absolute discretion thinks fit and may be given retrospectively.

- 5.17.7 The Trustee may, whenever it thinks it expedient in the interests of the Noteholders to do so, apply to a court at any time for directions in relation to any matter, or consent to, approve or oppose any application to a court by the Company or by or at the instigation of any Noteholder.
- 5.17.8 The Trustee may determine whether or not a failure by the Company to perform any obligation under the provisions of the Conditions or this document is in its opinion capable of remedy and/or is materially prejudicial to the interests of the Noteholders and any such determination shall be conclusive and binding upon the Noteholders, the Company;
- 5.17.9 The Trustee's powers to cause the remedying of any breach of this document are subject to any other provision of this document which is inconsistent with the exercise of such powers.
- 5.18 The Trustee will not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Noteholders in respect of which a proper record has been made and which the Trustee believes to have been properly passed, even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or in the proceedings conducted at the meeting or otherwise howsoever.
- 5.19 The Trustee will not be responsible for the receipt or application by the Company of the proceeds of the issue of Notes or for the delivery of the proceeds of the issue of Notes or for the delivery of Certificates or letters of allotment or certificates representing the Ordinary Shares (when issued) to the person entitled to them and no Noteholder shall be entitled to take any action to obtain any such information from the Trustee.
- 5.20 Except in order to comply with its obligations under this document or by law, the Trustee will not disclose to any Noteholder or any other person any confidential, financial, price sensitive, or other information made available to the Trustee by the Company in connection with this document.
- 5.21 The Trustee shall have no duties or responsibilities or liabilities under this document, other than under clause 2.9 and clause 2.10, to any Noteholder which is the Company or any of its subsidiaries (whether incorporated in New Zealand or elsewhere), other than where the Company or any of its subsidiaries holds Notes as personal representative or trustee in the circumstances set out in clause 1.17.

Trustee may concur in amendments

- 5.22 Subject to the requirements of NZX, the Trustee may, without the consent of the Noteholders except in respect of variations or additions under clause

5.22.2, concur with the Company in making any variation or addition to this document or the Conditions:

- 5.22.1 if in the opinion of the Trustee it is made to correct a manifest error, or is of a formal or technical nature, or is made to comply with law or is convenient for the purposes of obtaining or maintaining any quotation of the Notes on NZX; or
- 5.22.2 if it is authorised by an Extraordinary Resolution; or
- 5.22.3 if the Trustee is of the opinion that it is not, or is not likely to become, materially prejudicial to the general interests of the Noteholders; or
- 5.22.4 if it is necessary or desirable to facilitate the transfer and trading of the Notes on NZX or otherwise or the conversion of the Notes; or
- 5.22.5 if it is necessary or desirable in order to ensure compliance with any statutory or regulatory requirements; or

Any such variation or addition must be in writing signed by the Company and the Trustee and shall be binding on all Noteholders.

Liability of Trustee

- 5.23 The Trustee shall, subject to this document, have absolute discretion as to the exercise or non-exercise of all trusts and powers vested in it by this document and as to the commencement, variation, discontinuance, compromise or conduct of any action, proceeding or claim, and, provided it acts in good faith, it shall not be responsible to the Noteholders for any loss, damage or expense that may result from the exercise or non-exercise thereof.
- 5.24 The Trustee will not be under any liability to the Company or the Noteholders whatsoever unless the Trustee has failed to show the degree of care and diligence required of it having regard to the powers, authorities, discretions or responsibilities conferred or imposed upon it by this document or by law and the limitations thereon contained in and implied by this document and the Conditions.

Indemnity of Trustee

- 5.25 Without prejudice to the right of indemnity by law given to trustees, the Trustee and each of its officers, servants or agents shall be entitled to be indemnified by the Company, on an unsubordinated basis, in priority to any payment to the Noteholders:
 - 5.25.1 in respect of all expenses and liabilities incurred by it under clause 5.8; and
 - 5.25.2 against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this document, any Terms of Issue or any Relevant Document, other than a claim (or other action as aforesaid) arising out of:

- (a) fraud, wilful neglect, wilful breach of trust or dishonesty on the part of the Trustee or any of its officers, servants or agents (whether or not of the officer, servant or agent claiming to be indemnified); or
- (b) wilful breach of trust where the Trustee or any of its officers, servants or agents (whether or not of the officer, servant or agent claiming to be indemnified) fails to show the degree of care and diligence required by law having regard to the powers, authorities and discretions conferred on the Trustee by this document.

5.26 The Trustee may decline to take any action or exercise any power or discretion or comply with or implement any direction or request given pursuant to the provisions of this document whether or not it is otherwise bound to so act unless and until the Trustee shall first be indemnified to its satisfaction (whether by the Noteholders or any other person(s) acceptable to the Trustee) against all actions, proceedings, claims and demands to which the Trustee may be rendered liable and all costs, charges, damages and expenses which it may incur by so doing.

Trustee may retain money

5.27 The Trustee may retain and pay out of any monies in its hand upon the trusts of this document the amount of any such expenses and liabilities and of any other monies becoming payable to it under the foregoing indemnity, together with the remuneration and disbursements of the Trustee as provided in this document.

Discretion to consult Noteholders

5.28 In the event of any breach of the provisions of this document on the part of the Company or the occurrence of any circumstances which may result in such a breach which the Trustee is aware of and reasonably considers may be materially prejudicial to the interests of the Noteholders the Trustee may in its absolute discretion require the Company to report the circumstances and nature of such breach and any other information concerning the Company which the Trustee has received under or in relation to this document and which it reasonably considers to be material to the Noteholders or any of them. In such circumstances, the Trustee may invite the Noteholders or any of them to indicate to the Trustee their preferences as to any exercise or non-exercise of the Trustee's powers under this document or as to any action or omission or act by the Trustee in relation to the breach or any other matter or thing and, if the Company fails to so report, the Trustee may, subject to being indemnified as provided in clause 5.25, itself do so. Any such report shall be given in such manner as is considered by the Trustee to be the most practicable and expedient in all the circumstances.

6 Enforcement and default

Only Trustee may enforce

- 6.1 Only the Trustee may (but subject always to section 2) enforce the provisions of the Notes or this document and no Noteholder shall be entitled to proceed directly against the Company.

No claims by Noteholders

- 6.2 No Noteholder shall claim or prove in the Liquidation of the Company for any amount owing to such Noteholder under any Note or this document to the extent that the Trustee has claimed or proved for, or has determined to claim or prove for, such amount in such Liquidation on behalf of such Noteholder, and any claim or proof made contrary to this clause 6.2 shall be withdrawn by such Noteholder.

Trustee enforcement

- 6.3 The Trustee shall not be entitled to claim, demand, sue, prove for, compel or enforce payment or repayment from the Company of any amount by way of principal or interest on the Notes or any other sum due or payable in respect of the Notes or under this document except following the Commencement of the Liquidation of the Company, and then, only by way of a claim, demand, suit or proof as may be necessary to preserve such claim in any Liquidation of the Company (and the Trustee in respect of any amount owing to it and unpaid). Except as permitted by clause 2.6, the Trustee shall not be entitled to take or receive directly or indirectly (including by way of set off or counterclaim or in any other manner) from the Company any amount by way of principal or interest on the Notes or any other sum due or payable in respect of the Notes, and the Trustee shall not be entitled to pay, or procure the payment, to or to the order of or for the benefit of, any Noteholder, or any other person on behalf of any Noteholder, any sums for the time being held by or under the control of the Trustee being by way of principal or interest on the Notes or other sum due or payable in respect of the Notes unless and until the indebtedness of the Company to Senior Creditors has been fully paid or repaid.
- 6.4 If the Company at any time fails to observe or perform any covenant, condition or provision of this document (other than a covenant for payment referred to in clause 6.3) and the Trustee certifies in writing that it considers such failure to be prejudicial to the interests of the Noteholders (or a class thereof) or the Trustee, the Trustee may at its discretion and shall (subject to being indemnified as provided in clause 5.25) if so requested in writing by the Noteholders holding together not less than 10% of the Issue Price of the Notes (or the relevant class thereof) or if so directed by an Extraordinary Resolution of the Noteholders (or the relevant class thereof), take such proceedings against the Company as the Trustee may think fit to enforce the covenant, condition or provision in question but only to the extent to which it is permitted by section 2 and clause 6.6 and provided that the Company shall not, as a result of taking any such proceedings, be obliged to pay any sum representing or measured by reference to the principal or interest on the Notes sooner than it would otherwise have been payable, or any damages in respect of any such failure.

Trustee may remedy

- 6.5 If the Company fails to pay any monies due and payable under or to comply with this document or any Condition then, without prejudice to any other rights and remedies of the Trustee, it will be lawful, but not obligatory, for the Trustee to pay any such monies or to procure compliance with this document or such Condition. All monies so paid by the Trustee, and all reasonable costs, charges and expenses incurred by the Trustee in so doing, will be payable to the Trustee upon demand in writing by the Trustee to the Company.

Permitted proceedings

- 6.6 Subject to the Terms of Issue, nothing in section 2 or the Conditions shall exclude, limit, defer or otherwise prejudicially affect:
- 6.6.1 the right of the Trustee to seek directions from a court pursuant to any applicable legislation or to take any other proceedings seeking the directions of or guidance by any court, tribunal or other authority as to the performance of its functions and duties hereunder or otherwise in relation to this document;
 - 6.6.2 any proceedings taken by the Trustee at any time seeking a judgment or order declaratory of the rights and/or obligations of any Noteholder or any of the parties to this document (other than a judgment or order directing, requiring or compelling the payment or repayment of principal, interest and any other sums due or payable in respect of the Notes or impugning or challenging the provisions of section 2);
 - 6.6.3 the right to take proceedings in respect of any breach or threatened breach of, or to compel or enforce performance of, any of the covenants, undertakings and obligations of the Company hereunder other than in relation to the payment or repayment of principal, interest and any other sums due or payable in respect of the Notes.

7 Meetings

- 7.1 All meetings of Noteholders shall be convened and held in accordance with the provisions of Schedule 3.

8 Notices

Addresses

- 8.1 Any notice or other communication under this document (including the schedules) or the Notes shall be in writing and shall be made by facsimile or personal delivery or by post to the addressee at the facsimile number or address, and shall be marked for the attention of the person or office holder (if any) as set out in this clause 8.1 or otherwise, in the case of clauses 8.1.1 or 8.1.2 below, as from time to time designated for the purpose by the addressee to the other:

8.1.1 in the case of the Company:

Level 15, 142 Lambton Quay
Wellington
New Zealand
Telephone: 00 64 4 472 0784
Facsimile: 00 64 4 471 0981
Attention: Chief Financial Officer

8.1.2 in the case of the Trustee:

Trustees Executors Limited
Level 1,50-64 Customhouse Quay
Wellington
New Zealand
Telephone: 00 64 4 499 5999
Facsimile: 00 64 4 496 2952
Attention: Manager, Corporate Trusts

8.1.3 in the case of a Noteholder, the address of such Noteholder last entered in the Register; and

8.1.4 where two or more persons are registered as being a joint Noteholder, notice will be validly given if sent to them, or one of them, at the address of the first of them appearing in the Register.

Deemed delivery

8.2 No communication shall be effective until received. Notices or communications shall be deemed to be received:

8.2.1 if delivered in person or by hand, on the day of delivery if delivered before 4pm (local time in the place of receipt) on a business day in the place of receipt, otherwise on the next business day in the place of receipt;

8.2.2 in the case of a letter posted (postage prepaid) within the same country as the address of the recipient, on the second business day in the place of receipt after posting;

8.2.3 in the case of a letter posted (postage prepaid) overseas, on the 10th business day in the place of receipt (or if posted by airmail the 5th business day in the place of receipt) after posting; and

8.2.4 in the case of a facsimile where the sender has received an answerback or transmission report confirming that the facsimile was sent and received in its entirety, on the business day in the place of receipt on which it is received or, if received after 4pm (local time) on any business day in the place of receipt, or at any time on a non-business day in the place of receipt, on the next business day in the place of receipt after the date of receipt.

Calculation of notice period

- 8.3 When giving any notice under this document for a meeting, in calculating the period of notice required, the day on which the notice is given shall be excluded and the day on which the meeting is held shall be included.

9 Miscellaneous

Governing law

- 9.1 This document is and the Notes are governed by, and shall be construed in accordance with, the laws of New Zealand, and the Company submit (and each Noteholder is deemed by its holding of Notes to submit) to the non-exclusive jurisdiction of the courts of New Zealand to determine all proceedings or matters arising in relation to this document, the Conditions and the Notes.

Discharge of Trust Deed

- 9.2 The Trustee shall, if satisfied that no Notes are outstanding, or that appropriate arrangements have been made for redemption of the Notes in full and the payment of all other amounts payable in relation to the Notes, execute a discharge of this document whenever requested by the Company to do so.

Invalidity

- 9.3 If any provision of this document or the Notes shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

Counterparts

- 9.4 This document may be signed by any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this document by signing any such counterpart. The parties acknowledge that this document may be executed on the basis of an exchange of facsimile copies and confirm that their respective execution of this document by such means shall be a valid and sufficient execution.

10 Definitions and interpretation

- 10.1 This document shall be construed and shall take effect as a contract and declaration of trust made in New Zealand.
- 10.2 All references to money in this document shall, unless the contrary is stated, be deemed to be references to New Zealand currency.

Definitions

- 10.3 In this document unless the context otherwise requires:

Accrued Interest means all interest on the Notes which has accrued but which at the relevant time is unpaid and has not become payable in accordance with the Conditions.

Application Price means the sum to be paid to the Company for the issue of a Note as set by the Company in the application which may be the same as or be at a premium or discount to the Issue Price.

Arrangement means an arrangement under the Companies Act.

Auditors means the auditors for the time being of the Company and shall also include, if the Company so elects, any auditors for the time being of the Registrar elected by the Company as contemplated by clause 3.7.

Board means the board of directors of the Company as the case may be.

Certificate means a certificate issued by the Company in, or substantially in, the form set out in Schedule 1 or such other form as the Trustee approves, and includes any new certificate, in each case attaching the applicable Conditions and evidencing the entitlement of the Noteholder of the Notes specified therein.

Commencement of Liquidation of the Company means the earliest of:

- (a) the date of the passing by that company of an effective resolution for Liquidation of the Company; or
- (b) the date of the order of a court of competent jurisdiction for the Liquidation of the Company;
- (c) the date of the appointment of a receiver, receiver and manager, administrative receiver or statutory manager of the.

Companies Act means the Companies Act 1993 of New Zealand.

Company means Allied Farmers Limited.

Conditions means the terms and conditions (including, where appropriate, New Conditions) applicable to the Notes which, as provided in this document, are applicable to (and which will be endorsed on) the Certificates, and shall be in, or substantially in the form set out in Schedule 1 (as modified from time to time in accordance with this document or the Conditions) and any reference in this document to a particular numbered Condition or clause in the Conditions shall be construed accordingly and shall also include the terms and conditions specified to be applicable to such Notes in any deed, agreement, offer documentation or other document issued or executed by the Company in relation to the issue, allotment or offering of such Notes and which the Noteholder has accepted (either expressly or otherwise).

Constitution means the constitution of the Company.

Default Rate means the rate which is 2% per annum above the Interest Rate applicable to the Notes.

Director means a director of the Company as the case may be.

Election Date in respect of a Note, means the election date entered in the Register as being the election date for that Note, which for the first issue of Notes under this Trust Deed will be 15 November 2011, and where the context requires includes any New Election Date.

External Secured Debt means, in respect of the Company, indebtedness of the Company to any person (excluding indebtedness outstanding as at the date of this deed to any wholly owned subsidiaries of the Company) incurred other than in the ordinary course of business and in respect of which the Company has granted a security interest over any of its assets or undertaking

Extraordinary Resolution means a resolution passed at a meeting of Noteholders, by a majority consisting of not less than 75% of the persons voting on a show of hands or, if a poll is demanded, then by a majority of not less than 75% of the votes cast on such poll.

Financial Covenants means the covenants given in clause 4.3.1.

Interest Payment Date means the 15th day of February, May, August and November in each year.

Interest rate means the relevant interest rate specified in the Certificate in respect of the Notes when issued.

Issue Date means, in relation to a Note, the issue date specified in the Register.

Issue Price means, in relation to a Note, the principal amount specified in the Conditions applicable to their issue.

Liquidation in relation to the Company or, where the context so requires, the Company, means the winding up, dissolution or liquidation of the Company and any other analogous proceedings whereby the Company may, at the conclusion of such proceedings, cease to be duly incorporated or validly existing, and includes the appointment of a receiver, receiver and manager, administrative receiver or statutory manager of the Company but does not include any Arrangement, liquidation or appointment to effect a solvent reconstruction or amalgamation of the Company. For the avoidance of doubt, Liquidation does not include a capital restructuring arranged by the Company which results in a new listed holding company where, following the restructuring, at least 80% of the assets (and if being determined by value, are valued on a consistent basis) of the new holding company is comprised of assets which were assets of the Company or any of its subsidiaries prior to the restructuring provided that, prior to such restructuring, the new holding company is approved by the Trustee including, if reasonably required by the Trustee in any instance where such restructure could be materially prejudicial to the general interests of the Noteholders, by an Extraordinary Resolution and such new holding company enters into a deed supplemental to the Trust Deed in a form reasonably approved by the Trustee under which the obligations of the Company under the Trust Deed are assumed by such new

holding company, mutatis mutandis, subject only to any consequential or other modifications thereto as the Trustee, the Company may agree.

Liquidation Amount means the Issue Price of the Notes plus Accrued Interest and Unpaid Interest (if any) in respect of those Notes as at the date of the Commencement of Liquidation of the Company and (to the extent recoverable at law) interest on such sum at the Interest Rate from the date of such Commencement of Liquidation until payment.

Liquidator means any official in whom management of a company may become vested for the purpose of liquidating its assets and repaying (insofar as is possible) its debts and administering to the eventual cessation of both its business and its valid existence and in the event of the statutory management of a company means the statutory manager so appointed.

Listing Rules means the Listing Rules of NZX as is appropriate.

New Election Date means the next Election Date that will apply to the Notes, following the initial Election Date, as specified in the New Conditions.

New Conditions means the new conditions as to Interest Rate, Interest Dates, Election Date, early repayment options, and any other condition otherwise varying the Conditions to apply to the Notes after the Election Date.

Noteholder means, in relation to any Notes, a person (including future persons) registered in the Register as the holder of those Notes from time to time and shall include the legal personal representative or successor of such Noteholder.

Notes means the subordinated, unsecured Notes issued by the Company on the Terms of Issue which are on issue and have not been redeemed, purchased or converted into Ordinary Shares.

NZDX means the New Zealand Debt Market of the NZX.

NZSX means the New Zealand Securities Market of the NZX.

NZX means New Zealand Exchange Limited.

Ordinary Share means a fully paid ordinary share in the Company.

Permitted Financial Assistance means financial assistance permitted under the Listing Rules.

Proxy Closing Time means 48 hours before the time appointed for commencement of the relevant meeting of Noteholders or the taking of a poll of Noteholders.

Register means the register in respect of the Notes established and maintained in accordance with the Trust Deed.

Registrar means the registrar or (where there is more than one Register) each registrar from time to time appointed by the Company to maintain the Register.

Relevant Document means any documentation prescribed by the Company for completion by Noteholders in relation to any conversion, the constituent documents of the Company, and any documents evidencing or authorising the issue of Ordinary Shares or the Ordinary Shares themselves.

Securities Act means the Securities Act 1978 of New Zealand.

Senior Creditors means the persons from time to time entitled to Senior Debt.

Senior Debt means all obligations of the Company in respect of indebtedness whether existing now or established after and whether actual or contingent and notwithstanding that such obligations may arise in respect of credit facilities or other arrangements in favour of the Company either in place now or made available later (regardless of the extent to which such credit facilities or such other arrangements may now or at any time later be utilised, drawn or repaid and re-utilised or redrawn by the Company) except obligations of the Company under or in respect of the Notes and obligations which rank, or are intended or expressed to rank, *pari passu* with, or subordinate to, the obligations of the Company under or in respect of the Notes.

Stock Exchange means:

- (a) in respect of the Notes, the NZDX on which the Notes are quoted or any alternative or substitute market in New Zealand for Notes or other arrangement on or through which Notes may be freely traded and which is generally regarded as the principal such market or arrangement for the trading of Notes; and
- (b) in respect of Ordinary Shares, the NZSX on which the Ordinary Shares are quoted or any alternative or substitute market for Ordinary Shares or other arrangement on or through which Ordinary Shares are freely traded and which is generally regarded as the principal such market or arrangement for the trading of Ordinary Shares and if at any time any doubt exists as to the principal exchange for Ordinary Shares, such exchange as is determined as such at the relevant time by the Board of the Company.

Subordinated Creditors means the holders of the Notes and the holders of any other class of securities issued by the Company, the terms of issue of which provide that they are subordinated so as to rank *pari passu* with the Notes and any other person to whom the Company owes obligations which are subordinated in such manner.

Subsidiary Secured Debt means, in respect of a wholly owned subsidiary of the Company, indebtedness of that company to any person in respect of which that company has granted a security interest over assets or undertaking of that company other than in the ordinary course of business.

Terms of Issue means the terms of issue of the Notes, as set out in the Trust Deed and in the Conditions.

the Company means Allied Farmers Limited and includes any permitted successor or assignee or transferee.

Trust Deed and this document means the trust deed dated 13 March 2007 including the Background and the schedules, and any variation, between the Company and the Trustee.

Trustee means the trustee or trustees for the time being holding office as trustee under this document.

Unpaid Interest means, on any date and in respect of any Note, all interest which was not paid on its due date (whether due to a suspension pursuant to Condition 3.6 or otherwise).

Interpretation

- 10.4 In this document, unless the context otherwise requires, any reference to:
- 10.4.1 'business day' means a day (other than a Saturday or a Sunday) on which registered banks are open for general banking business in Auckland and Wellington;
 - 10.4.2 'borrowed monies' means any indebtedness for or in respect of money borrowed or raised (other than by way of share capital) (whether or not for a cash consideration) by whatever means (including acceptances, deposits, financial leases and debt factoring with recourse) or for the deferred purchase price of assets or services (other than assets or services supplied in the ordinary course of business on normal trade terms);
 - 10.4.3 'clause', 'section', or 'schedule' is, unless the context otherwise requires, a reference to a clause, section of, or schedule to, this document;
 - 10.4.4 'company' means any company or body corporate wherever incorporated or domiciled and where the context so permits shall include an individual;
 - 10.4.5 'indebtedness' includes any present or future obligation for the payment or repayment of borrowed monies (or the sum including interest in respect thereof) including (without limitation) in respect of notes, debentures or loan stock;
 - 10.4.6 'outstanding', in respect of Notes, means such Notes as from time to time have been duly constituted and issued pursuant to this document and which have not been cancelled, or deemed to be cancelled, pursuant to this document or the Conditions;
 - 10.4.7 'person' includes an individual, body corporate, an association of persons whether corporate or not, a trust or a state or agency of a

state (in each case, whether or not having separate legal personality);

- 10.4.8 'related company' has the same meaning as in the Companies Act;
- 10.4.9 'statutory management' includes a statutory management pursuant to the Corporations (Investigation and Management) Act 1989 and statutory manager shall have a corresponding meaning;
- 10.4.10 'subsidiary' in respect of a company incorporated in New Zealand has the same meaning as in the Companies Act and 'subsidiary' in respect of a company incorporated in a state of Australia has the same meaning as in division 5 of the Corporations Act;
- 10.4.11 'tax(es)' includes a present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature regardless of where or by whom imposed, levied, collected, withheld and assessed and includes interest, penalties, fines, costs, charges or expenses or other amounts relating to or arising in connection with taxes;
- 10.4.12 'in writing' and 'written' include words written, printed, typewritten, lithographed or otherwise represented or reproduced in permanent visible form by any other means;
- 10.4.13 a gender includes each other gender;
- 10.4.14 the singular includes the plural and vice versa;
- 10.4.15 any legislation includes a modification or re-enactment of legislation enacted in substitution for or a regulation, order-in-council or other instrument from time to time issued or made under that legislation;
- 10.4.16 an agreement includes that agreement as modified, supplemented, novated or substituted from time to time;
- 10.4.17 a party to this document or any other agreement or deed includes its successors or its permitted assignees or transferees; and
- 10.4.18 headings and the table of contents are to be ignored in construing this document.

Definitions in schedules

- 10.5 Words and expressions defined in the schedules and in any Terms of Issue not otherwise defined in this document will, unless the context requires otherwise, have the same meanings where used in this document. All words and expressions defined in this document (including in particular clause 10.4) shall have the same meaning in the schedules.

Non-business days

- 10.6 Anything which is required by this document or the Conditions to be done on, or as of, a day which is not a business day shall be done on, or as of, the next business day.

Currency equivalents

- 10.7 Where, for any purpose under this document, it is necessary or desirable to determine the equivalent in one currency of an amount in another currency, such equivalent shall be determined in such manner as the Company adopts and is acceptable to the Auditors having regard to prevailing commercial practices and to the policies in this regard adopted in the latest audited financial statements of the Company.

Accounting terms and basis

- 10.8 Except where inconsistent with specific definitions contained in this document, expressions that are utilised in this document in connection with accounting functions or reporting or in the description of either thereof shall bear the respective meanings accepted in respect of, or ascribed to, them in the preparation of the latest audited financial statements or statement of financial position of the Company.
- 10.9 References in this document to all or any of the financial statements or statement of financial position of the Company shall be to such financial statements or statement of financial position prepared in accordance with all applicable laws and the generally accepted accounting principles applicable to such statements and references to any calculation, determination or other matter which is to be based upon or referable to disclosed by such financial statements or statement of financial position shall be construed accordingly.


Capital Notes Trust Deed

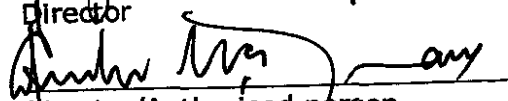
Execution

Executed as a deed

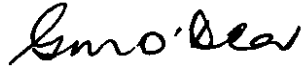
Date: 13 March 2007

Signed by
Allied Farmers Limited
in the presence of:




Director


Director/Authorised person

Witness signature: 

Occupation: *Executive Secretary*
Address: *33 Rata St
HAWERA*



(Witness to G. A. McDermott)
Personal Assistant
P.O. Box 1886
Wellington

Signed by
Trustees Executors Limited
in the presence of:

Authorised signatory

Authorised signatory

Witness signature:

Occupation:
Address:

Capital Notes Trust Deed

Execution

Executed as a deed

Date: 13 March 2007

Signed by
Allied Farmers Limited
in the presence of:

)
)
)
)

Director

Director/Authorised person

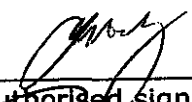
Witness signature:


Occupation:

Address:

Signed by
Trustees Executors Limited
in the presence of:





Yogesh Mody
Authorised signatory


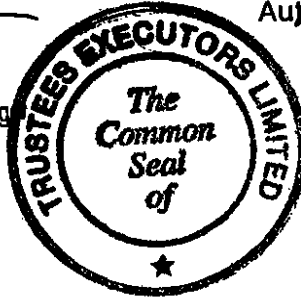
Claude Sandro Oberto
Authorised signatory

Witness signature:

Sean Roberts
Corporate Business Manager
Wellington

Occupation:

Address:



CTS 2007-013 (2/2)

Schedule 1

Form of Capital Note Certificate

ALLIED FARMERS LIMITED
CAPITAL NOTE CERTIFICATE

Certificate No	Election Date
Holder No	Interest rate
Issue Price	
Noteholder	_____
	Name

	Address

Certificate for subordinated, unsecured capital notes (**Notes**).

Allied Farmers Limited (Company) certifies that the Noteholder named above is registered as the holder of the Notes at the Issue Price specified above, and the Company undertakes to the Noteholder, subject to the terms of the Trust Deed (referred to below):

- (a) to pay interest on the Notes comprised in this Certificate;
- (b) to redeem the Notes for cash or Shares or renew the Notes on New Conditions on the Election Date in accordance with the Conditions and the Election Notice; and
- (c) in the event of the Liquidation of the Company (referred to below), to redeem the Notes by payment of the Liquidation Amount,

both in accordance with the terms of the Trust Deed.

Allied Farmers Limited (the Company) undertakes to the Noteholder to convert the Notes into Ordinary Shares of the Company in accordance with the terms of the Trust Deed and Conditions.

Except as provided in the Trust Deed, no transfer of all or any of the Notes or any part of a Note can be registered without production of this Certificate.

This Certificate may become:

- (a) void upon the conversion of the Notes into Ordinary Shares in circumstances where the Company has elected not to require surrender of this Certificate as

Schedule 2

Capital Notes Conditions

1 Trust Deed

- 1.1 The Notes are constituted pursuant to the Trust Deed dated 13 March 2007 between Allied Farmers Limited (**Company**), and Trustees Executors Limited (**Trustee**).
- 1.2 The statements in these Conditions include summaries of, and are subject to the detailed provisions of, the Trust Deed. If there is a discrepancy between the provisions of the Trust Deed and these Conditions, the provisions of the Trust Deed will prevail.
- 1.3 The Noteholder is entitled to the benefit of, is bound by, and is deemed to have notice of, the provisions of this Trust Deed.
- 1.4 Words and expressions defined in the Trust Deed not otherwise defined in these Conditions shall, unless the context otherwise requires, have the same meanings where used in these Conditions.

2 Status and Subordination of the Notes

Issue

- 2.1 Each of the Notes to be issued will have an Issue Price and face value of \$1 per Note, and must be paid for in full on application.

Status

- 2.2 The Notes constitute unsecured subordinated obligations of the Company and rank pari passu and without priority or preference amongst themselves.

Terms of subordination paramount

- 2.3 The provisions contained in Section 2 of the Trust Deed and in Conditions 2.4 shall apply notwithstanding anything to the contrary contained or implied in these Conditions.

Subordination

- 2.4 The rights of the Noteholders will be subordinated in right of payment to the claims of all Senior Creditors of the Company (other than persons, including other creditors and shareholders of the Company, whose claims against the Company are subordinated in the event of a Liquidation of the Company in any manner (other than by statute) to the claims of any Senior Creditor of the Company) in the event of a Liquidation of the Company. The Noteholders waive, to the fullest extent permitted by law, any right to prove in any such Liquidation as a creditor ranking for payment equally with any other Senior Creditors.

3 Interest

Interest Rate and Calculation of Interest

- 3.1 Subject to this Condition 3, each Note will accrue interest on a daily basis calculated on its Issue Price as recorded in the Register at the Record Date, from the relevant Issue Date and at the rate determined by the Company on each issue of Notes. In respect of the Notes to be issued on or about March or April 2007, in accordance with these Conditions, the Interest Rate will be fixed by the Company on the basis and applicable from that date as specified in the Offer Documents relating to such Notes. On any offer of Notes, the Company may issue and allot Notes both conditionally and progressively over the offer period as is specified in the Offer Documents.
- 3.2 All calculations of interest on the Notes will be to two decimal places. For the purpose of making any interest payment in respect of a Noteholder's aggregate Notes, any fraction of a cent will be disregarded.
- 3.3 Interest will cease to accrue on each Note on the earliest of:
- 3.3.1 the date on which the Note is redeemed or purchased for cash by the Company in accordance with these Conditions;
 - 3.3.2 the date upon which it is converted into Ordinary Shares in accordance with these Conditions; and
 - 3.3.3 in the event of Liquidation, the date on which the Note is redeemed by payment of the Liquidation Amount.

Interest Payment Dates

- 3.4 Subject to this Condition 3, interest on each Note will be calculated on a daily basis from the date of allotment until the First Interest Payment Date. Thereafter interest shall be calculated on an annual basis at the applicable rate and payment will be made in arrears on each Interest Payment Date of an amount being one quarter of such annual sum.
- 3.5 Any interest paid on the First Interest Payment Date shall be paid to the original subscriber of the Notes, whether or not on that date the Noteholder of the Notes is some other person. All subsequent interest is only payable to those persons registered in the Register as holders of Notes at the Record Date during the relevant Interest Period.

Suspension of interest

- 3.6 The Company may elect to suspend payment of any amount of interest due on any Interest Payment Date if the Board believes, on reasonable grounds, that:
- 3.6.1 making the payment of interest, or such part of the interest (as the case may be) would or would be likely to result in the Company breaching the Solvency Test; or
 - 3.6.2 making the payment of interest, or such part of the interest (as the case may be) would, or would be likely to, result in the Company

breaching any covenant, warranty or undertaking it has given to a Senior Creditor; or

- 3.6.3 making the payment of the interest, or such part of the interest (as the case may be) would or would be likely to breach any other legal obligation of the Company.

Default Interest

- 3.7 If any interest is not so paid on its due date (whether due to suspension pursuant to Condition 3.6 or otherwise) or if there is a breach of a Financial Covenant contained in clause 4.3 of the Trust Deed then:
- 3.7.1 in respect of any Unpaid Interest, interest shall be payable on the Notes at the Default Rate in lieu of the Interest Rate payable, from and including the Interest Payment Date falling after the date that the payment of interest is suspended until such time as all the Unpaid Interest is paid in full; and
- 3.7.2 in respect of any breach of a Financial Covenant, interest shall be paid on the Notes at the Default Rate in lieu of the Interest Rate payable, on the Interest Payment Date falling after the date of that breach for the three month interest period prior to that Interest Payment Date and on each subsequent Interest Payment Date for so long as the breach remains unremedied.
- 3.8 Any interest payable at the Default Rate in accordance with Condition 3.7 will accrue daily and compound on each subsequent Interest Payment Date unless paid. All such interest will fall due for payment on the subsequent Interest Payment Date.
- 3.9 The Company may, at its option and upon giving not more than 14 business days', nor less than 7 business days' notice to the Noteholders (which notice may be accompanied by a post-dated cheque), pay all or part of any Unpaid Interest. If part only is paid, it must be paid on a pro rata basis across all Notes. Unpaid Interest relating to any Interest Period may not be paid before the Unpaid Interest relating to any earlier Interest Period has been paid. All Unpaid Interest shall become due and payable in and upon the Commencement of Liquidation of the Company, but subject to Condition 2.4 and Section 2 of the Trust Deed.
- 3.10 Where interest has been suspended in accordance with Condition 3.6, or for so long as there is an unremedied breach of a Financial Covenant, the Company covenants that it will not:
- (a) pay any dividend or make any other Distribution while any such interest remains unpaid, or until such time as the breach has been remedied;
- (b) provide any financial assistance (other than Permitted Financial Assistance);

- (c) make any payment on any securities or other indebtedness ranking equally with or behind the Capital Notes.

3.11 The Company agrees that it will promptly notify the Trustee and each Noteholder if the Company intends not to or fails to make a payment of interest on the Notes when due in accordance with these Conditions.

Certificate by Company conclusive

3.12 A Certificate by the Company as to the amount of interest payable to a Noteholder on an Interest Payment Date is, in the absence of manifest error, conclusive and binding on the Noteholder.

4 Payments

Method of payment

4.1 All payments in relation to a Note may be satisfied by:

4.1.1 mailing cheques to the address of; or

4.1.2 direct credit to any bank account nominated in writing (prior to the Record Date) by,

the Noteholder entered in the Register on the Record Date. Such mailing or direct credit will occur prior to 5.00pm on the relevant Interest Payment Date (or, if that date is not a business day, the next business day after that date) or other date on which payment is required to be made.

Deduction for withholding

4.2 Subject to Condition 4.3, all payments or credits to, or to the account of, Noteholders (including payments of, and credits in respect of, interest) will be made net of any tax in respect thereof required by any Government Agency in New Zealand or Australia to be withheld, deducted or paid by the Company, except to the extent that the Company is satisfied that the Noteholder is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made. Any Noteholder claiming any such exemption or to be such a person must provide the Company and the Registrar with such evidence as the Company or the Registrar may from time to time require to satisfy itself in respect of the validity of that claim. The Company shall have no responsibility to make any gross up payments to any non-resident Noteholder.

Approved issuer levy

4.3 Noteholders to whom such is relevant may in writing request the Company to advise the basis, if any, upon which the Company, at no cost to itself, is prepared from time to time to deduct and pay an approved issuer levy (within the meaning of section 86F of the Stamp and Cheque Duties Act 1971) as an alternative to the exercise by the Company of its rights as referred to in Condition 4.2.

Time limit for claims

Subject to the Unclaimed Money Act 1971, a claim against the Company for a payment under or in respect of a Note is void unless made within five years of the due date for that payment.

5 Early repayment

Call Option

5.1 The Company may at any time after 15 May 2007 upon giving Noteholders (and the Trustee) 45 business days' written notice, require redemption of all or any portion of the Notes. If the Company proposes to redeem any portion of the Notes, such redemption must be made on a pro-rata basis across all Noteholders. Redemption shall be made by a payment in cash accordance with clauses 5.2 and 5.3. The Company agrees that if a pro-rata redemption would result in a Noteholder holding:

5.1.1 Notes that have an aggregate Issue Price that is less than the Minimum Holding, then the Company will redeem all Notes held by that Noteholder; or

5.1.2 Notes that have an aggregate Issue Price other than the Minimum Holding and thereafter integral multiples of \$1,000,

the Company shall redeem the number of Notes necessary to reduce the Noteholder's holding to an aggregate Issue Price of the nearest multiple of \$1,000 over the Minimum Holding of \$5,000 and in each case such redemptions will be made in accordance with Conditions 5.2 and 5.3.

Redemption Price

5.2 If the Company exercises its right to redeem all or any portion of the Notes pursuant to Condition 5.1, the redemption price paid to Noteholders shall be:

5.2.1 102% of the aggregate of the Issue Price of, and any Accrued Interest and Unpaid Interest as at the date of payment of the redemption price in respect of, such Note, if redeemed between the Issue Date and four years prior to the Election Date;

5.2.2 101.5% of the aggregate of the Issue Price of, and any Accrued Interest and Unpaid Interest as at the date of payment of the redemption price in respect of, such Note, if redeemed between four and three years prior to the Election Date; or

5.2.3 101% of the aggregate of the Issue Price of, and any Accrued Interest and Unpaid Interest as at the date of payment of the redemption price in respect of, such Note, if redeemed between three and two years of the Election Date;

5.2.4 100.5% of the aggregate of the Issue Price of, and any Accrued Interest and Unpaid Interest as at the date of payment of the

redemption price in respect of, such Note, if redeemed between two and one years of the Election Date;

5.2.5 100% of the aggregate of the Issue Price of, and any Accrued Interest and Unpaid Interest as at the date of payment of the redemption price in respect of, such Note, if redeemed within one year of, or on, the Election Date.

5.3 Each such payment, when cleared, shall (notwithstanding Conditions 8.1 to 8.4) operate as a transfer of the Note, or the relevant part thereof, to the Company (or its nominee) (and the Registrar shall amend, or be deemed to have amended, the Register accordingly) and shall be a complete satisfaction and discharge of any obligation of the Company to the relevant Noteholder in relation to payment of principal, interest and any other sums payable under the relevant part of such Note, including any obligation to issue Ordinary Shares in conversion of the relevant Notes or the relevant part thereof, and the Company shall have no further obligations or liabilities to the relevant Noteholder in respect of such Note or part thereof.

6 Election Notice

Election Notice:

6.1 The Company must give to each Noteholder (and send a copy to the Trustee) not later than 3 business days after the Election Record Date, a notice (Election Notice) in a form reasonably satisfactory to the Trustee specifying:

6.1.1 if applicable, the New Conditions as to Interest Rate, Interest Payment Dates, New Election Date, early repayment options (as set out in Condition 5), and otherwise varying the Conditions to apply to the Notes after the Election Date. The Company shall seek the Trustee's confirmation that it is prepared to continue to act as Trustee in respect of the Notes to be subject to the proposed New Conditions (such confirmation not to be unreasonably delayed or withheld, and not being required where the New Conditions differ from the previous terms and Conditions of the Notes only as to Interest Rate, Interest Payment Dates or New Election Date);

6.1.2 the Noteholders' ability to convert the Notes into Ordinary Shares; and

6.1.3 the proportion of Notes which the Company shall compulsorily redeem or purchase for cash in accordance with Condition 6.7;

6.1.4 if Ordinary Shares are not lawfully able to be issued, the Noteholders' ability to require the Company to redeem or purchase the Notes as an alternative to accepting the New Conditions, in accordance with Condition 6.12.

6.2 The Election Notice shall be given to the Noteholders whose names appear on the Register on the Election Record Date.

- 6.3 If the Company does not give an Election Notice within the timeframe specified above, the Company will be deemed to have given notice in accordance with Condition 6.1.2 and Noteholders will be deemed to have elected to convert all of their Notes into Ordinary Shares.

Noteholder's election to retain or convert

- 6.4 Unless the Company has given notice under Condition 6.1.2 that it will compulsorily redeem or purchase for cash all of the Notes on the Election Date, where the Company has elected to offer to renew the Capital Notes on New Conditions in accordance with Condition 6.1, the Noteholder shall complete and sign the Election Notice and return it to the Company on or before the Notification Date and shall indicate in the Election Notice in relation to the proportion of Capital Notes he or she holds which will not be compulsorily redeemed or purchased by the Company, either or both of:
- 6.4.1 the Notes in respect of which the Noteholder accepts the New Conditions with effect from the Election Date. The Notes are to have an aggregate Issue Price of not less than the Minimum Holding of \$5,000 or thereafter a multiple of \$1,000, or constitute the entire holding (or such other amount as approved by the Company, which approval may be recorded in any prospectus or other offer document in relation to the Notes); and
 - 6.4.2 the Notes which the Noteholder wishes to convert into Ordinary Shares on the Election Date.
- 6.5 If, in relation to a Note:
- 6.5.1 the Company does not receive an Election Notice from the Noteholder on or before the Notification Date; or
 - 6.5.2 the Company receives an Election Notice, but such Election Notice does not indicate whether or not the Noteholder elects to convert all or any of the Notes into Ordinary Shares; or
 - 6.5.3 the Election Notice requires a declaration to be completed by the Noteholders as to the name and domicile of the beneficial owner of the Notes and such declaration is not duly completed; or
 - 6.5.4 if for any other reason (not attributable to the Company) the Election Notice is defective,

the Noteholder will be deemed to have elected to convert all that Noteholder's Notes into Ordinary Shares, and, for the avoidance of doubt, if the Company does not elect to offer Noteholders the option to renew their Capital Notes on New Conditions in accordance with Condition 6.1, then all the Capital Notes that are not compulsorily redeemed or purchased for cash by the Company in accordance with these Conditions will, subject to Condition 6.12, be converted into Ordinary Shares on the Election Date.

Acceptance of New Conditions:

- 6.6 As from the Election Date, in respect the Notes which the Noteholder has accepted the New Conditions, the New Conditions will be deemed to be amended by incorporation into the Conditions as if such New Conditions were expressly set out in such Conditions. As soon as practicable after the Election Date the Company will give to the Noteholder a notice setting out such New Conditions, or if there is a valid Certificate for such Notes, the Company will give to the Noteholder a new Certificate incorporating (whether by endorsement or reference) such New Conditions.

Redemption or purchase at option of Company on Election Date

- 6.7 No later than 10 business days before and including the Election Date, the Company may elect that it redeems, or that it compulsorily purchases, for cash some or all of the Notes held by Noteholders by giving notice in writing of such election to Noteholders.
- 6.8 If the Company elects that it will compulsorily redeem, or that it will purchase, for cash some or all of the Notes, the Company must promptly notify Noteholders that such redemption or purchase of the Notes for cash will occur on the Election Date, and such redemption or purchase for cash will be at the price calculated in accordance with Condition 6.10.
- 6.9 If the Company elects to exercise its rights under Condition 6.7 to redeem or purchase some but not all of those Notes on the Election Date, then any such redemption or purchase for cash must be on a pro rata basis across all relevant Notes.
- 6.10 The redemption or purchase price shall be an amount equal to the aggregate of the Issue Price of, and any Unpaid Interest in respect of, such note or part thereof as at the date of payment of the Issue Price. Payment for such Notes shall be made without deduction (other than any deductions or withholdings on account of taxes which are required by law to be made from such payments), in accordance with Condition 4.2.
- 6.11 Each such payment, when cleared, shall (notwithstanding Conditions 8.1 to 8.4) operate as a transfer of the Note, or the relevant part thereof, to the Company (or its nominee) (and the Registrar shall amend, or be deemed to have amended, the Register accordingly) and shall be a complete satisfaction and discharge of any obligation of the Company to the relevant Noteholder in relation to payment of principal, interest and any other sums payable under the relevant part of such Note, including any obligation to issue Ordinary Shares in conversion of the relevant Notes or the relevant part thereof, and the Company shall have no further obligations or liabilities to the relevant Noteholder in respect of such Note or part thereof.

Inability to convert Notes:

- 6.12 If the Company is unable to lawfully issue or allot Ordinary Shares to Noteholders in conversion of all or any part of the Notes in accordance with these Conditions, or the Ordinary Shares cease to be quoted on NZX, the Notes will be unaffected and will continue to exist on their then conditions (including as to Interest Rate) until the Election Date. If, on the Election

Record Date, the Company remains unable to issue Ordinary Shares, or its Ordinary Shares remain ineligible to be quoted, and the Trustee is not satisfied that such Ordinary Shares will become eligible to be so quoted within 30 business days, all rights of conversion will be suspended and the Company will elect (such election to be notified to Noteholders within the same time periods applicable to Election Notices under Condition 6.1) whether it will compulsorily redeem or purchase the Notes in accordance with Condition 6.7 or deem the Notes to be rolled over, in which case the Election Notice will specify:

- (a) that the Interest Rate to apply to the Notes from the Election Date to the New Election Date will be the Market Rate as at the Election Date; and
- (b) a New Election Date (which shall be a business day) to be selected by the Company such that the period from the Election Date to the New Election Date shall not exceed two years.

6.13 If, on the New Election Date, the Company is unable lawfully to issue Ordinary Shares to Noteholders in conversion of the Notes in accordance with these Conditions or the Ordinary Shares of the Company cease to be eligible to be quoted on NZX, Condition 6.12 will apply again with the necessary modifications.

Conversion to Ordinary Shares

6.14 Basis of conversion

6.14.1 Subject to Conditions 6.7, 6.12 and 6.13, and to there then being no Commencement of Liquidation of the Company will convert the Notes held by the Noteholder on the Election Date to such number of Ordinary Shares as are equal in value to the aggregate as at the Election Date (less any withholdings or deductions required by law) of the Issue Price of any Notes which the Noteholder has elected to convert, less the aggregate of the Issue Price of, any Notes which the Company has elected to redeem or purchase pursuant to Condition 6.7.

6.14.2 Any Unpaid Interest will be paid for in cash and will not be converted into Ordinary Shares.

6.14.3 For this purpose, the number of Ordinary Shares to which a Noteholder is entitled upon conversion of any of its Notes is to be calculated in accordance with the following formula:

$$\text{Number of Ordinary Shares} = \frac{\text{Issue Price of Notes}}{(100\% - \text{CD}) \times \text{P}}$$

where:

CD means the Conversion Discount; and

P means the **VWAP** during the Reference Period; and

Reference Period means the 20 business days prior to the relevant Election Date.

- 6.14.4 All Ordinary Shares issued pursuant to this Condition will rank equally in all respects and form one class with the Ordinary Shares on issue at the relevant time, provided that where that issue occurs after the record date for a dividend declared by the Board of the Company to be payable to holders of Ordinary Shares or for any other distribution or entitlement, that Ordinary Share will not participate in the relevant dividend distribution or entitlement.
- 6.14.5 Where the total number of Ordinary Shares calculated in accordance with Condition 6.14.3 as being the entitlement of a Noteholder includes a fraction, that fraction will be disregarded.
- 6.14.6 Upon conversion, the relevant Noteholder irrevocably and unconditionally:
- (a) consents to be a member of the Company and agrees to be bound by its constitution; and
 - (b) directs the Company to pay to the Company and for it to apply the monies payable to that Noteholder on redemption of such Notes, in subscribing on behalf of the Noteholder for the number of Ordinary Shares calculated in accordance with Condition 6.14.3.

Takeover Provision

- 6.15 If a Takeover occurs (not being connected to a capital restructuring arranged by the Company which results in a new listed holding company where, following the restructuring, at least 80% of the consolidated assets of the new holding company is comprised of assets which were consolidated assets of the Company prior to the restructuring) but no offer is made to Noteholders to redeem or purchase all of the Notes, the Company must give notice prior to the next Election Date to all Noteholders, within the same time period applicable to Election Notices under Condition 6.1, offering to redeem or purchase all Notes on that next Election Date.
- 6.16 The offer to redeem or purchase shall be in addition to, and not in replacement of, the Company's obligations to issue Election Notices.
- 6.17 If a Noteholder elects that the Company redeems or purchases their Notes, such redemption or purchase must occur on that Election Date at a price equal to the aggregate of the Issue Price of, and any Unpaid Interest in respect of, such Notes.

Redemption on Liquidation

- 6.18 Notwithstanding any other Condition or any provision of the Trust Deed, on commencement of the Liquidation of the Company, the Notes will immediately become redeemable by payment of the Liquidation Amount which will only be

payable in accordance with, and subject to, Section 2 of the Trust Deed and Condition 2.4.

Share Register

- 6.19 All Ordinary Shares issued upon the conversion of Notes will be validly issued and entered on the Ordinary Share register of the Company in New Zealand or if the Noteholder is not resident in New Zealand, on such other Register as the Company may determine.

Surrender of Certificates on conversion

- 6.20 Every Noteholder must, if and to the extent so required by the Company as a condition precedent to the issue of Ordinary Shares in the conversion of Notes, surrender the Certificate in respect of such Notes, to the Company.
- 6.21 Every Noteholder must, if and to the extent so required by the Company, as a condition precedent to the issue of a new Certificate in accordance with Condition 6.6, surrender the existing Certificate to the Company or the Registrar.
- 6.22 Every Noteholder must immediately surrender to the Company, or the Registrar, the Certificate in respect of such Notes to be converted, purchased or redeemed pursuant to these Conditions.
- 6.23 The Registrar is entitled, at the option of the Company, to cancel, or to enter the Company in the register as the Noteholder of, and issue a substitute Certificate for, any Note relating to the Certificate not so surrendered.

Cancellation on conversion, redemption or purchase

- 6.24 Each Note which is converted into an Ordinary Share or redeemed or purchased in accordance with these Conditions is and will be deemed to be cancelled, and neither the Company nor the Trustee will have any further liabilities or obligations in respect of that Note or the relevant Noteholder. Each of the Company and its subsidiaries may at any time purchase a Note for its own account. Each Note so purchased by the Company will be cancelled and neither the Company nor the Trustee will have further liabilities or obligations in respect of that Note or the relevant Noteholder. New rights and obligations attaching to the Notes so purchased by the subsidiary of the Company may not be exercised by or against the Company while the subsidiary holds the Notes, and notwithstanding Condition 6, upon any Election Date the Note will become subject to the New Conditions. Any Note so purchased by a subsidiary of the Company may be transferred by the subsidiary in accordance with the Trust Deed and these Conditions.

7 Rights attaching to Notes

Ranking

- 7.1 Each Note ranks equally with all other Notes in all respects.

Issues of securities

- 7.2 The Notes carry no right to participate in any offering of securities by the Company, and the Company reserves the right at all times to issue securities to any person in any manner.

Voting rights

- 7.3 Except as required by the Securities Act or the Companies Act, Noteholders will not have any right to vote at general meetings of the Company, respectively.

8 Transfers of Notes

Transfers

- 8.1 Subject to the provisions of this Condition 8, the Notes may be transferred in minimum amounts of \$1,000, subject to the transferor and the transferee retaining the Minimum Holding of \$5,000 (except, in the case of the transferor, where transferor is transferring his or her entire holding) in accordance with Condition 8.12, or such lesser amount as the Company may from time to time permit.

Form of Transfer

- 8.2 Subject to these Conditions and the Trust Deed, a Noteholder may transfer any Note held by him or her by:
- 8.2.1 a written instrument or transfer in the usual or common form signed by the transferor and the transferee; or
 - 8.2.2 means of the FASTER system operated by NZX; or
 - 8.2.3 any other method of transfer of marketable securities which is not contrary to any law and which may be operated in accordance with any Listing Rules, and which is approved by the Company.

Registration process

- 8.3 The following provisions apply to instruments of transfer other than any transfer via FASTER:
- 8.3.1 the instrument of transfer must be left at the registry accompanied by the Certificate (if any) in respect of the Notes to be transferred or such other evidence as the Registrar or the Trustee requires to prove the transferor's title to, or right to transfer, the Notes; and
 - 8.3.2 on registration of a transfer of a Note, the Certificate (if any) evidencing that Note will be cancelled and replaced.
- 8.4 The Company will direct the Registrar not to charge a fee to any Noteholder for:
- 8.4.1 registering transfers of Notes; or

- 8.4.2 splitting Certificates in relation to Notes; or
- 8.4.3 issuing Certificates (where bound to do so) and transmission receipts in relation to Notes; or
- 8.4.4 using holder or FASTER identification numbers in relation to Noteholders; or
- 8.4.5 effecting conversions between sub-registers (if any) of the Register, or
- 8.4.6 noting transfer forms in relation to Notes

except in the case where Certificates, or any information necessary to effect a transfer of Notes are issued to replace lost or destroyed Certificates.

Transfers must be registered

- 8.5 Subject to this Condition 8, the Company must direct the Registrar not to refuse to register or fail to register or give effect to, a transfer of Notes.

Refusal to register transfers

- 8.6 The Company may direct the Registrar to refuse to register any transfer of Notes where these Conditions, the Trust Deed, any Listing Rules or any applicable legislation permits, or requires the Company to do so.

Notice of refusal to register

- 8.7 Where registration of a transfer of Notes is refused under Condition 8.6, the Company must direct the Registrar to give written notice of the refusal and the precise reasons for the refusal to the party lodging the transfer, if any, within five business days after the date on which the transfer was lodged. The failure to give such a notice will not invalidate the decision not to register.

Retention of transfers

- 8.8 The Company is to direct the Registrar to retain all instruments of transfer of Notes which are registered, but any instrument of transfer of Notes the registration of which was declined or refused (except on the ground of suspected fraud) is to be returned to the party lodging the transfer.

Powers of attorney

- 8.9 Any power of attorney granted by a Noteholder empowering the donee to deal with, or transfer Notes, which is lodged, produced or exhibited to the Registrar will be deemed to continue and remain in full force and effect as between the Company, the Trustee, the Registrar and the grantor of that power, and may be acted on, until express notice in writing that it has been revoked or notice of the death of the grantor has been received at the registry.

Transmission by operation of law

- 8.10 Any person becoming entitled to any Note by operation of law (including the death or bankruptcy of any Noteholder) may, upon producing evidence of such entitlement as shall be acceptable to the Company, obtain registration as the

Noteholder of such Note or may execute a transfer of such Note. This provision includes any case where a person becomes entitled as a survivor of persons registered as a joint Noteholder.

Replacement of Certificates

- 8.11 Should any valid Certificate be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the office of the Registrar upon payment by the claimant of the fees and expenses incurred in connection with such replacement and on such terms as to evidence and indemnity as the Company and the Registrar may require. Mutilated or defaced Certificates must be surrendered before replacements will be issued. Where there is a valid Certificate on issue for a Note, the Registrar may decline to register any transfer of that Note unless the relevant valid Certificate is produced, but may at its discretion dispense with production of the Certificate subject to production instead of such indemnity or declaration of loss as it may require.

Sale of less than Minimum Holding

- 8.12 Except as approved by the Company (at its absolute discretion), which approval may be recorded in any prospectus or other offer document in relation to the Notes, no transfer shall be permissible or be accepted for registration where any proposed transfer would result in the transferee holding Notes with the same Election Date having an aggregate Issue Price of less than the Minimum Holding.
- 8.13 The Company may at any time give notice to any Noteholder holding Notes of an aggregate Issue Price of less than the Minimum Holding that if at the expiration of three months after the date the notice is given the Noteholder still holds Notes of an aggregate Issue Price of less than the Minimum Holding then the Company may exercise the power of sale of those Notes as set out in this Condition 8.13. If that power of sale becomes exercisable:
- 8.13.1 the Company may arrange for the sale of those Notes through NZX or in some other manner approved by NZX;
 - 8.13.2 the Noteholder shall be deemed to have authorised the Company to act on the Noteholder's behalf and to execute all necessary documents for the purposes of that sale.
 - 8.13.3 the Company shall account to the Noteholder for the net proceeds of sale of the Notes (after deduction of reasonable sale expenses), which shall be held on trust for the Noteholder by the Company and paid to the Noteholder on surrender of any Certificates for the Notes sold; and
 - 8.13.4 the title of a purchaser of any Notes sold pursuant to this Condition 8.13 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

9 Transmission on death or by law

Transmission on death

- 9.1 The personal representative of a deceased Noteholder (who is not one of several joint Noteholders) is the only person recognised by the Company as having any title to Notes registered in the name of the deceased Noteholder. Subject to compliance by the transferee with the Terms of Issue, the Board of the Company may register any transfer signed by a Noteholder prior to the Noteholder's death, despite the Company having notice of the Noteholder's death.

Transmission by operation of law

- 9.2 A person (a transmittee) who establishes to the satisfaction of the Board of the Company that the right to any Notes has devolved on the transmittee by will or by operation of law may be registered as a holder in respect of the Notes or may (subject to the provisions of the Terms of Issue relating to transfers) transfer the Notes. The Board of the Company has the same right to refuse to register the transmittee as if the transmittee was the transferee named in a transfer presented for registration.

10 Indemnity to the Company

Liability of the Company

- 10.1 Condition 10.2 applies if any law imposes or purports to impose any immediate or future or possible liability on the Company to make any payment, or empowers any Governmental Agency to require the Company to make any payment, in respect of any Notes held either jointly or solely by any Noteholder or in respect of any transfer of those Notes or in respect of any interest or other money due or payable or accruing due or which may become due or payable to the Noteholder by the Company on or in respect of any Notes or for or on account or in respect of any Noteholder, whether because of:
- 10.1.1 the death of the Noteholder;
 - 10.1.2 the non-payment of any income tax or other tax by the Noteholder;
 - 10.1.3 the non-payment of any estate, probate, succession, death, stamp or other duty by the Noteholder or a personal representative of that Noteholder or by or out of the Noteholder's estate;
 - 10.1.4 any assessment of income tax against the Company in respect of interest paid or payable to the Noteholder; or
 - 10.1.5 any other act or thing in relation to a Note or the Noteholder.

Indemnity

- 10.2 In each case referred to in Condition 10.1:

- 10.2.1 the Company is to be fully indemnified, as a continuing indemnity, against all liability by the Noteholder or the Noteholder's personal representative and by any person who becomes registered as the holder of the Notes on the distribution of the deceased Noteholder's estate;
- 10.2.2 the Company have a lien or charge on the Notes for all money paid by the Company in respect of the Notes under or because of any law;
- 10.2.3 the Company have a lien on all interest and other money payable in respect of the Notes registered in the Register as held either jointly or solely by the Noteholder for all money paid or payable by the Company in respect of the Notes under or in consequence of any law, together with interest at a rate the Board of the Company may determine from the date of payment to the date of repayment, and may deduct or set off against any interest or other money payable any money paid or payable by the Company together with interest;
- 10.2.4 the Company may recover as a debt due from the Noteholder or the Noteholder's personal representative, or any person who becomes registered as the holder of the Notes on the distribution of the deceased Noteholder's estate, any money paid by the Company under or in consequence of any law which exceeds any interest or other money then due or payable by the Company to the Noteholder together with interest at a rate the Board of the Company may determine from the date of payment to the date of repayment; and
- 10.2.5 the Company may, if any money is paid or payable by the Company under any law, refuse to register a transfer of any Notes by the Noteholder or the Noteholder's personal representative until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any interest or other money then due or payable by the Company to the Noteholder, until the excess is paid to the Company.

Remedies cumulative

- 10.3 Nothing in Conditions 10.1 and 10.2 affects any right or remedy which any law confers on the Company and any right or remedy is enforceable by the Company whether against the Noteholder or the Noteholder's personal representative.

11 Definitions and interpretations

Definitions

- 11.1 Unless the context requires otherwise, terms defined in the Trust Deed shall have the same meaning in these Conditions, and:

Accrued Interest means all interest on the Notes which has accrued but which at the relevant time is unpaid and has not become payable in accordance with these Conditions.

Board means the board of Directors of the Company from time to time.

Conversion Discount means 5%.

Default Rate means the rate which is 2% per annum above the Interest Rate applicable to the Notes.

Distribution has the same meaning as in section 2 of the Companies Act but, for the avoidance of doubt, for the purposes of Condition 3.10, includes the payment of dividends but does not include a bonus issue of Ordinary Shares other than one in lieu of dividends in respect of the share capital (as from time to time constituted), or other securities ranking in Liquidation *pari passu* or subordinate to the Notes of the Company.

Effective Date means the date notified in writing by the Company to the Trustee pursuant to Clause 1.2, as being the date on which the Company becomes entitled to constitute and issue Capital Notes pursuant to the terms of this Deed.

Election Date in respect of a Note, means the election date entered in the Register as being the election date for that Note, which for the issue of Notes to which these Conditions relate, will be 15 November 2011, and where the context requires includes any New Election Date.

Election Notice has the meaning given to it in Condition 6.1.

Election Record Date means 33 business days before the Election Date.

First Interest Payment Date means 15 May 2007.

Governmental Agency means any government or semi-governmental, administrative, fiscal or judicial entity or authority of New Zealand.

Issue Date means, in relation to a Note, the issue date specified in the Register.

Issue Price means, in relation to a Note, the principal amount specified in the Conditions applicable to their issue.

Interest Payment Date means the 15th day of May, August, November and February, in each year.

Interest Period means:

- (a) the period from (and including) the Issue Date relevant to each Note to (but excluding) the First Interest Payment Date; and
- (b) each subsequent period from (and including) an Interest Payment Date to (but excluding) the next Interest Payment Date.

Interest Rate means the relevant interest rate specified in the Certificate in respect of the Notes.

Liquidation in relation to the Company means the winding up, dissolution or liquidation of the Company and any other analogous proceedings whereby the Company may, at the conclusion of such proceedings, cease to be duly incorporated or validly existing, and includes the appointment of a receiver, receiver and manager, administrative receiver or statutory manager of the Company but does not include any Arrangement, liquidation or appointment to effect a solvent reconstruction or amalgamation of the Company. For the avoidance of doubt, **Liquidation** does not include a capital restructuring arranged by the Company which results in a new listed holding company where, following the restructuring, at least 80% of the assets (and if being determined by value, are valued on a consistent basis) of the new holding company is comprised of assets which were assets of the Company or any of its subsidiaries prior to the restructuring provided that, prior to such restructuring, the new holding company is approved by the Trustee including, if reasonably required by the Trustee in any instance where such restructure could be materially prejudicial to the general interests of the Noteholders, by an Extraordinary Resolution and such new holding company enters into a deed supplemental to the Trust Deed in a form reasonably approved by the Trustee under which the obligations of the Company under the Trust Deed are assumed by such new holding company, mutatis mutandis, subject only to any consequential or other modifications thereto as the Trustee may agree.

Liquidation Amount means the Issue Price of the Notes plus Accrued Interest and Unpaid Interest (if any) in respect of those Notes as at the date of the Commencement of Liquidation of the Company (whichever first occurs) and (for the avoidance of doubt and to the extent recoverable at law) interest on such sum at the Interest Rate from the date of such Commencement of Liquidation until payment.

Market Rate means, calculated on an annual basis, the aggregate of 1.5% per annum and either:

- (a) the bid settlement rate (rounded upwards, if necessary, to the nearest four decimal places) as displayed at or about 10.45am on the Election Date (or if that is not a business day then the next business day after such date) on the Reuters Monitor Screen page BKBM (or its successor page) for bank-accepted bills of exchange having a term of six months; or
- (b) if there is no such rate displayed for bank-accepted bills of exchange having that term, then the average (rounded upwards if necessary to the nearest four decimal places) of the rates quoted by any three registered banks selected by the Company as being its buy rate for such bank-accepted bills at or about that time on that date.

Minimum Holding means \$5,000 and thereafter multiples of \$1,000.

New Election Date means the next Election Date that will apply to the Notes, following the initial Election Date, as specified in the New Conditions.

New Conditions means the new conditions as to Interest Rate, Interest Dates, Election Date, early repayment options, and any other condition otherwise varying the Conditions to apply to the Notes after the Election Date.

Notification Date means 20 business days before the Election Date.

Offer Documents means the investment statement and prospectus documents issued by the Company in respect of any particular issue of Notes.

Record Date means, in relation to an Interest Period, 5pm on that date:

- (a) which is 10 days prior to the relevant Interest Payment Date; or
- (b) where the date determined above is not a Friday, at the option of the Company the Friday immediately preceding that date (or where that Friday is not a business day, the business day immediately preceding that Friday); or
- (c) such other date as the Company (with the approval of the Trustee and the NZX) may determine,

before the Interest Payment Date for that Interest Period.

Reference Period has the meaning given in Condition 6.14.3.

Register means the register in respect of the Notes established and maintained in accordance with the Trust Deed.

Registrar means the registrar or (where there is more than one Register) each registrar from time to time appointed by the Company to maintain the Register.

Relevant Interest has the same meaning as defined in section 5 of the Securities Markets Act 1988.

Senior Creditors means the persons from time to time entitled to Senior Debt.

Senior Debt means all obligations of the Company in respect of indebtedness whether existing now or established after and whether actual or contingent and notwithstanding that such obligations may arise in respect of credit facilities or other arrangements in favour of the Company either in place now or made available later (regardless of the extent to which such credit facilities or such other arrangements may now or at any time later be utilised, drawn or repaid and re-utilised or redrawn by the Company except obligations of the Company under or in respect of the Notes and obligations which rank, or are intended or expressed to rank, pari passu with, or subordinate to, the obligations of the Company under or in respect of the Notes.

Solvency Test means the same as defined in the Companies Act.

Takeover means a takeover notice is given or a bid is made to acquire all or some of the Ordinary Shares and the offers under the takeover bid are, or become, unconditional and the bidder obtains or has a Relevant Interest in more than 90% of the Ordinary Shares on issue

Unpaid Interest means, on any date and in respect of any Note, all interest which was not paid on its due date (whether due to a suspension pursuant to Condition 3.6 or otherwise).

VWAP means, in relation to a period, the average of the daily volume weighted average sale price of Ordinary Shares sold on NZX for each business day during the relevant period (excluding the effect of any transaction defined as 'special' in the rules of NZX, any crossings prior to the commencement of normal trading or during the after hours adjust phase of NZX, any overseas trades or the exercise of options over Ordinary Shares). For the purposes of calculating VWAP, where, on some or all of the days the Ordinary Shares are sold on NZX during the relevant period are cum dividend or cum any other distribution or entitlement, and the Ordinary Shares to be issued on conversion of the relevant Notes would not rank for participation in the relevant dividend, distribution or entitlement, then the daily volume weighted average sale price of Ordinary Shares on which those shares have been quoted cum dividend, cum distribution or cum entitlement will be reduced by an appropriate amount equal to the value of such dividend, distribution or entitlement as reasonably determined by the Board of the Company.

Interpretation

In this Schedule, the rules of interpretation set out in clause 10.4 of the Trust Deed apply unless the context requires otherwise.

Schedule 3

Meetings of Noteholders

1 Convening Meetings

- 1.1 The Company or the Trustee at any time may, and the Trustee must upon a request in writing by the Noteholders holding together not less than 10% of the Issue Price of the Notes for the time being outstanding and conferring a right to vote, convene a meeting of the Noteholders.
- 1.2 Meetings will be held in Wellington, or such other place as the Company and the Trustee approve.
- 1.3 Any request by Noteholders holding together not less than 10% of the Issue Price of Notes for the time being outstanding for the Trustee to convene a meeting must state the nature of the business proposed to be dealt with at the meeting.
- 1.4 For the purposes of enabling the Trustee to satisfy itself as to the validity of any such request by Noteholders, the Trustee shall be permitted full access to the Register, whether the Register is for the time being closed or not.
- 1.5 Notwithstanding anything contained in this Schedule 3, any Notes for the time being held by the Company or any subsidiary of the Company, other than Notes held in their capacity as a personal representative or trustee as provided in clause 1.17 of the Trust Deed, will not confer any right to vote and such Notes shall be deemed not to be outstanding for the purposes of a request under clause 1.1 of this Schedule 3.

2 Notice

- 2.1 Notice of any meeting must be given by the Company (if the Company proposes to convene a meeting) or the Trustee (if the Trustee proposes or is required to convene a meeting) to every Noteholder entered in the Register (at the close of business 14 days prior to the date of dispatch of the notice) by ordinary post to the last address of each Noteholder entered in the Register.
- 2.2 Whenever the Company or the Trustee proposes or whenever the Trustee is required to convene a meeting, the Company or the Trustee (as the case may be) shall give notice to the other, to NZX (if the Notes are quoted) and to the Noteholders identified under clause 2.1 of this Schedule 3.
- 2.3 At least 10 days before the Company or the Trustee gives notice of any meeting it shall advise the other in writing of the intended place, day, time and the precise nature of the business to be considered and will provide copies of the documents it proposes to send to the Noteholders. If the Company or the Trustee so requires the documents shall include any statement which

either of them wish to make in relation to the meeting and the matters to be considered.

2.4 At least 14 days notice of a meeting must be given specifying:

2.4.1 the day and time the meeting is to be held; and

2.4.2 the place at which the meeting is to be held.

Such notice need not contain an agenda, nor specify the terms of the resolutions to be proposed (except in the case of a resolution to be passed as an *Extraordinary Resolution* where the text of the proposed resolution shall be set out), but must indicate the general nature of the business to be considered.

2.5 Subject to any requirement at law, including the provisions of clause 3 of the Fifth Schedule to the Securities Regulations 1983, if a meeting is called by shorter notice than that specified in clause 2.4 of this Schedule 3, the meeting will be deemed to have been duly called if it is so agreed prior to or at that meeting, by Noteholders having a right to attend and vote at the meeting, and together holding not less than 75% in Issue Price of the Notes for the time being outstanding.

2.6 The accidental omission to give notice to, or the non-receipt of notice by, any person entitled to notice (including NZX but not the Company or the Trustee) will not invalidate the proceedings of any meeting.

3 Chairperson

3.1 A person nominated in writing by the Trustee will chair any, or any particular meeting. If the Trustee does not make such a nomination or if at the meeting the person so nominated is not present within 15 minutes after the time specified for the meeting to commence, the Noteholders present must choose a Noteholder to chair the meeting.

4 Quorum

4.1 At any meeting 2 or more Noteholders, present in person or by representative, and holding or representing in the aggregate a 10% of the amount of the Notes for the time being outstanding will form a quorum for the transaction of business, and no business (other than the choosing of a chairperson) may be transacted at any meeting unless the requisite quorum is present.

5 Lack of Quorum and Adjournment

5.1 If, within 30 minutes after the time specified for the meeting to commence, a quorum is not present, the meeting will stand adjourned for such period, not being less than 14 days, as may be determined by the chairperson. At least 7 days notice of the reconvening of the adjourned meeting must be given to NZX (if the Notes are quoted) and to Noteholders specifying:

- 5.1.1 the day and time the adjourned meeting is to be reconvened;
- 5.1.2 the place at which the reconvening of the adjourned meeting is to be held; and
- 5.1.3 that if a quorum is not present in accordance with clause 4 of this Schedule 3 at the reconvening of the adjourned meeting then 2 or more Noteholders present in person or by representative will form a quorum.

At such reconvened meeting 2 or more Noteholders then present in person or by representative holding or representing Notes of (whatever number) will form a quorum and have the power to pass any resolution (including an Extraordinary Resolution) and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place had a quorum been present at such meeting.

- 5.2 In addition to clause 5.1 of this Schedule 3, the chairperson may, with the consent of any meeting, and shall, if directed by any meeting, adjourn the same from time to time and from place to place, but no business may be transacted at any adjourned meeting which has been reconvened except business which might lawfully have been transacted at the meeting from which the adjournment took place.

6 Attendance and voting at meetings

- 6.1 Except for the Trustee, the Company and their representatives (who, together with their advisors, may attend and speak, but may not vote except where that person is acting on behalf of a Noteholder in any capacity permitted by clause 5.16 of the Trust Deed in respect of the Trustee, or permitted by clause 1.17 of the Trust Deed in respect of the Company or any of its subsidiaries, it may vote in such capacity), no person will be entitled to attend and vote at any meeting of the Noteholders or to join with others in requesting the convening of any such meeting unless such person is registered as a Noteholder on the Register.
- 6.2 At a meeting, the persons registered as Noteholders in the Register at the Proxy Closing Time will be exclusively entitled to vote in respect of Notes recorded in their name, in person or by representative. For the purpose of establishing voting entitlements at a meeting, the Registrar will be closed as of close of business on the business day immediately preceding the day on which the Proxy Closing Time falls and will remain closed until after the relevant meeting has been held or adjourned.
- 6.3 In this Schedule 3 a 'representative' of a Noteholder means:
 - 6.3.1 in the case of a Noteholder being an individual, a person appointed by an instrument by way of proxy or by power of attorney (in either case, in a form satisfactory to the Trustee);
 - 6.3.2 in any other case, either:

- (a) a person appointed by an instrument by way of proxy or by power of attorney (in either case in a form satisfactory to the Trustee) of such company or body; or
- (b) a person authorised pursuant to clause 10 of the First Schedule to the Companies Act or a person having appropriate express authorisation (to the Trustee's satisfaction) pursuant to its constitution or any other empowering provisions; or

6.3.3 a person upon whom the ownership of a Noteholder's Note has devolved by reason of his being a legal personal representative or an assignee in bankruptcy or liquidator of such Noteholder, or such person's representative appointed or authorised under clauses 6.3.1 or 6.3.2 above.

6.4 The Trustee or any officer of the Trustee may be appointed a representative of a Noteholder.

6.5 The Trustee must attend every meeting convened pursuant to this Schedule 3.

7 Proxies

7.1 The instrument appointing a person a proxy of a Noteholder must be in writing signed by the appointor or attorney of such appointor duly authorised in writing, or if the appointor is a body corporate, either under seal or signed on its behalf by an officer, attorney so authorised, director or other person who has actual authority to appoint a proxy on behalf of such body.

7.2 A person appointed to act as a representative of a Noteholder need not be a Noteholder.

7.3 The instrument appointing a person a proxy of a Noteholder and the power of attorney or other authority (if any) under which such instrument is signed, or a copy of such power or authority (certified in such manner as the Trustee approves) must be deposited at such place as the Trustee, or the Company with the approval of the Trustee, may in the notice convening the meeting direct or (if no such place is appointed) then at the address in New Zealand of the Company not later than the Proxy Closing Time.

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

7.5 An appointment of a person to act as a representative of a Noteholder at a meeting of Noteholders will (subject to clause 7.6 of this Schedule 3), unless such appointment or instrument of proxy states otherwise, be valid for any adjournment of such meeting.

7.6 Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 6 months from the

date of its execution, but this provision does not apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

7.7 An instrument of proxy expressed in favour of:

7.7.1 the chairperson of the Company;

7.7.2 the chairperson of the meeting; or

7.7.3 'the chairperson', 'chairman' or 'chairwoman';

(howsoever expressed) will be valid and effectual as though it were in favour of a named person and shall in the case of clause 7.7.1 above, constitute the person holding the office of the chairperson of the Company, and in the case of clauses 7.7.2 and 7.7.3 above, constitute the person who chairs the meeting for which the instrument of proxy is used (whether an adjournment or not), the lawful proxy of the appointor Noteholder.

8 Rights of Representatives

8.1 A representative of a Noteholder will have the right to speak at the meeting and to demand or join in demanding a poll and shall (except when and to the extent to which the representative is specifically directed by the relevant Noteholder to vote for or against any proposal) have power generally to act at the meeting for the Noteholder concerned.

9 Voting Procedure and Polls

9.1 A resolution put to the vote of a meeting will be decided on a show of hands unless a poll is demanded by the chairperson, the Trustee, the Company or by one or more Noteholders holding or representing not less than 10% of the Issue Price of the whole of the Notes outstanding. A poll must be demanded before or on the declaration of the result of the show of hands.

9.2 Unless a poll is demanded in accordance with clause 9.1 of this Schedule 3 a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

9.3 On a show of hands each Noteholder present at the meeting and entitled to vote (whether personally or by a representative) will have one vote only. On a poll a Noteholder present at the meeting and entitled to vote (whether personally or by proxy or by a representative) will have one vote for each dollar of the Issue Price outstanding of every Note held by such Noteholder.

9.4 If a poll is duly demanded, it will be taken in such manner as the chairperson may direct and the result of such poll will be deemed to be a resolution of the meeting at which the poll was demanded.

- 9.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a cast in a vote in addition to the vote(s) (if any) to which the chairperson may be entitled as a Noteholder or on behalf of Noteholders.
- 9.6 A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded in respect of any other matter must be taken either immediately or at such time (not being more than 20 days from the date of the meeting) and place as the chairperson may direct. The result of such poll will be deemed to be a resolution of the meeting at which the poll was demanded. No notice need be given of a poll.
- 9.7 The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question on which the poll has been demanded.
- 9.8 On a poll, votes may be cast either personally or by representative, and a person entitled to more than one vote need not use all such votes nor cast all such votes in the same way.
- 9.9 In the case of joint Noteholders, the vote of the senior of the joint Noteholders who tenders a vote, whether in person or by representative, will be accepted to the exclusion of the votes of the other joint Noteholder(s). For this purpose seniority will be determined by the order in which the names of the joint Noteholders stand in the Register at the Proxy Closing Time.
- 9.10 A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form of appointment will be valid notwithstanding:
- 9.10.1 the previous death, insanity or (in the case of a company) liquidation of the principal;
 - 9.10.2 the revocation of the instrument of proxy or power of attorney or other form of appointment; or
 - 9.10.3 the revocation of the authority under which the instrument of proxy was executed; or
 - 9.10.4 the transfer of the Notes in respect of which the vote is given
- provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Trustee, the Company at its registered office or by the Registrar before the commencement of the meeting or adjourned meeting at which the instrument of proxy or power of attorney or other form of appointment is used.
- 9.11 A resolution passed at a meeting of the Noteholders duly convened and held in accordance with this document and this Schedule 3 will be binding upon all the Noteholders whether present or not at such meeting.

10 Extraordinary Resolutions

- 10.1 A meeting of the Noteholders, in addition to the powers expressed in this document, but without limiting or prejudicing any powers conferred on the Trustee or the Company by this document, has the following powers exercisable by Extraordinary Resolution namely:
- 10.1.1 to sanction either unconditionally or upon any conditions any proposal by the Company for any alteration, release, waiver, modification, abrogation, variation of, addition to or arrangement in respect of, the rights of the Noteholders against either of them arising under this document or the Notes;
 - 10.1.2 to assent to any proposal for modification of any of the provisions contained in the Certificates, this document or the Conditions (other than the provisions as to subordination pursuant to section 2 of the Trust Deed and of the equivalent Conditions) which shall be proposed by the Company or by the Company;
 - 10.1.3 to authorise the Trustee or any other person or persons to concur in and execute all such documents and do all such acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution;
 - 10.1.4 subject to section 62 of the Securities Act, to discharge or exonerate any person or persons (including the Trustee) from any liability to the Noteholders in respect of any act or omission for which such person or persons has or may have become responsible under this document or the Notes;
 - 10.1.5 to give any authority, direction or sanction which under the provisions of this document or the Notes is required or desirable to be given by Extraordinary Resolution;
 - 10.1.6 to request the removal of any Trustee of this document and to approve the appointment of, or appoint, a new trustee;
 - 10.1.7 to appoint any persons (whether or not Noteholders) as a committee or committees to represent the interests of the Noteholders and to confer upon such committee or committees any powers or discretions which the Noteholders could themselves exercise by Extraordinary Resolution;
 - 10.1.8 to direct or request the Trustee to take or refrain from taking such action or do such things as the Trustee may lawfully do under this document and to authorise the Trustee to deduct its costs and expenses from any amount received by the Trustee on account of Noteholders to the extent such additional authority may be required; and
 - 10.1.9 to sanction and approve any scheme for the reconstruction of the Company any capital restructuring or other similar arrangement or

for the amalgamation of the Company and/or the Company with any other company.

- 10.2 An Extraordinary Resolution passed in accordance with this Schedule 3 shall be binding upon all the Noteholders and each of the Noteholders and the Trustee (subject to the provisions of the Trustee's indemnity contained in the Trust Deed) will be bound to give effect thereto accordingly and the passing of any such Extraordinary Resolution will, as between the Noteholders and the Trustee, be conclusive evidence that the circumstances justify the passing thereof.

11 Minutes

- 11.1 Minutes of all resolutions and proceedings at every meeting of the Noteholders must be made and duly entered in records to be from time to time maintained for the purpose at the expense of the Company by the Trustee. Any such minute signed by the chairperson of the meeting at which such resolutions were passed or proceedings transacted, or by the chairperson of the next succeeding meeting of the Noteholders, will be prima facie evidence of the matters recorded in such minutes. Until the contrary is proved, every meeting the proceedings of which have been so minuted and signed by the chairperson as aforesaid will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed or transacted as the case may be. Copies of all minutes must be given by the Trustee to the Company as soon as possible after each meeting.

12 Class Meetings

- 12.1 If and whenever the Company shall have issued and have outstanding any Notes which are not identical and do not form one single series then those Notes which are in all respects identical shall be deemed to constitute a separate series of the Notes and the foregoing provisions of this Schedule 3 shall have effect subject to the following modifications:
- 12.1.1 a resolution which in the opinion of the Trustee affects one series only of the Notes shall be deemed to have been duly passed if passed at a separate meeting of the Noteholders of Notes of that series;
 - 12.1.2 a resolution which in the opinion of the Trustee affects more than one series of the Notes but does not give rise to a conflict of interest between the Noteholders of Notes of any of the series so affected shall be deemed to have been duly passed if passed at a single meeting of the Noteholders of the Notes of all series so affected;
 - 12.1.3 a resolution which in the opinion of the Trustee affects more than one series of the Notes and gives or may give rise to a conflict of interest between the Noteholders of the Notes of one series or group of series so affected and the Noteholders of the Notes of another series or group of series so affected shall be deemed to have been duly passed only if in lieu of being passed at a single meeting of the Noteholders

of the Notes of all such series, it shall be duly passed at separate meetings of the Noteholders of the Notes of each series or group of series so affected, and

- 12.1.4 to all such meetings referred to in clauses 12.1.1, 12.1.2 and 12.1.3 of this Schedule 3 all the preceding provisions of this Schedule 3 shall, *mutatis mutandis*, apply as though references therein to Notes and Noteholders were references to the Notes of the series or group of series so affected and to the Noteholders of such Notes respectively.

13 Further regulations

- 13.1 Subject to all other provisions contained in this Schedule 3 and the Trust Deed the Trustee may without the consent of the Noteholders prescribe such further regulations in respect of the convening and holding of meetings of Noteholders, attendance and voting at, and other matters incidental to, as the Trustee may in its sole discretion determine.

Schedule 4

Report of the Directors of Allied Farmers Limited (clause 4.5)

This Report is given by Allied Farmers Limited (*Company*) pursuant to clause 4.5 of the Trust Deed dated 13 March 2007 between the Company and Trustees Executors Limited (*Trust Deed*).

We, the undersigned, hereby state that as at [last day of financial year] [last day of financial half year]:

1 to the best of our knowledge and belief having made due enquiry during the immediately preceding financial [year] [half year]:

1.1 [here state any matter, or state if there is no matter, which has arisen relating to the Company which would materially and adversely affect the ability of the Company to perform its obligations under the Trust Deed and the Notes];

1.2 the Company [has] [has not] duly observed, performed and complied in all material respects with all provisions expressed to be binding upon it under the Trust Deed and the Conditions,

[if the Company has not so complied and observed the provisions of the Trust Deed, set out the particulars of the contravention and proposals to remedy the same]

1.3 the Register [has] [has not] been duly maintained and audited

[if the Register has not been duly maintained or audited, set out the particulars of the failure]

1.4 the amount of Notes which have been:

- Converted into Ordinary Shares of the Company is \$[];
- Redeemed or purchased is \$[].
- cancelled is \$[],

details of which are set out below:

[set out details of Notes which have been converted and cancelled in the immediately preceding financial [year] [half year]],

1.5 except as has been reported pursuant to clause 4.2.1 of the Trust Deed all interest due on the Notes has been paid; [detail interest payments not paid].

1.6 the Company has remained solvent;

1.7 the liability of the Company under the Trust Deed has not ceased;

Capital Notes Trust Deed

- 1.8 there are no matters that may materially prejudice the interests of the Noteholders;
 - 1.9 whether there have been any material changes to the Company's accounting policies;
 - 1.10 whether any material trading or capital loss has been sustained by the Company and, if so, details of that loss; and
 - 1.11 whether any material contingent or liabilities has been incurred by the Company (other than in the ordinary course of business) and, if so, the amount.
- 2 the aggregate Issue Price of the Notes outstanding, and the amount of any unpaid interest, at the end of the financial [year] [half year] is []

Unless the context otherwise requires, terms defined in the Trust Deed shall have the same meaning in this Report.

This Report is given on

Director/Chief Financial Officer/Secretary

Schedule 5

Auditor's Report

At the same time as the audited financial statements of the Company are provided in accordance with clause 4.5, a separate report by the Auditors stating:

- (i) whether or not in the performance of their duties as Auditors they have become aware of any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Trustee by the Trust Deed, Financial Reporting Act 1993, Securities Act or the Listing Rules, and, if so, giving particulars of those matters;
- (ii) whether or not their audit has disclosed any matters calling in their opinion for further investigation by the Trustee in the interests of the Noteholders and, if so, giving particulars of those matters;
- (iii) that they have perused as part of their normal requirements for the completion of their audit the reports of the directors of the Company under clauses 4.5(a) and 4.2.21 and respectively given since the last report by the Auditors and whether, so far as matters which they have observed in the performance of their duties are concerned, the statements made in those reports are correct, fair and reasonable as the context may require;
- (iv) whether or not (to the best of their knowledge and belief having made due enquiry) the Company or the Registrar has duly maintained the Register; and
- (v) if the Auditors have audited the Register then to state that they have audited the Register on the terms of and as required under the Securities Act, but if they have not audited the Register themselves, to state who has audited the Register and that they have obtained a copy of the annual audit report prepared by the auditors of the Register.

Ministry of Economic
Development



Manatū Ōhanga

Companies Office

CERTIFICATE OF REGISTRATION OF TRUST DEED

(Under Section 46(3) of the Securities Act 1978)

ALLIED FARMERS LIMITED

169597

This is to certify that a Trust Deed dated the 13th day of March 2007 entered into between ALLIED FARMERS LIMITED (the Company) and TRUSTEES EXECUTORS LIMITED (the Trustee) in relation to the issue of Capital Notes, was registered on the 13th day of March 2007.

Neville Harris
Registrar of Companies
Dated this 16th day of March 2007

