

NELSON BUILDING SOCIETY

COVENANT TRUSTEE SERVICES LIMITED

Supervisor

**DEED OF AMENDMENT AND RESTATEMENT TO
TRUST DEED**

RUSSELL McVEAGH

DEED dated 18 October 2016

PARTIES

NELSON BUILDING SOCIETY ("NBS")

COVENANT TRUSTEE SERVICES LIMITED ("Supervisor")

INTRODUCTION

- A. NBS and the Supervisor are parties to a Debt Security Trust Deed dated 20 December 1990 (as amended from time to time) ("**Trust Deed**").
- B. NBS and the Supervisor have been directed (pursuant to an extraordinary resolution of depositors) to execute this deed in order to amend and restate the Trust Deed on the terms set out in this deed.

COVENANTS

INTERPRETATION

1.1 Definitions:

- (a) Words and expressions that are defined in the Trust Deed have the same meanings when used in this deed, unless the context otherwise requires.
- (b) In this deed, "**Effective Date**" means the date NBS elects in accordance with clause 19(1)(a) of Schedule 4 of the Financial Markets Conduct Act 2013 ("**FMC Act**") and notifies to the Supervisor, having given the Supervisor notice of this date at the same time as the Financial Markets Authority and the Registrar of Financial Service Providers were notified in accordance with clause 19(2) of Schedule 4 of the FMC Act.

1.2 Interpretation:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this deed.
- (b) Unless the context otherwise requires the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (c) A reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time.
- (d) A reference to any party to a document includes its successors and permitted assigns.

2. AMENDMENT AND RESTATEMENT OF THE TRUST DEED

- 2.1 **Modifications:** With effect from the Effective Date the Trust Deed shall be amended and restated in the form set out in the Appendix.

2.2 Confirmation:

- (a) Except to the extent modified by this deed, the Trust Deed continues in full force and effect.
- (b) The provisions of the Trust Deed as modified by this deed shall be valid and binding obligations of each party hereto.
- (c) From the Effective Date this deed and the Trust Deed shall be read and construed as one document.

3. COUNTERPARTS

- 3.1 This deed may be signed in counterpart copies, both of which will together constitute one and the same instrument, and either of the parties may execute this deed by signing any such counterpart.

4. DELIVERY

- 4.1 For the purposes of section 9 of the Property Law Act 2007 and without limiting any other mode of delivery, this deed will be delivered by NBS immediately on the earlier of:
 - (a) physical delivery of an original of this deed, executed by NBS, into the custody of the Supervisor or the Supervisor's solicitors; or
 - (b) transmission by NBS or its solicitors of a facsimile, photocopied or scanned copy of an original of this deed, executed by NBS, to the Supervisor or the Supervisor's solicitors.

5. GOVERNING LAW

- 5.1 This deed shall be governed by, and construed in accordance with, the laws of New Zealand.

EXECUTED AS A DEED

NELSON BUILDING SOCIETY

By:

Garry Dayman
Name of Director

Garry Dayman
Signature of Director

PAUL BELL
Name of Director

Paul Bell
Signature of Director

EXECUTED AS A DEED

NELSON BUILDING SOCIETY

By:

GARRY DAYMAN

Name of Director



Name of Director



Signature of Director



Signature of Director



Supervisor

COVENANT TRUSTEE SERVICES LIMITED by:

[Signature]
Signature of authorised signatory

Richard Spring
Name of authorised signatory

and witnessed by:

[Signature]
Signature of witness

Name of witness **PAMELA WONG**
SOLICITOR
AUCKLAND

Occupation

City/town of residence

Carol Anne Cook
Signature of authorised signatory

Carol Anne Cook
Name of authorised signatory



APPENDIX
Amended and Restated Trust Deed



NELSON BUILDING SOCIETY

COVENANT TRUSTEE SERVICES LIMITED

Supervisor

TRUST DEED

RUSSELL McVEAGH



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DEED dated 20 December 1990 (as amended and restated pursuant to a deed of amendment and restatement of trust deed entered in during October 2016)

PARTIES

NELSON BUILDING SOCIETY, a building society registered under incorporation number 1781002 under the Building Societies Act 1965 ("**NBS**")

COVENANT TRUSTEE SERVICES LIMITED, having its registered office in Auckland (the "**Supervisor**")

BACKGROUND

- A. NBS currently issues and intends to continue issuing Debt Securities pursuant to this deed.
- B. The Supervisor has agreed to act as supervisor for the Security Holders on the terms and conditions of this Deed.

IT IS AGREED

1. INTERPRETATION

1.1 **Definitions:** In this Deed unless the context requires otherwise:

"**2016 Amendment Deed**" means the deed of amendment and restatement of trust deed between the Supervisor and NBS entered into during October 2016.

"**Act**" means the Building Societies Act 1965.

"**Annual Return**" has the meaning given to that term in the Act.

"**Approved Issuer Levy**" means the levy referred to in section 86J of the Stamp and Cheque Duties Act 1971.

"**Auditor**" means the person who for the time being is appointed as the auditor of NBS under section 98 of the Act.

"**Board**" means the board of Directors for NBS.

"**Committed Undrawn Lending Facilities**" means, as at any date, and if in relation to a period, the maximum of, the undrawn amounts under current revolving credit facilities made available by NBS (as lender) (aggregated if more than one) that are able to be drawn down at the option of a borrower.

"**Creditor Liabilities**" means, at any date, all liabilities of NBS to creditors of NBS including contingent liabilities, and further includes provision for income and other taxes, long service leave, holiday and retirement leave, in each case to the extent that they would be disclosed by a Reference Balance Sheet if one was prepared at the relevant date, but excludes the amount that NBS would be required to pay to Security Holders, (including any Interest) if all of the Debt Securities on issue on the relevant date were redeemed or withdrawn (as applicable) by Security Holders.



"Debt Security" means:

- (a) an unsecured call debt security or term deposit; or
- (b) any other unsecured debt security (as defined in the FMC Act) issued on terms and conditions approved by the Supervisor and set out in a supplemental trust deed in a form satisfactory to the Supervisor,

each issued by NBS pursuant to:

- (c) an offer of securities to the public under the Securities Act 1978; or
- (d) a regulated offer under the FMC Act,

and, for the avoidance of doubt, includes the Existing Debt Securities.

"Debt Security Moneys" means, at any time:

- (a) in relation to a Debt Security, the Principal Moneys outstanding, Interest and other moneys payable on or in relation to the Debt Security at that time; and
- (b) in relation to all or some Debt Securities, the aggregate Principal Moneys outstanding, Interest and other moneys payable on or in relation to those Debt Securities at that time.

"this Deed" means this deed and where used or falling to be interpreted in relation to a Debt Security defined in (b) above, includes the supplemental trust deed for that issue and relates to this deed as modified and supplemented by that supplemental trust deed and (for the avoidance of doubt) **"this deed"** means this deed alone.

"Deposit Taker" or **"NBDT"** shall have the meaning given to "NBDT" in the NBDT Act.

"Director" means a person who, at the relevant time, occupies the position of director of NBS under the Rules.

"Event of Default" means the occurrence of any one or more of the events specified in clause 10.1.

"Event of Review" means an event of review declared by the Supervisor under clause 9.1.

"Existing Debt Securities" means any "Debt Security" that was issued pursuant to, and defined as such in, the Existing Deed and for the time being outstanding.

"Existing Deed" means this deed prior to being amended and restated pursuant to the 2016 Amendment Deed.

"FATCA" means:

- (a) sections 1471 through 1474 of the United States Internal Revenue Code of 1986 or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an inter-governmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or

- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

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

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

"Fixed Establishment" has the meaning given to that term in the Income Tax Act 2007.

"FMA" means the Financial Markets Authority, or any successor authority or person.

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

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

"GAAP" means the matters required for financial statements to comply with generally accepted accounting practice under section 8 of the Financial Reporting Act.

"Interest" means all payments in respect of the Debt Securities that are properly characterised as interest payments, whether characterised by NBS as interest or as a return of another nature.

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

"Liabilities" means:

- (a) the amount that NBS would be required to pay to Security Holders (including any Interest) if all of the Debt Securities on issue on the relevant date were redeemed or withdrawn (as applicable) by Security Holders; plus
- (b) Creditor Liabilities.

"Liquid Assets" means:

- (a) cash;
- (b) term deposits with any Registered Bank with contractual maturities of 90 days or less;
- (c) term deposits with any Registered Bank with contractual maturities of greater than 90 days provided that the relevant Registered Bank has provided NBS with written confirmation that the relevant term deposit can be terminated by NBS on 31 days notice;
- (d) callable securities held with any Registered Bank;
- (e) New Zealand government stock able to be converted to cash within 90 days;
- (f) New Zealand local authority securities able to be converted to cash within 90 days;
- (g) any committed undrawn bank facility on terms and conditions approved by the Supervisor; and
- (h) Marketable Debt Securities.



"Marketable Debt Securities" means debt securities issued by New Zealand issuers incorporated in or otherwise with a permanent establishment in New Zealand, having a Standard & Poor's Rating Services long term credit rating of A+ or better or a Standard & Poor's Rating Services short term credit rating of A1 or better (or, if the debt securities are rated by another approved rating agency, the equivalent rating given to the debt securities by that approved rating agency as certified by NBS), which, in the opinion of NBS, are capable of being converted into cash by sale or other realisation or repayment within 30 days.

"Meeting" means a meeting of the Security Holders or a class of Security Holders.

"NBDT Act" means the Non-bank Deposit Takers Act 2013.

"Outstanding Moneys" means, all Debt Security Moneys and includes all expenses, fees and other moneys owing or payable to the Supervisor under this Deed.

"Permitted Amalgamation" means an amalgamation between NBS and another building society or other entity where:

- (a) NBS is the remaining entity following the amalgamation;
- (b) the amalgamation would not result in NBS's Total Tangible Assets (calculated immediately prior to the amalgamation) changing by 10 percent or more; and
- (c) NBS has provided the Supervisor with written confirmation of and evidence regarding the matters set out in paragraphs (a) and (b) prior to the amalgamation.

"Permitted Security Interest" means:

- (a) any charge or lien created by a statute (other than the PPSA) or arising by operation of any rule of law, except where such a charge or lien is created or arises as a result of any non-performance or default;
- (b) a Security Interest over goods acquired by NBS in the ordinary course of its normal business, and which meets the following criteria:
 - (i) it is given by NBS as a buyer in favour of a seller of those goods;
 - (ii) it secures (and only secures) indebtedness owed to the seller in respect of the goods acquired by NBS as buyer;
 - (iii) it is discharged within 30 days of its creation;
- (c) any Security Interest in relation to personal property that is created or provided for by:
 - (i) a lease for a term of more than one year (as defined in the PPSA) in respect of which NBS is the lessee;
 - (ii) a commercial consignment (as defined in the PPSA) in respect of which NBS is consignee,
 - that does not secure payment or performance of an obligation;
- (d) any Security Interest granted with the prior written consent of the Supervisor.

"PLA" means the Property Law Act 2007.



"PPSA" means the Personal Property Securities Act 1999.

"Principal Moneys" means, in relation to any Debt Security, the amount (other than Interest) payable upon the redemption or withdrawal (as applicable) of the Debt Security, including any premium payable in accordance with the terms of the Debt Security.

"Product Disclosure Statement" includes a product disclosure statement or other disclosure document (including any supplemental document) required by the FMC Act, however described.

"Proxy Closing Time" means 24 hours before the time at which the relevant Meeting is to commence.

"RBNZ Act" means the Reserve Bank of New Zealand Act 1989.

"Record Date" means, in relation to a payment, the date which is 10 calendar days before the due date for the payment and, if that date is not a business day, the preceding business day.

"Reference Balance Sheet" means a statement of financial position of NBS prepared as at the date in question on a basis that complies with the FMC Act and that applies accounting principles and practices on a basis that is consistent in all material respects with the most recently prepared audited financial statements of NBS, provided that NBS may make a material change in an accounting principle or practice if that change is approved by the Auditor.

"Register" means the register(s) set up and maintained by NBS in accordance with clause 7.6 of this Deed.

"Registered Bank" means a bank registered under the RBNZ Act.

"Regulations" means the regulations relating to Deposit Takers made under the NBDT Act and includes the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010 and the Deposit Takers (Liquidity Requirements) Regulations 2010.

"Reporting Certificate" means a certificate required under clause 8.1(e).

"Reserves" means the amount by which Total Tangible Assets exceeds Total Liabilities.

"Rules" means the rules of NBS from time to time as registered under the Act.

"Security Interest" includes a security interest (as defined in the PPSA), mortgage, charge, encumbrance, lien, pledge, finance lease, sale and lease back, sale and repurchase, deferred purchase or title retention arrangement, flawed asset arrangement, and any other security or arrangement having like economic effect over any property, assets or revenues.

"Security Holder" means, in relation to a Debt Security, the person whose name is entered in the Register as the holder of that Debt Security.

"Special Resolution" has the meaning given in schedule 1.

"Subsidiary" means, in relation to a person:

- (a) a subsidiary, as defined in section 5 of the Companies Act 1993; or



- (b) an "in-substance subsidiary", in accordance with any approved financial reporting standard,

of that person, but so that:

- (c) a company, or other corporation, or trust may be a subsidiary of a trust if it would have been a subsidiary if that trust were a company; and
- (d) a trust may be a subsidiary, for the purpose of which a unit or other beneficial interest will be regarded as a share.

"**Supervisor**" means the person that performs the function of supervisor under this deed from time to time, such person as at the date of the 2016 Amendment Deed being Covenant Trustee Services Limited.

"**Tangible Assets**" means all property and assets other than those which in the opinion of the Auditors should, according to GAAP be regarded as intangible assets.

"**Total Liabilities**" means, at any date, the value of the Liabilities that would be disclosed by a Reference Balance Sheet if one was prepared at the relevant date.

"**Total Liquid Assets**" means, at any date, the value of all the NBS's Liquid Assets that would be disclosed by a Reference Balance Sheet if one was prepared at the relevant date.

"**Total Tangible Assets**" means, at any date, the value of all of NBS's Tangible Assets that would be disclosed by a Reference Balance Sheet if one was prepared at the relevant date.

1.2 **Miscellaneous:** In this Deed, unless the context requires otherwise, any reference to:

an "**amendment**" includes any replacement, waiver or temporary variation.

an "**approved rating agency**" means Standard & Poor's Ratings Services, Fitch Ratings or Moody's Investors Service or any other rating agency approved in writing by the Supervisor.

"**associated person**" has the meaning given to it in section 12 of the FMC Act.

an "**authorisation**" includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a governmental agency; and
- (b) in relation to anything which will be proscribed or restricted in whole or part by law if a governmental agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of such period without such intervention or action.

a "**business day**" means a day on which registered banks are open for general banking business in Nelson.

a "**clause**" or "**schedule**" is to a clause of or schedule to this deed.

a "**call debt security**" has the meaning given to it in the Financial Advisers Act 2008.



"category 2 product", "insolvent", "register entry" and "supervisor" have the meanings given to them in the FMC Act.

a "class" of Debt Securities for the purposes of clauses 10.2 and 14.3 means any category of Debt Securities having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of NBS (in consultation with the Supervisor) constitutes a separate class of Debt Securities and class of Security Holders shall be construed accordingly.

"financial statement" has the meaning given to it in section 6 of the Financial Reporting Act.

"guarantee" includes an indemnity, letter of credit, legally binding letter of comfort, suretyship and other agreement the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness of another person.

any "governmental agency" includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law. It also includes any self-regulatory organisation established under statute or any stock exchange.

"indebtedness" includes an obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money.

a "law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute or other legislative measure, in each case of any jurisdiction whatever and "lawful" and "unlawful" shall be construed accordingly.

"nominal value" in respect of a Debt Security means the Principal Moneys.

"payment" includes satisfaction of a monetary obligation.

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

"regulated offer" shall be construed in accordance with the FMC Act.

1.3 Miscellaneous:

- (a) The introduction to and headings in this deed are inserted for convenience only and shall be ignored in construing this deed.
- (b) Unless the context otherwise requires words denoting only the singular number shall include the plural and vice versa and words denoting any gender shall include all genders.
- (c) References to any legislation, including any exemption notice gazetted under the FMC Act (or any legislation replacing the FMC Act), or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted, replaced or substituted (including any exemption notice passed or gazetted in substitution for or that refers to or incorporates any of its provisions) and, unless the context otherwise requires, shall also include any statutory instruments issued under any such legislation or provision.



- (d) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to any party to this deed or any other document or any Security Holder shall include its successors or permitted assigns.
- (f) References to a time of day are references to New Zealand time unless otherwise stated.
- (g) Anything which may be done at any time may also be done from time to time.

2. APPOINTMENT, DUTIES, POWERS AND DISCRETIONS OF THE SUPERVISOR

2.1 **Appointment:** NBS appoints the Supervisor, and the Supervisor accepts appointment, as trustee and supervisor in respect of the Debt Securities, with the rights, powers, functions, duties and obligations set out in this Deed, the FMC Act and FMC Regulations including, without limitation:

- (a) acting on behalf of the Security Holders in relation to:
 - (i) NBS;
 - (ii) any matter connected with this Deed or the terms of a regulated offer of Debt Securities; and
 - (iii) any contravention or alleged contravention of the Issuer Obligations; and
- (b) supervising NBS's performance:
 - (i) of its Issuer Obligations; and
 - (ii) in order to ascertain whether the assets of NBS that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the Principal Moneys, Interest and other monies payable on, or in relation to the Debt Securities as they become due; and
- (c) performing or exercising any other functions, duties, and powers conferred or imposed on the Supervisor by or under the FMC Act, the Financial Markets Supervisors Act and this Deed.

2.2 **Duties:**

- (a) **Ascertain breach:** The Supervisor shall exercise reasonable diligence to ascertain whether any breach or alleged breach of the Issuer Obligations or any breach of the provisions of this Deed or the terms of the Debt Securities has occurred and, except where it is satisfied that the breach will not have a material adverse effect on Security Holders, shall (and shall have the power to) do all such things as it is empowered to do to cause any such breach to be remedied.
- (b) **Carry out functions:** The Supervisor must exercise reasonable diligence in carrying out its functions under clause 2.1.



2.3 **Powers:** In addition to the powers, authorities and discretions from time to time vested in trustees and supervisors by law and the provisions of the law relating to supervisors of debt securities under the FMC Act and FMC Regulations, and to facilitate the discharge of its duties under this Deed, it is expressly declared that:

- (a) **Reliance on advice:** the Supervisor may, subject to the provisions of this Deed, without liability for loss, obtain, accept and act on, or decline and elect not to accept and act on:
 - (i) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, stockbroker, financial adviser, auditor, chartered accountant or other expert whether or not obtained by the Supervisor, even though the opinion, advice or information may subsequently be found to contain some error or not be authentic;
 - (ii) a certificate or report signed by any two Directors, as to any fact or matter prima facie within their knowledge or that any transaction or thing is expedient or commercially desirable and not detrimental to the interests of the Security Holders, as sufficient evidence of such fact or matter or the expediency or desirability of such transaction or thing, as the case may be provided the Supervisor may require that such certificate or report should specify or indicate that such certificate or report is given by such Directors:
 - (aa) after all reasonable inquiries and diligent investigations and deliberations have been made at a date not more than 10 business days prior to the giving of such certificate or report;
 - (bb) where relevant to such certificate or report in respect of any particular matter or transaction, the Directors are satisfied that full valuable consideration is being given or received for or by NBS;
 - (cc) that the certificate is given on behalf of all the Directors; and
 - (iii) the statements contained in any certificate or report given pursuant to the provisions of this Deed as conclusive evidence of the facts stated in that certificate or report;
- (b) **Resolution of Security Holders:** the Supervisor will not be responsible for any losses, costs, expenses, inconvenience or otherwise that may result from acting or relying upon any resolution purporting to have been passed at any Meeting in respect of which a proper record has been made and which the Supervisor believes to have been properly passed, even if it appears afterwards 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 and, subject to clause 10.3, the Supervisor shall not be bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, charges, damages, expenses and liabilities that it may incur by so acting;
- (c) **Receipt of proceeds:** the Supervisor will not be responsible for the receipt or application by NBS of any amounts paid by Security Holders for Debt Securities;
- (d) **Ascertain breach:** subject to clause 2.2(a), the Supervisor will be entitled to assume without enquiry that no breach or alleged breach of the Issuer



Obligations and no breach of the provisions of this Deed or the terms of the Debt Securities by NBS is occurring or has occurred unless:

- (i) the Supervisor receives specific notice that a breach has, or appears to have, occurred or threatens to occur, from the Directors, Auditor or the Registrar of Building Societies or otherwise becomes aware a breach has, or appears to have, occurred or threatens to occur pursuant to a report received by it in its capacity as supervisor under this Deed; or
 - (ii) the Supervisor receives notice of the commencement of the winding up of NBS;
- (e) **Limitation of liability:** the Supervisor will not be under any liability to NBS or the Security Holders unless the Supervisor 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 Deed or by law and the limitations contained in and implied by this Deed;
- (f) **Discretion to exercise:** except as otherwise expressly provided in this Deed, the Supervisor, as regards all trusts, powers, authorities and discretions vested in it by this Deed, will have absolute discretion as to their exercise or non-exercise and as to the commencement, variation, discontinuance, compromise or conduct of any action, proceeding or claim, and provided it acts in accordance with sections 112 and 113 of the FMC Act it will not be responsible for any loss, damage or expense that may result;
- (g) **Delegation:**
- (i) subject to sub-clause (ii) below, the Supervisor may, whenever it thinks it expedient in the interests of the Security Holders to do so:
 - (aa) delegate at any time to any person any of the trusts, powers, authorities or discretions vested in the Supervisor by this Deed that cannot conveniently be exercised by it or through its employees upon such terms and conditions (including the power to sub-delegate) as the Supervisor may reasonably think fit provided that the Supervisor will at all times remain responsible for the exercise or performance of its powers and duties under this Deed and will be responsible for the acts and omissions of any person appointed under this clause;
 - (bb) authorise any person as it thinks fit to act as its representative at any meeting (including any Meeting); and
 - (cc) apply to the court at any time for directions in relation to any matter, or consent to, approve or oppose any application to the court by NBS or by or at the instance of any Security Holder;
 - (ii) notwithstanding any provision of this Deed, the Supervisor shall not delegate any of its functions set out in clause 2.1 except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act;
- (h) **Limited power to remedy:** the Supervisor's power to cause any breach of the provisions of this Deed or the terms of the Debt Securities to be remedied shall



be subject to any other provision of this Deed that is inconsistent with the exercise of such powers;

- (i) **Conditional consents:** any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor thinks fit;
- (j) **Confidentiality:** subject to clause 2.4, the Supervisor will not (unless ordered to do so by a court of competent jurisdiction or required to do so under any law) disclose to any Security Holder:
 - (i) any confidential or financial information made available to the Supervisor by or on behalf of NBS in connection with this Deed; or
 - (ii) any information where it would be unlawful to do so,

and no Security Holder will be entitled to take any action to obtain from the Supervisor any such information (other than for the purposes of enforcing NBS's duty to repay, or pay interest, or any other duties that NBS or any other person owes to the Security Holder);
- (k) **Supervisor's opinion:** the Supervisor may determine whether or not a failure by NBS to perform any Issuer Obligation or any obligation under the provisions of this Deed or in relation to the terms of the Debt Securities is, in its opinion, capable of remedy and/or will have a material adverse effect on Security Holders;
- (l) **Construction of certain obligations:** the Supervisor has entered into this Deed on the basis that the Debt Securities are debt securities for the purposes of the FMC Act;
- (m) **Power to engage expert:** the Supervisor may engage from time to time an expert (for example, an auditor, investigating accountant, valuer or actuary) if it considers, on reasonable grounds, that it requires the assistance of the expert to:
 - (i) determine the financial position of NBS; or
 - (ii) review the business, operation, management systems or the governance of NBS.

Where the Supervisor engages an expert pursuant to this clause 2.3(m), NBS shall provide reasonable assistance to the expert to allow the expert to provide the assistance, and the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by NBS;
- (n) **Power to inspect premises:** the Supervisor may inspect the business premises of NBS upon 24 hours written notice.

- 2.4 **Fiduciary relationship:** The Supervisor shall be entitled to be a Security Holder on its own account. Nothing in this Deed prohibits the Supervisor or its holding company or any of their Subsidiaries or their officers or shareholders (all of whom are, for the balance of this clause 2.4 included, where the context permits, in the expression "**the Supervisor**") from being a Security Holder in any trustee, agency, nominee or other representative capacity or from being a creditor of, or having any other interest in, NBS or from acting in any other fiduciary, contractual, agency or representative capacity for a Security Holder or NBS without breach of any obligations established by this Deed or otherwise imposed or implied by law or arising out of any such relationship. The



Supervisor may enter into any transactions with NBS in the ordinary course of business and will not be accountable to the Security Holders for any profits arising from such transactions.

2.5 **Enforcement of Security Holders' rights:** The Supervisor holds the following in trust for the benefit of Security Holders:

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

2.6 **Enforcement by Security Holder:** No Security Holder shall be entitled to enforce any of the rights or remedies referred to in clause 2.5 directly against NBS unless the Supervisor fails to enforce such rights or remedies within a reasonable period after having become bound to do so in accordance with this Deed.

3. CONSTITUTION AND ISSUE OF DEBT SECURITIES

3.1 **Constitution of Debt Securities:** Subject to the provisions of this deed, NBS may at any time constitute and issue Debt Securities:

- (a) upon such terms and conditions and in such amounts and currencies as NBS may from time to time determine; and
- (b) pursuant to the Act, the Rules, the FMC Act and the FMC Regulations.

3.2 **Form of Debt Securities:** Each Debt Security will be issued by entry on the Register.

3.3 **Benefit:** Each Debt Security issued (whether before or after the date of the 2016 Amendment Deed) shall have the benefit of the provisions of this Deed.

3.4 **Covenant to observe this deed:**

- (a) **Indebtedness:** NBS acknowledge its indebtedness to each Security Holder and to the Supervisor on behalf of the Security Holders, in relation to the payment of the Debt Security Moneys.
- (b) **Payment:** NBS covenants with the Supervisor that it will:
 - (i) pay the Debt Security Moneys to, or as directed by the Supervisor; and
 - (ii) comply with, perform and observe all the provisions of this Deed.
- (c) **Payment in satisfaction of obligations:** Each payment in respect of the Debt Securities duly made to Security Holders or the Supervisor will be in satisfaction of the relevant obligation of NBS to the Security Holders and the Supervisor under this Deed.



- (d) **Performance of terms of Debt Securities:** NBS covenants with the Supervisor that it will comply with, perform and observe all the terms of any Debt Security.
- 3.5 **Security Holder absolute owner:** NBS and the Supervisor is, notwithstanding any notice to the contrary, entitled to treat the Security Holder entered into the Register as the holder of a Debt Security as its absolute and beneficial owner and is not required to recognise any trust or equity or security interest affecting such ownership (except as required by law or order of any competent court).
- 3.6 **No transfer:** A Security Holder cannot transfer any Debt Security held by it to any other person.
- 3.7 **Fees and costs:** The Security Holder is responsible for any stamp duty, taxes and other governmental charges which are payable in any jurisdiction in connection with any dealing by the Security Holder with the Debt Securities.
- 3.8 **Acquisition of Debt Securities by operation of law:** When the right to any Debt Security is acquired by any person in any manner (including, without limitation, whether on the dissolution, death or bankruptcy of the relevant Security Holder, or under a writ of execution) NBS on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the holder of that Debt Security, will enter that person's name on the Register as the Security Holder who holds that Debt Security accordingly.
- 3.9 **Co-ownership of Debt Securities:** Except where a Security Holder has notified NBS that it holds the relevant Debt Security as tenants in common, where two or more persons are entered in the Register as joint holders of a Debt Security, they are taken to hold that Debt Security as joint tenants with rights of survivorship.

4. PAYMENTS

- 4.1 **Payments to Security Holders:** Payment of the Principal Moneys of, and Interest (if any) on, a Debt Security (less any amount required to be deducted in accordance with clause 12) shall be made to the person whose name appears in the Register as the holder of the Debt Security on the Record Date in respect of the relevant payment. If more than one person is so named in the relevant Register, payment will be made to the first person so named except:
- (a) as specified in the terms of the Debt Securities; or
- (b) where persons so named in the Register direct NBS to make the payment to any other person or persons.
- 4.2 **Method of payment:** Payment of the Debt Security Moneys on a Debt Security shall be made in accordance with the terms of the Debt Security and this Deed.
- 4.3 **Unclaimed payments:** Any payment made by NBS or the Supervisor to any Security Holder at its address last entered in the Register which is returned unclaimed and remains unclaimed by the person entitled to it during the 12 month period thereafter, will be held by NBS for the Security Holder concerned without any liability to invest or pay interest on that amount. Unless otherwise required by law, any money not so claimed within a period of six years from the original date of payment may be applied by NBS for its own purposes, and NBS and the Supervisor will have no further liability in respect of the amount concerned.

- 4.4 **Reinstatement:** If any payment made to the Supervisor or to any Security Holder by or on behalf of NBS is avoided by law, such payment will be deemed not to have discharged or affected the liability of NBS in respect of which that payment was made. In this circumstance, the Supervisor, the Security Holder and NBS will each be restored to the position in which it would have been, and will be entitled to exercise all the rights which each would have had, if such payment had not been made.

5. RETIREMENT AND REMOVAL OF, AND APPOINTMENT OF NEW, SUPERVISOR

- 5.1 **Retirement and removal of Supervisor:** Subject to, in the case of resignation or removal under paragraphs (a) or (b) below, clauses 5.2 and 5.4 below:

- (a) **Retirement:** the Supervisor may retire at any time without giving any reason by giving 30 days' notice (or such lesser period of notice as NBS may agree) in writing to NBS; and
- (b) **Removal:**
- (i) NBS may at any time, without giving any reason, by giving not less than 30 days' notice in writing to the Supervisor (or such lesser period of notice as the Supervisor may agree) remove the Supervisor; and
- (ii) the Security Holders may at any time, by Special Resolution, remove the Supervisor by giving not less than 30 days' notice in writing to the Supervisor (or such lesser period of notice as the Supervisor may agree); and
- (c) **FMA Removal:** the Supervisor may be removed by the FMA or NBS under Part 2 of the Financial Markets Supervisors Act.

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

- (a) be removed or resign under subsections 5.1(a) or 5.1(b) unless:
- (i) all functions and duties of the position have been performed;
- (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
- (iii) the court consents;
- (b) be removed by NBS under clause 5.1(b)(i) without the FMA's consent.

- 5.3 **Appointment of new Supervisor:** If any of the circumstances described in clause 5.1 occur, subject to clauses 5.2(a)(i) and 5.2(a)(iii), 5.2(b) (where applicable) and 5.4, the power of appointing a new supervisor in respect of the Debt Securities under this deed is vested in the Board. If the Board fails to appoint a new supervisor within 90 days of receiving notice of the Supervisor's intention to retire or its removal from office (as the case may be) then the Security Holders may exercise such power by Special Resolution. In each case, the new supervisor must hold a licence under the Financial Markets Supervisors Act that covers the Debt Securities and must have accepted such appointment.

- 5.4 **Removal and appointment by the FMA:** Nothing in clauses 5.2 or 5.3 above shall apply to the removal or appointment of a supervisor by the FMA pursuant to section 22 of the Financial Markets Supervisors Act. The Board may agree to the continued appointment of the FMA appointed supervisor.



- 5.5 **Successor Supervisor:** Upon the acceptance of any appointment under this clause 5 by a successor supervisor:
- (a) the successor supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under this Deed and, as from that time, the retiring Supervisor shall be discharged from its rights, powers and obligations; and
 - (b) the retiring Supervisor must transfer to the successor supervisor all moneys, investments, property and books held by the Supervisor under this Deed.
- 5.6 **Execution of documents:** Upon the acceptance of any appointment under this clause 5 by a successor supervisor, the successor supervisor shall execute all such documents which are necessary or appropriate and in such form as may be required by NBS, such that the successor supervisor is bound by all the covenants on the part of the Supervisor under this Deed from the date of such appointment. Any appointment of a successor supervisor has no effect until such documents are executed by the successor supervisor.
- 5.7 **Notice:** NBS shall notify all Security Holders of the appointment of any new supervisor as soon as reasonably practicable following such appointment.

6. SUPERVISOR'S REMUNERATION AND EXPENSES

- 6.1 **Basic remuneration:** NBS shall pay the Supervisor remuneration for services as Supervisor in accordance with the terms of any current agreement between NBS and the Supervisor.
- 6.2 **Expenses:** NBS will also pay all reasonable expenses (including travelling expenses) and other reasonable costs, charges, taxes or duties (including legal expenses on a full indemnity basis) incurred in good faith by or on behalf of the Supervisor in connection with:
- (a) **Deed preparation:** the preparation, execution and variation (and release when applicable) of this Deed and any registration costs in connection with it;
 - (b) **Exercise of powers:** the exercise or attempted or purported exercise by the Supervisor of any power or discretion conferred on the Supervisor by this Deed or in respect of any Debt Securities, or the performance of its duties, including the taking of any expert advice deemed necessary or expedient by the Supervisor;
 - (c) **Breach by NBS:** any breach, default or non compliance by NBS of or with any obligation under this Deed;
 - (d) **Meetings of Security Holders:** the convening of and attendance at any Meeting and the carrying out of any directions or resolutions of such Meeting;
 - (e) **Other matters:** any other matter from time to time agreed between the Supervisor and NBS.
- 6.3 **Payable on demand:** All expenses payable under clause 6.2 shall be payable on demand.
- 6.4 **Interest:** All expenses payable under clause 6.2 shall accrue interest from the date on which they become payable until payment (in full) at an interest rate of 2% above the



ordinary rate of interest payable by the Supervisor to its principal bankers at the relevant time on any overdraft.

- 6.5 **Liability not terminated:** The remuneration and payments payable under this clause 6 shall continue to be payable until NBS is finally wound-up.
- 6.6 **Regulatory levies:** NBS shall reimburse the Supervisor for any levies payable to the FMA, in such amounts as the Supervisor calculates, acting reasonably, as attributable to NBS.

7. COVENANTS BY NBS

7.1 **Covenants:** NBS covenants with the Supervisor that it will:

- (a) **Pay Outstanding Moneys:** pay the Outstanding Moneys when due and payable in accordance with this Deed and (where applicable) the Rules, the Act and the terms of the Debt Securities;
- (b) **Borrow money:** not borrow money or lend other than as permitted by this Deed and the Rules;
- (c) **Alteration of business:** not make any material alteration to the nature of its business as carried out at the date of the 2016 Amendment Deed;
- (d) **Liabilities:** not at any time permit its Total Liabilities to exceed 95% of Total Tangible Assets;
- (e) **Permitted Security Interests:** not at any time permit the aggregate indebtedness secured by Permitted Security Interests to exceed 1% of Total Tangible Assets;
- (f) **Exposure limit:** not at any time permit the amount owing to it under any credit facilities by a borrower or related group of borrowers to exceed the greater of:
- (i) 35% of capital (calculated in accordance with the relevant provisions of the Regulations as amended by any exemption granted to NBS pursuant to the RBNZ Act or NBDT Act (as applicable)); or
- (ii) 5% of Total Tangible Assets;

In this clause 7.1(f) "related group" means any person, partnership and/or other group of people which for trading, financial reporting, borrowing or other commercial purpose:

- (iii) acts as or is; or
- (iv) should (acting reasonably) be considered to be, one financial entity or group and includes a group of related (as defined in section 2(3) of the Companies Act 1993) companies;
- (g) **Comply with laws and Rules:** comply with:
- (i) all laws to which it may be subject including, without limitation, the Act, the NBDT Act, the FMC Act, the FMC Regulations and the Regulations;



- (ii) the Rules; and
 - (iii) the conditions of the licence granted to it by the Reserve Bank of New Zealand under the NBDT Act.
- (h) **Change to Act or Rules:** consult the Supervisor if there is any material amendment to the Act or the Rules, with a view to considering whether the provisions of this Deed remain appropriate in light of such amendment;
- (i) **Notice of breach or possible breach:** where NBS has reasonable grounds to believe that it has breached, may have breached, or is likely to breach, any of its Issuer Obligations in a material respect, the provisions of this Deed or the terms of the Debt Securities, notify the Supervisor in writing as soon as practicable of:
- (i) the breach or possible breach, and
 - (ii) the steps (if any) that NBS has taken or intends to take in light of the breach or possible breach and the date by which the steps were taken or are to be taken;
- (j) **Notice of default and proceedings:** immediately notify the Supervisor in writing of:
- (i) any default and the particulars of the default under any document or arrangement with any person; and
 - (ii) the commencement of any legal proceedings,
- that could materially adversely affect the interests of Security Holders;
- (k) **Lending and investment policies:** establish, maintain and operate its business in accordance with:
- (i) a lending policy that details the nature, terms and procedures to be adopted for lending by NBS; and
 - (ii) an investment policy that details the nature, terms and procedures to be adopted for investment of NBS's assets,
- and will not materially alter or amend these policies without the prior written consent of the Supervisor, which consent will not be unreasonably withheld and will be given by the Supervisor as soon as is reasonably practicable, and the Supervisor acknowledges that in some circumstances such consent may be required urgently;
- (l) **Issue Debt Securities:** not, without the prior written consent of the Supervisor, offer or issue any Debt Securities while NBS is in breach of any provisions of this Deed or the FMC Act;
- (m) **Amalgamation or restructure:** not amalgamate with another building society or other entity or (subject to clause 16) alter its legal status from that of a building society without the prior written consent of the Supervisor and, if the Supervisor considers it necessary (acting reasonably), a Special Resolution, provided that nothing in this clause 7.1(m) shall apply to a Permitted Amalgamation;

- (n) **Provide reports:** in addition, and without prejudice, to its obligations under clause 8, provide any reports, documents, records or information that the Supervisor (or a person authorised by the Supervisor to exercise its powers) requires NBS to provide, which may be about any matter relating to NBS and/or relevant to the performance of the Supervisor's duties and functions and include any forward-looking reports. Such reports, documents, records or information must be provided to the Supervisor (or other authorised person) within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor and (in the case of reports) be signed by any two Directors;
- (o) **Report serious financial problems:** if it becomes aware of information on the basis of which it could reasonably form the opinion that it is, or is likely to become, insolvent, as soon as practicable:
- (i) disclose to the Supervisor all information relevant to that matter that is in its possession or under its control and that was obtained in the course of, or in connection with, the performance of its functions; and
 - (ii) advise the Supervisor of the steps (if any) that it intends to take in respect of that matter and the date by which the steps are to be taken;
- (p) **Subsidiary:** not (directly or indirectly) form or acquire any Subsidiary without the prior written consent of the Supervisor. Without limiting clause 2.3(i), the Supervisor may, as a condition of its consent, require the Subsidiary to guarantee NBS's obligations under this Deed and in respect of the Debt Securities and may require amendments to this Deed to reflect such guarantee;
- (q) **Negative pledge:** not create or attempt to create or permit to subsist any Security Interest over any of its assets other than a Permitted Security Interest;
- (r) **No unlimited guarantee:** not enter into any guarantee for an unlimited amount;
- (s) **Disposal of undertaking:** not sell or transfer whether by a single transaction or any series of transactions (whether related or not) all or substantially all of its business, undertaking or assets;
- (t) **Not declare dividends:** not, without the prior written consent of the Supervisor:
- (i) make any return of paid-up capital or fixed capital shares;
 - (ii) pay any dividend out of annual surplus; or
 - (iii) make any distribution from any share premium account or reserve,
- while any Debt Security Moneys which have become due and payable and remain unpaid; and
- (u) **Not deal with associated person except on arms length basis:** not purchase any asset or services from, or dispose of any assets or provide any services to any associated person other than for full market value, on an arms-length basis and in the ordinary course of business.



7.2 Minimum capital, related party and liquidity restrictions:

- (a) **Definitions:** Except where the context otherwise requires, words and expressions defined in the Regulations shall, for the purposes of this clause 7.2, have the same meanings when used in this clause 7.2 and shall be calculated or determined in accordance with the relevant provisions of the Regulations (as amended by any exemption granted to NBS pursuant to the RBNZ Act or the NBDT Act (as applicable)).
- (b) **Covenants:** NBS covenants with the Supervisor as follows, at all times:
- (i) **Minimum capital:**
- (aa) for so long as NBS has no credit rating from an approved rating agency, NBS shall ensure that its capital ratio is not less than 10% (10 percent); and
- (bb) for so long as NBS has a credit rating from an approved rating agency, NBS shall ensure that its capital ratio is not less than 8% (8 per cent),
- where, in each case, the capital ratio is the ratio expressed as a percentage of NBS's capital to the sum of:
- (cc) NBS's risk weighted amount for credit risk; and
- (dd) NBS's aggregate amount for market risk and operational risk.
- (ii) **Related party exposures:** the maximum aggregate exposure of NBS to related parties will not exceed 15% of NBS's capital;
- (iii) **Liquidity requirements:** NBS will not permit the Total Liquid Assets of NBS to be less than 115% of any deficit (expressed as a positive number) arising from:
- (aa) the aggregate amount receivable by NBS in cash by way of principal and interest on all moneys due to NBS (excluding, for the avoidance of doubt, any such principal moneys from Liquid Assets) during the next three months (based on contractual maturities); less
- (bb) the aggregate of the total amount payable by NBS in cash by way of:
- (A) 40% of the Principal Moneys of the Debt Securities payable during the next three months (based on contractual maturities); and
- (B) 40% of Committed Undrawn Lending Facilities.

- 7.3 **Deposit Takers Regulations amendment:** Should the Regulations be amended or superseded to provide for amended minimum capital, related party restrictions or liquidity requirements, NBS and the Supervisor will (subject to compliance with clause 14) amend clause 7.2 to appropriately reflect the new minimum (or greater amount as agreed in writing) capital, related party restrictions or liquidity requirements.



7.4 **Benefit of covenants:** Without prejudice to clause 2.5, the Supervisor shall take and hold the benefit of all the covenants given by NBS under this Deed for the benefit of the Security Holders, except those relating to the Supervisor's fees and expenses, the indemnification of the Supervisor, and any other matters that are intended to be for the benefit of the Supervisor for its own account.

7.5 **Appointment of Auditor:**

- (a) **Consultation with Supervisor:** NBS must:
- (i) before recommending the appointment or reappointment of a person as an Auditor:
 - (aa) consult with the Supervisor on the appointment or reappointment; and
 - (bb) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
 - (ii) notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
 - (iii) not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.
- (b) **Specified Engagement:** NBS must, before recommending the appointment or reappointment of a person as the Auditor:
- (i) give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to NBS's compliance with this Deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) consult with the Supervisor on the nature and scope of any such engagement.
- (c) **Terms of Appointment:** NBS must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:
- (i) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of NBS being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of NBS being present, to discuss matters arising in the performance of the audit, review, or



engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement.

7.6 **Register:** NBS shall:

- (a) despite anything to the contrary in Regulation 107(b) of the FMC Regulations, establish and maintain a Register for the Debt Securities as required by the Act (if applicable) and the FMC Act. Each Register shall include all information and matters required by the Act (if applicable), the FMC Act (as if Regulation 107(b) of the FMC Regulations did not apply) and all other applicable laws, including:
 - (i) the name and address of the Security Holder;
 - (ii) particulars of any change of name and address;
 - (iii) the date on which the Debt Security was issued to the Security Holder;
 - (iv) the nature of the Debt Security including particulars of redemption, purchase or forfeiture;
 - (v) the amount of the Debt Security;
 - (vi) the maturity date of the Debt Security;
 - (vii) such other information as the Supervisor may reasonably require or NBS thinks fit; and
- (b) ensure each Register is audited in accordance with Regulation 109 of the FMC Regulations (as if Regulation 107(b) of the FMC Regulations did not apply) (or such other method as approved by the Supervisor) by the Auditor or such other auditor as approved by the Supervisor.

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

7.8 **Retention of documents:** NBS will in respect of each document required by or for the purposes of the FMC Act in respect of the Debt Securities or any offer of the Debt Securities and which is given, made or provided by or to NBS:

- (a) keep a copy of the document for a period of at least seven years from the date on which the document comes into the possession of NBS; and
- (b) comply with Regulation 112 of the FMC Regulations.

8. REPORTS AND INFORMATION FOR SUPERVISOR

8.1 **Information:** NBS covenants with the Supervisor that, from time to time for the duration of this deed:

- (a) **Accounting records:** it will keep proper accounting records in accordance with its obligations under the Act, the Financial Reporting Act 1993 and the FMC Act (as applicable) and all other applicable laws or regulations;



- (b) **Annual Return:** it will provide to the Supervisor within three months after the close of each financial year of NBS (or such further time as the Supervisor agrees in writing), a copy of the Annual Return of NBS prepared in accordance with section 103 of the Act and together with all documents and reports required by the Act to be annexed to or to accompany that Annual Return;
- (c) **Financial statements:** it will provide to the Supervisor, as soon as the same become available, but in any event within four months after the end of each of its financial years, its audited financial statements for that financial year prepared in accordance with Part 7 of the FMC Act;
- (d) **Half-yearly unaudited financial statements:** it will provide to the Supervisor, within three months after the close of each financial half year of NBS (or such further time as the Supervisor agrees in writing), its financial statements in respect of the previous financial half year prepared in accordance with section 92 of the Act, such financial statements must be prepared in accordance with GAAP;
- (e) **Monthly reporting:** it will, within one calendar month of the end of the reporting month (or such further time as the Supervisor may agree), provide to the Supervisor a certificate signed by any two Directors on behalf of the Board in such form as may be agreed (in writing) from time to time between the Supervisor and NBS and attaching copies of NBS's monthly management accounts including an unaudited statement of financial position, statement of financial performance and (if requested by the Supervisor acting reasonably) statement of cash flows;
- (f) **Auditor's report:** it will provide, or cause to be provided, to the Supervisor, at the same time as the Annual Return is provided under clause 8.1(b), a separate report by the Auditor containing the confirmations set out in Schedule 2 and any other matters required by section 106 of the Act and the FMC Act to be set out in the Auditor's report;
- (g) **Product Disclosure Statement:** it will:
 - (i) provide the Supervisor with an advanced draft copy of each Product Disclosure Statement or other offer document in respect of the Debt Securities to be issued by NBS at least three weeks (or such shorter period as the Supervisor may agree) before it is registered or distributed, as the case may be; and
 - (ii) promptly consider, address and/or action any feedback given by the Supervisor in relation to each Product Disclosure Statement, replacement Product Disclosure Statement or other offer document in respect of the Debt Securities;
- (h) **Other documents and information:** unless otherwise provided under this Deed, it will provide the Supervisor with a copy of any information or document that:
 - (i) it intends to supply the Registrar of Financial Service Providers for registration on the register entry for each regulated offer of Debt Securities;
 - (ii) is made publicly available pursuant to the requirements of the FMC Act; or
 - (iii) is provided to Security Holders,



at least five business days (or such shorter period as the Supervisor may agree) before such information or document is supplied, made publicly available, or provided.

8.2 Other Information:

- (a) **Information to Security Holders:** The Supervisor shall be entitled to receive all notices of, and other communications relating to, any Meeting that any Security Holder is entitled to receive.
- (b) **Attendance at Meetings:** Any representative of the Supervisor, being a person authorised to act for the purposes of this clause by resolution of the directors or other governing body of the Supervisor, shall be entitled to:
 - (i) attend any Meeting and any meeting of the Board; and
 - (ii) be heard at any Meeting that he or she attends on any part of the business of the Meeting that concerns the Supervisor as trustee in respect of the Debt Securities or the Security Holders.
- (c) **Other information:** NBS shall, from time to time and within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor:
 - (i) make available for its (or the Supervisor's authorised person's) inspection the whole of the accounting and other documents and records of NBS (including each Register);
 - (ii) give to the Supervisor (or the Supervisor's authorised person) such information as it requires with respect to all matters relating to those documents or records; and
 - (iii) give to the Supervisor copies of any reports or information required to be provided to the Reserve Bank of New Zealand, at the same time such information is provided to the Reserve Bank of New Zealand.

9. EVENT OF REVIEW

9.1 **Declaration:** The Supervisor may, by written notice to NBS, declare an Event of Review if:

- (a) **Event of Default:** an Event of Default has occurred; or
- (b) **Obligations in jeopardy:** an event has occurred that, in the reasonable opinion of the Supervisor, is likely to have a material adverse effect on NBS's ability to perform its obligations under this Deed or the Act as those obligations fall due; or
- (c) **Protect financial stability:** the Supervisor reasonably considers that such a declaration is necessary to protect the financial stability of NBS.

9.2 **Powers of Supervisor:** At any time after the Supervisor declares an Event of Review, it may give written notice to NBS advising that a nominee of the Supervisor is, with effect from the date of the notice, appointed as an observer at meetings of the Board until the matters giving rise to the Event of Review have been rectified. The Supervisor will allow

the Board up to 20 business days to explain to the Supervisor what will be done to rectify the matters giving rise to the Event of Review. If the Supervisor is not satisfied, acting reasonably, that NBS's explanation will rectify the matters giving rise to the Event of Review, the Supervisor may, having regard to the interests of Security Holders, give directions to NBS under clause 9.3.

9.3 **Directions:** Subject to clause 9.2, the Supervisor may give a direction to NBS under this clause relating to the management and administration of its business or prohibiting NBS from carrying on all or any part of its business activities. Such direction may:

- (a) **Transfer engagements:** require NBS to begin negotiation to transfer engagements on terms and conditions to be agreed by the Supervisor;
- (b) **Prohibitions:** prohibit NBS from:
 - (i) borrowing money; or
 - (ii) accepting a payment due by way of subscription for a Debt Security (other than a payment that became due before the giving of the direction); or
 - (iii) lending money; or
 - (iv) paying amounts due on Debt Securities for a period of up to 90 days (provided that acting upon a direction to do this shall not of itself, constitute an Event of Default); and
 - (v) accepting new Security Holders.

At least 10 business days' notice of a direction must be given under this clause and such direction must be in writing and must explain why the direction is being given and what the Supervisor expects to achieve by it.

9.4 **Cessation of Event of Review:**

- (a) **Supervisor to declare:** Unless the Supervisor has exercised its powers under clause 10.2, it shall declare that an Event of Review has ceased when it is satisfied, acting reasonably, that the events giving rise to the declaration of the Event of Review no longer exist or will no longer have a material adverse effect on the Security Holders.
- (b) **Board may request:** The Board may request in writing the Supervisor to make a declaration under clause 9.4(a), within 20 business days of the written request, either that the Event of Review has ceased or that it has not ceased. If the Supervisor declares that the Event of Review has not ceased, the Board may immediately request the President for the time being of the Institute of Chartered Accountants to appoint a suitably qualified and independent expert to investigate the affairs of NBS for the purposes of recommending whether the Supervisor should declare that the Event of Review has ceased.
- (c) **Independent expert recommendation:** Any independent expert appointed under clause 9.4(b) shall have regard to information provided to him or her by the Board and by the Supervisor for the purposes of making a recommendation. The independent expert must make a recommendation within 20 business days of his or her appointment. If the independent expert recommends that the Event of Review should cease, the Supervisor will take into account, but shall not be bound by, that recommendation. Following that recommendation, the Supervisor may (but is not obliged to) make a declaration

pursuant to clause 9.4(a) but only if, the Supervisor has not exercised its powers under clause 10.2.

- (d) **Effect of declaration:** A declaration by the Supervisor under clause 9.4(a) shall have the effect of revoking the powers of the Supervisor under clause 9.2 in relation to the Event of Review that has occurred and:
- (i) any direction given shall be of no further effect; and
 - (ii) the Supervisor shall no longer have the authority to appoint someone as an observer at meetings of the Board in relation to that Event of Review.

10. EVENTS OF DEFAULT

10.1 **Events of Default:** NBS will be considered to have committed an Event of Default under this Deed if:

- (a) **Non repayment of Debt Securities:** NBS fails to repay when due any Principal Moneys to a Security Holder in respect of any Debt Security (other than a failure that is due to or caused by a breakdown or error in the banking or payment system, that is not caused by and is outside the control of NBS, and that is remedied within three business days of the cessation of that breakdown or error); or
- (b) **Non payment of Interest:** NBS fails to pay any Interest or any other moneys (excluding Principal Moneys) when due in respect of any Debt Security or fails to pay any other Outstanding Moneys when due and that failure is not remedied within 14 days after the due date for payment (other than a failure that is due to or caused by a breakdown or error in the banking or payment system, that is not caused by and is outside the control of NBS, and that is remedied within three business days of the cessation of that breakdown or error); or
- (c) **Insolvency:** NBS:
 - (i) is declared or becomes bankrupt or insolvent, is unable to pay its debts when they fall due (other than a failure that is due to or caused by a breakdown or error in the banking or payment system, that is not caused by and is outside the control of NBS, and that is remedied within three business days of the cessation of that breakdown or error);
 - (ii) enters into dealings with or for the benefit of any of its creditors with a view to avoiding, or in expectation of, insolvency;
 - (iii) takes any corporate action or any other procedure or step is taken to make a general assignment or an arrangement, compromise or composition with or for the benefit of any of its creditors; or
 - (iv) stops or threatens to stop payments generally; or
- (d) **Breach of clause 7:** any of the covenants set out in clause 7 is breached and, in the case of a breach that is capable of remedy, remains unremedied for a period of 15 business days from the earlier of NBS becoming aware of the breach or the Supervisor requiring NBS to take steps to remedy it; or

- (e) **Breach of other obligations:** NBS fails to perform or comply with any of its other material obligations under this Deed and, in the case of a failure that is capable of remedy, that failure remains unremedied for a period of 20 business days from the earlier of NBS becoming aware of the breach or the Supervisor requiring NBS to take steps to remedy it; or
- (f) **Revocation of consent:** any authorisation of or registration with a governmental or public body or consent required to be obtained and maintained by NBS in connection with its business is not granted, is revoked, lapses or otherwise ceases to be in full force and effect without the position being rectified to the satisfaction of the Supervisor within 10 business days of the Supervisor giving NBS notice to do so; or
- (g) **Failure to report:** NBS fails to provide any Reporting Certificate by its due date (or such later date as agreed between NBS and Supervisor in writing); or
- (h) **Content of certificate:** any Reporting Certificate indicates that NBS is reasonably likely to be unable to satisfy amounts owing in respect of withdrawn or redeemed (as applicable) Debt Securities or any Interest during the 12 month period after that Reporting Certificate; or
- (i) **Misleading information:** There is:
 - (i) a statement in a Product Disclosure Statement for any Debt Security, any application form that accompanies that Product Disclosure Statement or the register entry for an offer of any Debt Security that is false or misleading or is likely to mislead;
 - (ii) an omission from a Product Disclosure Statement for any Debt Security or the register entry for an offer of any Debt Security, of information required to be contained in either of them by the FMC Act or the FMC Regulations; or
 - (iii) a circumstance that has arisen since the Product Disclosure Statement was lodged with the "Registrar" (in this clause, as defined in the FMC Act) that would have been required by the FMC Act or FMC Regulations to be disclosed or otherwise contained in the Product Disclosure Statement or the register entry, if it had arisen before the Product Disclosure Statement was lodged, and the circumstance is not disclosed or otherwise contained in the Product Disclosure Statement or the register entry,

and the matter is materially adverse from the point of view of the Security Holder, provided that NBS will not be considered to have committed an Event of Default if:

 - (aa) section 80 of the FMC Act applies to all the affected Debt Securities; and
 - (bb) NBS promptly complies with section 80 of the FMC Act in respect of all the affected Debt Securities; or
- (j) **Breach of Act:** NBS borrows or attempts to borrow money, or mortgages, or secures or attempts to secure any borrowings over, its property in breach of the Act, the Rules or this Deed; or
- (k) **Breach of NBDT Act:** NBS breaches any of its obligations under the NBDT Act or any regulations made under the NBDT Act; or

- (l) **Audit report:** an Auditor's report provided under clause 8.1(f) contains a statement which, in the reasonable opinion of the Supervisor, indicates that the interests of Security Holders may be materially prejudiced in the six months after the date of that report; or
- (m) **Winding up:** an order is made, or an effective resolution is passed, for the winding up, dissolution or cancellation of the registration of NBS under the Act (other than a winding up, dissolution or cancellation for an amalgamation, restructure or reconstruction permitted by clauses 7.1(m) or 16) or the Registrar of Building Societies cancels the registration of NBS under the Act (other than pursuant to Part 7A of the Act); or
- (n) **Cross Default:** as a result of the occurrence of any default, event of default, repayment event or cancellation event (in each case howsoever described and whether or not involving culpability on the part of any person), any indebtedness of NBS is declared to be or otherwise becomes, or becomes capable of being declared, due and payable prior to its scheduled maturity date; or
- (o) **Reduction in capital:** NBS, without the prior written consent of the Supervisor, reduces or redeems or attempts to reduce or redeem its paid up fixed capital or fixed capital shares; or
- (p) **Appointment of receiver:**
 - (i) An encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, inspector under any companies or securities law, or similar official, is appointed in respect of NBS or the whole or any part of its assets;
 - (ii) Any corporate action, legal proceedings or other procedure or step is taken for the appointment of any official referred to in sub-clause (i) above and is not stayed, discharged or withdrawn within five business days of being taken or, if earlier, by the date of appointment of the relevant official pursuant to the corporate action, legal proceedings or other procedure or step; or
- (q) **Enforcement:** Any Permitted Security Interest over any assets or assets of NBS is enforced or becomes enforceable; or
- (r) **Cessation of business or dissolution:** NBS ceases or threatens to cease to carry on all or substantially all of its business or operations; or
- (s) **Moratorium:**
 - (i) Any step is taken to appoint, or with a view to appointing, a statutory manager (including the making of any recommendation in that regard by the FMA) under the Corporations (Investigation and Management) Act 1989 in respect of NBS, or NBS or any associated person (as that term is defined in that Act) of NBS it is declared at risk pursuant to the provisions of that Act.
 - (ii) A moratorium is declared in respect of any indebtedness of NBS; or
- (t) **Litigation:** NBS is or becomes party to any litigation, tax claim or administrative or arbitration proceedings before or of any court, tribunal, arbitrator, or governmental agency, or to any dispute with any government, governmental agency or authority, which, if adversely determined, would be



likely to, in the reasonable opinion of the Supervisor, result in NBS becoming liable to a claim or penalty in excess, in aggregate of \$100,000 (or its equivalent in any other currency or currencies), except for frivolous or vexatious claims where the Supervisor is satisfied that NBS is contesting the same in good faith by appropriate proceedings; or

- (u) **Judgment amount:** A distress, attachment or other execution for a sum exceeding \$100,000 (or its equivalent in any other currency or currencies) is levied or enforced upon, or commenced against, any assets of NBS and is not discharged or stayed within 7 days, or a final judgment for a sum exceeding \$100,000 (or its equivalent in other currencies) is obtained against NBS and is not satisfied, stayed or discharged within 7 days.

10.2 **Supervisor's powers:** At any time after an Event of Default has occurred, the Supervisor may in its discretion, and shall immediately upon being directed to do so by:

- (a) a Special Resolution of the Security Holders, or each class of Security Holders that is or may be adversely affected by the Event of Default; or
- (b) Security Holders holding one-fifth of the total Principal Moneys of each class of Debt Security,

declare all the Debt Security Moneys of the relevant class(es), together with any accrued Interest to be immediately due and payable. Any such declaration must be made by notice in writing to NBS.

10.3 **Protection of Supervisor:**

- (a) **No liability:** To the maximum extent permitted by law, the Supervisor shall not be accountable for any losses that may occur in, or as a result of, the exercise, purported exercise or non-exercise of any of its rights, powers and remedies.
- (b) **Indemnity:** Without prejudice to the right of indemnity by law given to trustees or supervisors, the Supervisor and each of its officers, employees, attorneys or agents are entitled to be indemnified by NBS, on an unsubordinated basis, in respect of all liabilities and expenses incurred by it or any of them in the performance or exercise or attempted or purported performance or exercise of any of the trusts, powers, authorities or discretions conferred on the Supervisor or any of them by this Deed and against all actions, proceedings, costs, losses, claims and demands in respect of any matter or thing done or omitted in any way relating to this Deed other than liabilities, expenses, actions, proceedings, costs, losses, claims or demands that arise as a result of the Supervisor's failure to:
 - (i) act honestly in acting as a supervisor;
 - (ii) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Security Holders;
 - (iii) exercise reasonable diligence in carrying out its functions as a supervisor; or
 - (iv) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances,



and the Supervisor may retain and pay out of any moneys it holds upon the trusts of this Deed, all sums necessary to effect and satisfy that indemnity, together with the remuneration and reimbursements of the Supervisor as provided for in this Deed.

10.4 **Protection of persons dealing with Supervisor:** No person dealing with the Supervisor, or with any agent or attorney of the Supervisor, as the case may be, shall be concerned:

- (a) **Make enquiry:** to enquire:
 - (i) whether the powers that the Supervisor, agent or attorney, as the case may be, is purporting to exercise have become exercisable; or
 - (ii) otherwise as to the propriety or regularity of any exercise of the powers of the Supervisor; or
- (b) **Apply money:** to see to the application of any money paid to the Supervisor, agent or attorney, as the case may be.

In the absence of fraud on the part of any person, that person's dealing with the Supervisor shall be deemed, so far as regards the safety and protection of that person, to be within the powers conferred by this Deed and to be valid and effective accordingly.

10.5 **Receipt of Supervisor or Receiver:** Upon exercise of the powers of enforcement, and upon any other dealing or transaction under the provisions of this Deed, the receipt of the Supervisor of any amount shall discharge the payer's obligation to pay that amount.

10.6 **Supervisor's power to apply to court:** The Supervisor may at any time apply to the High Court for an order that the powers and trusts contained in this Deed be exercised and carried out under the direction of the Court and for the appointment of a receiver of all or any part of the property of NBS and for any other order or direction in relation to the execution and administration of the powers and trusts contained in this Deed as the Supervisor shall deem expedient and it may assent to or approve of or oppose any application to the Court made by or at the instance of any of the Security Holders and shall, subject to clause 10.3(b)(i) to (iv) be indemnified by NBS against all the costs, charges and expenses incurred by and in relation to any such application or proceedings.

10.7 **Interest of Security Holders:** In the execution or purported execution of any of the powers, authorities or discretions vested in the Supervisor under this Deed, the Supervisor will at all times regard to the best interests of the Security Holders.

11. DISTRIBUTION OF PROCEEDS AND PRIORITY

11.1 **Priority:** All moneys received by the Supervisor from or on behalf of NBS in respect of the Debt Securities on or after the date the Supervisor makes a declaration pursuant to clause 10.2 shall be held and applied (subject to any other interests having a prior claim in law and subject always to any direction made by any court):

- (a) first, in satisfaction of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor in accordance with the provisions contained in this Deed or pursuant to any directions given in any court order and of all remuneration payable to the Supervisor under this Deed (including any interest payable);

(b) secondly, in or towards payment to the Security Holders amongst themselves in proportion to the Debt Security Moneys owing to them respectively in respect of the Debt Securities held by them; and

(c) thirdly, to NBS.

11.2 **Payment of principal before interest:** If the Supervisor considers that, in the interests of Security Holders, it is expedient to do so, payment may be made on account of the Principal Moneys before any or all Interest is paid, but any such alteration in the order of payment shall not prejudice the right of any Security Holder to receive the whole amount to which it would have been entitled if the ordinary order of payment had been observed.

11.3 **Notice of distribution:** The Supervisor must give not less than 14 days' notice to the Security Holders of the time fixed for any payment to them under the provisions of clause 11.1 and after the day so fixed the Security Holders shall be entitled to Interest only on the balance (if any) of the Principal Moneys owing on the Debt Securities held by them and on the amount (if any) payable in respect of those Debt Securities on that day.

12. TAXES

12.1 **Payments to be free and clear:** All sums payable in respect of the Debt Securities must be paid:

(a) free of any restriction or condition;

(b) free and clear of, and (except to the extent required by law or as provided in this clause 12) without any deduction or withholding on account of, any taxes; and

(c) (except to the extent required by law or as provided in this clause 12) without deduction or withholding on account of any other amount whether by way of set-off or otherwise.

12.2 **Non-resident withholding tax:** Where New Zealand's non-resident withholding tax regime applies to a payment made to Security Holders (including, if applicable, any person who beneficially derives interest under the Debt Security), non-resident withholding tax will be deducted from payments of Interest (or payments deemed by law to be interest) to such a Security Holder. Unless otherwise stated in the terms the Debt Securities or the relevant Security Holder notifies NBS that it elects that non-resident withholding tax be deducted from payments to it instead of Approved Issuer Levy, if NBS is lawfully able to pay Approved Issuer Levy in respect of any payment of Interest (or deemed interest) to such a Security Holder or apply the zero percent rate of Approved Issuer Levy, and elects to do so in respect of the Debt Securities, NBS shall pay any required Approved Issuer Levy to the appropriate authority and shall deduct and retain for its own benefit an amount equal to the amount so paid from the Interest (or deemed interest) payable to those Security Holders in lieu of deducting non-resident withholding tax from that payment at the rate otherwise applicable.

12.3 **Resident withholding tax:** Where New Zealand's resident withholding tax regime applies to a payment made to Security Holders (including, if applicable, any other person who beneficially derives interest under a Debt Security), resident withholding tax will be deducted from payments of Interest (or payments deemed by law to be interest) to such a Security Holder unless the Security Holder is able to establish to the satisfaction of NBS either by means of an appropriate exemption certificate or otherwise before the Record Date for the relevant payment that no such tax need be deducted.



- 12.4 **No gross-up:** NBS will not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made under clauses 12.2 or 12.3. If, in respect of a Debt Security, NBS becomes liable to make any payment of, or on account of, tax payable by any Security Holder (including, if applicable, any other person who beneficially derives interest under a Debt Security), then NBS shall be indemnified by the relevant Security Holder in respect of such liability, together with any interest or penalties imposed in relation thereto. Any moneys paid by NBS in respect of such liability may be recovered from the relevant Security Holder as a debt due to NBS and may be withheld from any further payments to the Security Holder. Nothing in this clause 12.4 will prejudice or affect any other right or remedy of NBS.
- 12.5 **Maximum rate:** Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Security Holder (or, if applicable, any person who beneficially derives interest under a Debt Security) provides evidence to NBS (acceptable to it) that a lesser rate is applicable.
- 12.6 **Information:** A Security Holder must, before the first Record Date, notify NBS of its country of residence for tax purposes and, if the Security Holder is not tax resident in New Zealand, whether the Security Holder is engaged in business in New Zealand through a Fixed Establishment in New Zealand and whether the Notes are held in connection with such Fixed Establishment. A Security Holder must notify NBS prior to any subsequent Record Date of any change in circumstances from those previously notified, or provide any other information requested, that could affect the payment or withholding obligations of NBS.
- 12.7 **Tax status:** NBS shall be entitled for the purposes of this clause 12 to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Security Holder in relation to the information required by clause 12.6, and to regard the Security Holder entered in the Register as the only beneficial owner of, or the only persons who beneficially derives Interest under, the Debt Securities.
- 12.8 **FATCA:**
- (a) NBS may withhold or make deductions from payments due to a Security Holder in respect of a Debt Security where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Security Holder or a beneficial owner of Debt Securities may be subject to FATCA or has breached its FATCA obligations, and may deal with such payment in accordance with the obligations of NBS under FATCA. If any withholding or deduction arises under or in connection with FATCA as contemplated by this clause 12.8(a), NBS will not be required to pay any further amounts on account of such withholding or deduction to a Security Holder or otherwise reimburse or compensate, or make any payment to, a Security Holder or a beneficial owner of Debt Securities for or in respect of any such withholding or deduction.
- (b) A Security Holder will, within ten business days of request by NBS, supply to NBS such forms, documentation and other information relating to its status under FATCA or any other matter as NBS reasonably requests for the purposes of NBS's compliance with FATCA.

13. WAIVER BY SUPERVISOR

- 13.1 **Waiver:** Subject to clause 14 (if applicable) and to any written direction or request given to the Supervisor by a majority of Security Holders by nominal value, the Supervisor may at any time and from time to time by written notice to NBS waive, in whole or in part



and for a specified period or completely on such terms and conditions (if any) as it sees fit, any Event of Review or Event of Default or any anticipated Event of Review or Event of Default or any breach or anticipated breach by NBS of any covenant, condition, agreement or other provision expressed or implied in this Deed (other than an Event of Default of the kind referred to in clause 10.1(a) and 10.1(b), which may be waived only with the consent of the Security Holders concerned) provided the Supervisor is satisfied that such waiver will not have a material adverse effect on the Security Holders.

14. AMENDMENTS TO DEED

14.1 **Amendments:** Any amendment to this Deed must be made by means of a deed executed by the Supervisor. The provisions of this Deed may not be amended or replaced unless the amendment or replacement is made:

- (a) with the consent of the Supervisor; or
- (b) under section 109 of the FMC Act (despite anything to the contrary in this Deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this Deed), or under sections 22(7) or 37(6) of the Financial Markets Supervisors Act or any other power to amend or replace this Deed under an enactment.

14.2 **Supervisor consent:** The Supervisor must not consent to an amendment to, or a replacement of, this Deed unless:

- (a) either:
 - (i) the amendment or replacement is approved by, or is contingent on approval by, the Security Holders; or
 - (ii) NBS and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Security Holders; and
- (b) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this Deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.

14.3 **Security Holder consent:** The approval of the Security Holders for the purposes of clause 14.2(a)(i) must be the approval of a Special Resolution of:

- (a) the Security Holders; or
- (b) each class of Security Holders that is or may be adversely affected by the amendment or replacement.

14.4 **Notification:** Notice of any such amendment made to this Deed under clause 14.1, including a description of the amendment, shall be provided by NBS to the Security Holders within ten business days of the amendment being made, unless the Supervisor notifies NBS that such notification is not required to be provided to the Security Holders or that it would be appropriate to give notice of the amendment in some other manner.

15. MEETINGS

15.1 **Schedule to apply:** The provisions of schedule 1 shall govern any Meeting convened under this Deed.



15.2 **FMC Regulations:** Regulation 78 and Schedule 11 of the FMC Regulations (other than clauses 2 and 5 of Schedule 11 of the FMC Regulations) do not apply to this Deed.

16. RECONSTRUCTION

16.1 **Reconstruction:** Nothing in this Deed shall be construed as preventing the reconstruction of NBS from a building society registered under the Act into a company registered under the Companies Act 1993.

16.2 **Supervisor to assist:** If the Security Holders, by Special Resolution, approve a reconstruction of the nature referred to in this clause 16, the Supervisor and NBS shall use all reasonable endeavours to assist with such reconstructions having regard to the duties and powers of each party under this Deed.

17. NOTICES

17.1 **Method:** Each notice, agreement and other communication (each a "**communication**") to be given, delivered or made under this Deed is to be in writing but may be sent by personal delivery, post, facsimile or, if the recipient so agrees, by electronic transmission.

17.2 **Addresses:** Each communication under this Deed is to be sent to the address, email address or facsimile number of the relevant party set out below or to any other address from time to time designated for that purpose by at least five business days' prior notice to the other. The initial details of the parties are:

Supervisor: Covenant Trustee Services Limited
Level 6
Crombie Lockwood Tower
191 Queen Street
Auckland 1010

PO Box 4243
Shortland Street
Auckland 1140

Facsimile No: +64 9 302 1037

Email address: team@covenant.co.nz

Attention: General Manager - Covenant Trustee Services Limited

Nelson Building Society: 111 Trafalgar Street
Nelson 7010

PO Box62
Nelson 7040

Facsimile No: +64 3 548 8900

Email address: ken@nbs.co.nz

Attention: General Manager

17.3 **Receipt:** A communication under this Deed will only be effective:

- (a) **Delivery:** in the case of personal delivery, when delivered;
- (b) **By post:** if posted, three business days after being deposited in the post postage prepaid in an envelope addressed to it at that address;
- (c) **By facsimile:** if made by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile number of the recipient designated for the purpose of this Deed; and
- (d) **By email:** if made by e-mail, on the date the email was sent,

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

18. REGISTRATION OF DEED

18.1 **Registration:** NBS shall immediately, and at its own cost, register or procure all necessary registrations and recordings of this Deed as may be required by law and as may be necessary to give full legal effect to this Deed and shall pay all registration fees and other expenditure incidental to the registration and cost of registration.

19. OTHER LAWS

19.1 **Relationship with other laws:**

- (a) The rights, powers and remedies provided in this Deed are in addition to, and not exclusive of, any rights, powers or remedies provided by law.
- (b) If any provision in this Deed conflicts with the provisions of any law or any provisions implied by any law then:
 - (i) if the provisions of or implied by that law may be varied or negated, the provisions of this Deed will take precedence and the provisions of or implied by that law will be deemed not to apply to this Deed or to apply only as varied by the provisions of this Deed; or
 - (ii) if the provisions of or implied by that law may not be varied or negated, then the provisions of this Deed shall be read subject to the provisions of or implied by that law.

20. APPOINTMENT OF ATTORNEY

20.1 **Appointment:** Subject to clause 20.4, NBS irrevocably appoints:

- (a) the Supervisor; and
- (b) each of the Supervisor's officers for the time being,

severally to be its attorney or attorneys and in its name and on its behalf to enter into, execute, sign and do all assurances, deeds, instruments, acts and things which are, in the opinion of the attorney, necessary or expedient for the purposes of giving to the Supervisor the full benefit of any of the provisions of this Deed, and generally to use

NBS's name in the exercise of all of the powers, rights and remedies conferred by this Deed or at law on the Supervisor.

- 20.2 **Power to delegate:** Each such attorney has full power to delegate a power of attorney to any person for any period.
- 20.3 **Conflicts:** Subject to clause 20.4, each such attorney may exercise or concur the exercise of its powers even if the attorney has a conflict of duty or a direct or personal interest in the means or result of the exercise of such powers.
- 20.4 **Circumstances permitting appointment:** Each such attorney may only exercise its powers conferred by this clause 20.4 if:
- (a) an Event of Default has occurred and is continuing in respect of NBS; or
 - (b) the Supervisor otherwise reasonably determines that the circumstances justify the exercise of such power (and, except where impractical to do so, notifies NBS prior to the exercise of such power; if prior notice is not given, the Supervisor must provide such notification as soon as practical thereafter).
- 20.5 **Ratification:** Subject to clause 20.4, NBS ratifies and confirms and agrees to ratify and confirm whatever any such attorney or attorneys may do or purport to do in accordance with the powers conferred by this clause 20.

21. INVALIDITY

- 21.1 **Invalidity:** If any provision of this Deed shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22. RELEASE

- 22.1 The Supervisor **will**, upon being reasonably satisfied that no moneys are actually or contingently owing under this Deed or any Debt Security, execute a discharge of this Deed whenever requested by NBS so to do, but any such discharge will be without prejudice to any indemnity given by NBS in favour of the Supervisor or any unremedied breach or unperformed obligation under this Deed.

23. GOVERNING LAW

- 23.1 **Governing law:** This deed is governed by the laws of New Zealand.
- 23.2 **Jurisdiction:** The courts in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed).



SIGNED AS A DEED

[Execution blocks omitted]

Garry Dayman

PAUL BELL




SCHEDULE 1 MEETINGS OF SECURITY HOLDERS

1. INTERPRETATION

"Special Resolution" means a resolution approved by Security Holders holding Debt Securities with a combined nominal value of no less than 75% of the nominal value of the Debt Securities held by Security Holders who are entitled to vote and who vote on the question.

"Working Day" has the meaning given to it in the Interpretation Act 1999.

Classes: In this schedule, references to "Debt Securities" and "Security Holder" are references to the Debt Securities of the relevant class only and the Security Holders of the relevant class of Debt Securities only. For the purposes of this schedule, NBS (acting reasonably and in consultation with the Supervisor) may at any particular time, for any particular purpose, determine what constitutes a separate class of Debt Securities.

2. CONVENING MEETINGS

- (a) NBS may convene a Meeting at any time.
- (b) At the request in writing of Security Holders that hold Debt Securities that have a combined nominal value of no less than 5% of the nominal value of the Debt Securities in that class, NBS must summon a Meeting of that class. The request must state the nature of the business proposed to be dealt with at the meeting concerned.
- (c) At the request in writing of the Supervisor, in relation to any class of Debt Securities, NBS must summon a meeting of Security Holders holding that class of Debt Securities.
- (d) Meetings will be held in **Nelson**, or such other place as the Supervisor approves.

3. NOTICE TO SECURITY HOLDERS

NBS must ensure that written notice of the time and place of a Meeting is sent to the following at least 15 Working Days before the Meeting:

- (a) every Security Holder entitled to receive notice of the meeting;
- (b) the Supervisor; and
- (c) every Director and an Auditor of NBS.

4. NOTICE OF MEETING

- (a) The notice given under regulation 3 must state:
 - (i) the nature of the business to be transacted at the Meeting in sufficient detail to enable a Security Holder to form a reasoned judgment in relation to it;
 - (ii) the text of any Special Resolution to be submitted to the Meeting; and

- (iii) the right of a Security Holder to appoint a proxy.
- (b) If a Special Resolution is to be submitted to the Meeting:
 - (i) a draft of the proposed notice of the meeting must be given to the Supervisor at least 10 Working Days before the notice is given under regulation 3 (or any lesser period approved by the Supervisor); and
 - (ii) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the Supervisor has provided those comments in writing to NBS at least 5 Working Days before the notice is given under regulation 3).
- (c) An irregularity in a notice of a meeting is waived if:
 - (i) all Security Holders entitled to attend and vote at the Meeting attend the Meeting without protest as to the irregularity, or if all such Security Holders agree to the waiver; or
 - (ii) the Supervisor indicates at the Meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Security Holders.
- (d) The accidental omission to give notice of a Meeting to, or the failure to receive notice of a meeting by, a Security Holder does not invalidate the proceedings at that Meeting.
- (e) If a Meeting is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned Meeting other than by announcement at the Meeting that is adjourned.

5. CHAIRMAN

A person (who may, but need not, be a Security Holder) nominated in writing by the Supervisor will be entitled to chair every such meeting, but if no such nomination is made, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the holding of such Meeting, the Security Holders present must choose one of their number to chair the Meeting.

6. QUORUM

- (a) No business may be transacted at a meeting of Security Holders if a quorum is not present.
- (b) A quorum for a meeting of Security Holders at which a Special Resolution is to be submitted is present if Security Holders or their proxies are present who hold Debt Securities with a combined nominal value of no less than 25% of the nominal value of the Debt Securities held by those Security Holders who are entitled to vote on the business to be transacted at the Meeting.
- (c) A quorum for any other business at a meeting of Security Holders is present if at least 2 Members or their proxies are present.

7. LACK OF QUORUM AND ADJOURNMENT

- (a) Despite regulation 6(a), if a quorum is not present within 30 minutes after the time appointed for the Meeting:

- (i) in the case of a Meeting called under section 120(1)(b) of the FMC Act, the Meeting is dissolved; and
 - (ii) in the case of any other Meeting, the Meeting is adjourned to the day that is 10 Working Days after the date appointed for the Meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the Meeting, the Members or their proxies present are a quorum.
- (b) To avoid doubt, a Security Holder participating in a Meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

8. ATTENDANCE AND VOTING AT MEETINGS

- (a) Except for the Supervisor, NBS and their representatives (who may attend but may not vote, except in the case of the Supervisor where it is acting on behalf of a Security Holder), no person will be entitled to attend and vote at any Meeting or to join with others in requesting the convening of any such Meeting unless he is a Security Holder or is a representative of such Security Holder.

In this clause, a "**representative**" means:

- (i) in the case of a Security Holder 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 Supervisor); and
 - (ii) a person upon whom the ownership of a Security Holder's Debt Security has devolved by reason of them being a legal representative or an assignee in bankruptcy or liquidator of the Security Holder, or such person's representative appointed or authorised under (i) above.
- (b) At a Meeting, the persons registered as Security Holders at the Proxy Closing Time will be exclusively entitled to vote, in person or by representative. For the purpose of establishing voting entitlements at a Meeting, the Register 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 closed or adjourned.
- (c) The Supervisor, or any of its officers or employees, may be appointed a representative of a Security Holder.

9. PROXIES

- (a) The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney.
- (b) A person appointed to act as a proxy need not be a Security Holder.
- (c) A proxy of a Security Holder shall have the right to speak at the Meeting.
- (d) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified in such manner as the Supervisor approves must be deposited at such place as (or a facsimile copy of such proxy and power of attorney must be received at such facsimile number as) the Supervisor or NBS with the approval of the Supervisor may in the notice convening the Meeting direct or (if no such place

is appointed) at the registered office of NBS not later than the Proxy Closing Time.

- (e) An instrument of proxy may be in any usual common form or in such other form as the Supervisor approves and may make provision for directions to be given by the appointor to vote in favour of or against any proposed resolution.
- (f) A proxy will, unless it states otherwise, be valid for any adjournment of the Meeting as well as for the Meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy no instrument of proxy will be valid after the expiration of 12 months from the date of its execution, although this provision does not apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.
- (g) An instrument of proxy in favour of:
 - (i) the chairman of NBS; or
 - (ii) the chairman of the Meeting, or "the chairman",

(howsoever expressed) will be valid and effectual as though it were in favour of a named person and shall in the case of sub-clause (i) above constitute the person holding the office of the chairman of NBS and in the case of sub-clause (ii) above the person who chairs the Meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointor.

10. RIGHTS OF REPRESENTATIVES

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

11. VOTING PROCEDURE AND POLLS

- (a) A resolution (other than a Special Resolution) put to the vote of a Meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or the Supervisor or by not less than Security Holders that hold Debt Securities that have a combined nominal value of no less than 5% of the nominal value of the Debt Securities in that class. Unless a poll is so demanded or required a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. A poll is required for a Special Resolution.
- (b) On a show of hands each person present at the Meeting and entitled to vote (whether personally, by proxy or as a representative) will have one vote only. On a poll every Security Holder who is present in person, by proxy or by a representative will have one vote for every \$1 of Principal Moneys held by that Security Holder.
- (c) If a poll is required, it will be taken in such manner as the chairman may direct and the result of such poll will be deemed to be the resolution of the Meeting at which the poll was required.
- (d) In the case of an equality of votes whether on a show of hands or on a poll, the chairman of the Meeting at which the show of hands takes place or at which

the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Security Holder or on behalf of Security Holders.

- (e) A poll demanded on the election of a chairman or the Supervisor or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the Meeting) and place as the chairman may direct. The result of such poll will be deemed to be the resolution of the Meeting at which the poll was demanded. No notice need be given of a poll.
- (f) 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.
- (g) On a poll, votes may be given either personally or by representative, and a person entitled to more than one vote need not use all such votes or cast all such votes in the same way.
- (h) In the case of joint Security Holders, the vote of the senior who tenders a vote, whether in person or by representative, will be accepted to the exclusion of the votes of the other joint Security Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
- (i) A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or the authority under which the proxy was executed provided that no intimation in writing of such death, insanity, liquidation or revocation is received by the Supervisor or NBS at its registered office before the commencement of the Meeting or adjourned Meeting at which the proxy is used.
- (j) A resolution passed at a Meeting duly convened and held in accordance with this deed will be binding upon all the Security Holders whether present or not at such Meeting.

12. SPECIAL RESOLUTIONS

12. A Meeting of the Security Holders, in addition to the powers expressed in this Deed, but without prejudice to any powers conferred on the Supervisor by this Deed, has the following powers exercisable by Special Resolution namely:
- (a) **Sanction release of Debt Securities:** to sanction, either unconditionally or conditionally, the release of NBS from the payment of all or any part of the total Debt Security Moneys;
 - (b) **Sanction exchange of Debt Securities:** to sanction the exchange, or the conversion, of Debt Securities into deposits, shares, stock, debentures, debenture stock or other obligations or securities of NBS or another company;
 - (c) **Sanction postponement or acceleration of Debt Securities:** to postpone or (with the agreement of NBS except no agreement is required following an Event of Default) accelerate, the day when the Principal Moneys of the Debt Securities shall become payable and to suspend or postpone for a time the payment of Interest on the Debt Securities;

- (d) **Sanction alteration of rights of Security Holders:** to sanction any alteration, modification, variation or compromise or any arrangement in respect of the rights of the Security Holders against NBS;
- (e) **Assent to modification of terms or this deed:** to assent to any alteration, modification, variation or addition to the provisions contained in this Deed or terms of the Debt Securities;
- (f) **General power:** to sanction, assent, release or waive any breach or default by NBS under any of the provisions of this Deed;
- (g) **Discharge liability:** to discharge or exonerate any person or persons from the liability in respect of any act or omission for which such person or persons may have become responsible under this Deed;
- (h) **Sanction scheme for reconstruction:** to sanction any scheme for the reconstruction of NBS or for the amalgamation or transfers of engagements of NBS with any other corporation;
- (i) **Remove Supervisor:** to remove the Supervisor and to appoint or approve the appointment of, a new Supervisor;
- (j) **Direct Supervisor:** to authorise or direct the Supervisor to concur in and execute any supplemental deed or other document.

12.2 A Special Resolution passed in accordance with this schedule will be binding upon all Security Holders and each of the Security Holders and the Supervisor (subject to the provisions for the Supervisor's indemnity contained in this Deed) will be bound to give effect to that resolution accordingly and the passing of any such Special Resolution will, as between the Security Holders and the Supervisor, be conclusive evidence that the circumstances justify the passing thereof.

13. MINUTES

Minutes of all resolutions and proceedings at every Meeting must be made and duly entered in records to be from time to time maintained for that purpose at the expense of NBS by the Supervisor. Any such minutes signed by the chairman of the Meeting at which such resolutions were passed or proceedings transacted, or by the chairman of the next succeeding Meeting, will be prima facie evidence of the matters recorded in them. Until the contrary is proved, every Meeting whose proceedings have been so minuted and signed will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed and transacted. Copies of all minutes must be given by the Supervisor to NBS as soon as possible after each Meeting.

14. METHOD OF NOTICE

Except where notice by post is required by law and provided the relevant Security Holder has consented in writing to receive notices electronically, notice may be given to Security Holders by electronic means at the email address last entered in the Register.

15. ADJOURNMENT BY CHAIRMAN

15. In addition to an adjournment under regulation 7 above, the chairman may, with the consent of (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 except business that might lawfully have been transacted at the Meeting from which the adjournment took place.

**SCHEDULE 2
FORM OF AUDITOR'S REPORT**

1. In accordance with clause 8.1(f) of the trust deed dated [] between Nelson Building Society ("**NBS**") and Covenant Trustee Services Limited ("**Supervisor**"), as Auditor of NBS for the year ended [] we report that to our best knowledge and belief:
- (a) that in the performance of its duties as Auditor:
- (i) whether or not, the Auditor has become aware of any matter which, in its opinion, is relevant to the exercise or performance of the powers or duties of the Supervisor and, if so, giving particulars of such matters;
 - (ii) whether or not, the audit has disclosed any matter calling, in their opinion, for further investigation by the Supervisor in the interests of the Security Holders and, if so, giving particulars of such matters;
 - (iii) subject to section 200(2) of the Financial Markets Conduct Act 2013 ("**FMC Act**"), whether or not, the audit has disclosed any serious problem (as defined in section 199 of the FMC Act);
 - (iv) that the Auditor has perused the certificates given by the Directors under clause 8.1(e) since the last report by the Auditor and whether or not, so far as matters which observed and the performance of the Auditors duties are concerned, the statements made in those certificates are not unreasonable;
 - (v) whether or not the method of valuation of assets and liabilities disclosed in the annual financial statements have been made on a consistent basis with the stated policies in prior periods;
 - (vi) that for the financial year the Register has been audited and whether or not NBS has duly maintained each Register required by the Trust Deed and (if applicable) the FMC Act;
 - (vii) as at the end of the financial year covered by the relevant statement of financial position and statement of financial performance:
 - (aa) the aggregated Principal Moneys;
 - (bb) the capital ratio of NBS calculated in accordance with clause 7.2(b); and
 - (cc) the amount of Total Tangible Assets and the amount of Total Tangible Assets that are held as Liquid Assets.