

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKAURAU ROHE

CIV-2022-404-1993

**UNDER** Part 7 of the High Court Rules 2016 and Part 15A of  
the Companies Act 1993

**IN THE MATTER OF** **RUAPEHU ALPINE LIFTS LIMITED**  
**(ADMINISTRATORS APPOINTED)**

**AND** of an application by **JOHN HOWARD ROSS FISK**  
and **RICHARD JOHN NACEY**, as Administrators of  
**RUAPEHU ALPINE LIFTS LIMITED**  
**(ADMINISTRATORS APPOINTED)**

Applicants

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**AFFIDAVIT OF JOHN HOWARD ROSS FISK IN SUPPORT OF ORIGINATING  
APPLICATION WITHOUT NOTICE FOR ORDERS RELATING TO VOLUNTARY  
ADMINISTRATION**

Affirmed: *18* November 2022

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**BUDDLE FINDLAY**

Barristers and Solicitors  
Auckland

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I, **JOHN HOWARD ROSS FISK**, of Auckland, Chartered Accountant and a New Zealand Licensed Insolvency Practitioner, solemnly and sincerely affirm:

### **Background**

1. I am a partner at PricewaterhouseCoopers (**PwC**) in Auckland, a Chartered Accountant and Fellow of the Institute of Chartered Accountants of New Zealand. I was admitted as a full member of that organisation in November 1989. I hold a certificate of public practice. I am also a licensed insolvency practitioner under the Insolvency Practitioners Regulation Act 2019 (**IPRA**).
2. The second named applicant, Richard John Nacey, is also a partner at PwC, in Wellington. Mr Nacey specialises in corporate recovery and insolvency. He is a member of the Chartered Accountants Australia and New Zealand, holds a certificate of public practice, and he is a licensed insolvency practitioner under the IPRA.
3. As discussed in Mr Nacey's affidavit affirmed on 16 October 2022 and filed in this proceeding, Mr Nacey and I were appointed as joint as several administrators of Ruapehu Alpine Lifts Limited (**Company**) on 11 October 2022 at 3:55pm.
4. I annex a paginated exhibit bundle of true copy documents to this affidavit marked "**JF-1**". References in this affidavit and page numbers in the format JF-1 are references to pages in that bundle.
5. This affidavit is made in support of a without notice interlocutory application for orders under s 239ADO of the Companies Act 1993 (**Act**) limiting our liability under the Term Loan Facility Deed dated 17 November 2022 (**Facility**) given by ANZ Bank New Zealand Limited (**ANZ**) and Crown Regional Holdings Limited (**CRHL**) to the available assets of the Company and any available statutory and equitable indemnities of the applicants in relation to those assets, except to the extent agreed under the Facility.

### **Events since Mr Nacey's 16 October 2022 affidavit**

6. Following our appointment as Administrators, and subsequent to Mr Nacey's 16 October 2022 affidavit, we have carried out numerous tasks, including:
  - (a) We held the first creditors' meeting on 21 October 2022. We had approximately 500 creditors attend in Auckland, at Whakapapa, and in Wellington. The creditors elected a creditors' committee, comprised of



Greg Stebbing (for the Sky Waka Bond Holders), James Fisher (for Company staff), Malcolm Frew (for ANZ), Robert Krebs and Sam Clarkson (for Life Pass Holders) and Sharon Cresswell (for The Lines Company).

- (b) We have met with Ngāti Tūwharetoa, Ngāti Rangi and Uenuku who are tangata whenua on several occasions;
- (c) We have met and corresponded with central Government (including the Department of Conservation and the Ministry of Business, Innovation, and Employment) and with local government (including the Ruapehu District Council and the Taupō District Council) on several occasions to discuss the future of the Company, restructuring options, and the concessions on which the Company operates the ski fields;
- (d) We have met and corresponded with staff, life-pass holders, creditors and other interested parties such as the media;
- (e) We have conducted various analyses of the Company, including reviewing the Company's insurance and health and safety, identifying surplus assets, valuing assets, and in relation to other general trading matters;
- (f) We have met and corresponded with ANZ and CRHL to obtain funding to enable us to continue the administration and consider restructuring options for the Company, as I discuss below; and
- (g) We have also had discussions with various parties who are interested in purchasing the business and in providing funding to support the business in remaining open.

#### **Discussions with ANZ and CRHL**

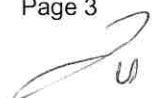
7. Following our discussions with ANZ and CRHL (together, **Lenders**), we have agreed the Facility with them, which provides for further funding to enable the Company to continue trading and for CRHL to develop a restructuring proposal (**JF-1/1**) (subject to us obtaining Court orders limiting our personal liability). The Facility is necessary because without it the Company will not be able to continue trading. If that were to occur, we would need to put the Company into liquidation, which (as detailed in Mr Nacey's 16 October 2022 affidavit) would be the worst possible outcome for all creditors and stakeholders because it would trigger significant remediation costs. I note

that contact details in the execution block of the copy of the Facility annexed have been redacted on the basis that the contact details are irrelevant, personal and confidential information.

8. The Lenders have proposed the Facility in contemplation of the watershed meeting being held on or before 16 December 2022. If we can develop a restructuring proposal on terms acceptable to the Lenders, it will be proposed by CRHL in a deed of company arrangement at the watershed meeting.
9. I annex a spreadsheet showing the approximate amounts of the Company's assets and liabilities (**JF-1/47**).
10. We are unwilling and unable to drawdown under the Facility without an order from the Court limiting our personal liability to the amount of the Company's available assets. As detailed in the annexed spreadsheet referred to above, there is a risk that in the absence of the order, we would incur personal liability for the Facility.
11. ANZ and CRHL have confirmed that they consent to the orders we are seeking. I understand that the application will be served on ANZ and CRHL and a consent memorandum will be filed confirming that they consent.
12. I am not aware of any prejudice to the Company's other creditors. We believe that limiting our liability is in the best interests of the Company's other creditors, even though the Facility will increase the amount of the secured debt of the Company (but with a corresponding introduction of funds to the Company). This is because without the Facility, the Company could not continue trading, which would bring with it the consequences of liquidation referred to above. Our lawyers intend to serve this application on the Company's creditors at the same time it is filed (by email and upload to PwC's website), and the proposed orders reserve leave for the Company's creditors to apply to vary the orders.
13. If I receive notice of any objection from the Company's creditors before any orders are made, I will ensure that the Court is aware of that objection.


**Without notice application**

14. I believe it is appropriate for this application to be on a without notice basis because service on the Company's creditors would be an added expense to the administration and highly impractical given the number of parties to serve.




15. The orders sought are, in my view, in the best interests of the Company's creditors.
16. If the Court makes the orders sought, we propose to:
  - (a) advertise the orders in *The New Zealand Herald* and *The Dominion Post*; and
  - (b) post of copy of the Court's orders on PwC's website; and
  - (c) email a copy of the Court's orders to each creditor's email address by which the Company normally communicates with that creditor (to the extent such exists).

Affirmed at *Auckland* )  
 this *18<sup>th</sup>* day of November 2022 )  
 )

  
 \_\_\_\_\_  
**John Howard Ross Fisk**

Before me:

  
 \_\_\_\_\_  
 A Solicitor of the High Court of New Zealand

S C Gaanesh Prkash Seger  
 Solicitor  
 Auckland

# JF-1

Paginated exhibit bundle

**EXHIBIT NOTE:**

This is the exhibit marked "JF-1" referred to in the affidavit of **JOHN HOWARD ROSS FISK** affirmed at Auckland on this 18<sup>th</sup> day of November 2022 before me:

Signature:   
A Solicitor of the High Court of New Zealand

S C Gaanesh Prkash Seger  
Solicitor  
Auckland

No	Description	Date	Page
1.	Term Loan Facility Deed	17 November 2022	1
2.	Spreadsheet of Company's assets and liabilities	11 October 2022	47

# \$4,500,000 Term Loan Facility Deed

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## PARTIES

Ruapehu Alpine Lifts Limited (*Administrators Appointed*)

**Borrower**

ANZ Bank New Zealand Limited

**Original Tranche A Lender and Original Tranche C Lender**

Crown Regional Holdings Limited

**Original Tranche B Lender**

John Fisk and Richard Nacey

**Administrators**

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DEED dated 17 November 2022

## PARTIES

Ruapehu Alpine Lifts Limited (*Administrators Appointed*)  
("Borrower")

ANZ Bank New Zealand Limited  
("Original Tranche A Lender" and "Original Tranche C Lender")

Crown Regional Holdings Limited  
("Original Tranche B Lender")

John Fisk and Richard Nacey  
("Administrators")

## INTRODUCTION

The Lenders are willing to make the Facility available to the Borrower to enable the Administrators to meet post-administration liabilities incurred by the Administrators in maintaining the business of the Borrower on Mt Ruapehu and its assets and the Original Tranche B Lender to develop a proposal to enable the continued operation of the business of the Borrower on Mt Ruapehu on the terms and subject to the conditions of this deed.

## COVENANTS

### 1. INTERPRETATION

#### 1.1 Definitions: In this deed:

"**Administrator Costs**" has the meaning given to that term in clause 3.1(c)

"**Administrators**" means John Fisk and Richard Nacey as joint and several voluntary administrators of the Borrower.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**ANZ Security**" means the general security agreement dated 12 April 2007 granted by the Borrower in favour of the Original Tranche A Lender.

"**Approved Costs**" has the meaning given to that term in clause 3.1(a).

"**Authorisation**" includes:

- (a) an authorisation, consent, approval, resolution, licence, exemption, filing, lodgement or registration required by, from or with a Government Agency or any law; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**"Authorised Signatory"** means:

- (a) in respect of the Borrower, the Administrators, or any person from time to time nominated as an Authorised Signatory by the Administrators by a notice to the Lenders accompanied by specimen signatures of all new persons so appointed and evidence satisfactory to the Lenders of the authority of each such person (and in respect of which the Lenders have not received notice of revocation of which the appointment); and
- (b) in respect of a Lender, any person whose title or acting title includes the word **"Manager"**, **"Head"**, **"Executive"** or **"Director"** or cognate expressions, or any secretary or director.

**"Available Commitment"** means, in relation to a Tranche, a Lender's Commitment under that Tranche minus:

- (a) the amount of its participation in any outstanding Loans owing under that Tranche; and
- (b) in relation to any proposed Drawdown, the amount of its participation in any Loans that are due to be made under that Tranche on or before the proposed Drawdown Date.

**"Available Facility"** means, in relation to a Tranche, the aggregate for the time being of each Lender's Available Commitment in respect of that Tranche.

**"Availability Period"** means the period from and including the date on which each Lender has provided notice to the Borrower in accordance with clause 4.1 that the conditions precedent are satisfied to and including the earlier of:

- (a) the date of the Watershed Meeting;
- (b) 19 December 2022; and
- (c) in respect of a Tranche, the date on which the applicable Lender cancels its Commitments in accordance with clause 14.13(b).

**"Baseline STCFF"** has the meaning given to that term in schedule 1.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in Auckland and Wellington.

**"Commitment"** means a Tranche A Commitment, Tranche B Commitment or Tranche C Commitment.

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

"**CRHL**" means Crown Regional Holdings Limited, and acting through its agent Kānoa – RDU.

"**CRHL Security**" means the specific security deed dated on or about 8 December 2020 granted by the Borrower in favour of the Ministry of Business, Innovation and Employment, as novated to the Original Tranche B Lender.

"**Crown Party**" has the meaning given to that term in clause 17.2 of the Existing Finance Document listed in paragraph (b) of that definition.

"**Default**" means an Event of Default or any event or circumstance specified in clause 14 which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Discharge Date**" means the first date on which all Senior Liabilities and Super Senior Liabilities have been fully and finally discharged to the satisfaction of each Lender and the Administrators, whether or not as the result of an enforcement, and the Lenders are under no further obligation to provide financial accommodation to the Borrower under the Finance Documents, the Existing Finance Documents or otherwise.

"**DOCA**" has the meaning given to the term "deed of company arrangement" in section 239B of the Companies Act.

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

"**Drawdown**" means a drawdown of the Facility.

"**Drawdown Date**" means the date of a Drawdown, being the date on which the relevant Loan is, or is to be, made.

"**Drawdown Request**" means a notice substantially in the form set out in schedule 2.

"**Enforcement Date**" means the first date (if any) on which a Lender takes acceleration or enforcement action in accordance with the terms of this deed, any other Finance Document or any Existing Finance Document.

"**Event of Default**" means any event or circumstance specified as such in clause 14.

"**Existing Finance Documents**" means:

- (a) the facility agreement (as amended and/or restated from time to time) dated 24 May 2022 between the Original Tranche A Lender and the Borrower, together with the general conditions referred to therein;
- (b) the convertible loan agreement dated 8 December 2020 between Ministry of Business, Innovation and Employment and the Borrower, as novated to the Original Tranche B Lender;
- (c) the loan agreement dated 8 June 2018 between Ministry of Business, Innovation and Employment and the Borrower as amended and restated on 12 September 2018 and as novated to the Original Tranche B Lender; and
- (d) any document defined or designated as a "Finance Document" in the document listed in paragraph (a) above, or as a "Convertible Transaction Document" in the

document listed in paragraph (b) above or a "Transaction Document" in the document listed in paragraph (c) above.

**"Existing Funding Amount"** has the meaning given to that term in clause 5.4.

**"Facility"** means the term loan facility made available under this deed as described in clause 2.1.

**"Facility Office"** means, in respect of a Lender, the office or offices of that Lender through which it will perform its obligations under this deed.

**"Finance Document"** means:

- (a) this deed;
- (b) any Security Document; and
- (e) any other document designated as such by the Lenders and the Borrower.

**"Funding Event"** means, in respect of a Lender, that Lender having notified the Borrower that by reason of an extraordinary circumstance affecting the New Zealand or Australian funding markets, any other relevant interbank market or relevant foreign currency market or the availability of finance to lending institutions in New Zealand or Australia generally, it is unable to make all or part of a Loan.

**"Government Agency"** means:

- (a) a central or local government authority, body or agency;
- (b) a governmental, semi-governmental or judicial entity or authority;
- (c) any self-regulatory organisation established under any statute or stock exchange; or
- (d) a person (whether autonomous or not) who is charged with the administration of any law or directive.

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**"Indirect Tax"** means any goods and services tax, consumption tax, value added tax or other Tax of a similar nature.

**"Interim True-Up Date"** means any date agreed by each Lender and the Administrators in writing to be an Interim True-Up Date for the purposes of clause 18.8 and clause 18.9.

**"Kānoa – RDU"** means Kānoa – Regional Economic Development & Investment Unit.

**"Lender"** means a Tranche A Lender, a Tranche B Lender or a Tranche C Lender.

**"Liabilities"** means all present and future liabilities and obligations at any time of the Borrower (including any transferee or novatee of those liabilities and obligations) to any Lender or the Administrators (whether under the Finance Documents, the Existing Finance Documents or otherwise), both actual and contingent and whether incurred solely or jointly or as principal or

surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by the Borrower of payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"**Lien Rights**" has the meaning given to that term in clause 15.5.

"**Loan**" means a Tranche A Loan, a Tranche B Loan or a Tranche C Loan.

"**Material Adverse Effect**" means, in the reasonable opinion of a Lender, a material adverse effect on:

- (a) the business, assets or financial or trading condition of the Borrower;
- (b) the ability of the Borrower to perform and comply with its obligations under any Finance Document; or
- (c) a Lender's rights under, or the validity, enforceability or priority of, any of the Finance Documents.

"**NewCo**" has the meaning given to that term in the definition of "Restructuring Proposal" in this clause 1.1 and, prior to the incorporation or establishment of NewCo as an entity, means the individuals engaging with the Original Tranche B Lender to develop the Restructuring Proposal.

"**NewCo Capped Costs**" has the meaning given to that term in clause 3.1(b).

"**NewCo Costs Cap**" means an amount equal to \$200,000 (plus GST if any).

"**Non-Cash Consideration**" means consideration in a form other than cash.

"**Party**" means a party to this deed.

"**Payment**" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

"**PPSA**" means the Personal Property Securities Act 1999.

"**PPSR**" means the Personal Property Securities Register maintained for the purposes of the PPSA.

"**Recoveries**" has the meaning given to that term in clause 18.1.

"**Repayment Date**" means the earlier of:

- (a) if a DOCA is approved at the Watershed Meeting, the date specified in the DOCA for repayment of the Facility in accordance with the DOCA;
- (b) if a DOCA is not approved at the Watershed meeting, the Business Day following the date on which the Watershed Meeting is held;
- (c) (unless paragraph (a) above applies) 19 December 2022; and
- (d) the date on which either Lender declares an amount to be due and payable under this deed in accordance with clause 14.13.

"**Restructuring Proposal**" means a proposal to enable the continued operation of the business of the Borrower on Mt Ruapehu, which involves (among other things) the establishment and funding of a new entity ("**NewCo**") to acquire the assets, and to assume certain liabilities of, the Borrower.

"**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 Document**" means:

- (a) the ANZ Security;
- (b) the CRHL Security; and
- (c) any other security document that may at any time be given as security for any of the amounts outstanding under or in connection with any Finance Document.

"**Senior Liabilities**" means the Liabilities owed by the Borrower to the Tranche A Lender and Tranche B Lender under the Finance Documents and the Existing Finance Documents:

- (a) in respect of the Tranche A Lender, in an amount up to the aggregate of all Tranche A Loans made available under this deed (including, for the avoidance of doubt, any deemed to be Tranche A Loans under clause 5.4(b)(ii)), capped at \$2,000,000; and
- (b) in respect of the Tranche B Lender, in an amount up to the aggregate of all Tranche B Loans made available under this deed, capped at \$2,000,000.

"**Subsidiary**" means, in relation to a person:

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

**"Super Senior Liabilities"** means the Liabilities owed by the Borrower:

- (a) to the Tranche C Lender under the Finance Documents and the Existing Finance Documents in an amount up to the aggregate of all Tranche C Loans made available under this deed; and
- (b) to the Administrators in respect of any unpaid Administrator Costs in an amount up to \$2,000,000 less an amount equal to the aggregate of all Tranche C Loans made available under this deed.

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

**"Tranche"** means Tranche A, Tranche B or Tranche C.

**"Tranche A"** means the term loan facility made available by the Tranche A Lender under this deed as described in clause 2.1(a).

**"Tranche A Commitment"** means \$2,000,000 to the extent not cancelled, reduced or transferred by the Tranche A Lender under this deed.

**"Tranche A Lender"** means:

- (a) the Original Tranche A Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with clause 16,

which in each case has not ceased to be a Party in accordance with the terms of this deed.

**"Tranche A Loan"** means a loan made or to be made under Tranche A or the principal amount outstanding for the time being of that loan.

**"Tranche B"** means the term loan facility made available by the Tranche B Lender under this deed as described in clause 2.1(b).

**"Tranche B Commitment"** means \$2,000,000 to the extent not cancelled, reduced or transferred by the Tranche B Lender under this deed.

**"Tranche B Lender"** means:

- (a) the Original Tranche B Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with clause 16,

which in each case has not ceased to be a Party in accordance with the terms of this deed.

**"Tranche B Loan"** means a loan made or to be made under Tranche B or the principal amount outstanding for the time being of that loan.

**"Tranche C"** means the term loan facility made available by the Tranche C Lender under this deed as described in clause 2.1(c).

**"Tranche C Commitment"** means \$500,000 to the extent not cancelled, reduced or transferred by the Tranche C Lender under this deed.

**"Tranche C Lender"** means:

- (a) the Original Tranche C Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with clause 16,

which in each case has not ceased to be a Party in accordance with the terms of this deed.

**"Tranche C Loan"** means a loan made or to be made under Tranche C or the principal amount outstanding for the time being of that loan.

**"True-Up Date"** means the earlier of:

- (a) the date on which each Lender and the Administrators has received or recovered all Recoveries that it is entitled to receive or recover; and
- (b) the date on which each Lender and the Administrators has received or recovered aggregate Recoveries of an amount greater than or equal to the aggregate of the Senior Liabilities and the Super Senior Liabilities owing to that Lender or the Administrators (as applicable).

**"Unpaid Sum"** means any sum due and payable but unpaid by the Borrower under the Finance Documents.

**"Updated STCFF"** has the meaning given to that term in clause 5.2.

**"Watershed Meeting"** means a "watershed meeting" (within the meaning given to that term in section 239B of the Companies Act) in respect of the Borrower.

## 1.2 Construction:

- (a) Unless a contrary indication appears, any reference in this deed to:
  - a **"Lender"**, the **"Borrower"**, an **"Administrator"** or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - "assets"** includes present and future properties, revenues and rights of every description;
  - "constitutional documents"** includes any shareholder or joint venture agreement (however described) in relation to the relevant person;



a "**Finance Document**" or "**Existing Finance Document**" or any other agreement or instrument is a reference to that Finance Document or that Existing Finance Document or other agreement or instrument as amended, novated, supplemented, restated or replaced and includes any increase in, extension of or change to any facility made available under that Finance Document or that Existing Finance Document or other agreement or instrument;

"**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

a "**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure;

a "**person**" or "**entity**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns; and

a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation and if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply.

- (b) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this deed.
- (c) An Event of Default is "**continuing**" if it has not been remedied to the satisfaction of the Lenders or waived.

### 1.3 **Miscellaneous:**

- (a) Headings are inserted for convenience only and do not affect interpretation of this deed.
- (b) References to the Administrators includes, to the greatest extent permitted by law, any replacement voluntary administrators, subsequent deed administrators and/or liquidators in each case appointed to the Borrower in place of the Administrators;
- (c) References to a person include that person's successors, permitted assigns, executors and administrators (as applicable).
- (d) Unless the context otherwise requires, the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (e) A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, re-enactment of, or replacement of, that legislation.

- (f) A reference to any document includes reference to that document as amended, modified, novated, supplemented, varied or replaced from time to time.
- (g) A reference to any party to a document includes its successors and permitted assigns.
- (h) Except where inconsistent with the context, the expression "at any time" also means from time to time.
- (i) Unless otherwise stated, reference to a clause or schedule is a reference to a clause of or schedule to this deed.
- (j) A reference to "including", "for example" or "such as", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.4 **Security confirmation:** The Borrower and the Administrators expressly confirm, acknowledge and agree that the Security Interests created by the Borrower pursuant to the ANZ Security, the provisions of the ANZ Security and all its obligations under the ANZ Security:

- (a) shall not be discharged, impaired or otherwise adversely affected by the entry into of the Finance Documents and shall continue in full force and effect notwithstanding the entry into of the Finance Documents; and
- (b) continue to secure:
  - (i) all amounts of any nature which the Borrower (whether alone or jointly, or jointly and severally with any other person, and in any capacity) is, or may at any time become, liable (whether actually or contingently) to pay or deliver to the Tranche A Lender and/or Tranche C Lender (whether alone or jointly, or jointly and severally with any other person, and in any capacity); and
  - (ii) all present and future obligations which the Borrower (whether alone or jointly, or jointly and severally with any other person, and in any capacity) have or owe to or for the benefit of the Tranche A Lender and/or Tranche C Lender (whether alone or jointly, or jointly and severally with any other person, and in any capacity),

in each case, which include any new amounts and/or obligations owing to the Tranche A Lender and/or Tranche C Lender under this deed and the other Finance Documents.

1.5 **Security confirmation:** The Borrower and the Administrators expressly confirm, acknowledge and agree that:

- (a) the CRHL Security was originally granted in favour of the Ministry of Business, Innovation and Employment and that the CRHL Security was subsequently novated to the Original Tranche B Lender, such that the Original Tranche B Lender is the "secured creditor" under (and as defined in) the CRHL Security as at the date of this deed;
- (b) the Security Interests created by the Borrower pursuant to the CRHL Security, the provisions of the CRHL Security and all its obligations under the CRHL Security:

- (i) shall not be discharged, impaired or otherwise adversely affected by the entry into of the Finance Documents and shall continue in full force and effect notwithstanding the entry into of the Finance Documents; and
- (ii) secure:
  - (aa) all amounts of any nature which the Borrower (whether alone or jointly, or jointly and severally with any other person, and in any capacity) is, or may at any time become, liable (whether actually or contingently) to pay or deliver to the Tranche B Lender (whether alone or jointly, or jointly and severally with any other person) under the "Loan Agreement" (as defined in the CRHL Security) and the Finance Documents; and
  - (bb) all present and future obligations which the Borrower (whether alone or jointly, or jointly and severally with any other person, and in any capacity) have or owe to or for the benefit of the Tranche B Lender (whether alone or jointly, or jointly and severally with any other person, and in any capacity) under the "Loan Agreement" (as defined in the CRHL Security) and the Finance Documents,

in each case, which include any new amounts and/or obligations owing to the Tranche B Lender under this deed and the other Finance Documents.

- 1.6 **Procurement by Administrators:** The Administrators shall take all necessary steps to ensure, and shall procure, that the Borrower complies with its obligations under the Finance Documents (other than with respect to any default under the Security Documents that has occurred and is continuing on the date of this deed).

## 2. THE FACILITY

- 2.1 **The Facility:** Subject to the terms of this deed:

- (a) the Tranche A Lender makes available to the Borrower, a bridge term loan facility equal to the Tranche A Commitment;
- (b) the Tranche B Lender makes available to the Borrower, a bridge term loan facility equal to the Tranche B Commitment; and
- (c) the Tranche C Lender makes available to the Borrower, a bridge term loan facility equal to the Tranche C Commitment.

- 2.2 **Lenders' rights and obligations:**

- (a) The obligations of each Lender under the Finance Documents are several. Failure by a Lender to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Lender is responsible for the obligations of any other Lender under the Finance Documents.

- (b) The rights of each Lender under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Lender from the Borrower is a separate and independent debt in respect of which a Lender shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Lender include any debt owing to that Lender under the Finance Documents and for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Lender's participation in the Facility or its role under a Finance Document is a debt owing to that Lender by the Borrower.
- (c) A Lender may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

### 3. PURPOSE

3.1 **Purpose:** The Borrower shall apply all amounts borrowed by it under this deed towards payment of:

- (a) (in respect of Tranches A and B only) liabilities of the Borrower incurred by the Administrators, or payable by the Borrower, after 11 October 2022, only to the extent that such liability:
  - (i) is within the Baseline STCFF or has otherwise been approved by the Lenders; and
  - (ii) either:
    - (aa) has fallen due for payment, or will fall due for payment within five Business Days and, in any event, on or prior to 16 December 2022; or
    - (bb) will fall due for payment after 16 December 2022 and the Lenders are satisfied in their absolute discretion that the amount of the Loan drawn to fund such liability is held in an account of the Borrower with the Original Tranche A Lender held for the benefit of the Administrators (for the sole purpose of meeting that liability) and will not be released from such account until such payment is required to be paid,

(such liabilities being "**Approved Costs**");
- (b) (in respect of Tranches A and B only) the professional services costs and expenses incurred by, or on behalf of, NewCo for the purposes of the development of the Restructuring Proposal in an aggregate amount up to the NewCo Costs Cap only to the extent that such costs and expenses either:
  - (i) have fallen due for payment, or will fall due for payment within five Business Days and, in any event, on or prior to 16 December 2022; or
  - (ii) will fall due for payment after 16 December 2022 and the Lenders are satisfied in their absolute discretion that the amount of the Loan drawn to fund such costs and expenses is held in an account of the Borrower with

the Original Tranche A Lender held for the benefit of the Administrators (for the sole purpose of meeting that liability) and will not be released from such account until such payment is required to be paid,

(such costs and expenses being "**NewCo Capped Costs**"); and/or

- (c) (in respect of Tranche C only) the Administrators' remuneration and reasonable out-of-pocket professional (including legal) costs and expenses, in each case, that have fallen due for payment (such amounts being "**Administrator Costs**").
- 3.2 **Monitoring:** No Lender is bound to monitor or verify the application of any amount borrowed pursuant to this deed.

#### 4. CONDITIONS OF DRAWDOWN

4.1 **Initial conditions precedent:** The Borrower may not deliver a Drawdown Request unless the Lenders have received all of the documents and other evidence listed in schedule 1 in form and substance satisfactory to each Lender. Each Lender shall notify the Borrower promptly upon being so satisfied.

4.2 **Further conditions precedent:** A Lender will only be obliged to comply with clause 5.3 if:

- (a) on the date of the Drawdown Request and on the proposed Drawdown Date:
    - (i) no Funding Event has occurred and is continuing;
    - (ii) no Default is continuing or would result from the proposed Loan;
    - (iii) the representations to be made by the Borrower are in all material respects correct and not misleading; and
    - (iv) any Court orders obtained by the Administrators under section 239ADO of the Companies Act are on terms acceptable to the Lenders;
  - (b) the amount of the proposed Loan requested in the relevant Drawdown Request is to be used to fund Approved Costs, NewCo Capped Costs and/or Administrator Costs in accordance with clause 3.1; and
  - (c) the conditions set out in clause 5 are complied with.
- 4.3 **No division:** The Borrower may not request that any Loan be divided.

#### 5. DRAWDOWN

5.1 **Utilisation:** The Borrower may utilise the Facility by delivery to the Lenders of a Drawdown Request not later than 10am on the Business Day prior to the proposed Drawdown Date, completed and signed by an Authorised Signatory of the Borrower.

5.2 **Completion of a Drawdown Request:**

- (a) Each Drawdown Request is irrevocable and will not be regarded as having been duly completed unless:

- (i) the proposed Drawdown Date is a Business Day within the Availability Period;
  - (ii) the amount of the proposed Loan under a Tranche must be a minimum of \$35,000 or, if less, the Available Facility in respect of that Tranche;
  - (iii) it specifies the amounts to be drawn under each Tranche, which must comply with clause 5.4;
  - (iv) it specifies the purpose for which the relevant Loans are to be drawn and includes a detailed breakdown of the Approved Costs, NewCo Capped Costs and/or Administrator Costs being funded by such Loans;
  - (v) if the relevant Loans are to be made available to fund the payment of NewCo Capped Costs, the aggregate amount of those Loans that will be applied towards NewCo Capped Costs together with the aggregate amount of all previous Loans made available to fund the payment of NewCo Capped Costs, is less than or equal to the NewCo Costs Cap;
  - (vi) the Administrators certify that:
    - (aa) the purpose for which the relevant Loans are to be drawn complies with clause 3.1;
    - (bb) the Borrower is in compliance with its obligations under this deed;
  - (vii) it is delivered together with a cash flow forecast showing all expected Approved Costs up to and including 16 December 2022 and includes a reconciliation to the Baseline STCFF with appropriate commentary acceptable to the Lenders (an "**Updated STCFF**");
  - (viii) it is the only Drawdown Request to have been submitted during that calendar week; and
  - (ix) it specifies the account and bank to which the proceeds of the Drawdown are to be credited.
- (b) Only one Loan under each Tranche may be requested in each Drawdown Request.

### 5.3 Lenders' participation:

- (a) If the conditions set out in this deed have been met, each Tranche A Lender shall make each Tranche A Loan, each Tranche B Lender shall make each Tranche B Loan and each Tranche C Lender shall make each Tranche C Loan available on the Drawdown Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment in respect of the relevant Tranche to the Available Facility in respect of that Tranche immediately prior to making the Loan.

#### 5.4 Pro rata funding:

- (a) Subject to paragraphs (b) and (c) below, the Borrower shall drawdown under each of Tranche A and Tranche B on a pro rata basis, such that each Drawdown Request shall include a request for a Tranche A Loan and Tranche B Loan of equal amounts.
- (b) The Parties acknowledge that:
  - (i) prior to the date of this deed, the Tranche A Lender made loans available to the Borrower in an amount equal to \$755,892.79, such loans remain outstanding as at the date of this deed and the Tranche A Lender may continue to make loans available to the Borrower prior to the first Drawdown Date under this deed (the aggregate amount of all such loans outstanding, as notified by the Tranche A Lender to the other Lenders and the Borrower in writing, being the "**Existing Funding Amount**"); and
  - (ii) such loans shall be deemed to be Tranche A Loans outstanding under this deed, such that the Available Facility in respect of Tranche A, and the Tranche A Lender's Available Commitment in respect of Tranche A, is an amount equal to the Tranche A Lender's Commitment in respect of Tranche A less the Existing Funding Amount.
- (c) The Tranche A Lenders shall not be required to make available, and the Borrower shall not request, any Tranche A Loan until such time as the aggregate amount of Tranche B Loans made (or to be made pursuant to a Drawdown Request) available under this deed is equal to the Existing Funding Amount.

#### 5.5 Fronting by Tranche A Lender:

- (a) Notwithstanding paragraph (a) of clause 5.3 (but subject to paragraph (d) below), to the extent that the Original Tranche B Lender is required to make a Tranche B Loan available in accordance with this deed, then the Tranche A Lender shall make that Loan available on the Drawdown Date through its Facility Office in accordance with this deed on behalf of the Original Tranche B Lender (the amount of any such Loan, being a "**Fronted Amount**").
- (b) The Original Tranche B Lender shall pay to the Tranche A Lender an amount equal to any Fronted Amount made available by the Tranche A Lender pursuant to paragraph (a) above no later than five Business Days after that Fronted Amount is made available.
- (c) The Tranche A Lender shall not be required to make available any Fronted Amounts pursuant to paragraph (a) above if the Original Tranche B Lender has not complied with its reimbursement obligations under paragraph (b) above.
- (d) This clause 5.5 shall only apply while CRHL or a Crown Party is the only Tranche B Lender.



## 6. REPAYMENT

### 6.1 Repayment:

- (a) The Borrower shall repay the Loans in one lump sum on the Repayment Date.
- (b) The Borrower may not reborrow any part of the Facility which is repaid.

6.2 **Repayment Date:** The Borrower shall pay all other amounts accrued due under the Finance Documents (unless otherwise agreed by the Lenders) to the Lenders in full on the Repayment Date.

6.3 **Repayment of costs:** If, at any time, any Approved Cost or NewCo Capped Cost does not fall due for payment or is otherwise no longer required to be paid, the Borrower agrees that, to the extent that such Approved Cost or NewCo Capped Cost was funded by a Loan, the relevant amount shall:

- (a) from the point at which the relevant Approved Cost or NewCo Capped Cost ceases to fall due or is otherwise no longer required to be paid, be held on trust for the benefit of the Lenders; and
- (b) immediately be repaid to the Lenders, such payment being made to the Lenders in accordance with this deed.

## 7. PREPAYMENT AND CANCELLATION

7.1 **Illegality:** If it becomes unlawful (or impossible as a result of a change in law or regulation or as a result of any other matter affecting the availability of funds to banks or financial institutions in New Zealand or Australia) in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this deed or to fund or maintain its participation in any Loan:

- (a) that Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) the Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay each Loan owing to that Lender on the date specified by the Lender (being no earlier than the last day of any applicable grace period permitted by law).

7.2 **Voluntary cancellation:** Subject to clause 7.4, the Borrower may, if it gives the Lenders not less than five Business Days (or such shorter period as the Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$100,000 and a whole multiple of \$100,000) of the Commitment.

### 7.3 Voluntary prepayment:

- (a) Subject to clause 7.4, the Borrower may, if it gives the Lenders not less than five Business Days' (or such shorter period as the Lenders may agree) prior notice, prepay the whole or any part of any Loan.
- (b) If a Loan is to be prepaid in part, the relevant Loan must be prepaid in an amount that reduces the Loan by a minimum amount of \$100,000 and a whole multiple of \$100,000.



7.4 **Restrictions:**

- (a) Any prepayment of a Loan pursuant to clause 7.3 shall be applied *pro rata* to each Lender's participation in that Loan.
- (b) Any notice of cancellation or prepayment given by any Party under this clause 7 shall be irrevocable and, unless a contrary indication appears in this deed, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (c) No part of the Loan which is prepaid may be re-borrowed.
- (d) The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this deed.
- (e) No amount of the Commitment cancelled under this deed may be subsequently reinstated.
- (f) The Borrower shall not exercise its rights under clause 7.2 in respect of a part cancellation of the Commitment unless it voluntarily cancels a pro rata amount of Commitments under each Tranche.
- (g) The Borrower shall not exercise its rights under clause 7.3 in respect of a part prepayment of the Loans unless it voluntarily prepays a pro rata amount of the amounts outstanding under each Tranche.

7.5 **Cancellation of Commitments:** At the end of the Availability Period, the Commitment which is that time unutilised shall be immediately cancelled.

8. **INTEREST**

8.1 **No interest:** Each Loan under this deed shall be interest free.

9. **TAX GROSS UP AND INDEMNITIES**

9.1 **Definitions:**

(a) In this deed:

"**RWT Exempt Status**" means "RWT-exempt status" as defined in Income Tax Act 2007;

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"**Tax Payment**" means an increased payment made by the Borrower to a Lender under clause 9.2 or a payment under clause 9.3.

- (b) Unless a contrary indication appears, in this clause 9 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

9.2 **Tax gross-up:**

- (a) The Borrower shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless such Tax Deduction is required by law.
- (b) The Borrower or a Lender shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the other Parties accordingly.
- (c) If a Tax Deduction is required by law to be made by the Borrower, except in relation to a Tax described in clause 9.4(b)(i), the Borrower shall pay an additional amount together with the payment so that (after making any Tax Deduction) the relevant Lender receives an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction on or before the date on which it falls due and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the relevant Lender evidence satisfactory to the Lender (acting reasonably) that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

9.3 **Certificate of exemption:** Each Lender:

- (a) confirms that as at the date of this deed it has RWT Exempt Status;
- (b) agrees to use reasonable endeavours to maintain RWT Exempt Status during the continuance of the Facility provided it is lawfully able to do so; and
- (c) agrees to notify the Borrower if it ceases to hold, or ceases to be entitled to hold, RWT Exempt Status.

9.4 **Tax indemnity:**

- (a) Without prejudice to clause 9.2, if a Lender is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under or in connection with the Finance Documents (including any sum deemed for purposes of Tax to be received by that Lender whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, the Borrower shall (within five Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document or a transaction or payment under it.

- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Lender:
    - (aa) under the law of the jurisdiction in which that Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
    - (bb) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
      - if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or
  - (ii) to the extent the relevant loss, liability or cost is compensated for by an increased payment under clause 9.2.

9.5 **Tax Credit:** If the Borrower makes a Tax Payment and a Lender determines in its absolute discretion that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Lender has obtained and utilised that Tax Credit on an affiliated group basis,

then, subject to clause 9.8, that Lender shall pay an amount to the Borrower which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the circumstances not arisen which caused the Tax Payment to be required to be made by the Borrower.

9.6 **Stamp taxes:** The Borrower shall pay and, within three Business Days of demand, indemnify each Lender against any cost, loss or liability that Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

9.7 **Indirect Tax:**

- (a) All consideration expressed to be payable under a Finance Document by any Party to a Lender shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by a Lender to the Borrower in connection with a Finance Document, that Party shall pay to that Lender (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax and the Lender will promptly provide the Borrower a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where a Finance Document requires the Borrower to reimburse a Lender for any costs or expenses, the Borrower shall also at the same time pay and indemnify that Lender against all Indirect Tax incurred by the Lender in respect of those costs or expenses. The Lender will promptly provide to the Borrower a tax invoice complying with the relevant law relating to that Indirect Tax.

9.8 **Conduct of business:** No provision of this deed will:

- (a) interfere with the right of a Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige a Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige a Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 10. OTHER INDEMNITIES

10.1 **Currency indemnity:**

- (a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
  - (i) making or filing a claim or proof against the Borrower; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three Business Days of demand, indemnify the Lender to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Payment of an amount in a currency other than the due currency does not discharge that amount except to the extent of the amount of the due currency actually obtained when the recipient converts the amount received into the due currency.

10.2 **Other indemnities:** The Borrower shall, within three Business Days of demand, indemnify each Lender against any cost, expense, loss or liability (including legal fees) sustained or incurred by that Lender as a result of:

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (c) the occurrence or continuance of any Default;
- (d) any information produced or approved by or on behalf of the Borrower under or in connection with the Finance Documents or the transactions they contemplate being or being alleged to be misleading or deceptive in any respect;

- (e) any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Borrower or with respect to the transactions contemplated or financed under this deed;
- (f) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- (g) funding, or making arrangements to fund, a Loan requested in a Drawdown Request but not made by reason of the operation of any one or more of the provisions of this deed (other than by reason of default or negligence by the relevant Lender alone); or
- (h) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower,

including but not limited to any costs, losses, expenses or liabilities on account of funds borrowed, contracted for or utilised to fund any amount payable under this deed.

## 11. COSTS AND EXPENSES

- 11.1 **Transaction expenses:** Each Lender shall cover its own costs and expenses incurred by them in connection with the negotiation, preparation, printing and execution of this deed and any other documents referred to in this deed.
- 11.2 **Amendment costs:** Unless otherwise agreed by the Lenders, if the Borrower requests an amendment, waiver or consent, the Borrower shall, within three Business Days of demand, reimburse the Lenders for the amount of all costs and expenses (including legal fees) reasonably incurred by them in responding to, evaluating, negotiating or complying with that request or requirement.
- 11.3 **Enforcement costs:** The Borrower shall, on demand, pay to the Lenders the amount of all costs and expenses (including legal fees) incurred by them in connection with the enforcement of, or the preservation of any rights under, any Finance Document or in connection with anything referred to in clause 10.2(e).

## 12. REPRESENTATIONS

- 12.1 The Borrower makes the representations and warranties set out in this clause 12 to the Lenders:
  - (a) to the best of its knowledge and belief (such knowledge being limited to the knowledge of the Borrower on the date on which the representation and/or warranty is made, and excluding any knowledge of the Borrower attributable to the period prior to the date of appointment of the Administrators); and
  - (b) on the date of this deed and the other dates set out in clause 12.13.
- 12.2 **Status:**
  - (a) It is a company, duly incorporated and validly existing under the laws of New Zealand.

- (b) It has the power to own its assets and carry on its business as it is being conducted.
- 12.3 **Binding obligations:** The obligations expressed to be assumed by it in each Finance Document are, legal, valid, binding and enforceable subject to applicable insolvency laws affecting creditor's rights generally and to equitable principles of general application.
- 12.4 **Non-conflict with other obligations:** The entry into and performance by it and the transactions contemplated by, the Finance Documents do not and will not conflict with:
- (a) any law or regulation applicable to it;
  - (b) its constitutional documents; or
  - (c) any agreement or instrument binding upon it or any of its assets in any material respect,
- nor (except as provided in any Security Document) result in the existence of, or oblige it to create, any Security Interest over any of its assets.
- 12.5 **Power and authority:** It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- 12.6 **Authorisations:** All Authorisations required or desirable:
- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
  - (b) to make the Finance Documents to which it is a party admissible in evidence;
  - (c) to enable it to create the Security Interests to be created by it pursuant to any Security Document and to ensure that such Security Interests have the priority and ranking they are expressed to have; and
  - (d) for it to carry on its business,
- have been obtained or effected and are in full force and effect.
- 12.7 **No filing or stamp taxes:** It is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents (other than registration of the Security Documents on the PPSR and payment of the associated registration fees).
- 12.8 **No misleading information:**
- (a) Any factual information provided by it or on its behalf (excluding projections) was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
  - (b) Any financial projections provided by it or on its behalf were prepared on the basis of recent historical information and on the basis of reasonable assumptions.

- (c) Nothing been omitted from the information provided in writing in connection with the Finance Documents and no information has been given or withheld that results in the information provided by the Borrower being untrue or misleading in any material respect as at the time it was provided or as at the date (if any) at which it is stated or that would be reasonably likely to result in a Lender reconsidering its decision to provide the facility.
- 12.9 **Pari passu ranking:** Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.
- 12.10 **No trust:** It does not enter into any Finance Document as trustee of any trust.
- 12.11 **Authorised signatories:** Any person specified as its Authorised Signatory under is authorised to sign Drawdown Requests and other notices on its behalf except where it has previously notified the Lenders that the authority has been revoked.
- 12.12 **Repetition:** The representations set out in this clause 12 are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Drawdown Request.
- 12.13 **Reliance:** The Borrower acknowledges that the Lenders will rely on the representations and warranties contained in this clause 12 in making the Facility available to the Borrower.

### 13. INFORMATION UNDERTAKINGS

The undertakings in this clause 13 remain in force from the date of this deed for so long as any amount is outstanding under the Finance Documents or a Commitment is in force.

- 13.1 **Information - Miscellaneous:** The Borrower shall supply to the Lenders:
- (a) no later than on 5pm on Friday during each calendar week from the date of this deed, an Updated STCFF (unless an Updated STCFF has already been delivered to the Lenders during that calendar week in accordance with clause 5.2);
  - (b) promptly, any information regarding the Administrators' engagement with the Borrower's creditors or the development of the Restructuring Proposal, as may be requested by a Lender;
  - (c) all documents dispatched by (or on behalf of) the Borrower to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
  - (d) promptly upon becoming aware of the same, all information in relation to a notice or order from or to any Government Agency which has or is likely to have a Material Adverse Effect;
  - (e) promptly upon becoming aware of any breach of any law (or any likely breach of law) which has or is likely to have a Material Adverse Effect, all details relating to such event;
  - (f) promptly upon issuance, copies of any invoices in respect of the Administrator Costs;



- (g) promptly, such further information regarding the Approved Costs, NewCo Capped Costs, Administrator Costs the Borrower's creditors, financial condition, business and operations, or the administration of the Borrower, in each case, as a Lender may request;
  - (h) promptly, notice of any change in its Authorised Signatories, signed by one of the Administrators and accompanied by specimen signatures of any new signatories; and
  - (i) if requested by a Lender, provide relevant invoices in support of any Drawdown Requests.
- 13.2 **Information – Restructuring Proposal:** The Borrower shall provide to the Lenders, as soon as practicable, any information received by the Administrators, and CRHL shall provide to the Lenders, as soon as reasonably practicable, any information received by CRHL that the Borrowers or CRHL (as applicable) reasonably believes indicates that it is unlikely that:
- (a) a Restructuring Proposal will be able to be developed that is acceptable to the Lenders;
  - (b) a DOCA incorporating a Restructuring Proposal that is acceptable to the Lenders will be able to be proposed at a Watershed Meeting; or
  - (c) a Watershed Meeting will be able to be held by 16 December 2022.
- 13.3 **Notification of Default:**
- (a) The Borrower shall notify the Lenders of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
  - (b) Promptly upon a request by a Lender, the Borrower shall supply to the Lenders a certificate signed by the Administrators certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).
- 13.4 **Administrators' Meeting:** If requested by a Lender at any time, the Administrators and the other Lenders will meet with each other on two Business Days' notice to discuss the current position of the Borrower, the information provided to the Lenders and the progress and prospects of the Restructuring Proposal.
- 13.5 **Anti-money laundering documentation:** The Borrower and the Administrators shall supply or procure the supply of, documentation and other evidence requested by a Lender which is required to satisfy or comply with the know your customer, know your client or client vetting procedures of that Lender or any potential assignee, transferee or potential sub-participant or any other person who is considering contracting with the Lender in connection with a Finance Document.



## 14. EVENTS OF DEFAULT

Each of the events or circumstances set out in this clause 14 (other than clause 14.13) is an Event of Default.

14.1 **Non-payment:** The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by administrative or technical error beyond the control of the Borrower; and
- (b) payment is made within two Business Days of its due date.

14.2 **Other obligations:**

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in clauses 14.1 or any default under the Security Documents that has occurred and is continuing on the date of this deed) or the Existing Finance Documents (other than any default under the Existing Finance Documents that has occurred and is continuing on the date of this deed) or with any condition of any waiver or consent by the Lenders under or in connection with any Finance Document or Existing Finance Document.
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within two Business Days of a Lender giving notice to the Borrower or the Borrower becoming aware of the failure to comply, whichever is the earlier.

14.3 **Misrepresentation:**

- (a) Any representation, warranty or statement made or deemed to be made by the Borrower in the Finance Documents or the Existing Finance Documents (other than any representation, warranty or statement under the Existing Finance Documents that is incorrect, untrue or misleading on the date of this deed)) or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document or Existing Finance Document is or proves to have been incorrect, untrue or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur as a result of any such representation, warranty or statement being incorrect, untrue or misleading if it is capable of remedy and is remedied within two Business Days of a Lender giving notice to the Borrower, or the Borrower becoming aware of it, whichever occurs first.

14.4 **Cross default:** A default or review event, howsoever described, occurs under an Existing Finance Document, a Finance Document or any other agreement in respect of indebtedness of the Borrower (other than a default that has occurred and is continuing on the date of this deed).

14.5 **Security:** Any Security Document is not in full force and effect or does not create for the benefit of the Lenders the Security Interest which it is expressed to create with the ranking and priority it is expressed to have.

- 14.6 **Unlawfulness/Invalidity:**
- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.
  - (b) Any material provision of the Finance Documents becomes unenforceable.
- 14.7 **Repudiation:** The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.
- 14.8 **Material adverse change:** A Lender determines that a Material Adverse Effect occurs or is reasonably likely to occur after the date of this deed.
- 14.9 **Compulsory acquisition:** All or any material part of the Borrower's business or assets are compulsorily acquired unless compensation is received that is sufficient to discharge all of the obligations (present or future, actual or contingent) of the Borrower to the Lenders.
- 14.10 **Misapplication of funds:**
- (a) Any portion of the proceeds of any Loan are applied for any purpose other than in accordance with clause 3.1.
  - (b) No Event of Default under paragraph (a) above will occur until a Lender has given three Business Days' notice to the Borrower.
- 14.11 **Restructuring:**
- (a) Any Lender determines (in its absolute discretion) that:
    - (i) it is unlikely that a Restructuring Proposal will be able to be developed that is acceptable to it;
    - (ii) a DOCA incorporating a Restructuring Proposal that is acceptable to it will not be able to be, or is not, proposed at a Watershed Meeting; or
    - (iii) a Watershed Meeting will not be able to be held by 16 December 2022.
  - (b) No Event of Default under paragraph (a) above will occur until a Lender has given three Business Days' notice to the Borrower.
- 14.12 **Variance in STCFF:**
- (a) An Updated STCFF delivered in accordance with clause 5.2 or clause 13.1 shows an increase in the aggregate of all expected Approved Costs of \$100,000 or more when compared with the aggregate of all expected Approved Costs set out in the Baseline STCFF.
  - (b) No Event of Default under paragraph (a) above will occur until a Lender has given three Business Days' notice to the Borrower.
- 14.13 **Acceleration:** At any time an Event of Default is continuing, any Lender may by notice to the Borrower:
- (a) declare the existence of an Event of Default;

- (b) cancel its Commitment whereupon it shall immediately be cancelled;
- (c) declare that all or part of the Loans owing to it, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (d) declare that all or part of the Loans owing to it are payable on demand, whereupon they shall immediately become payable on demand by that Lender.

## 15. ADMINISTRATORS' LIMITATION OF LIABILITY

- 15.1 **Sole capacity as Administrators:** The Administrators enter into this deed solely in their capacity as Administrators of the Borrower and not in their personal capacities.
- 15.2 **Expense of the administration of the Borrower** Subject at all times to clauses 15.3 and 15.4, the obligations of the Borrower under this deed constitute a personal liability of the Administrators for the purposes of section 239ADH of the Companies Act and the Administrators' liability to the Lenders under this deed ranks as an expense of the administration of the Borrower.
- 15.3 **Limitation on Administrators' personal liability:** The parties acknowledge and agree that:
- (a) the Administrators are entering into and signing this deed as agents for and on behalf of the Borrower;
  - (b) notwithstanding any action the Administrators may have taken (which action is deemed to be on behalf of the Borrower and/or in order to obtain the benefit of the exclusions and indemnities in their favour contained in this deed) or any other provision of this deed, the personal liability of the Administrators, whether in contract, tort (including negligence) or otherwise, in relation to this deed is limited to the available assets of the Borrower and the statutory and equitable indemnities and liens to which the Administrators are entitled in relation to those assets; and
  - (c) the personal liability of the Administrators in respect of any matters arising under or incidental to this deed is incurred in the due performance of the Administrators' duties and the Administrators' right to be indemnified pursuant to 239ADL of the Companies Act will be reserved.

Notwithstanding any other provision to the contrary in this deed, the parties agree that nothing in this deed shall limit the liability of the Administrators for the Administrators' performance of their duties in bad faith or negligently.

- 15.4 **No recourse to personal assets:** The parties acknowledge and agree that they shall not have recourse to either or both of the Administrators' personal assets, or to the personal assets of their agents or employees, nor will they petition or otherwise seek adjudication for bankruptcy of either or both of the Administrators or of their agents or employees, in respect of any liability, claim or judgment thereon under, pursuant to or in connection with this deed.
- 15.5 **Administrators' lien:** The Administrators undertake to the Lenders to take all reasonable steps to exercise all statutory and equitable lien rights held by the Administrators in relation

to the assets of the Borrower in order to repay amounts owing to the Lenders under, and in accordance with, this deed ("**Lien Rights**").

- 15.6 **No proceedings:** Each Lender acknowledges and agrees that clauses 15.3 and 15.4 are not severable from this deed and under no circumstances will a Lender (or any other person claiming through a Lender) claim or support any claim that clauses 15.3 and 15.4 are unenforceable or should be excluded or severed from this deed in any way.

## 16. ASSIGNMENT AND TRANSFER

- 16.1 **Borrower:** The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the prior written consent of the Lenders.

### 16.2 **Lenders:**

- (a) A Lender may at any time assign all or any of its rights and benefits, and/or novate or transfer all or any of its obligations under the Finance Documents or any of them to another person without requiring the consent of the Borrower, the Administrators or any other Lender.
- (b) A Lender must promptly give notice to the Borrower of any assignment, transfer and/or novation made in accordance with this clause.
- (c) Where a Lender exercises its rights under paragraph (a) above, the Borrower, the Administrators and the other Lenders will execute such documents and do such acts as may reasonably be required by that Lender so long as the Borrower's, the Administrators' and the other Lenders' respective rights or obligations under the Finance Documents are not materially adversely affected.
- (d) If (other than at the request of the Borrower) a Lender assigns or transfers any of its rights or obligations under this deed, the Borrower shall not be under any greater monetary obligation under this deed, as a direct consequence of that assignment or transfer, than it would have been but for that assignment or transfer.

- 16.3 **Disclosure of information:** A Lender may disclose to:

- (a) any of its Affiliates and any other person:
  - (i) to (or through) whom the Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents; or
  - (ii) with (or through) whom the Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments may be made by reference to, this deed or any Borrower; or
  - (iii) who provides services to the Lender to assist it in its functions and activities and where in the reasonable opinion of the Lender disclosure is necessary or desirable for that person to be able to provide such assistance;

- (b) participants in any payment systems in which the Lender is involved and where in the reasonable opinion of the Lender disclosure is necessary or desirable in connection with the Lender's involvement with those payment systems;
- (c) any Government Agency or rating agencies to the extent lawfully required by them; or
- (d) any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about the Borrower and the Finance Documents as the Lender shall reasonably consider appropriate.

16.4 **Original Tranche B Lender:** The Parties acknowledge and agree that nothing in this deed restricts CRHL's ability to:

- (a) discuss, and provide all information in respect of any matters concerning the Borrower, the Restructuring Proposal or the Finance Documents with any Minister of the Crown, any other government agency or any of their respective advisors;
- (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the "no surprises" policy advised by Ministers of the Crown.

16.5 **Official Information Act:** The Parties acknowledge that:

- (a) the contents of the Finance Documents and the Restructuring Proposal; and
- (b) information provided to CRHL,

may be official information in terms of the Official Information Act 1982 and, in line with the purpose and principles of the Official Information Act 1982, the Finance Documents, the Restructuring Proposal and such information may be released to the public unless there is good reason, in terms of the Official Information Act 1982 to withhold it and provided that CRHL provides prior written notice of such release to the other Parties.

## 17. PAYMENT MECHANICS

17.1 **Payments by Lenders:** All payments to be made by a Lender to the Borrower under the Finance Documents shall be made in the relevant currency for value in the place of payment on the due date to the account of the Borrower previously notified by the Borrower to the Lender.

17.2 **Payments by Borrower:** All payments to be made by the Borrower under the Finance Documents shall be made for value in the place of payment on the due date to the account of the relevant Lender previously notified by that Lender to the Borrower.

17.3 **No set-off:** All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

17.4 **Partial payments:**

- (a) If a Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, that Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents and the Existing Finance Documents in accordance with clause 18.9.
- (b) Paragraph (a) above will override any appropriation made by the Borrower.

17.5 **Business Days:**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this deed interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

17.6 **Currency of account:**

- (a) Subject to paragraphs (b) and (c) below, Dollars is the currency of account and payment for sums due from the Borrower under the Finance Documents.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that currency.

18. **SECURITY SHARING**

18.1 **Turnover by the Lenders:** Subject to clause 18.2, if at any time prior to the Discharge Date, any Lender or the Administrators receive or recover:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not made in accordance with clause 18.9 (excluding any amounts received by the Borrower in the ordinary course of business to the extent included in the Baseline STCFF or an Updated STCFF and applied to fund Approved Costs (but not Administrator Costs));
- (b) any amount by way of set-off in respect of any of the Liabilities owed to it;
- (c) the proceeds of any enforcement of the ANZ Security or the CRHL Security, except in accordance with clause 18.9; or
- (d) the proceeds of any exercise by the Administrators of any Lien Rights, except in accordance with clause 18.9,

(the "**Recoveries**") that Lender or the Administrators (as applicable) will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off, hold an amount of that receipt or recovery equal to the aggregate

of the Senior Liabilities and the Super Senior Liabilities (or if less, the amount received or recovered) ("**Trust Amounts**") on trust for the Lenders and the Administrators and promptly pay or distribute that amount in accordance with clause 18.9;

- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay or distribute that amount in accordance with clause 18.9.

18.2 **Permitted assurance and receipts:** Nothing in this deed shall restrict the ability of any Lender or the Administrators to:

- (a) arrange with any person other than the Borrower any assurance against loss in respect of, or reduction of its credit exposure to, the Borrower (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by clause 16.2,

and that Lender or the Administrators (as applicable) shall not be obliged to account to any other Party for any sum received by it as a result of that action.

18.3 **Amounts received by the Borrower:** If the Borrower receives or recovers any amount which, under the terms of any Finance Document or Existing Finance Document, should have been paid or distributed to the Lenders or the Administrators (excluding any amounts received by the Borrower in the ordinary course of business to the extent included in the Baseline STCFF or an Updated STCFF and applied to fund Approved Costs (but not Administrator Costs)), the Borrower will hold an amount of that receipt or recovery equal to the aggregate of the Senior Liabilities and the Super Senior Liabilities (or if less, the amount received or recovered) on trust for the Lenders and the Administrators and promptly pay or distribute that amount in accordance with clause 18.9.

18.4 **Saving provision:** If, for any reason, any of the trusts expressed to be created in this clause 18 should fail or be unenforceable, the affected Lender, the Administrators or the Borrower (as applicable) will promptly pay or distribute an amount equal to that receipt or recovery in accordance clause 18.9.

18.5 **Turnover of Non-Cash Consideration:** If any Lender or the Administrators receive or recover any amount or distribution in the form of Non-Cash Consideration which is subject to clause 18.1, the cash value of that Non-Cash Consideration shall be determined by reference to a valuation obtained by the Lenders from a financial adviser appointed by the Lenders.

18.6 **Recovering Creditor's rights:**

- (a) Any amount paid or distributed by a Lender or the Administrators (a "**Recovering Creditor**") in accordance with clause 18.9 as a result of this clause 18 shall be treated as having been paid or distributed by the Borrower.
- (b) On an application by a Lender or the Administrators pursuant to clause 18.9 of a Payment or distribution received by a Recovering Creditor, as between the Borrower and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed by the Recovering



Creditor in accordance with clause 18.9 (the "**Shared Amount**") will be treated as not having been paid or distributed by the Borrower.

- 18.7 **Reversal of redistribution:** If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to the Borrower and is repaid or returned by that Recovering Creditor to the Borrower, then:
- (a) each Party that received any part of that Shared Amount pursuant to an application by the Recovering Creditor of that Shared Amount under clause 18.6 (a "**Sharing Party**") shall, upon request of that Recovering Creditor, pay or distribute to that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
  - (b) as between the Borrower and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by the Borrower.
- 18.8 **Notification obligations:** Each Lender and the Administrators will provide notice to each other Party (other than the Borrower):
- (a) as soon as reasonably practicable, if it has received or recovered all Recoveries that it is entitled to receive or recover and/or it has received or recovered aggregate Recoveries of an amount greater than or equal to the aggregate of the Senior Liabilities and the Super Senior Liabilities owing to that Lender or the Administrators (as applicable);
  - (b) as soon as reasonably practicable, if it receives or recovers any Recoveries, together with reasonable detail of the amount and nature of such Recoveries; and
  - (c) within two Business Days of the True-Up Date or any Interim True-Up Date, the amount of its Senior Liabilities and/or Super Senior Liabilities (as applicable) that have been satisfied, the amount of its Senior Liabilities and/or Super Senior Liabilities (as applicable) that remain unpaid and the aggregate amount of all Recoveries that it has received or recovered, in each case, together with reasonable details (each such notice being a "**Liabilities Notice**").
- 18.9 **Order of application:**
- (a) All Trust Amounts received or recovered by a Lender or the Administrators prior to the Discharge Date shall be held by that Lender or the Administrators (as applicable) on trust until the trust terminates in accordance with paragraph (d) below or until such Trust Amounts are applied in accordance with this clause 18.9.
  - (b) If, on the True-Up Date or any Interim True-Up Date any Super Senior Liabilities or Senior liabilities remain unpaid and a Lender or the Administrators has issued a Liabilities Notice, the Lenders and the Administrators will, within 10 Business Days of the date that the first Liabilities Notice was delivered in respect of the True-Up Date or that Interim True-Up Date (as applicable), make such payments amongst themselves as are necessary to ensure that:
    - (i) (in the case of the True-Up Date) all Recoveries; or



- (ii) (in the case of any Interim True-Up Date) the Recoveries received or recovered on or prior to that Interim True-Up Date which have not previously been applied in accordance with this clause 18.9,

in each case, are shared in accordance with the following order of priority:

- (aa) the Tranche C Lender and the Administrators towards the discharge of the Super Senior Liabilities (on a *pro rata* basis between the Super Senior Liabilities of the Tranche C Lender and the Administrators); and
- (bb) (excluding any Recoveries referred to in clause 18.1(d)) the Lenders towards the discharge of the Senior Liabilities (on a *pro rata* basis between the Senior Liabilities of each Lender),

(such payments being "**True-Up Payments**").

- (c) For the purposes of any Liabilities Notice and this clause 18.9, if any reimbursement obligation of the Original Tranche B Lender under clause 5.5 in respect of a Tranche B Loan is payable but unpaid on the True-Up Date or any Interim True-Up Date, then the Senior Liabilities of the Original Tranche B Lender shall be reduced, and the Senior Liabilities of the Tranche A Lender shall be increased, to the extent of that unpaid reimbursement or indemnity obligation.
- (d) Once all True-Up Payments in respect of the True-Up Date have been received by the relevant recipients or (if no True-Up Payments are required to be made following the True-Up Date) on the date falling two Business Days after the True-Up Date, the trust imposed on the Lenders and the Administrators in accordance with clause 18.1 shall terminate with immediate effect and without any further steps being taken by any Lender or the Administrators.

## 19. SET-OFF

- 19.1 **Set-off:** If an Event of Default is continuing, a Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Lender) against any obligation owed by that Lender to the Borrower, (whether or not matured), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## 20. NOTICES

- 20.1 **Writing:** Each notice or other communication to be given or made by a party under the Finance Documents shall:
- (a) **Writing:** be given or made in writing by electronic mail or letter and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to that party at the address or electronic mail address, and marked for the attention of the person (if any), from time to time designated by that party to the other for the purposes of this deed;

- (c) **Deemed delivery:** not be effective until received by that party, and any such notice or communication shall be deemed to be received by that party:
- (i) (if given or made by letter) when left at the address of that party or five Business Days after being put in the post (by airmail if to another country), postage prepaid, and addressed to that party at that address; or
  - (ii) (if given or made by email) upon production of a physical copy of the email detailing the time and the date the email was sent (provided that the sender does not receive any "out of office" auto-reply or other indication of non-receipt),

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

20.2 **Initial address and numbers:** The initial address, email address and person (if any) so designated by each party, are set out under the name of that party at the end of this deed.

20.3 **English language:**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by a Lender accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## 21. CALCULATIONS AND CERTIFICATES

- 21.1 **Accounts:** In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lenders are prima facie evidence of the matters to which they relate.
- 21.2 **Certificates and determinations:** Any certification or determination by a Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 21.3 **Day count convention:** Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

## 22. PARTIAL INVALIDITY

- 22.1 **Partial invalidity:** If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 23. REMEDIES AND WAIVERS

- 23.1 **Remedies and waivers:** No failure to exercise, nor any delay in exercising, on the part of a Lender, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this deed are cumulative and not exclusive of any rights or remedies provided by law.

## 24. AMENDMENTS AND WAIVERS

- 24.1 **In writing:** Any term of the Finance Documents may be amended or waived only with the consent of each Party. The Parties agree that an amendment or waiver of this deed is not required to be in the form of, or executed as, a deed.

## 25. ANTI-MONEY LAUNDERING

- 25.1 **Transactions:** The Borrower agrees that a Lender may delay, block or refuse to process any transaction under the Finance Documents without incurring any liability if the Lender suspects (on reasonable grounds) that:
- (a) the transaction may breach any laws or regulations in New Zealand or any other country;
  - (b) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is subject to sanctions imposed by the United States, the United Nations, the European Union or any other country; or
  - (c) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in New Zealand or any other country.
- 25.2 **Provide information:** The Borrower must provide all information to a Lender which that Lender reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Borrower agrees that each Lender may disclose any information concerning it to any law enforcement or regulatory agency or court where required by any such law or regulation in New Zealand or any other country.
- 25.3 **Representations:** The Borrower represents and warrants to the Lenders that:

- (a) it is acting on its own behalf in entering into the Finance Documents; and
- (b) to the best of its knowledge and belief, the processing of any transaction by a Lender in accordance with the Borrower's instructions will not involve any sanctioned person or breach any law or regulation referred to in this clause 25 in New Zealand or in any other country.

25.4 **Notification:** The Borrower will immediately notify the Lenders if it becomes aware that it or a Lender has become involved, or might become involved, with any sanctioned person or in any act which breaches any law or regulation referred to in this clause in New Zealand or in any other country.

## 26. DELIVERY

26.1 **Delivery by the Borrower and the Administrators:** For the purposes of section 9 of the PLA and without limiting any other mode of delivery, this deed will be delivered by the Borrower or the Administrators immediately on the earlier of;

- (a) physical delivery of an original of this deed, executed by the Borrower or the Administrators (as applicable), into the custody of a Lender or a Lender's solicitors; or
- (b) transmission by the Borrower or the Administrators (as applicable) or its solicitors of a facsimile, photocopied or scanned copy of an original of this deed, executed by the Borrower or the Administrators (as applicable), to a Lender or a Lender's solicitors.

## 27. COUNTERPARTS

27.1 **Counterparts:** Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## 28. INDEMNITIES

28.1 **Indemnities:** All indemnities and reimbursement obligations in each Finance Document are continuing and survive termination of the Finance Document, repayment of the Loan and cancellation or expiry of the Commitment.

## 29. GOVERNING LAW

29.1 **Governing law:** This deed is governed by New Zealand law. The Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## SCHEDULE 1

### Conditions Precedent to Initial Drawdown

**1. Finance Documents**

Duly executed copies of each Finance Document, in each case in form and substance satisfactory to the Lenders.

**2. Approved Costs**

A cash flow forecast showing all expected Approved Costs up to and including 16 December 2022 ("Baseline STCFF").

**3. 239ADO Orders**

Evidence that the Administrators have obtained Court orders under section 239ADO of the Companies Act.

**4. Other documentation**

Any other documentation or evidence requested by a Lender.

**SCHEDULE 2**

**Drawdown Requests**

Dated:

From: Ruapehu Alpine Lifts Limited (Administrators Appointed)

To: ANZ Bank New Zealand Limited and Crown Regional Holdings Limited

Dear Sirs

**Ruapehu Alpine Lifts Limited (Administrators Appointed) – \$4,500,000 Term Loan Facility Deed  
Dated 17 November 2022 ("Agreement")**

1. We refer to the Agreement. This is a Drawdown Request. Terms defined in the Agreement have the same meaning in this Drawdown Request unless given a different meaning in this Drawdown Request.
2. [We wish to borrow a Tranche A Loan on the following terms:
  - (a) Proposed Drawdown Date: [ ] (or, if that is not a Business Day, the next Business Day)
  - (b) Amount: [ ] or, if less, the Available Facility in respect of Tranche A
  - (c) Purpose: [ ]<sup>1</sup>
3. We wish to borrow a Tranche B Loan on the following terms:
  - (a) Proposed Drawdown Date: [ ] (or, if that is not a Business Day, the next Business Day)
  - (b) Amount: [ ] or, if less, the Available Facility in respect of Tranche B
  - (c) Purpose: [ ]<sup>2</sup>
4. [We wish to borrow a Tranche C Loan on the following terms:
  - (a) Proposed Drawdown Date: [ ] (or, if that is not a Business Day, the next Business Day)
  - (b) Amount: [ ] or, if less, the Available Facility in respect of Tranche C
  - (c) Purpose: [ ]<sup>3</sup>

<sup>1</sup> Insert detailed breakdown the Approved Costs being funded by such Loan.

<sup>2</sup> Insert detailed breakdown the NewCo Capped Costs being funded by such Loan.

<sup>3</sup> Insert detailed breakdown the Administrator Costs being funded by such Loan.

5. [The aggregate amount of the Loans requested in this Drawdown Request that will be applied towards the payment of NewCo Capped Costs together with the aggregate amount of all previous Loans made available for the purpose of funding the payment of NewCo Capped Costs, is less than or equal to the NewCo Costs Cap.]<sup>4</sup>
6. An Updated STCFF is attached to this Drawdown Request.
7. We confirm that each condition specified in clause 4.2 of the Agreement is satisfied on the date of this Drawdown Request.
8. We confirm that:
  - (a) the purpose for which the Loans requested in this Drawdown Request are to be drawn complies with clause 3.1 of the Agreement; and
  - (b) the Borrower is in compliance with its obligations under the Agreement.
9. The proceeds of this Loan should be credited to [account].
10. This Drawdown Request is irrevocable.

For and on behalf of  
**Ruapehu Alpine Lifts Limited (Administrators Appointed)**  
By:

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Administrator (with personal liability limited in accordance with the Agreement)

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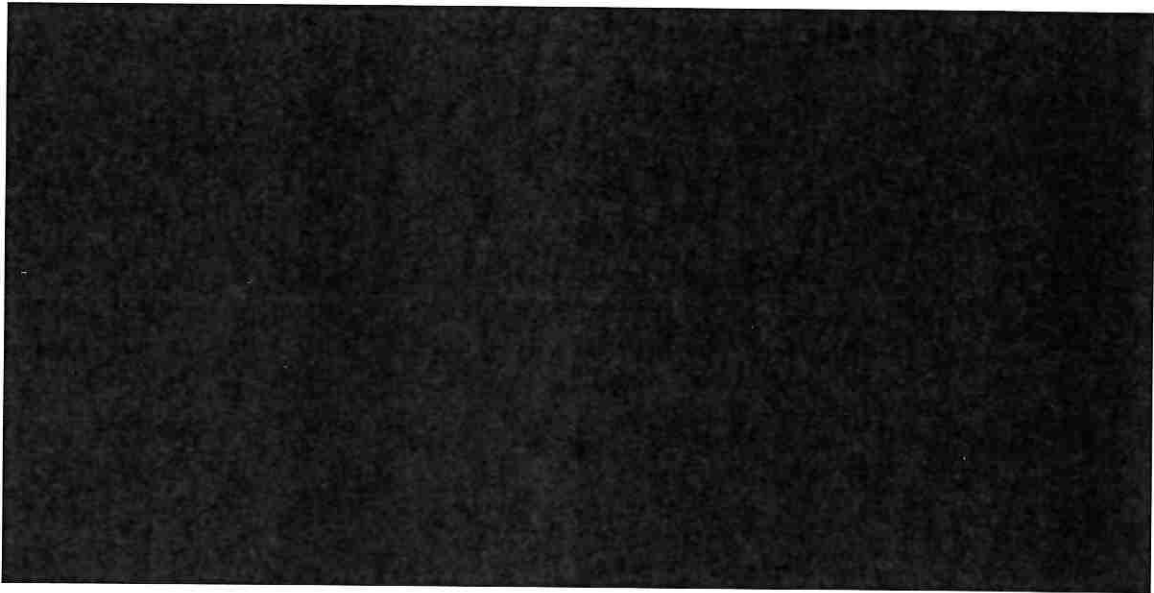
<sup>4</sup> Include if the relevant Loans are to be used to fund NewCo Capped Costs.

Russell  
McLaugh

**EXECUTED AS A DEED**

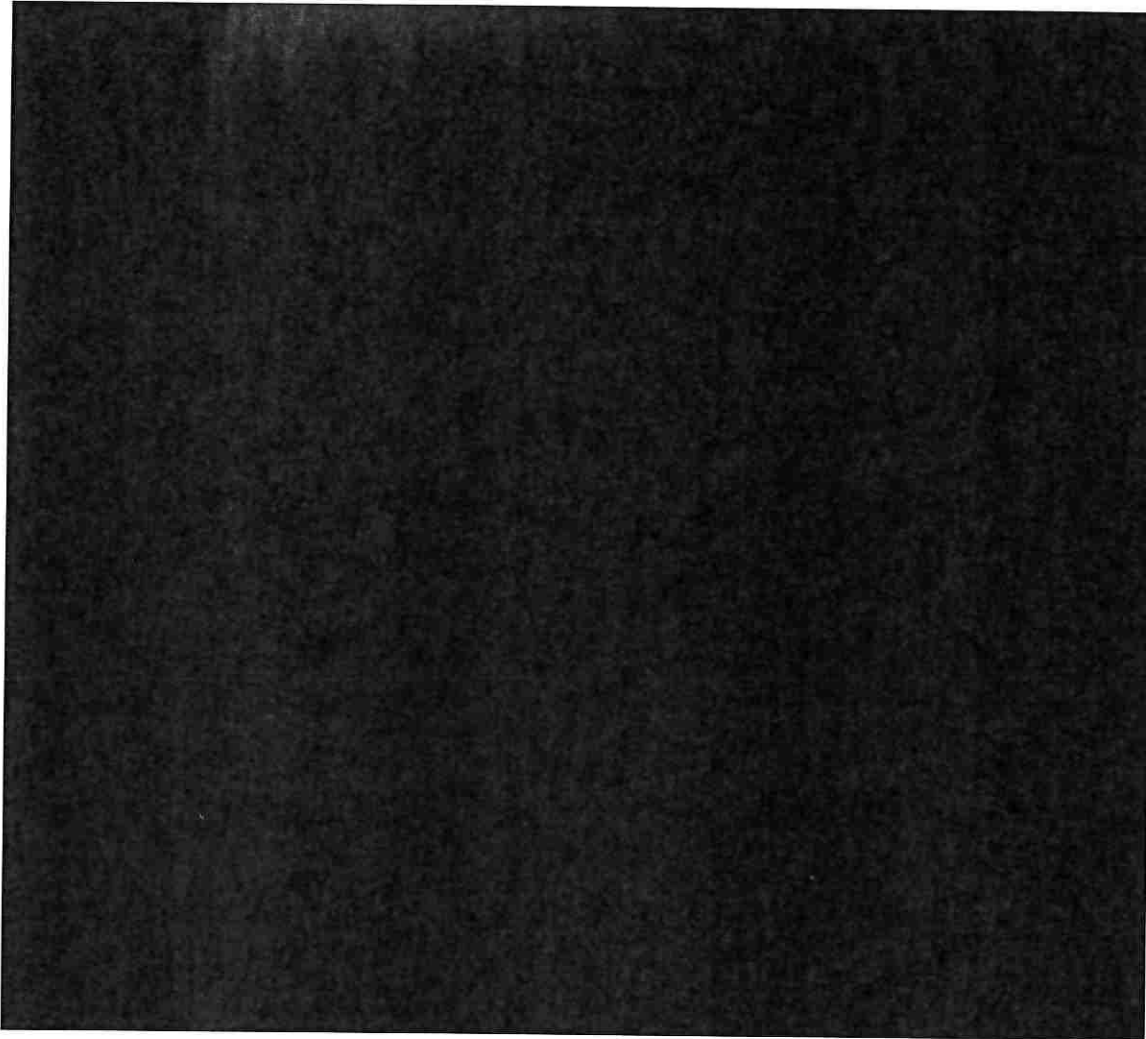
**Borrower**

For and on behalf of **RUAPEHU ALPINE  
LIFTS LIMITED (ADMINISTRATORS  
APPOINTED)** by John Fisk and Richard  
Nacey in their capacity as joint and several  
administrators (with personal liability limited in  
accordance with this deed):

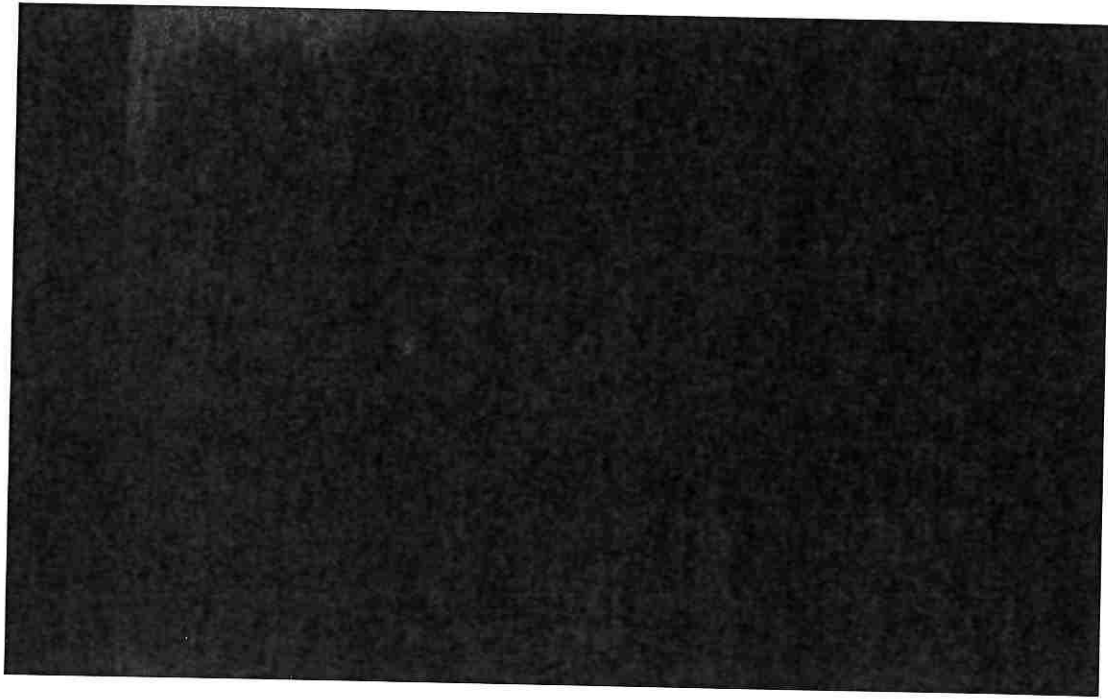




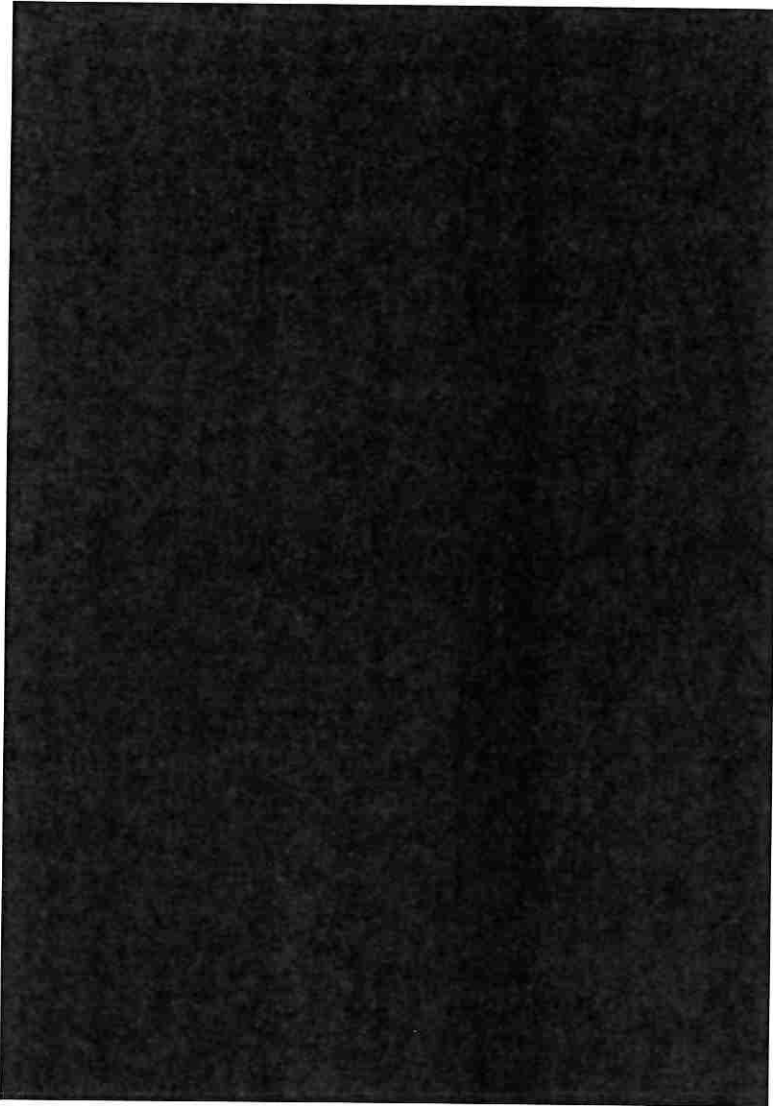
Original Tranche A Lender and Original Tranche C Lender



**CERTIFICATE OF NON-REVOCATION OF POWER OF  
ATTORNEY**

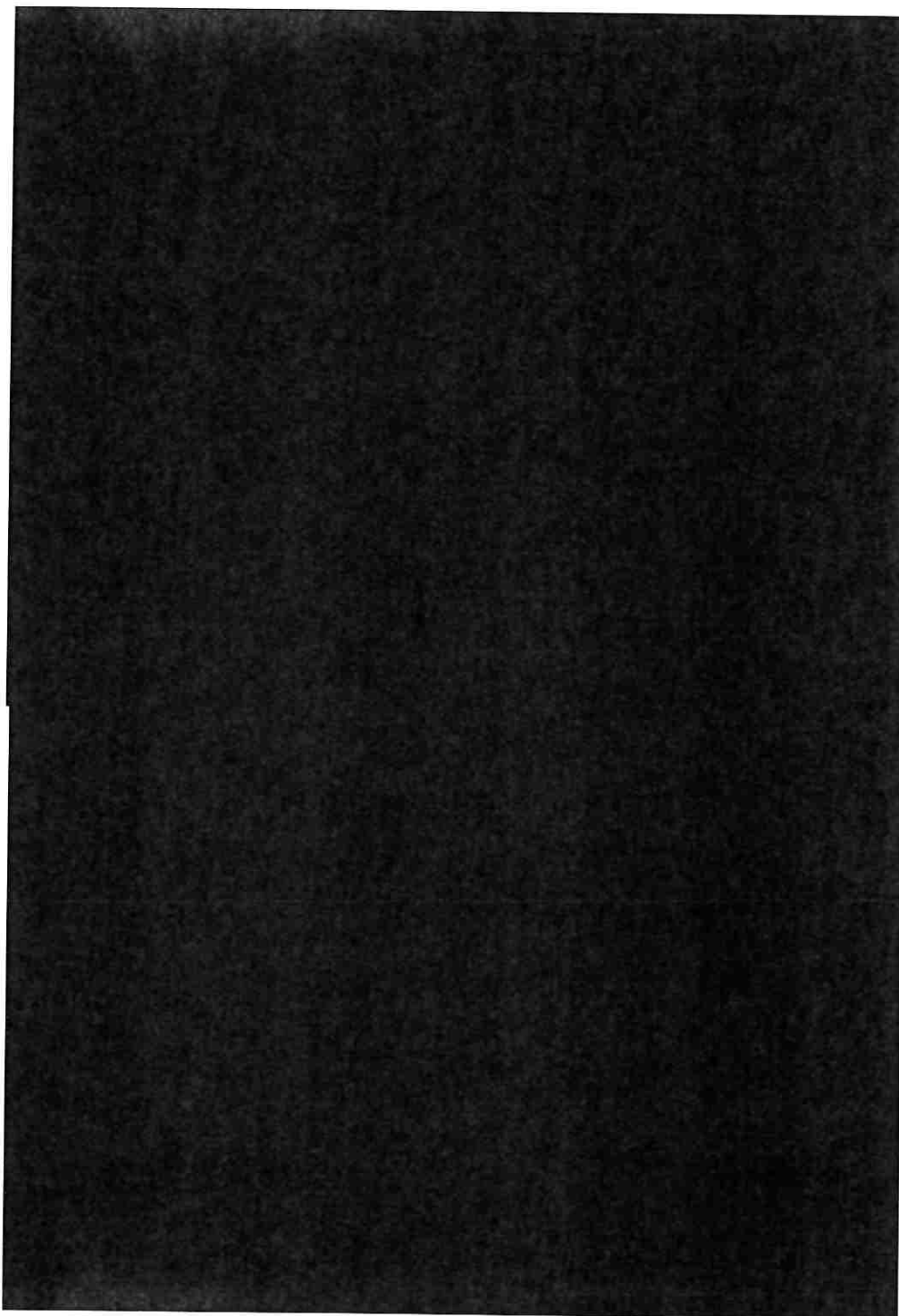


Original Tranche B Lender



Russell  
McLaugh

**Administrators**



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[Signature Page – RAL \$4,500,000 Facility Agreement]

<b>Draft as at 11 October 2022</b>		<b>NZD</b>
<b>Current Assets</b>		
Cash		79,461
Accounts Receivable & Prepayments		438,132
Stock on hand		1,320,366
RAL Stakeholder account		73,599
<b>Total Current Assets</b>		<b>1,911,558</b>
<b>Current Liabilities</b>		
Revenue in Advance		104,074
Accounts Payable		901,373
Employee entitlements, wage and PAYE clearing		1,207,206
DOC licence fee accrual		437,980
GST Payable		235,779
Current Portion of Lease Liabilities		-
ANZ Bank Overdraft		6,773,086
<b>Total Current Liabilities</b>		<b>9,659,498</b>
<b>Non-Current Assets</b>		
Fixed Assets		54,070,722
Life pass finance plan		4,423
<b>Total Non-current assets</b>		<b>54,075,145</b>
<b>Non-Current Liabilities</b>		
ANZ long term debt		5,900,000
MBIE Loan		10,000,000
RDC loan		500,000
RAL Gondola Bonds		13,500,000
Life pass revenue in advance		14,660,086
PGF Convertible note		5,000,000
<b>Total Non-Current Liabilities</b>		<b>49,560,086</b>
<b>Net Assets</b>		<b>(3,232,881)</b>
<b>Equity</b>		
Share capital		98,478
Retained Equity		(3,331,359)
<b>Total Equity</b>		<b>(3,232,881)</b>