

**STATEMENT OF DETAILS OF PROPOSED DEED OF COMPANY ARRANGEMENT
FOR
RUAPEHU ALPINE LIFTS LIMITED (ADMINISTRATORS APPOINTED)**

(the “**Company**”)

(Section 239AU(3)(c), Companies Act 1993)

This is a statement which accompanies a Notice of Watershed Meeting dated 13 June 2023 for the Company and which attaches the proposed terms of the Deed of Company Arrangement (“**DOCA**”) specified in the resolution referred to in the Notice of Watershed Meeting for the Company, and as referred to in the accompanying report prepared by the administrators of the Company under s239AU(3)(a) of the Companies Act 1993.

A copy of the full text of the proposed DOCA, including the key terms and general terms, is also available at:

<https://www.pwc.co.nz/services/business-restructuring/voluntary-administration/ruapehu-alpine-lifts-limited.html>

The DOCA can be provided to any creditor of the Company by email upon request to the Administrators at:

Email: nz_RAL@pwc.com

The proposed DOCA is an important legal document for creditors of the Company. Creditors should seek legal advice in relation to the effect of its terms on their claims and interests in advance of voting at the Watershed Meeting.

Deed of Company Arrangement

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

**John Howard Ross Fisk and Richard John Nacey
of PwC (Deed Administrators)**

Table of contents

Key Terms	1
Deed of Company Arrangement – General Terms	9
1 Definitions and construction	9
2 Directors	10
3 Deed Administrators	11
4 Company operations during the Deed Period	13
5 Available Funds	14
6 Secured Creditors	14
7 Purchase money security interest ('PMSI') creditors	14
8 Creditor claims	15
9 Interest	16
10 Deed may be pleaded as bar to Company Creditors' claims	16
11 Meeting of Company Creditors	17
12 Events of default	17
13 Termination of Deed	18
14 Deed Administrators' certification of performance of Deed	18
15 Conflicts	19
16 Other assurances	19
17 Privity	19
18 Governing law	19
19 Notices	19
20 Severance	20
21 Counterparts	20
Schedule 1 Powers and duties of the Deed Administrators	21

Deed of Company Arrangement dated 2023

Key Terms

Date of Deed	
Company	Ruapehu Alpine Lifts Limited (Administrators Appointed)
Company Number	8273
Voluntary Administrator(s)	John Fisk and Richard Nacey of PwC
Deed Administrator(s)	John Fisk and Richard Nacey of PwC
Voluntary Administration Date (the cut-off day)	11 October 2022
Date of Watershed Meeting	20 June 2023
Key purposes of this Deed	To restore the Company to a position of financial health so that it may continue trading to operate the Whakapapa and Turoa ski fields with a refreshed ability to raise capital and a renewed commitment to stakeholders (including iwi, local residents, staff and the ski community).
Deed Period	The period commencing on the date of execution of this Deed and ending on the Expiry Date.
Expiry Date	31 December 2026 or such date as may be agreed pursuant to clause 11 of the General Terms.
Default position	All Company staff, assets, liabilities, ownership, governance, and commercial relationships will remain in place except as set out in this Deed.
Management of the Company	During the Deed Period, the Company will operate under the control of its directors. The Deed Administrators shall have only the rights, powers, duties and obligations set out in this Deed.

<p>Directors</p>	<p>Subject to the approval of shareholders in accordance with the Company's constitution, the directors of the Company will be replaced with the following:</p> <ol style="list-style-type: none"> 1. John Sandford - representing Tūroa and regional tourism 2. Peter Thomson - representing new equity investors 3. Jason Platt - representing the Stakeholders Association 4. Sam Clarkson - representing Life Pass holders 5. Robert Krebs - representing Life Pass holders <p>The Company will appoint the following special advisors as board observers with rights to attend board meetings, receive board materials, ask questions and report on their observations:</p> <ol style="list-style-type: none"> 1. A nominee appointed by Ruapehu District Council (through the Visit Ruapehu Regional Tourism Organisation) 2. Gary Traveller (or a nominee) - appointed by the bondholders <p>The initial directors are intended to focus on transition and stabilisation. They will retire or stand for re-election at the next AGM, at which point, directors would be elected as per the Ruapehu Skifield Governance Framework (with a focus on lift operations and ski industry expertise).</p>
<p>Persons bound by this Deed</p>	<p>All Company Creditors, subject to section 239ACT of the Act.</p>
<p>Secured Creditors</p>	<p>At the cut-off day, the Secured Creditors are:</p> <ol style="list-style-type: none"> 1. ANZ Bank New Zealand Limited 2. Crown Regional Holdings Limited (MBIE Kānoa - Regional Economic Development & Investment Unit) 3. Bondholders, who are understood to be: <ol style="list-style-type: none"> a. Tūwharetoa Gondola Limited Partnership b. Māori Investments Ltd c. Taupo District Council d. Bay of Plenty Community Trust e. Atihau-Whanganui Incorporation 4. PMSI Creditors (for example, sundry trade creditors).

<p>Treatment of creditors</p>	<p>All obligations incurred by the Company during the Deed Period will be paid on normal terms (including the Administration Costs and Fees). Notwithstanding any other terms of this Deed, the Voluntary Administrators' statutory and equitable liens and recourse to the Company's assets are not limited, subordinated, or otherwise affected in any way by this Deed. Any security interest granted in favour of wholesale investors who provide short-term bridging finance to the Company will be subordinated to the Voluntary Administrators' statutory and equitable liens and right of recourse to the Company's assets.</p> <p>In addition, all Available Funds will be paid to Company Creditors (on a quarterly basis, cashflow permitting) in the following order:</p> <ol style="list-style-type: none"> 1. PMSI Creditors, assignees of accounts receivable and Preferential Creditors, will be paid in full and in the same order of preference that would apply under clause 2(1) of the Seventh Schedule of the Act as if the date of liquidation was the cut-off day; 2. in respect of Secured Creditors: <ol style="list-style-type: none"> a ANZ Bank New Zealand Limited will: <ol style="list-style-type: none"> i. agree to forgive the debt (and/or any obligations) incurred by the Company before the cut-off day; ii. consent to debt incurred after the cut-off day being paid in full over a period of ten years; iii. accept and agree that clauses in any lending documents or similar requiring the restructuring of the Company into a for-profit NewCo will be void and of no effect; and b Crown Regional Holdings Limited (MBIE Kānoa - Regional Economic Development & Investment Unit) will: <ol style="list-style-type: none"> i. agree to forgive the debt (and/or any obligations) incurred by the Company before the cut-off day; ii. consent to debt incurred after the cut-off day being paid in full over a period of ten years; iii. accept and agree that clauses in any lending documents or similar requiring the restructuring of the Company into a for-profit NewCo will be void and of no effect; and c Bondholders will be paid in accordance with the scheduled payment terms of the bonds and will rank ahead of the wholesale investors who provide short-term bridging finance to the Company; 3. the wholesale investors who provide short-term bridging finance to the Company through a line-of-credit facility which is secured by a general security interest; 4. the Ruapehu District Council loan will be paid back in full over a ten year period;
--------------------------------------	---

	<p>5. small unsecured creditors (less than \$50,000 in total at the cut-off day) will be paid within one year. Large unsecured creditors (over \$50,000 in total at the cut-off day) will be paid over five years; and</p> <p>6. the balance of the Admitted Claims on a <i>pari passu</i> basis over a five year period.</p> <p><u>Contingent Creditors – Life Pass holders</u></p> <p>All Claims of a Life Pass holder will be extinguished by this Deed. The Company will make new Life Passes available in 2023 to previous Life Pass holders under the 2019 Life Pass Terms of Service (these terms are subject to change). In 2023, previous Life Pass holders will be offered new Life Passes at a discounted price of \$1,000 plus GST. For subsequent years, up to and including 2032, the discounted price for previous Life Pass holders will increase annually, from 1 January 2024, by 5% from the 2023 discounted price (e.g., \$50 extra a year). For the avoidance of any doubt, in the event that the Deed is executed, all Life Pass holders, whether they vote to approve the Deed or otherwise, will be bound by the Deed as if they had voted in favour of the Deed.</p> <p>The Company reserves its right to offer previous Life Pass holders payment terms, consider hardship exceptions, or accept a lower fee in some circumstances.</p> <p>In general, the intention is that, other than the abovementioned creditor compromises, Company Creditors will be treated the same as they would be if the Company was in liquidation (i.e. afforded the same priority).</p>
<p>Additional Terms</p>	<p><u>Shareholding</u></p> <p>The Company will seek independent tax advice on the effect of proposing changes to its shareholding. The Company will not propose any changes to its shareholding if doing so would have a material adverse effect on its tax position (including loss of its tax exemptions).</p> <p>Subject to the Company receiving appropriate independent advice, and to the extent permitted by the trust deed and applicable law, the Company will seek the retirement of the current trustees of the Ruapehu Alpine Lifts Trust. If the current trustees retire, a representative of each of the following entities will be appointed as new trustees during the Deed Period:</p> <ol style="list-style-type: none"> 1. Three Mana Whenua representatives to be nominated by local Iwi or Hapū 2. the Stakeholders Association <p>If this change cannot be achieved by way of agreement with the current trustees, then the Company will, to the extent permitted by law, seek an order in the High Court to dissolve the Trust on the grounds set out in the Trust Deed for vesting. In particular, the Company will seek orders that the Trustees execute a written resolution under clause 2.5(b) of the Trust that the date of distribution under the Trust be 1 November 2023 (or such other date as the Court orders) and /or an order that the Trust be wound up. To the extent that the Deed Administrators need to consent to such a</p>

court application by the Company, the Deed Administrators' consent will not be unreasonably withheld.

The Stakeholders Association will appoint a shareholding committee to monitor the Company and act on behalf of the stakeholders.

Operating Concession

The operating concessions will continue unchanged as the skifields will be operated by the same legal entity. Any transfer of shares or issue of new shares will be limited to comply with the change of control clauses in the current concession (unless the necessary consent for change of control is provided).

The existing iwi relationship agreements with the Ngati-Rangi Trust (2017), Ngāti Tuwharetoa – Te Pae Maunga (2015) will continue. New relationship agreement negotiations will be commenced immediately with Ngāti Uenuku - Uenuku Charitable Trust (or its successors).

The Company will commence a program of works to remove and/or remediate abandoned infrastructure on the mountain in consultation with the named relationship parties, Department of Conservation and the Tongariro Taupō Conservation Board.

Short Term Finance

To ensure the timely opening of the Winter 2023 Season, the Stakeholders Association have organised a small number of wholesale investors willing to provide short-term bridging finance to the Company through a line-of-credit facility. These short term loans will make facilities of \$2,000,000 available to the company to meet payroll obligations and short-term operating costs for the ski season. The facilities are conditional on execution of this Deed on terms substantially similar to the form presented herein (in particular the director and shareholder provisions). The short-term loans will be secured by the Company granting a general security interest to wholesale investors that will rank behind existing general security interests) and will be paid back through operating cashflow during the 2023 winter season.

To ensure a smooth transition and rapid access to the facilities, the required Company shareholder & director resolutions will be prepared in advance, signed by the required parties (current shareholders and directors) and held in escrow by the Voluntary Administrators pending a creditor resolution to enter a deed of company arrangement (on terms substantially similar to this Deed) at the Watershed Meeting.

For the comfort of creditors and to ensure ongoing business continuity, execution of this Deed will be conditional on at least \$2,000,000 being available for the Company through the facilities. The availability of funds through the facilities will be confirmed prior to the Watershed Meeting by presentation to the Voluntary Administrators of signed and executed documents with supporting evidence of available on-call funds.

The short-term loans will receive a general security (not ranking above any existing securities) and will be paid back through operating cashflow during the 2023 winter season.

Short Term Cash Flow

Immediately following the Watershed Meeting the Company will release the 2023 Season Passes for sale. Based on historic performance, this will generate a rapid injection of several million dollars in operating cashflow.

The Life Pass re-activation fee will be made available for purchase as a product on the Company's website within 7 days of the Watershed Meeting. Based on LPH feedback to date, this will generate several million dollars in immediately available cash.

Any delays in cash availability as a result of delays in merchant service processing will be mitigated through the working capital facilities and through use of direct deposit payment for the re-activation fee and/or season passes.

Equity Capital Raising

The Company will maintain the non-profit community ownership model and invite new shareholders with a love of the mountain to become shareholders (to the extent permitted by law). In particular, the Company will move to offer shares for investment to the retail investors including the ski community, local residents and local businesses through a licensed equity crowdfunding provider. On completion, the Company will commence the capital raising process for the first tranche of equity investment (approximately \$2 million).

Company Constitution

The Company will seek the approval of the shareholders of the Company to amend the Company's constitution as follows:

1. The requirement for operating profit to be re-invested into maintenance and capital improvements will be retained.
2. Shareholders in the Company will not be specifically prohibited from earning capital gains (as under the previous constitution). The constitution will retain the requirement that no dividends be paid by the company to investors.
3. Shareholders will be allowed to own more than 100 shares.
4. The Company will be allowed to buy-back, issue shares or facilitate secondary transfers at or about the net asset value (or a valuation determined through a transparent process).
5. Two contingency funds will be established to make the re-investment of profits more transparent: a rainy-day reserve fund and a capital-works improvement fund.

Over time, the Ruapehu Skifield Governance Framework will be incorporated in the constitution through amendment as required (such as number of directors).

Prior to proposing any changes to the constitution of the Company, the Company will seek independent tax advice on the effect of these changes. The Company will not propose any changes to its constitution (or shareholding) if doing so would have a material adverse effect on its tax position.

	<p><u>Creditors' Committee</u></p> <p>Representatives from each of the major creditor classes will be invited to be on a creditors' committee. Creditor classes on the committee will include: Life Pass holders, bondholders, MBIE, ANZ, RDC, trade creditors, and employees.</p> <p><u>Employees</u></p> <p>As the Company is being restored to trading, all existing employment agreements will be retained including holiday entitlements and long-service agreements.</p>
<p>Terms of Deed of Company Arrangement</p>	<p>This Deed of Company Arrangement comprises these Key Terms and the annexed General Terms.</p> <p>To the extent that the Key Terms and the General Terms are inconsistent, the Key Terms shall prevail.</p>

Executed and delivered as a deed of company arrangement under Part 15A of the Companies Act 1993

Execution

Signed for and on behalf of **Ruapehu Alpine Lifts Limited** (Administrators Appointed)
by:

Director's signature

Director's signature

Director's name

Director's name

Signed by John Howard Ross Fisk and Richard John Nacey of PwC as
Deed Administrators:

Witness signature _____
Full name _____
Occupation _____
Town/city _____

John Howard Ross Fisk
Deed Administrator

Witness signature _____
Full name _____
Occupation _____
Town/city _____

Richard John Nacey
Deed Administrator

Deed of Company Arrangement – General Terms

1 Definitions and construction

1.1 Defined terms

In this Deed, unless the context requires otherwise:

Act means the Companies Act 1993.

Administration Costs and Fees means:

- a all costs (including legal costs), charges, fees, taxes, expenses, liabilities and other obligations incurred by or on behalf of the Voluntary Administrators and the Deed Administrators during the Administration Period and the Deed Period; and
- b the Voluntary Administrators' and the Deed Administrators' reasonable remuneration during the Administration Period and the Deed Period.

Administration Period means the period from the date of the Voluntary Administrators' appointment until the date of this Deed.

Admitted Claim means the amount owing by the Company to the relevant creditor as at the cut-off day and admitted by the Deed Administrators in accordance with this Deed and the Act.

Assets means all the real, personal or other property in which the Company has rights (including ownership rights) from time to time.

Available Funds means all money held in bank accounts in the name of the Company as at the date of execution of this Deed, all receipts and other moneys paid to the Company (whether from trading operations or from the sale of any Assets of the business), and any other amounts which the Company receives or is entitled to receive during the Deed Period, together with all interest accrued, less the amount required to fund the Company's actual and anticipated capital expenditure (if any) and operating costs for the Deed Period.

Claim means a debt or a claim that would have been a debt or claim admissible in the liquidation of the Company pursuant to section 303 of the Act had liquidators been appointed to the Company on the date of the Voluntary Administrators' appointment.

Company means Ruapehu Alpine Lifts Limited (Administrators Appointed).

Company Creditor means any person with a Claim against the Company as at the date of the Voluntary Administration Date, whether or not that Claim is an Admitted Claim.

PPSA means the Personal Property Securities Act 1999.

Preferential Creditor means each person that is a creditor of the Company and who would have been entitled to payment under clauses 1(2) to 1(5) of Schedule 7 of the Act as if liquidators had been appointed to the Company on the Voluntary Administration Date.

Purchase Money Security Interest has the meaning given to it in the PPSA.

Secured Creditor means any party that, as at the date of execution of this Deed, holds a general security interest, charge or mortgage granted by the Company or arising by way of operation of law or equity over Assets of the Company.

Stakeholders Association means Ruapehu Skifields Stakeholders Association Incorporated.

Working Day means a day (other than a Saturday, Sunday, public holiday, or the period commencing with 25 December in any year and ending with 2 January in the following year) on which banks registered in New Zealand by the Reserve Bank are open for business banking in Auckland.

1.2 Construction

In this Deed, unless the context requires otherwise:

Capitalised terms: capitalised terms shall have the meaning given to them by the Key Terms or the General Terms, as the context requires.

Construction: the contra proferentem rule does not apply to this Deed.

Documents: a reference to any document, including this Deed, includes a reference to that document as amended or replaced from time to time.

Examples and inclusions: an example, or a reference to “including” (or similar) does not exclude any other matter or thing.

Headings: headings are for convenience only, and do not affect interpretation.

Joint and several liability: any provision of this Deed to be performed or observed by two or more persons binds those persons jointly and severally.

Legislation: a reference to legislation or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a statutory regulation, rule, order or instrument made under or issued pursuant to it.

Parties: a reference to a party to this Deed or any other document includes that party's personal representatives/successors, administrators, and permitted assigns.

Person: includes an individual, a body corporate, any association of persons (whether corporate or not), a trust, and a state and any governmental authority (in each case whether or not having separate legal personality).

Prescribed provisions: for the purposes of section 239ACN of the Act, the clauses of Schedule 1 of the Companies (Voluntary Administration) Regulations 2007 are not to be taken or be incorporated into this Deed, except where they are incorporated expressly or by necessary implication into this Deed. To the extent that the Act requires any provision to be included in this Deed which is not expressly included in this Deed, such a provision will be deemed to be included in this Deed.

Singular and plural: the singular includes the plural and the converse applies.

2 Directors

In accordance with this this Deed, the directors of the Company:

- a shall comply in all respects with the terms of this Deed;
- b shall co-operate with and provide all reasonably requested assistance to the Deed Administrators in the performance of their obligations under this Deed or at law; and

- c will, upon termination of this Deed (assuming licensed insolvency practitioners or similar are not appointed to the Company), resume full control of the Company and shall have the power and authority to exercise all of the rights, powers, privileges, authorities and discretions which are conferred by the Company's constitution or otherwise by law.

3 Deed Administrators

3.1 Acceptance of appointment

The Deed Administrators accept appointment as Deed Administrators of the Company and under this Deed and agree to act as joint and several Deed Administrators during the operation of this Deed, or until resignation or removal from office.

3.2 Powers and obligations of the Deed Administrators

This Deed will be administered by the Deed Administrators who will act as agents for the Company and have all the functions, duties, powers and obligations conferred on the Deed Administrators by any provision of this Deed and the Act, including the powers and obligations set out in Schedule 1 of this Deed. The rights and powers of the Deed Administrators may be exercised by them jointly and severally.

3.3 Remuneration of the Deed Administrators

The Deed Administrators, together with the partners, employees, advisers or agents of the Deed Administrators, shall be entitled to reasonable remuneration in their capacity as Deed Administrators.

3.4 Deed Administrators' right of access to business records

The Deed Administrators shall be entitled to:

- a review the business records of the Company, and the Company will not in any way deny or frustrate the Deed Administrators' rights to review the business records; and
- b make enquiries from time to time of the Company's management and staff (including any director) as to any matter nominated by the Deed Administrators with respect to the financial affairs (or any other affairs) of the Company.

3.5 Deed Administrators not liable for debts after Watershed Meeting

The Deed Administrators and the partners, employees, advisers or agents of the Deed Administrators shall not in any way be personally liable for any liabilities, claims, debts, costs or expenses (of any kind whatsoever) of the Company incurred or arising in any way whatsoever on or after the Watershed Meeting, including (but not limited to) any debt or claim owed to trade creditors or supplier to the Company.

3.6 Indemnity granted by Company to Deed Administrators

Without affecting any other lien, indemnity or recourse available to the Deed Administrators, the Company indemnifies the Deed Administrators (in their capacities as voluntary administrators of the Company and as administrators of this Deed) and the partners, employees, advisers and agents of the Deed Administrators, for all claims, costs, expenses, losses, demands, proceedings, liabilities and debts made against or incurred by the Deed Administrators under this Deed or arising from or related to:

- a acting as Deed Administrators;

- b any claims arising out of works carried out during the Administration Period or the Deed Period;
- c any claims made by Company Creditors notwithstanding the extinguishment of their claims in accordance with the Deed;
- d any claims in relation to any security interest under the PPSA; and
- e any claims in relation to compliance with any health and safety legislation or regulations.

3.7 **Continuing indemnity**

The indemnity in clause 3.6 is a continuing indemnity notwithstanding the termination of this Deed for any reason whatsoever or the appointment of liquidators to the Company and shall not be affected or limited in any way by any defect or invalidity in the appointment of the Voluntary Administrators or Deed Administrators. The indemnity will extend to cover all actions, suits, proceedings, claims, liabilities, losses, debts and demands whatsoever arising out of any defect in the appointment of the Voluntary Administrators or Deed Administrators, or any defect in the approval or execution of this Deed or otherwise.

3.8 **Limitation of liability of Deed Administrators**

The parties to this Deed each acknowledge and agree that the Deed Administrators shall not personally be liable for any loss or claim arising out of or in connection with this Deed save for the Deed Administrators' own negligence or wilful default. If a Court of competent jurisdiction shall hold the Deed Administrators or their partners, agents, advisers or employees personally liable in respect of any matters arising under or incidental to this Deed then:

- a such liability shall be limited to \$5,000; and
- b no person shall have recourse to any or all of the Deed Administrators' (or either of their) personal assets or to the personal assets of their firm, partners, agents, or employees, or representatives, nor will they petition or otherwise seek adjudication for bankruptcy of the Deed Administrators (or either of them) or their partners, agents or employees, or representatives in respect of any liability, claim or judgment thereon under, pursuant to, or in connection with, this Deed.

3.9 **Limitation not severable**

The parties to this Deed also acknowledge and agree that this clause 3 is not severable from this Deed and under no circumstances shall any party to this Deed (or any person claiming through any of them) claim or support any claim that this clause is unenforceable or should be excluded or severed from this Deed in any way.

3.10 **Resignation**

A Deed Administrator may resign by giving notice in writing to the Company.

3.11 **Replacement**

Where a Deed Administrator:

- a dies; or
- b becomes prohibited, in accordance with the Act, from acting as Deed Administrator; or
- c resigns by notice in writing given to the Company,

the remaining Deed Administrator may convene a meeting of Company Creditors in accordance with clause 12 of this Deed to appoint a replacement administrator and (if appropriate) determine the rate of remuneration to be paid to the replacement administrator.

4 Company operations during the Deed Period

4.1 The Company shall:

- a account properly for all Available Funds;
- b make timely payment of all debts arising during the Deed Period;
- c make payments to Company Creditors as described in the Key Terms;
- d provide the Deed Administrators with timely and proper reports on the Company's financial position;
- e meet all health and safety requirements;
- f meet all statutory obligations, including obligations to Inland Revenue; and
- g meet any other reasonable requirement arising as a consequence of the Company continuing to trade.

4.2 The Company shall not, without the Deed Administrators' written consent (and save where expressly provided in this Deed):

- a make any change to its directorship;
- b authorise any director of the Company to be paid director's remuneration (for the avoidance of doubt any director of the Company shall be entitled to receive employee remuneration on arms' length commercial terms);
- c make payment of any employee remuneration except on arms' length commercial terms;
- d appoint new employees or change the pay rates of existing employees;
- e allow any new capital or equity to be raised by the Company in any form;
- f incur new or further debt to any party (other than debt incurred in the course of ordinary trading);
- g make any distributions (including, without limitation, any amount of interest and any sum payable on redemption) in respect of any shares in the Company;
- h change the shareholding of the Company;
- i create or permit to subsist any new security interest over, in relation to or otherwise affecting, any of its assets other than a security interest in goods acquired in the ordinary course of trading;
- j sell or agree to sell its business, goodwill or any of its fixed assets;
- k make any material changes to the extent, nature or place of its business;
- l expend in excess of \$10,000 on capital items or plant and equipment in any one financial year;

- m allow any director of the Company to borrow money from the Company or charge the Company with any expenses where such expenses are not exclusively incurred for the purpose of the Company's business;
- n commence, continue, discontinue or defend any legal proceedings;
- o purchase its own shares; or
- p enter into any further compromise with its creditors.

4.3 For the avoidance of any doubt, the Company may, with the Deed Administrators' consent, cease trading.

5 Available Funds

5.1 Security interest granted over Available Funds

In order to secure the Company's obligations to Company Creditors in respect of all Admitted Claims, and to the Deed Administrators, the Company grants a security interest in the Available Funds in favour of the Deed Administrators, for the benefit of the Deed Administrators and the Company Creditors ('**Account Security**'). This Account Security will rank in priority to the general security interest granted to wholesale investors who provide short-term bridging finance to the Company through a line-of-credit facility on or around the Watershed Meeting.

5.2 Operation of Deed Fund

The Deed Administrators may direct that Available Funds are to be paid into a separate bank account, and/or to become signatories of the bank account(s) into which the Available Funds are paid.

6 Secured Creditors

6.1 Nothing in this Deed will in any way restrict the right of a Secured Creditor who did not vote at the Watershed Meeting in favour of a resolution as a result of which the Company executed this Deed from lawfully realising or otherwise dealing with its security.

7 Purchase money security interest ('PMSI') creditors

7.1 The Voluntary and Deed Administrators shall hold on trust an amount representing the price invoiced for each item of inventory that was:

- a supplied to the Company by the holder of a valid PMSI having priority over all other security interests; and
- b sold by the Company during the Administration Period (each a PMSI Creditor).

7.2 The Deed Administrators will, upon being satisfied that any PMSI Creditor has produced all relevant documentation evidencing a valid PMSI, pay each relevant PMSI Creditor its relevant share of the money set aside during the Administration Period from the sale of inventory subject to a valid PMSI.

7.3 In respect of inventory subject to a valid PMSI having priority over all other security interests (PMSI Stock) that has not been sold during the Administration Period:

- a the Deed Administrator may invite the relevant PMSI Creditor to collect that PMSI Stock. If PMSI Creditors do not, following such a request, collect their PMSI Stock within 15 Working Days of receiving notice from the Deed Administrators, the Deed Administrators shall be entitled to release any such PMSI Stock for sale or use in the ordinary course of business and the relevant PMSI Creditor shall be deemed to have consented to the release of its PMSI in the relevant PMSI Stock;
- b the Deed Administrator and the PMSI Creditor may negotiate terms on which that PMSI Stock is to remain available to the Company; and
- c the PMSI Creditor's rights in that PMSI Stock shall not otherwise be affected by this Deed.

7.4 If, during the Administration Period, obsolete inventory is sold or used where the price invoiced was in all circumstances greater than the actual sale price of the relevant PMSI Stock, the Deed Administrators shall pay the PMSI Creditor the actual sale price of the relevant PMSI Stock.

8 Creditor claims

- 8.1 The amount of each Company Creditor's Admitted Claim shall be calculated by reference to the provisions of this Deed.
- 8.2 Company Creditors must file a creditor claim with the Deed Administrators in the form prescribed by Form 1 of the Schedule to the Companies Act 1993 Liquidation Regulations 1994 within 15 Working Days of the date of execution of this Deed. Each creditor claim must contain full particulars of the relevant claim, together with such sufficient written evidence as the Deed Administrators in their absolute discretion shall require to determine:
 - a whether or not the Company Creditor's Claim will be admitted; and
 - b the amount in respect of which the Company Creditor's Claim will be admitted.
- 8.3 Any costs and expenses incurred by a Company Creditor in seeking proof of a claim will be borne by that Company Creditor and will not form part of that Company Creditor's Claim.
- 8.4 A Company Creditor is taken to have abandoned its Claim if, before the final distribution of Available Funds to Company Creditors in accordance with this Deed, the Company Creditor:
 - a fails to submit a formal creditor claim to the Deed Administrators in respect of the Company Creditor's Claim; or
 - b having submitted a formal creditor claim to the Deed Administrators in respect of the Company Creditor's Claim and that creditor claim is rejected, fails to appeal to a Court against that rejection.
- 8.5 The Deed Administrators shall have the power to accept, reject or compromise any Claim and to ask for such further evidence of the amount claimed in order to reach a decision whether to accept, reject, or compromise any Claim.
- 8.6 The Deed Administrators shall determine any such manifest error that is proven in connection with the calculation of an Admitted Claim of a Company Creditor.
- 8.7 Sections 302 to 304, 305(1) to (10), and 306 to 311 of the Act apply, with all necessary modifications, to Company Creditors' claims in the administration of the Company. For the purposes

of this clause 4.7, references to liquidation and liquidators shall be read respectively as voluntary administration and Deed Administrators.

- 8.8 As soon as reasonably practicable after the date of execution of this Deed, the Deed Administrators shall use their best endeavours to determine:
- a the Claims of Company Creditors for the purposes of determining whether the Company Creditors have an Admitted Claim (and in what amount such Claim will be admitted); and
 - b distributions of Available Funds to be made to Company Creditors in accordance with the terms of this Deed.

9 Interest

- 9.1 No Company Creditor will be entitled to claim or be paid interest or penalties of any description that would otherwise accrue in any period after the date of the Voluntary Administration Date and before the Expiry Date in respect of any debt or Claim that existed at the Voluntary Administration Date. This clause does not limit any Company Creditor's right to seek recovery of any interest that is secured by any security interest.

10 Deed may be pleaded as bar to Company Creditors' claims

- 10.1 This Deed may be pleaded by the Company against any of the Company Creditors as a bar to any Claim by that Company Creditor, whether or not the Claim is an Admitted Claim pursuant to this Deed.
- 10.2 Apart from the rights to receive payment out of the Available Funds in accordance with this Deed, or under any security interest they may hold (subject to this Deed), the Company Creditors agree that, during the terms of this Deed, they have no proprietary right, interest or entitlement whatsoever (whether in law or in equity) to any other Assets in repayment of their Claims.
- 10.3 Whether or not the debt or Claim of a Company Creditor is admitted or established under this Deed, a Company Creditor must not (except as provided by this Deed), before the termination of this Deed:
- a institute, prosecute or continue any legal proceedings in relation to any debt or liability incurred, or alleged to have been incurred, by the Company prior to the Voluntary Administration Date (whether in any court or any other forum or tribunal);
 - b take (or support) any step to appoint liquidators to the Company or (without limiting the above) present any applications for the appointment of liquidators to the Company or continue to prosecute any application presented on or before the date of execution of this Deed for the liquidation of the Company;
 - c take or continue any form of enforcement action against the Company (including the enforcement of any security interest) in relation to events occurring prior to the Voluntary Administration Date; or
 - d exercise any right of set-off or counterclaim to which the Company Creditor would not have been entitled if liquidators had been appointed to the Company on the Voluntary Administration Date
- 10.4 To the extent that any Company Creditor has contracted with the Company on terms which provide that the appointment of voluntary administrators and operation of the Company's business under a

deed of company arrangement or any other arrangement or compromise with creditors constitutes an event of default or breach of an essential term, then those Company Creditors will be deemed to have expressly and irrevocably waived any such contractual term during the Deed Period.

11 Meeting of Company Creditors

11.1 At any time, the Deed Administrators may convene a meeting of Company Creditors for any reason including:

- a to inform the Company Creditors as to the progress of this Deed Administration or to ascertain their views on matters arising under this Deed;
- b to consider a resolution to terminate the Deed and appoint a liquidator(s) on the basis that it is no longer practicable or desirable to implement the Deed;
- c to consider a resolution to extend the Expiry Date; or
- d to consider a resolution to amend the terms of this Deed.

11.2 Schedule 5 of the Act applies, with all necessary modifications, to meetings of Company Creditors under this Deed, provided that:

- a a reference to the liquidator must be read as a reference to the Deed Administrators;
- b the Deed Administrators shall provide the Company Creditors with at least 10 Working Days' notice of a meeting, other than in cases where a shorter notice period is reasonably required; and
- c a resolution is adopted if a majority in number representing 75% in value of the Company Creditors voting in person, or by proxy vote or by postal vote, vote in favour of the resolution.

11.3 Where a Committee of Company Creditors is established, Regulations 10 to 15 of Schedule 1 of the Companies (Voluntary Administration) Regulations 2007 will apply to this Deed.

12 Events of default

12.1 For the purposes of this clause 12, Event of Default means the occurrence of any one or more of the following events:

- a the resignation or removal of the Deed Administrators (except where either or both of the Deed Administrators are replaced by another member or members of the Deed Administrators' firm);
- b the identification of any material claims that are not known at the date of execution of this Deed and which may materially reduce the return to Company Creditors;
- c the breach of one or more of the covenants in clause 4 of this Deed and the breach, if capable of remedy, is not remedied within five Working Days of its occurrence;
- d the appointment of a liquidator, receiver, or statutory manager to the Company; or
- e the occurrence of an event which, in the reasonable opinion of the Deed Administrators, has or could reasonably be expected to have a material adverse effect on:
 - i the financial condition, business, or operations of the Company; or
 - ii the ability or willingness of the Company to comply with its obligations under this Deed.

- 12.2 The Company shall, as soon as possible, notify the Deed Administrators of the occurrence of any Event of Default.
- 12.3 Upon receiving notification of an Event of Default, or on their own initiative following an Event of Default, the Deed Administrators may serve a default notice on the Company requiring the Event of Default to be remedied.
- 12.4 If the Event of Default is not remedied by the time specified in the default notice (which time shall be determined by the Deed Administrators, acting reasonably) the Deed Administrators may serve on the Company a further notice terminating this Deed with immediate effect.

13 Termination of Deed

- 13.1 This Deed shall terminate on the earliest occurrence of any of the following events:
- a the Deed Administrators certifying in accordance with clause 14.1 that this Deed has been performed;
 - b a meeting of Company Creditors pursuant to clause 11 of this Deed resolving to terminate the Deed;
 - c a termination notice being served by the Deed Administrators on the Company under clause 12.4 of this Deed; or
 - d the Expiry Date.
- 13.2 Where the Deed is successfully performed in accordance with clause 13.1(a), each Company Creditor shall be deemed (without the requirement of any further notice, agreement or deed) to have released the Company, the Deed Administrators, and the Assets from all claims, demands and proceedings that they may have had against the Company, the Deed Administrators, or the Assets with respect to a Claim.
- 13.3 Where this Deed is terminated other than in accordance with clause 13.1(a):
- a all Claims that remain unpaid and due on the date of termination shall be payable in full on the first Working Day immediately following the date of termination, less any payments received by Company Creditors pursuant to this Deed (clause 9 shall continue to apply); and
 - b the Deed Administrators shall enforce the Account Security and distribute any proceeds in accordance with the order of priority set out in the Key Terms.
- 13.4 The termination of this Deed or the appointment of liquidators to the Company shall not in any way affect the Deed Administrators' rights under the Act or this Deed (including rights of indemnity), nor shall termination or liquidation affect the Deed Administrators' limitation of liability under clause 3, and all such rights will continue unaffected.

14 Deed Administrators' certification of performance of Deed

- 14.1 The Deed Administrators must execute a notice of certification of performance of this Deed when the Deed Administrators have paid to the Company Creditors their full entitlements under this Deed, or any lesser sum which the Company Creditors accept (whether at a meeting of Company Creditors or otherwise).

14.2 The notice must be in the following form:

[Name of company in deed administration]

I/We [name and address of Deed Administrators], as Deed Administrator(s) of the Deed of Company Arrangement executed on [date of execution of Deed] certify that the Deed has been performed.

15 Conflicts

Insofar as any provision of this Deed is inconsistent with the constitution of the Company or with a provision of the Act (including any regulation made thereunder) this Deed shall, to the extent of such inconsistency, and to the extent permitted by law (including the Act), prevail, and all persons bound by this Deed agree to immediately sign all documents and do all things necessary to remove such inconsistency if so requested of them by the Deed Administrator.

16 Other assurances

The parties bound by this Deed shall, on request from the Deed Administrators, execute such deeds and other documents and do such acts and things as may be necessary or expedient to implement this Deed.

17 Privity

The Deed Administrators and the Company acknowledge and declare that their obligations under this Deed constitute promises that are intended to confer benefits enforceable by the Voluntary Administrators under the Contract and Commercial Law Act 2017.

18 Governing law

This Deed is governed by the laws of New Zealand, and each party bound by this Deed submits to the exclusive jurisdiction of the courts of New Zealand.

19 Notices

19.1 Written notice

Subject to any contrary statutory provision, any notice under this Deed shall be in writing addressed to the party to whom it is to be sent at the address or email address from time to time designated by that party in writing to the other party, or if no such address has been given, then to that party at its registered office or principal place of business for the time being.

19.2 Delivery

Delivery may be effected by hand or by email where a party has advised its email address to the other party in writing.

19.3 Deemed receipt

Any notice given under this Deed shall be deemed to have been received:

- a at the time of delivery, if delivered by hand;

- b on the day on which the transmission is sent, if sent by email. However, if the date of transmission is not a Working Day or the transmission is sent after 5:00pm on a Working Day then the notice will be deemed to have been received on the next Working Day after the date of transmission. If there is any dispute or difference between the Parties over the fact of transmission in any particular case, production by the sender of a confirmation of clear transmission shall be conclusive evidence of transmission and shall bind the parties accordingly.

20 Severance

Subject to clause 3, if the whole or any part of this Deed or the application of this Deed to any person or circumstance is or shall become illegal, invalid or unenforceable or infringe upon any statutory requirement (including any provision of the Act):

- a the relevant part of the Deed shall be deemed to be read down to such extent as is necessary to ensure that it does not so infringe and as may be reasonable to give valid operation and effect (albeit of a partial nature) to the Deed; and
- b if the relevant part of the Deed cannot be read down, that part of the Deed shall be deemed to be void and severable and the remaining terms (including, where applicable, the remaining part of the offending term) shall be valid and enforceable to the fullest extent permitted by law.

21 Counterparts

This Deed may be signed and delivered in one or more counterparts, each of which when signed shall be deemed to be an original, and all of which taken together shall constitute one and the same deed. Where a party transmits its counterpart copy by PDF (or similar) to the other party then such transmission shall be deemed proof of signature of the original.

Schedule 1 Powers and duties of the Deed Administrators

1. The powers of the Deed Administrators are as set out in Schedule 1 to the Companies (Voluntary Administration) Regulations 2007 and shall also include:
 - a the power to review the ongoing trading of the Company;
 - b the power to advise the Company on trading strategies;
 - c the power to monitor the Company's compliance with the terms of this Deed;
 - d the power to do anything else that is reasonably necessary for the purpose of administering this Deed;
 - e the power to call meetings of shareholders of the Company (including on an urgent basis);
 - f the power to make interim or other repayments out of the Available Funds in accordance with this Deed;
 - g the power to determine Admitted Claims;
 - h the power to compromise any Admitted Claims on such terms as the Deed Administrators think fit;
 - i the power to pay any class of Company Creditors (including a Secured Creditor) to the extent provided for by this Deed;
 - j the power to terminate this Deed in accordance with clause 13 of this Deed without requiring a meeting of Company Creditors;
 - k the power to consult professional advisers and/or agents as the Deed Administrators deem appropriate;
 - l the power to at any time apply to the Court for directions in relation to any particular matter arising under this Deed;
 - m the power to report to the Company Creditors on matters concerning the administration of this Deed; and
2. Duties of the Deed Administrators: the Deed Administrators have a duty to report serious problems pursuant to section 60 of the Insolvency Practitioners Regulation Act 2019.