

BAY ENERGY LIMITED (TO BE RENAMED TRUSTPOWER LIMITED)

Issuer

TRUSTEES EXECUTORS LIMITED

Supervisor

MASTER TRUST DEED

RUSSELL McVEAGH

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DEED dated 14 September 2016

PARTIES

BAY ENERGY LIMITED (Company number 565426, to be renamed Trustpower Limited) ("**Issuer**")

TRUSTEES EXECUTORS LIMITED ("**Supervisor**")

INTRODUCTION

- A. The Issuer has resolved to establish a bond programme ("**Programme**") pursuant to which it may issue Bonds from time to time.
- B. Bonds will be issued under the Programme on a series by series basis on terms set out in a Series Supplement made between the Issuer and the Supervisor. The terms of each Series Supplement may modify the terms of this Deed in relation to the relevant Series.
- C. The FMC Act requires the appointment of a supervisor in respect of the Retail Bonds and the execution by the Issuer and the Supervisor of a trust deed.
- D. The Supervisor has agreed, at the request of the Issuer, to act as supervisor for the Retail Holders and, to the limited extent expressly provided in this Deed, for the Wholesale Holders, on the terms and conditions of this Deed applicable to that Series.

COVENANTS

1. DEFINITIONS AND INTERPRETATION

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

"**Accrued Interest**" means all interest on the Principal Amount of the Bonds which has accrued and is payable in accordance with this Deed.

"**Agency Agreement**" means, in relation to any Series, the agency agreement (if any) between the Issuer and the person appointed as registrar, calculation agent (if any) and paying agent for that Series.

"**Amortising Bond**" means a Bond (whether a Fixed Rate Bond, Floating Rate Bond, Index-linked Bond, Zero Coupon Bond or otherwise) the Principal Amount or part of the Principal Amount of which is repayable on the scheduled Amortisation Dates.

"**Amortisation Date**" means, in respect of an Amortising Bond, each date (other than the Maturity Date) for the repayment of part of the Principal Amount of that Amortising Bond, being the dates recorded as such in the Register in respect of that Amortising Bond.

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

"**ARL**" means Australasian Renewables Limited (company number 1212113).

"**ARL Group**" means the group of companies comprising ARL and its intended subsidiaries (if any) following the Demerger.

"**Auditor**" means the auditor for the time being of the Issuer.

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

"**Base Rate**" means, in relation to an Interest Period, the reference rate specified in the Series Supplement for the relevant Bonds.

"**Board**" means the Directors who number not less than the required quorum acting together as a board of directors.

"**Bond**" means, at any time, a note, bond or other debt instrument created, constituted and issued pursuant to the terms and conditions set out in this Deed and the Series Supplement applicable to it, and remaining outstanding at that time.

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

"**Business Day**" means a day on which the NZX is open for trading.

"**Class**" means Bonds which constitute a separate category of Bonds with such categories being:

- (a) in relation to matters affecting a Series only, that Series; or
- (b) any category of Bonds having substantially the same rights, privileges, limitations and conditions, which in the reasonable opinion of the Issuer (in consultation with the Supervisor) at any particular time, for any particular purpose, constitutes a separate class of Bonds,

and "**Class of Holders**" means the Holders of that Series or those Series of Bonds, as the context requires.

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

"**Conditions**" means, in relation to a Bond, the terms and conditions applicable to that Bond set out in any part of the Series Supplement for the Series of which that Bond forms part and (as modified by that Series Supplement) this Deed.

"**Consolidated Group**" means the Issuer and its Subsidiaries.

"**Constitution**" means the constitution of the Issuer, as amended from time to time.

"**Conversion**" means, in relation to a Bond, the redemption of that Bond by the issue of the number of Ordinary Shares derived by application of the relevant Conversion Rate, and "**Convert**", "**Convertible**" and "**Converted**" shall be construed accordingly.

"**Conversion Percentage**" has the meaning given (if any) in the Series Supplement for the relevant Series.

"Conversion Rate" means, in relation to a Convertible Bond, the number of Ordinary Shares to be issued on Conversion of that Bond calculated in accordance with the following formula:

$$OS = FV + (OSMV \times CP)$$

provided that, unless the Holder makes full and timely payment to the Issuer in respect of any withholding tax or other withholding or deduction required to be paid or made on or before Conversion (whether pursuant to clause 15 (including, for the avoidance of doubt, any Approved Issuer Levy to be deducted pursuant to clause 15) or otherwise), the number of Ordinary Shares to be issued on Conversion shall be adjusted in accordance with the following formula:

$$AOS = OS - \frac{WT}{OSMV}$$

In the above formulae:

OS = the number of Ordinary Shares to be issued on Conversion of the Bond

FV = the Face Value of the Bond

OSMV = the Ordinary Share Market Value on the date of Conversion

CP = the Conversion Percentage for that Series of Bonds as specified in the Series Supplement for that Series

AOS = the adjusted number of Ordinary Shares

WT = the amount of the withholding tax, Approved Issuer Levy, or other withholding or deduction required to be paid or made by the Issuer on or before Conversion.

"Convertible Bonds" means Bonds of a Series that are Convertible into Ordinary Shares and which is identified in the Series Supplement constituting it and in the Register in respect of that Bond as a Convertible Bond.

"Credit Support" means, in relation to any Series, a guarantee or indemnity by any person (other than the Issuer or a Subsidiary of the Issuer) in favour of the Supervisor and/or the Holders of those Bonds guaranteeing the payment of, or indemnifying against the consequences of default in the payment of (on and subject to the terms and conditions of the document recording such guarantee and/or indemnity) amounts payable in respect of those Bonds.

"Credit Wrapped Bonds" means Bonds of a Series that has the benefit of Credit Support.

"Date of Enforcement" means the date on which a Holder or the Supervisor makes a declaration pursuant to clause 14.1.

"this Deed" means this deed and, where used or required to be interpreted in relation to a particular Series, means this deed as modified and supplemented by the Series Supplement applicable to that Series.

"Default Interest" has the meaning given to it by clause 7.6.

"Demerger" means the proposed demerger of ARL and the Issuer from Trustpower to be implemented by way of a court approved scheme of arrangement.

"Director" means, at any time, a director (or alternate director) of the Issuer at that time and **"Directors"** means, at any time, the directors (including alternates) of the Issuer acting in accordance with the Constitution.

"Dollars" and **"\$"** means New Zealand dollars.

"Early Redemption Option" means, in relation to a Series of Bonds, the early redemption option (if any) as specified in clause 3.6 of the Series Supplement for that Series.

"Event of Default" means any event specified in clause 14.1.

"Face Value" means the face value of each Bond as specified in the Series Supplement for that Series of Bonds.

"FATCA" means sections 1471-1475 of the US Internal Revenue Code of 1986, any current or future regulations or official interpretation thereof, and any relevant intergovernmental agreement.

"First Interest Accrual Date" means, in respect of a Bond, the first date from which interest will accrue in respect of that Bond, as set out in the Series Supplement, for the Series of which that Bond forms part.

"Fixed Establishment" has the meaning given to that term in section YA 1 of the Income Tax Act 2007.

"Fixed Rate Bond" means a Bond bearing a fixed rate of interest.

"Floating Rate Bond" means a Bond bearing interest at a margin over the Base Rate.

"FMA" means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011.

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

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

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

"Holder" means, at any time, each person whose name is entered in the Register as a holder of Bonds at that time.

"Index" means, in relation to a Bond, the index (if any) recorded in the Register in respect of that Bond by reference to which the Principal Amount of that Bond and/or the amount of interest payable in respect of that Bond is to be calculated.

"Index-linked Bond" means a Bond in respect of which either the Principal Amount of, or the interest payable on, that Bond, or both, is to be calculated by reference to an Index.

"Interest Group" means, in relation to any action or proposal affecting rights attached to any Bonds, a group of Holders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and

- (c) who comprise Holders of one or more classes, except where action is taken in relation to some Holders in a class and not others, or a proposal expressly distinguishes between some Holders in a class and other Holders in that class, in which case the Holders in that class may fall into two or more interest groups.

"Interest Payment Date" means:

- (a) in relation to a Floating Rate Bond, the last day of each Interest Period for that Floating Rate Bond or such other date as is specified in the Series Supplement in relation to the Series of which that Floating Rate Bond forms part;
- (b) in relation to a Fixed Rate Bond, the quarterly, semi-annual or annual dates (or such other dates) specified in the Series Supplement in relation to the Series of which that Fixed Rate Bond forms part; and
- (c) in relation to any other Bond, the dates specified in the Series Supplement in relation to the Series of which that Bond forms part.

"Interest Period" means, in relation to a Floating Rate Bond, each period for payment of interest on that Bond as specified in clause 8.1(a) and the relevant Series Supplement.

"Interest Rate" means, in relation to a Bond, the rate of interest (if any) payable in respect of that Bond (which may be a fixed rate or a margin over the Base Rate or calculated by reference to an Index) specified in the relevant Series Supplement and recorded as such in the Register in respect of that Bond.

"Independent Adviser" means an adviser appointed pursuant to clause 1.6.

"Issue Date" means, in relation to a Bond, the date on which it is issued, in terms of this Deed, being the date specified in the relevant Series Supplement in respect of such Bond.

"Issuer Group" means the group of companies comprising the Issuer and its intended subsidiaries (if any) following the Demerger.

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

"Listing Rules" means the NZSX and NZDX listing rules as amended from time to time.

"Margin" means, in relation to a Floating Rate Bond, the margin specified at the time of issue in the Series Supplement in respect of that Floating Rate Bond.

"Maturity Date" means, in relation to a Bond, the date for the repayment of that Bond, being the earlier of:

- (a) the maturity date (if any) specified in the relevant Series Supplement; and
- (b) in relation to a Bond other than a Perpetual Bond, the Date of Enforcement (if any).

"Minimum Number" means such number of Bonds as may constitute a "Minimum Holding" of Bonds (as set out in the relevant Series Supplement).

"Minimum Principal Amount" means, in relation to a Series, the minimum principal amount of the Bonds forming part of that Series on their Issue Date (or, as the context requires, at all times), being the amount specified as such in the relevant Series Supplement for that Series.

"**NZClear**" means the securities clearing and settlement facility operated by the Reserve Bank of New Zealand and known as the NZ Clear System and includes any securities clearing and/or settlement facility which replaces or supersedes it from time to time.

"**NZDX**" means the debt security market operated by NZX.

"**NZSX**" means the main board equity security market operated by NZX.

"**NZX**" means the NZX Limited and includes, where applicable, NZSX and NZDX.

"**Offer Document**" means:

- (a) in relation to any Retail Series, the product disclosure statement or other disclosure document required by the FMC Act (or such other document required by law which may replace a product disclosure statement or other disclosure document required by the FMC Act); and
- (b) in relation to any Wholesale Series, the Offer Document (if any) or other offering document (if any) relating to that Wholesale Series,

in each case, together with all documents to be distributed with or which form part of the relevant document, which has been prepared by, or on behalf and with the approval of, the Issuer in relation to the relevant Series, and in relation to any Retail Series, in each case, has been reviewed by the Supervisor.

"**Ordinary Shares**" means fully paid ordinary voting shares in the capital of the Issuer of the same one class.

"**Ordinary Share Market Value**" means, in relation to an Ordinary Share, on any Maturity Date:

- (a) if the Ordinary Shares of the Issuer are listed on the NZX on that Maturity Date:
 - (i) the volume weighted average of the prices at which Ordinary Shares were sold through the order matching system of the NZX during the period of 10 consecutive Business Days immediately preceding the fifth Business Day prior to that Maturity Date, such period to be referred to as the Market Value Determination Period; or
 - (ii) if no such sale occurred during such 10 Business Day period, the market value of the Ordinary Shares of the Issuer determined on the basis set out in paragraph (b) of this definition; or
- (b) in the circumstances described in paragraph (a)(ii) of this definition, or if the Ordinary Shares of the Issuer are not listed on the NZX on the Maturity Date, the market value of the Ordinary Shares of the Issuer as determined by an Independent Adviser.

"**Perpetual Bond**" means a Bond which, in accordance with its Conditions, is Subordinated Indebtedness of the Issuer and which is identified in the Series Supplement constituting it and in the Register in respect of that Bond as a Perpetual Bond and which has no Maturity Date other than on a Winding-Up of the Issuer or as otherwise specified in the Series Supplement constituting it.

"**Principal Amount**" means, in relation to a Bond at any time, the outstanding principal amount of that Bond, at that time as recorded in the Register in respect of that Bond or as the context may require:

- (a) in relation to an Amortising Bond, the principal amount thereof for the time being outstanding, as reduced in accordance with clause 7.2; or
- (b) in relation to an Index-linked Bond, the principal amount thereof for the time being outstanding, as increased or reduced in accordance with clause 8.3.

"**QFP Offer**" means an offer of financial products that would require disclosure under Part 3 of the FMC Act but for the application of the quoted financial products exclusion under clause 19 of Schedule 1 to the FMC Act.

"**Record Date**" means, in relation to a payment due on a Bond or the determination of the holders of Ordinary Shares to be whom an entitlement, right or obligation relating to those Ordinary Shares shall apply, 5:00pm on the tenth day before the due date for that payment or determination (or if that day is not a Business Day, the Business Day immediately preceding such day) or such other date provided for in the Series Supplement for the relevant Bonds.

"**Register**" means, in relation to a Series, the register of Bonds kept by the Registrar for that Series in accordance with the provisions of this Deed and the Agency Agreement in which is entered the name and address of each person who is the Holder of a Bond.

"**Registered Address**" means, in relation to a Holder at any time, the address of that Holder recorded in the Register at that time.

"**Registrar**" means, in respect of any Series, the person named in the relevant Agency Agreement and specified in the Series Supplement for that Series as the registrar, calculation agent and/or paying agent for that Series or any successor agent appointed under the relevant Agency Agreement in relation to that Series.

"**Regulated Offer**" means a regulated offer within the meaning of that term in the FMC Act, or a QFP Offer.

"**Retail Provisions**" means the provisions in this Deed relating to a Retail Series only.

"**Retail Bond**" means a Bond which is part of a Retail Series and Retail Holder means a Holder of a Retail Bond.

"**Retail Series**" means a Series of Bonds which is expressed in the relevant Series Supplement to be a "**Retail Series**" and therefore have been or may be in accordance with the relevant Conditions, be offered or sold under a Regulated Offer.

"**Senior Creditors**" means, in relation to a person, all creditors of that person in relation to indebtedness, other than, in the case of the Issuer, indebtedness:

- (a) owed to Holders pursuant to the Subordinated Bonds; or
- (b) which is expressed to be subordinate to the obligations of the Issuer under or in relation to the Subordinated Bonds, or pari passu with such obligations.

"**Series**" means Bonds that are issued under the same Series Supplement.

"**Series Supplement**" means a deed supplemental to this Deed entered into by the Issuer and the Supervisor pursuant to clause 2.4 constituting and specifying the terms and conditions applicable to a Series of Bonds.

"**Special Resolution**" has the meaning set out in schedule 2.

"**Statement**" means:

- (a) in relation to a Bond and a Holder, the statement issued, or to be issued, by the Issuer to that Holder as required by the Listing Rules; and
- (b) in relation to an Ordinary Share arising from Conversion of any Bond, the statement to be issued by the Issuer to the holder of that share, as required by the Listing Rules.

"Subordinated Bond" means a Term Subordinated Bond or a Perpetual Bond.

"Subsidiary" means a subsidiary, as defined in section 5 of the Companies Act, or an "in-substance" subsidiary, in accordance with any approved financial reporting standard, of the Issuer.

"Supervisor" means Trustees Executors Limited or such other supervisor as may hold office under this Deed from time to time.

"Supervisor Powers" means, in relation to a Bond, the trusts, powers, authorities or discretions vested in the Supervisor by this Deed, or otherwise at law, in relation to that Bond.

"Suspension Notice" means a notice given by the Issuer to the Supervisor pursuant to clause 9.3.

"Term Subordinated Bond" means:

- (a) a Bond which, in accordance with its Conditions, is Subordinated Debt of the Issuer and which is identified in the Series Supplement constituting it and in the Register in respect of that Bond as a Term Subordinated Bond and which has a specified Maturity Date; and
- (b) a Perpetual Bond (if any) identified in a Series Supplement which provides that those Perpetual Bonds are repayable with the same priority as Term Subordinated Bonds.

"Transaction Documents" means, in relation to a Series, the documents specified as such in the relevant Series Supplement.

"Trustpower" means Trustpower Limited (company number 604040).

"Unsubordinated Bond" means a Bond which is not a Subordinated Bond.

"Winding-Up" means any procedure, whether brought or instigated by a Holder or any other person, for the winding up or dissolution of the Issuer otherwise than for the purposes of, and followed by, an amalgamation or solvent reconstruction on terms previously approved by a Special Resolution of each Class of Holders or, if the conditions relating to such Class of Bonds so require, with the consent or at the direction of the relevant Credit Support provider for such Class.

"Wholesale Series" means a Series of Bonds which is expressed in the relevant Series Supplement to be a **"Wholesale Series"** and therefore are not permitted, in accordance with the relevant Conditions, to be offered or sold under a Regulated Offer,

and **"Wholesale Bond"** means a Bond which is part of a Wholesale Series and **"Wholesale Holder"** means a Holder of a Wholesale Bond.

"Zero Coupon Bond" means a Bond in respect of which no interest is payable issued by the Issuer at a discount to its Principal Amount.

- 1.2 **Listing Rules:** When used in this Deed, the following words and phrases (and any other word or phrase beginning with a capitalised letter which is not defined in clause 1.1 but which is a defined term in the Listing Rules) shall, unless the context requires otherwise, bear the same meaning as it has under the Listing Rules:

"Affected Group"

"Listing"

"Quoted"

"Relevant Group".

- 1.3 **References:** Except to the extent that the context requires otherwise, any reference in this Deed to:

an "**authorisation**" includes:

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

a "**charge**" includes a mortgage, charge, encumbrance, lien, or pledge and any other security interest or arrangement of any nature the practical effect of which is to secure a creditor but does not include any of the foregoing:

- (a) which arises by operation of law; or
- (b) which consists of rights or obligations of, or in the nature of, set-off, netting, combination, consolidation or retention of accounts, banker's lien or similar rights or obligations in relation to or affecting any credit balances or other financial obligations (but not where there is a flawed asset or arrangement having a similar purpose or effect).

a "**clause**", "**section**" or "**schedule**" is a reference to a clause or section of, or a schedule to, this Deed.

a "**company**" means any company or body corporate wherever incorporated or domiciled and, where the context so admits, includes an individual.

the "**dissolution**" of any person includes the bankruptcy or winding up of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets.

"**financial indebtedness**" means indebtedness for or in respect of money borrowed or raised (whether or not for cash consideration), by whatever means (including the drawing, acceptance, endorsement or discounting of bills of exchange).

"**financial statements**" includes statements of financial position, financial performance, movements in equity and cash flows, and the bonds relating thereto, and consolidated "financial statements" has a corresponding meaning.

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

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

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

"**outstanding**" means, in relation to Bonds, all Bonds other than those which have been:

- (a) redeemed or repaid in full in accordance with the Conditions applicable to those Bonds; or
- (b) purchased and cancelled in accordance with the Conditions applicable to those Bonds.

"**payment**" includes satisfaction of a monetary obligation.

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

"**tax**" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called (including, for the avoidance of doubt, Approved Issuer Levy), imposed or levied by any governmental agency, together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing.

"**written**" and "**in writing**" includes all means of reproducing words in a tangible and permanently visible form.

1.4 **Cross-references:** In relation to any Series, a cross-reference to any clause of this Deed shall, where that clause is amended or substituted by the Series Supplement in relation to that Series, be deemed to be a cross-reference to that clause as so amended or substituted.

1.5 **Interpretation**

- (a) **Plural, singular and gender references:** Words importing the singular number include the plural and vice versa, and the masculine gender includes the feminine or neutral genders and vice versa.
- (b) **References to legislation:** Reference to a statute or regulation includes all amendments to that statute or regulation whether by subsequent statute or otherwise, and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.
- (c) **Modified, novated, supplemented, varied and replaced document:** References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.

- (d) **References to any party:** References to any party to this Deed or any other document or any Holder shall include its successors or permitted assigns.
 - (e) **References to time of day:** References to a time of day are references to New Zealand time unless otherwise stated.
 - (f) **Headings:** The introduction to and headings have been inserted in this Deed for guidance only and shall not be deemed to form any part of the context.
 - (g) **Non-Business Days:** Where under or pursuant to this Deed or anything done under this Deed the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day.
 - (h) **References to currency:** If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in Dollars of any amount denominated in any other currency, that equivalent shall be determined on the basis of such rate of exchange prevailing as at that date as the Issuer, with the prior approval of the Auditor, may select.
- 1.6 **Independent Adviser:** If an Independent Adviser is required for any of the purposes of this Deed the Supervisor shall select an investment banker, chartered accountant, or other financial adviser (in each case appropriately qualified having regard to the purpose of the appointment) and shall notify the Issuer of the name of that adviser. The Issuer shall within 5 Business Days thereafter advise the Supervisor whether or not it approves that adviser. The Issuer shall not unreasonably withhold its approval of any such adviser. If the Issuer does not approve an adviser, the Supervisor shall select another until a suitable adviser is approved.
- 1.7 **Retail Provisions:** The FMC Act imposes certain obligations on the Issuer, and requires this Deed to include certain terms and conditions for the benefit of Holders of Retail Bonds. To the extent that any provision of this Deed or the applicable Series Supplement expressly or impliedly indicates that a Holder of Retail Bonds would not have the full benefit of the provisions of the FMC Act and FMC Regulations that are for the benefit of holders of debt securities issued under a regulated offer, those provisions must be read in a manner consistent with the relevant obligations of the Issuer under the FMC Act and the FMC Regulations. Unless expressly provided otherwise in this Deed or the Series Supplement, the Holders of Wholesale Bonds are not intended to have the benefit of the Retail Provisions and the terms of this Deed and the Series Supplement should be read accordingly.
- 1.8 **Demerger:** Prior to the first issuance of Bonds under this Deed, the Demerger will be effected through a distribution of ordinary shares in ARL and ordinary shares in the Issuer to Trustpower shareholders, by way of an *in specie* distribution made by the liquidator of Trustpower. The distribution will occur following the completion of a restructuring of Trustpower whereby all of its assets and liabilities (including contracts) are transferred to the ARL Group or the Issuer Group, except for the shares which Trustpower holds in ARL and the Issuer. Trustpower is then to be placed into liquidation and the shares which it holds in ARL and the Issuer are to be subdivided so that Trustpower holds the same number of shares in each of those companies as the number of shares that Trustpower has on issue. The liquidator of Trustpower will then make an *in specie* distribution of these shares to the Trustpower shareholders, with each Trustpower shareholder receiving one ARL share and one Issuer share for each Trustpower share which they hold at the applicable record date for the Demerger. The Holders and the Supervisor shall be deemed to have consented to the Demerger and agreed that the Demerger and any step that is necessary or incidental to achieving the Demerger and to any transactions considered necessary or desirable in connection with the Demerger are approved and will not breach any terms set out in this Deed.

2. ISSUE AND CONSTITUTION OF BONDS

2.1 **Power to issue Bonds:** The Issuer may issue Bonds pursuant to this Deed from time to time in such Series (including any existing Series), at the times, in the amounts, at the prices, in the currencies, to the persons and on the terms and conditions as determined by the Issuer.

2.2 **Form of Bonds:** Without limitation to clause 2.1, Bonds may be issued on terms such that the Principal Amount is a fixed amount or a reducing amount or an amount to be calculated by reference to an Index and/or that interest (if the Bond is interest-bearing) will be calculated by reference to a specific interest rate (which may be a fixed rate or a margin over a base rate) or by reference to an index or both. In addition, Bonds shall be Subordinated Bonds or Unsubordinated Bonds, as specified in the relevant Series Supplement.

2.3 **Wholesale Bonds and Retail Bonds:** Bonds shall be issued on the basis that the relevant Series:

- (a) may be offered or sold under a Regulated Offer (being Retail Bonds); or
- (b) may not be offered or sold to retail investors (as that terms is defined in the FMC Act) (being Wholesale Bonds),

in each case as specified in the relevant Series Supplement.

2.4 Series Supplement

- (a) Bonds shall be constituted and issued in Series. Each Series shall be subject to the terms and conditions set out in a Series Supplement for that Series and (as modified by that Series Supplement) this Deed.
- (b) To the extent that the Series Supplement for a Series modifies this Deed, or in the event of any conflict between the provisions of that Series Supplement and those of this Deed, that Series Supplement shall prevail over this Deed in relation to that Series.
- (c) The provisions of the relevant Series Supplement and this Deed read together in accordance with this clause 2.4 shall constitute the Conditions for the Bonds of the relevant Series.

2.5 **Creation and issue:** A Series of Bonds shall be constituted by:

- (a) the Issuer delivering a completed and signed Series Supplement to the Supervisor and to the Registrar; and
- (b) the Supervisor signing and returning the Series Supplement to the Issuer.

A Series of Bonds shall be issued and created by the Registrar entering the particulars of that constituted Series into the Register in accordance with clause 5.1(a).

2.6 **Provisions applicable to Bonds:** The Bonds shall be issued and held with the benefit of and subject to the applicable Conditions, all of which are binding upon the Issuer, the Supervisor and the Holders. The Holders shall be deemed to have notice of the applicable Conditions.

2.7 **Form of Bonds:** Each Bond shall:

- (a) be in uncertificated book entry form; and

- (b) in respect of each Series, have a Minimum Principal Amount for holdings of Bonds of that Series and may also have a minimum multiple of that amount for such holdings, in each case as specified in the relevant Series Supplement for that Series.

2.8 **Purchase, cancellation, reissue:** Subject to any provisions to the contrary in the Conditions, the Issuer may purchase Bonds from any person at any time on the market or by private treaty at any price and may cancel any Bonds so purchased or may re-issue any such Bonds or may hold the Bonds as treasury stock, but shall not be obliged to do so. For the avoidance of doubt, a restriction in a Series Supplement on prepayment of Bonds in that Series shall not of itself be a restriction on the purchase of those Bonds.

2.9 **Bonds may be credit wrapped:** The Issuer shall be entitled to issue Bonds of any Series where the Supervisor (or a separate guarantee supervisor) on behalf of the Holders holds the benefit of Credit Support in respect of that Series. The terms of any such Credit Support shall be contained in, or referred to in, the Series Supplement in respect of that relevant Series. Unless otherwise stated in the relevant Series Supplement, any monies payable by the provider of the relevant Credit Support to the Supervisor on behalf of the Holders (or the separate guarantee supervisor, as the case may be) of the relevant Series shall be held solely for the Holders of that Series and shall not be available to other Holders pursuant to clause 11.2 or otherwise.

2.10 **Redemption and Prepayment:** Bonds may be issued with such redemption and prepayment rights as are specified in the relevant Series Supplement.

2.11 **Conversion conditional:** To the extent that the Conversion of Bonds into Ordinary Shares remains subject to approval by an ordinary resolution of Shareholders, the Conversion rights and the related Conversion mechanics will become operative only once that approval has been obtained.

3. STATUS OF BONDS

3.1 Status of Bonds generally

- (a) The Bonds are and will at all times be direct, unsecured and (except in relation to Subordinated Bonds) unconditional indebtedness of the Issuer.
- (b) Except where the Bonds are expressed in the Series Supplement for the relevant Series to be Term Subordinated Bonds or Perpetual Bonds, the Bonds shall be Unsubordinated Bonds and nothing in clause 6 shall apply in respect of them.

3.2 **Status of Unsubordinated Bonds:** Unsubordinated Bonds rank and will at all times rank equally without any preference or priority among themselves and at least equally with all present and future unsubordinated and unsecured indebtedness of the Issuer (except indebtedness preferred solely by operation of law and subject to laws affecting creditors' rights generally and equitable principles of general application).

3.3 **Status of Term Subordinated Bonds:** Term Subordinated Bonds rank and will at all times rank equally without any preference or priority among themselves and otherwise in accordance with the status and ranking recorded in the relevant Series Supplement.

3.4 **Status of Perpetual Bonds:** Perpetual Bonds rank and will at all times rank equally without any preference or priority among themselves and otherwise in accordance with the status and ranking recorded in the relevant Series Supplement.

- 3.5 **Election:** For the avoidance of doubt, the Issuer may, in the relevant Series Supplement, elect that a Bond that is otherwise a Perpetual Bond shall rank equally in right of repayment and priority with a Term Subordinated Bond, in which case the relevant Series of Bonds shall be treated as Term Subordinated Bonds hereunder.

4. TITLE AND TRANSFER

- 4.1 **Certificates:** At the request of a Holder, or otherwise as required by the FMC Act, FMC Regulations or any other applicable law, the Issuer shall procure the Registrar of the relevant Bonds to issue to that Holder a certificate or notice of registration in relation to the Bonds held by that Holder, such certificate or notice to be in the form agreed between the Issuer, the Registrar of the relevant Bonds and, where required by any Series Supplement in relation to a Series of Credit Wrapped Bonds, the provider of Credit Support for the relevant Bonds. A certificate or notice of registration issued in respect of a Bond will not constitute a document of title. Entitlement will be determined solely by entry in the Register and, in the case of the beneficial interest in Bonds lodged in NZClear, the records of NZClear.

- 4.2 **Fees:** The Issuer shall, and shall procure that each Registrar shall make no service charge to the Holders for:

- (a) the registration of any holding of Bonds; or
- (b) the transfer of registered title to any Bonds.

The Issuer and each Registrar may, however, require the payment of any taxes and other governmental charges payable as a result of any transfer.

4.3 Selling restrictions

- (a) Each Holder shall only offer for sale or sell any Bond in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) Without limitation to the generality of paragraph (a) above, Bonds which are expressed in the relevant Series Supplement to be a Wholesale Series or part of a Wholesale Series shall not be offered or sold by the Issuer or any Wholesale Holder to any investors where the offer or sale to at least one of those investors would require disclosure under Part 3 of the FMC Act.
- (c) No Offer Document or any advertisements or other offering material in relation to any Bonds may be made in or from any jurisdiction except in circumstances that will result in compliance with all applicable laws and regulations and where compliance with all such applicable laws and regulations will not impose any obligations on the Issuer.
- (d) The Series Supplement for any Series may set out additional selling restrictions.

- 4.4 **Validity:** No Holder shall be concerned or obliged to enquire whether any Bond has been issued in contravention of this Deed, any Series Supplement, the Listing Rules (if applicable to the relevant Series) or the Constitution. Each Bond shall be deemed to be validly issued and constituted under this Deed, the Listing Rules (if applicable to the relevant Series) and the Constitution and to be entitled to the benefit of the provisions of this Deed, notwithstanding that it may subsequently be determined that the issue of such Bond was in breach of any provision of this Deed, any Series Supplement, the Listing Rules (if applicable to the relevant Series) or the Constitution, but without

prejudice to the Supervisor's rights pursuant to this Deed against the Issuer in relation to such breach.

- 4.5 **Statements:** The Issuer shall issue, or shall cause to be issued, to each Holder a Statement relating to that Holder's Bonds, in accordance with, and in the time required by, the Listing Rules (if applicable to the relevant Series).

5. REGISTER

5.1 Register

- (a) The Issuer shall at all times while Bonds are outstanding, cause the Registrar for each Series to establish and maintain a Register for that Series complying with all applicable laws, which must record in respect of each Bond the information specified in Schedule 1.
- (b) There shall be a separate Register for each Series but one or more such Registers may be maintained by the same Registrar.
- (c) The Register shall be kept by the Registrar at such place in New Zealand as the Issuer may from time to time determine and notify the Supervisor of in writing.

- 5.2 **Disclosure and Inspection:** The Registrar of the relevant Bonds must disclose to a Holder who so requests, any information held on the Register which relates to the Bond(s) registered in the name of that Holder. The Issuer and the Supervisor may, at all reasonable times during normal office hours upon reasonable notice to the Registrar and subject to applicable laws, inspect and take extracts from each Register without payment of any fee.

5.3 Register conclusive

- (a) Except as ordered by a court of competent jurisdiction, the Issuer, the Supervisor and each Registrar and provider of Credit Support is each entitled to recognise the Holder of a Bond as the absolute owner of the Bond and shall not be bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance, security or other adverse interest to which any Bond may be subject. No recognition of any trust (express, implied or constructive), encumbrance, security or other adverse interest shall be entered on the Register. In the event of any conflict between any certificate or notice of registration issued in respect of a Bond and the Register, the Register shall prevail.
- (b) None of the Issuer, the Supervisor nor any Credit Support provider is liable to each other or to any Holder or former Holder for relying on the Register or for accepting in good faith as valid any detail recorded on the Register subsequently found to be forged, irregular or not authentic.

- 5.4 **Correction of errors:** Each Registrar may, on such evidence as appears to it to be sufficient, correct errors and remedy omissions in the relevant Register.

5.5 Co-ownership Bonds

- (a) Where two or more persons are registered as Holders of the same Bond(s) by virtue of any application for Bonds, memorandum of transfer or other instrument, then, unless the contrary is expressed in the application,

memorandum, or other instrument, the persons will be deemed to hold the Bond(s) as joint tenants with right of survivorship.

- (b) If two or more persons apply, whether on application for any Bonds or by memorandum of transfer, to be registered as Holders as tenants in common, the Registrar for the relevant Series may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share. If the Bonds cannot be divided into shares each of which share would comply with the applicable Minimum Principal Amounts (and any minimum multiples thereof), the Registrar of the relevant Bonds may refuse to accept the application or memorandum of transfer (as the case may be).

5.6 Acquisition of Bonds by operation of law: When the right to any Bond is acquired by any person in any manner other than by way of a transfer under this Deed (whether on the dissolution, death or bankruptcy of the relevant Holder, or under a writ of execution, or otherwise) the Registrar of the relevant Bonds, on application by or on behalf of that person and on being satisfied that such person is legally entitled to be registered as the Holder of that Bond, will enter that person's name in the Register as the Holder of that Bond accordingly.

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

5.8 Compliance with law: The Issuer shall comply with, and shall use its best endeavours to ensure that each Registrar complies with, all statutory requirements and the requirements of this Deed relating to the keeping of the Register and the details entered in the Register. Without limiting the generality of the foregoing, the Register in respect of any Retail Series shall be audited by the Auditor annually within 4 months of the end of each financial year of the Issuer and at such other times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements for this clause 5.8 are not being complied with in relation to the Register for any Retail Series.

5.9 No liability: No Registrar will be liable for any breach by the Issuer of any representation, obligation, undertaking, including the non-payment of any money due, nor will any Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any instruction or direction of the Issuer or with the consent or approval of the Issuer.

6. SUBORDINATED BONDS

6.1 Issue of Subordinated Bonds: The Issuer may, if it expressly so provides in the Series Supplement for any Series, issue Bonds which are subordinated in the event of the Winding-Up of the Issuer to the claims of Senior Creditors of the Issuer, in which case this clause 6 (as it may be modified by the relevant Series Supplement) shall apply to that Series.

6.2 Term Subordinated Bonds: The rights and claims of Holders of Term Subordinated Bonds are, in a Winding-Up of the Issuer, subordinated to the claims of the Senior Creditors of the Issuer (with the intent that all claims of Senior Creditors shall be paid in full before any claims of the Holders of the Term Subordinated Bonds are paid), and prior to the commencement of a Winding-Up of the Issuer:

- (a) the obligation of the Issuer to make any payment in respect of the Term Subordinated Bonds is conditional upon the Issuer being solvent at the time the

relevant payment falls due and, in the event that the Issuer is not solvent at that time, such obligation shall remain conditional until such time as the Issuer becomes solvent; and

- (b) no payment shall be made in respect of the Term Subordinated Bonds except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.

6.3 **Perpetual Bonds:** The rights and claims of Holders of Perpetual Bonds are, in a Winding-Up of the Issuer, subordinated to the claims of the Senior Creditors of the Issuer and Holders of Term Subordinated Bonds (with the intent that all claims of Senior Creditors and Holders of Term Subordinated Bonds are paid in full before any claims of the Holders of the Perpetual Bonds are paid), and prior to the commencement of a Winding-Up of the Issuer:

- (a) the obligation of the Issuer to make any payment in respect of the Perpetual Bonds is conditional upon the Issuer being solvent at the time the payments and other amounts owing fall due and, in the event that the Issuer is not solvent at that time, such obligation shall remain conditional until such time as the Issuer becomes solvent; and
- (b) no payment shall be made in respect of the Perpetual Bonds except to the extent that the Issuer may make such payment and still be solvent immediately thereafter.

6.4 **Solvency**

- (a) For the purposes of clauses 6.2 and 6.3, the Issuer shall be considered to be solvent at any time if at that time it is able to meet the solvency test in section 4 of the Companies Act (or would be able to do so if it were a company registered under that Act).
- (b) A certificate as to whether the Issuer is solvent signed by two directors or two authorised signatories of the Auditor shall be prima facie evidence of the information contained therein.

6.5 **Contingent debt:** On a Winding-Up of the Issuer, the Supervisor and the Holders of Subordinated Bonds shall only be entitled to prove for any sum payable in respect of the Subordinated Bonds as a debt which is subject to and contingent upon prior payment in full of, in the case of Holders of Term Subordinated Bonds, the Senior Creditors, or in the case of Holders of Perpetual Bonds, the Senior Creditors and the Holders of Term Subordinated Bonds. The Supervisor agrees, and by purchasing, or otherwise becoming entered on the Register for the relevant Series as a Holder of a Subordinated Bond, each Holder of Subordinated Bonds will be deemed to agree, that:

- (a) in accordance with section 313(3) of the Companies Act, it is accepting a lower priority in respect of the debt represented by such Bond than that which it would otherwise have under section 313; and
- (b) nothing in section 313 of the Companies Act will prevent this Deed from having effect in accordance with its terms.

6.6 **No set-off:** No Holder of a Subordinated Bond shall be entitled to net or set off against any amounts due in respect of the Subordinated Bonds held by that Holder any amount held by the Holder to the credit of the Issuer or otherwise to reduce the amount due to such Holder in respect of a Subordinated Bond by merger of accounts or lien or the exercise of any other rights of like effect. To the extent any netting, set-off, merger, lien

or other right is required by law to be exercised that exercise shall be subject to clause 6.7.

- 6.7 **Trust:** Any payment, whether voluntarily or in any other circumstances, received by a Holder of Subordinated Bonds or by the Supervisor on its behalf from or on account of the Issuer (including by way of credit, netting, set-off or otherwise) or from any liquidator, receiver, manager or statutory manager of the Issuer in breach of this clause 6 will be held by the Supervisor or the relevant Holder in trust for and to the order of the Senior Creditors (and, in the case of payments received by the Holders of Perpetual Bonds, payments will also be held in trust for and to the order of the Holders of Term Subordinated Bonds). Any such trust hereby created shall be for a term expiring on the earlier of the date on which all Senior Creditors (and, in the case of any payment held in trust by a Holder of Perpetual Bonds, the Holders of Term Subordinated Bonds) have been paid in full or 80 years from the date of this Deed, except to the extent that any interests under such trusts have vested at that date and without affecting the contractual rights and obligation of the Issuer and the Supervisor under this Deed, and any amounts which would, otherwise, have been held on trust for the Senior Creditors of the Issuer will be held on trust for the Issuer absolutely. Neither the Supervisor nor any Holder shall have any obligation under this clause 6.7 in respect of any payment received by anyone other than itself.
- 6.8 **Performance of trust:** Any trust mentioned in clause 6.7 may be performed by a Holder or the Supervisor by paying or repaying the amount so received or recovered, or so much thereof as shall be necessary to ensure that all of the Senior Creditors (and, in the case of any payment held in trust by a Holder of Perpetual Bonds, the Holders of Term Subordinated Bonds) are fully paid or repaid, on trust to the liquidator of, or other person charged with or responsible for the making of distributions on behalf of the Issuer or, where there is no such person, the Issuer, for distribution to the appropriate Senior Creditors (and, in the case of any payment held in trust by a Holder of Perpetual Bonds, the Holders of Term Subordinated Bonds). The receipt of the liquidator or other such person or the Issuer, shall be a good discharge to the Holder or the Supervisor for the performance by it of the trust mentioned in clause 6.7. Any amount which becomes subject to the trust mentioned in clause 6.7 and which is paid or repaid by any Holder, as the case may be, or the Supervisor pursuant to this clause 6.8 shall thereafter be treated as between the Issuer and the Supervisor or the Holder as if it had never been received or recovered in the first place.
- 6.9 **Contracts Privity Act:** For the purposes of the Contracts (Privity) Act 1982, the provisions of this clause 6 are intended to confer a benefit upon the Senior Creditors and to be enforceable by the Senior Creditors directly, but no consent of the Senior Creditors shall be required to any modification or amendment to this clause 6.
- 6.10 **No subordination of Supervisor's entitlement:** The provisions of this clause 6 apply only to payments or repayments by way of Principal Amount or interest on the Subordinated Bonds and nothing in this clause 6 shall subordinate, defer in priority or point of payment, or otherwise affect or prejudice the payment or reimbursement of the fees, expenses, indemnities or other moneys payable to the Supervisor pursuant to this Deed, or the rights and remedies of the Supervisor in respect thereof.
- 6.11 **Exercise of Supervisor's duties:** In respect of Subordinated Bonds issued as part of a Series, the duties of the Supervisor shall be construed and interpreted to recognise and take into account the subordinated nature of the Bonds including the following characteristics:
- (a) the subordination and the postponement in priority of the Subordinated Bonds to indebtedness to all Senior Creditors (and also, in the case of Perpetual Bonds, to Holders of Term Subordinated Bonds);

- (b) the Issuer may freely incur further indebtedness to Senior Creditors and further Subordinated Indebtedness;
- (c) the Issuer may, in the circumstances set out in the relevant Conditions, suspend payment on the Bonds; and
- (d) Perpetual Bonds have no Maturity Date (other than on a Winding-Up of the Issuer or as otherwise specified in a relevant Series Supplement),

and the duties of the Supervisor, including the duties set out in FMC Act and FMC Regulations, shall to the extent permitted by law be limited and construed by reference to the special features of the Subordinated Bonds. All Holders of Subordinated Bonds are deemed to have agreed to and accept and are bound by the foregoing limitations.

6.12 **Bonds paramount:** In the execution of the trusts under this Deed, the Supervisor shall at all times:

- (a) regard the interests of the Holders of Unsubordinated Bonds as paramount to the interests of the Holders of Subordinated Bonds; and
- (b) regard the interests of the Holders of Term Subordinated Bonds as paramount to the interests of the Holders of Perpetual Bonds.

7. PAYMENT OF PRINCIPAL AMOUNT AND INTEREST

7.1 Bonds

(a) Principal Amount

- (i) Subject to clause 7.1(a)(ii), the Issuer shall, on the Maturity Date of each Bond, pay or cause to be paid to, or to the order of, the Supervisor the Principal Amount of that Bond in accordance with the Conditions applicable to that Bond.
- (ii) Notwithstanding clause 7.1(a)(i), the Issuer shall, on the Maturity Date of each Bond, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Holder the Principal Amount of that Bond in accordance with the relevant Agency Agreement. Such payment shall operate as a payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 7.1(a)(i).

(b) Interest

- (i) Subject to clause 7.1(b)(ii), the Issuer shall, as and when due and payable in accordance with the Conditions applicable to each Bond, unconditionally pay or cause to be paid to, or to the order of, the Supervisor all interest and other amounts payable in respect of that Bond in accordance with the Conditions applicable to that Bond.
- (ii) Notwithstanding clause 7.1(b)(i), the Issuer shall, as and when due and payable in accordance with the Conditions applicable to each Bond, unless and until otherwise requested by the Supervisor, pay or cause to be paid to, or to the order of, the relevant Holder all interest and other amounts payable in respect of that Bond in accordance with the Conditions applicable to that Bond and in accordance with the relevant Agency Agreement. Such payment shall operate as a

payment to the Supervisor in satisfaction (to the extent of the amount paid) of the Issuer's obligations under clause 7.1(b)(i).

(iii) If specified in the relevant Series Supplement for a Bond, on the first Interest Payment Date for a Bond, an additional amount may be paid to the person whose name appears in the Register as the initial Holder of that Bond.

(c) **Early redemption:** In relation to a Series of Bonds where the Early Redemption Option is specified as applicable in the relevant Series Supplement, the Issuer may elect to redeem the Bonds in that Series for cash by giving 15 Business Days' notice to each relevant Holder of the date (being (in the case of Subordinated Bonds) any Business Day and (in the case of all other Bonds) a date not less than 25 Business Days before the Maturity Date for that Series of Bonds) on which the Issuer will redeem the Bonds (the early redemption date). On the early redemption date, the Issuer will redeem each Bond in the relevant Series for an amount to be determined in accordance with the relevant Series Supplement.

7.2 **Principal amount of Amortising Bonds:** The Issuer shall, on each Amortisation Date of each Amortising Bond, unconditionally pay, or cause to be paid to, or to the order of, the relevant Holder, the portion of the Principal Amount of that Amortising Bond as set out in respect of that Amortisation Date in the Register in respect of that Amortising Bond in accordance with the Conditions applicable to that Bond.

7.3 **Interest:** Subject to the Conditions applicable to a Bond, the Issuer shall pay interest on each Interest Payment Date:

- (a) on each Floating Rate Bond for each Interest Period, at the rate per annum equal to the aggregate of the Base Rate for that Interest Period (as determined by the Registrar for the relevant Series) and the Margin for that Floating Rate Bond;
- (b) on each Fixed Rate Bond, at the Interest Rate for that Fixed Rate Bond; and
- (c) on each Index-linked Bond, in accordance with the formula or at the Interest Rate (as the case may be and as determined by the Registrar for the relevant Series) recorded in the Register in respect of that Index-linked Bond.

7.4 **Basis of calculation of interest:** Other than as set out in a Series Supplement:

- (a) A certificate by the Issuer as to the amount of interest payable to a Holder on an Interest Payment Date is, in the absence of manifest error, conclusive and binding on the Holder.
- (b) Where an Interest Payment Date is not a Business Day, interest will be paid on the next Business Day without adjustment, interest or further payment as a result thereof.
- (c) Interest shall be calculated on the basis of a 365 day year.
- (d) Interest shall cease to accrue on a Convertible Bond from the date of Conversion of that Convertible Bond.

7.5 **Non-payment:** Each Bond will cease to bear interest from its Maturity Date unless payment of the Principal Amount is improperly withheld or refused. In such event, interest will continue to accrue (after, as well as before, any judgment) up to but excluding the date on which payment in full of the Principal Amount is made,

- 7.6 **Default interest:** If any amount payable in respect of a Bond or any other amount due to any person under this Deed is not paid on its due date, interest shall accrue on the unpaid amount (net of any interim or progress payments made) (after, as well as before, judgment) at the rate determined by the Registrar for the relevant Series to be the aggregate of 2% and the Base Rate (or, in the case of a Bond bearing a fixed rate of interest, the applicable fixed rate) which on the due date would apply to an Interest Period of one month. The Base Rate shall be determined at monthly intervals thereafter until the unpaid amount (net of any interim or progress payments) is paid and shall be compounded monthly until paid. For the avoidance of doubt, this clause 7.6 shall not apply in respect of payments which have been suspended in accordance with this Deed.

8. CALCULATION OF INTEREST

8.1 Floating rate bonds

(a) Interest Periods

Each Interest Period in relation to a Floating Rate Bond shall be a period of one, two, three, four, five or six months' duration (as specified by the Issuer at the time of issue of that Bond and entered in the Register for the relevant Series) and:

- (i) the first Interest Period will commence on (and include) the First Interest Accrual Date and end on (but exclude) the next Interest Payment Date and each subsequent Interest Period will commence on (and include) the Interest Payment Date of the previous Interest Period and end on (but exclude) the next Interest Payment Date;
- (ii) if an Interest Period would otherwise end on a day which is not a Business Day, it will be extended to the next Business Day unless that day falls in the next calendar month, in which case that Interest Period will end on the first preceding day that is a Business Day; and
- (iii) if the final Interest Period would otherwise extend beyond the Maturity Date, it will end on the Maturity Date.

(b) Basis for calculation

Interest shall be calculated on the Principal Amount of the Floating Rate Bond, on the basis of the number of days in the relevant interest Period and a year of 365 days, unless otherwise provided in the relevant Series Supplement. Interest shall accrue from day to day and shall be paid to the Holder in arrears on the Interest Payment Date for that Interest Period, subject to any provisions relating to suspension of interest payments which are contained in the Conditions of the relevant Series.

- 8.2 **Fixed Rate Bonds:** Other than as set out in a Series Supplement, interest shall be calculated on the Principal Amount of each Fixed Rate Bond and will be payable in arrears in equal quarterly, semi-annual, annual or other instalments on each Interest Payment Date for that Fixed Rate Bond, subject to any provisions relating to suspension of interest payment which are contained in the Conditions of the relevant Series.

8.3 Index-linked Bonds

- (a) In the case of an Index-linked Bond for which the Principal Amount is calculated by reference to an Index, the Principal Amount on each Interest Payment Date (for the purposes of calculating the amount of interest payable

by the Issuer on that Interest Payment Date) shall be determined in accordance with the formula set out in the relevant Series Supplement.

- (b) In the case of an Index-linked Bond for which the amount of interest payable is calculated by reference to an Index, the amount of interest payable on each Interest Payment Date shall be determined in accordance with the formula set out in the relevant Series Supplement.
- (c) If the amount of interest payable on an Index-linked Bond on an Interest Payment Date is a negative amount, no amount by way of interest shall be payable by the Issuer on that Interest Payment Date and the positive equivalent of that amount will be deducted from the Principal Amount of that Index-linked Bond for the balance of the term of that Bond. Nothing in this clause 8.3 obliges the Holder of that Index-linked Bond to make any payment to the Issuer by reason of the interest payable on the relevant Interest Payment Date being a negative amount.
- (d) If a deduction made pursuant to this clause 8.3 results in the Principal Amount of the Index-linked Bond being equal to or less than zero, the Issuer shall not be required to make any further payments of interest or principal in respect of that Bond and that Bond shall be cancelled. The Issuer shall procure that the Registrar promptly notifies the relevant Holders of such cancellation.

9. SUSPENSION OF INTEREST

9.1 **Suspension:** Subject to clause 9.7, if:

- (a) the Directors, on reasonable grounds, believe that the payment would, or would be likely to, result in the Issuer breaching the solvency test contained in section 4 of the Companies Act; or
- (b) the payment would, or would be likely to, result in any member of the Consolidated Group being in breach of any covenant, warranty or undertaking given by it to any of its Senior Creditors under the terms or conditions on which any financial indebtedness was advanced to or otherwise provided to it; or
- (c) the payment would, or would be likely to, result in any member of the Consolidated Group being in breach of any other legal obligation,

the Issuer may, to the extent necessary, suspend the payment of interest on any Series until such time as the circumstances provided for in paragraphs (a), (b) or (c) above no longer apply. Such suspension shall take effect from the date specified in the relevant Suspension Notice, which may be before the delivery to the Supervisor of that Suspension Notice, but shall not be more than 14 days before the delivery to the Supervisor of that Suspension Notice.

9.2 **Date of acceleration:** In the event that the Issuer does not pay interest on any Series of Bonds for a period of two years from the date any interest payment first fell due to the circumstances provided for in paragraphs 9.1(a), 9.1(b) or 9.1(c), the Issuer may:

- (a) in the case of Bonds other than Perpetual Bonds, elect to accelerate the maturity date specified in the Series Supplement for that Series of Bonds to a date earlier than that date; and
- (b) in the case of Perpetual Bonds, specify a maturity date in respect of that Series of Bonds on which to convert or redeem the Bonds in accordance with clause 10.1(a).

The Issuer shall give to the Supervisor notice to that effect.

- 9.3 **Suspension Notice:** If the Issuer determines to suspend the payment of interest in relation to any Series in accordance with clause 9.1, the Issuer shall give to the Supervisor notice to that effect. That notice shall incorporate a certificate signed by not less than two Directors on behalf of the Directors stating that one or more of the circumstances specified in clause 9.1 exists, provided that if the Issuer is in receivership, liquidation or statutory management, or otherwise under the control of a person other than the Directors, then the certificate incorporated in the Suspension Notice may be given to the Supervisor by the receiver, liquidator or statutory manager or by that other person. The Issuer shall, forthwith after giving the Suspension Notice to the Supervisor, give notice to Holders of Bonds of the relevant Series of the suspension of interest in accordance with that Suspension Notice.
- 9.4 **Validity of Suspension Notice:** The Supervisor may without enquiry accept and rely on any Suspension Notice as conclusive evidence of the existence of the circumstances specified in that Suspension Notice, and the Supervisor shall not be obliged to enquire further.
- 9.5 **Effect of Suspension Notice:** If payment of interest in relation to any Series is suspended pursuant to clause 9.1, the obligation to pay that interest shall not be extinguished, and interest shall continue to accrue on the Bonds of that Series (but such interest shall not be capitalised or compounded). The interest accrued (whether before or after the date of suspension) shall be paid by the Issuer when and if none of the circumstances specified in clause 9.1(a), 9.1(b) or 9.1(c) exists and the payment will not cause any such circumstance to exist.
- 9.6 **Further certificate or report:** At any time while payment of interest in relation to any Series is suspended pursuant to clause 9.1, the Supervisor may require the Issuer to produce a certificate signed by not less than two Directors on behalf of the Directors (or by a person referred to in the proviso to clause 9.3), as to whether the circumstances specified in the Suspension Notice pursuant to which payment of interest in relation to that Series was suspended, still exist. The Issuer shall procure that certificate or report to be produced within 14 days after request by the Supervisor.
- 9.7 **Series Supplement:** For the avoidance of doubt a Series Supplement may provide that this clause 9 does not apply in respect of a Series of Bonds.

10. CONVERSION

- 10.1 **Issuer's election:** In relation to each Series of Bonds which has a specified Maturity Date, the Issuer shall elect, by giving notice to each Holder of Bonds of that Series at least 25 Business Days prior to the Maturity Date for that Series, to either:
- (a) convert all Bonds at the relevant Conversion Rate on the Maturity Date for that Series; or
 - (b) redeem all Bonds for cash on the Maturity Date for that Series.
- If the Issuer fails to give notice as required by this clause, it shall be deemed to have given notice under clause 10.1(a).
- 10.2 **Ordinary Shares not listed or unable to be issued:** If clause 10.1(a) applies and either:
- (a) the existing Ordinary Shares are not listed on the NZX and the Supervisor is not satisfied that the Ordinary Shares issued in relation to any Conversion of

Bonds will be listed on the NZX within 30 days after the relevant Maturity Date;
or

- (b) the Issuer is unable for any reason whatsoever, other than the reasons specified in clause 10.3, to issue Ordinary Shares in relation to the Bonds,

then the Issuer shall be deemed to have given notice under clause 10.1(b).

- 10.3 **Holder's failure to obtain consent or to take steps:** If clause 10.1(a) applies and the Issuer is unable to issue Ordinary Shares in relation to Bonds by reason of a Holder's failure to obtain any necessary consent required under the Overseas Investment Regulations 2005 or the Holder's failure to take any necessary steps to obtain such consent, then the Issuer may suspend the Conversion of those Bonds until the Holder has obtained that consent or taken those steps. Notwithstanding any other provision in this Deed, interest will cease to accrue in respect of those Bonds from the relevant Maturity Date.
- 10.4 **Conversion:** On the Maturity Date for a Series, the Issuer shall:
- (a) if clause 10.1(a) applies, Convert all Bonds of the relevant Series at the Conversion Rate for that Series; or
- (b) if clause 10.1(b) applies, redeem each Bond for cash at its Face Value.
- 10.5 **Rounding:** If application of the Conversion Rate to all the Bonds of a Series held by a Holder would result in a fraction of an Ordinary Share being issued, the number of Ordinary Shares to be issued to that Holder shall be rounded down to the nearest whole number of Ordinary Shares.
- 10.6 **All redemptions for cash at Face Value less withholdings:** Each Bond which is to be redeemed for cash, whether under clause 10.1(b) or otherwise (but other than under clause 7.1(c)), shall be redeemed at an amount equal to its Face Value less all withholding tax and other withholdings or deductions required to be made (whether pursuant to clause 15 or otherwise).
- 10.7 **Ranking of Ordinary Shares:** Ordinary Shares resulting from each Conversion shall rank pari passu in all respects with all other Ordinary Shares then on issue and, if a Date of Record for a dividend or other distribution occurs after the Market Value Determination Period but before the relevant Maturity Date, the holder of such Ordinary Shares shall also receive that dividend or other distribution.
- 10.8 **Extension of Maturity Date:** Notwithstanding any other provision of this Deed, if a Record Date for a dividend or other distribution would occur during the Market Value Determination Period, then the first Business Day of the Market Value Determination Period shall be moved to the first Business Day after that Date of Record. All other dates connected with the Conversion of the Bonds shall be moved forward (the period in between being the same number of days) by the same number of days. For the avoidance of doubt, interest will cease to accrue on the Bonds on the Maturity Date before it was moved.
- 10.9 **Issue of Statement after Conversion:** If required by the Listing Rules (if applicable to the relevant Series), the Issuer shall issue, or shall cause to be issued, to a Holder whose Bonds have Converted in accordance with this clause 10, a Statement relating to the Ordinary Shares into which the Bonds have converted, in accordance with, and in the time required by, the Listing Rules.
- 10.10 **Date of Conversion:** A Bond shall be deemed Converted on the date on which the Issuer issues and allots the relevant Ordinary Shares to the Holder.

- 10.11 **Cancellation of Bonds on Conversion:** Each Bond shall be automatically cancelled on Conversion.
- 10.12 **Interest on Conversion:** If the date of Conversion of a Bond is not an Interest Payment Date, the Issuer shall, subject to clause 9.1, pay to the Holder accrued interest on that Bond to the date of Conversion.
- 10.13 **Application:** For the avoidance of doubt, this clause 10 applies only to Bonds that are Convertible Bonds.

11. PAYMENTS

- 11.1 **Payment to Holder:** The person entitled to receive payment of the Principal Amount of, and interest (if any) on, a Bond (less any amount required to be deducted in accordance with clause 15 or in accordance with any Series Supplement) shall be made to the person whose name appears in the Register for the relevant Series as the Holder of the Bond on the Record Date in respect of the relevant payment. If more than one person is so named in the Register, payment will be made to the first person so named.

11.2 Method of payment

- (a) A Holder may, by notice to the Registrar for the relevant Series, request the Registrar to make payments in respect of any Bond held by it to a specified bank account and may at any time cancel or amend any notice so given. No such notice, or cancellation or amendment of a notice, will have effect in respect of any payment unless received by the Registrar before the Record Date for that payment. In the absence of any such notice, payments in respect of each Bond will be made by posting a cheque to the address of the relevant Holder appearing in the Register at the Holder's risk. Any notice given under this clause will be deemed to be automatically cancelled upon transfer of a Bond. A notice from one of several Holders of the same Bonds shall be deemed to be given by all such Holders.
- (b) If, for whatever reason, at any time a Holder has provided neither a current address nor current details of a bank account to the Registrar, any payments in respect of any Bonds to that Holder shall be deemed to be unclaimed money for the purpose of clause 11.4.

- 11.3 **Maturity Date to fall on Business Day:** If the specified Maturity Date of any Bond is not a Business Day, the Maturity Date for that Bond will be the next following Business Day and all other provisions of this Deed and the relevant Agency Agreement will be read and construed accordingly.

11.4 Unclaimed payments

- (a) Subject to paragraph (b) below, if any payment made by the Issuer to a Holder to the address, or into the bank account, last specified by that Holder to the Issuer or the Registrar is returned unclaimed, the amount concerned will (unless the Registrar or the Issuer has in the meantime received notice of a change of address or bank account to be entered in the Register for the relevant Series) be retained by the Registrar for the relevant Series to be held by it for the Holder concerned without any liability to invest or pay interest on that amount. Any money not claimed within a period of six months from the original date of payment must be returned to the Issuer without limiting the rights of the Holder entitled to the unclaimed amount.

- (b) The Issuer will have no liability in respect of the amount concerned if it remains unclaimed six years after the original date of payment. If the amount concerned is not claimed within six years after the original date of payment, then the amount concerned is taken to be forfeited to the Issuer for the Issuer's benefit and shall no longer be treated as being an unclaimed amount.

- 11.5 **Reinstatement:** If any payment made to a Holder by, or on behalf of, the Issuer is subsequently rescinded, avoided or otherwise restored to the Issuer, that payment will be deemed not to have discharged or affected the liability of the Issuer in respect of which that payment was made. In that event the relevant Holder and the Issuer will be restored to the position in which each would have been, and be entitled to exercise all the rights which each would have had, if such payment had not been made.
- 11.6 **Treatment of payments:** Each payment of the full amount then payable, when cleared, shall be a complete satisfaction and discharge of any obligation of the Issuer to the relevant Holder in relation to payment of principal, interest and any other sums then payable under such Bond.
- 11.7 **New issues of securities:** Subject to compliance by the Issuer with the Constitution, the Listing Rules (if applicable) and the provisions of this Deed, and any relevant Series Supplement, the Issuer shall be entitled from time to time to issue further securities.
- 11.8 **Financial assistance:** The Issuer may, subject to compliance with its Constitution, the Listing Rules and the Companies Act, give financial assistance for the purpose of, or in connection with, the acquisition of Bonds.
- 11.9 **Right to vote:** Except as required by the FMC Act or the Companies Act, Holders will not have any right to vote at general meetings of the Issuer.

12. REPRESENTATIONS AND WARRANTIES

- 12.1 **Representations and warranties:** The Issuer represents and warrants to the Supervisor that:
 - (a) **Status:** it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
 - (b) **Capacity:** it has the power to enter into, exercise its rights and perform and comply with its obligations under, this Deed;
 - (c) **Appropriate Action:** everything required to be done (including the obtaining of any necessary consents and the passing of all necessary resolutions) to:
 - (i) enable it lawfully to enter into, exercise its rights and perform and comply with its obligations under, this Deed; and
 - (ii) ensure that those obligations are legal, valid, binding and enforceable, has been duly done;
 - (d) **No Contravention:** its entry into, exercise of its rights and performance of and compliance with its obligations under, this Deed does not and will not:
 - (i) contravene any law to which it is subject; or
 - (ii) contravene any of the documents constituting it; or

- (iii) exceed any limitation on, or constitute an abuse of, the powers of its directors or officers; or
 - (iv) contravene any agreement to which it is a party or which is binding on any of its assets;
 - (e) **Binding Obligations:** its obligations under this Deed are legal, valid, binding and enforceable (subject to laws relating to creditors rights generally and to the application of equitable principals);
 - (f) **No Default:** except as notified to the Supervisor in writing no Event of Default has occurred and remains unremedied, or will result from the execution and delivery of this Deed; and
 - (g) **Consents and other authorisations:** all consents and other authorisations required by it, or otherwise appropriate for it to obtain, in connection with the Transaction Documents, and the transactions contemplated by such documents, have been obtained or effected and are in full force and effect.
- 12.2 **Series Supplement:** In respect of a Series, the Issuer shall make such further representations and warranties as are set out in the Series Supplement for that Series.
- 12.3 **Repetition**
- (a) The representations and warranties contained in clause 12.1 shall be deemed to be repeated for the benefit of the Supervisor and the Holders on the Issue Date and each Interest Payment Date of each Bond.
 - (b) In respect of a Series, the representations and warranties referred to in clause 12.2 shall be deemed to be repeated for the benefit of the Supervisor and the Holders of that Series on the Issue Date and each Interest Payment Date of each Bond forming part of that Series.

13. UNDERTAKINGS

- 13.1 **General undertakings:** The Issuer undertakes to the Supervisor (in respect of Retail Series only) and the Holders that, for so long as any Bonds are outstanding, it:
- (a) **Notify Event of Default:** will, upon receipt of a written request to that effect from the Supervisor, confirm in writing to the Supervisor within 10 business days that except as previously notified to the Supervisor it is not aware (having made due enquiry) of any Event of Default which has occurred;
 - (b) **Comply with laws:** shall comply with and observe all laws and all requirements and orders of any government agency, which are material in the context of the business of the Issuer;
 - (c) **Corporate existence:** will maintain its corporate existence and will not amalgamate, merge or consolidate with any person unless the resulting or surviving entity assumes, to the satisfaction of the Supervisor, the obligations of the Issuer under the Bonds;
 - (d) **Authorisations:** shall ensure that each consent or other authorisation required for:

- (i) the execution, delivery and performance by it of the Transaction Documents to which each of them is expressed to be a party and the transactions contemplated by those documents; and
 - (ii) the validity and enforceability of the Transaction Documents,
- is obtained and promptly renewed and maintained in full force and effect;
- (e) **FMC Act:** in respect of each Retail Series, comply with the provisions of the FMC Act, the FMC Regulations and all exemption notices issued pursuant thereto and, all other laws and the Listing Rules applicable to that Series;
 - (f) **Issuance of Offer Document:** it will not issue an Offer Document in respect of the issue of Bonds without prior notice to the Supervisor, and not include any statement in any such Offer Document, or any advertisement (as defined in the FMC Act) for any Bonds, concerning the Supervisor, without the prior consent of the Supervisor;
 - (g) **Ordinary Shares and Bonds to remain Quoted:** it will, until all Bonds are Converted or redeemed in full or otherwise no longer qualify for Listing, use its reasonable endeavours to ensure that the Ordinary Shares (on and from the Demerger) and the Convertible Bonds remain Quoted;
 - (h) **Notices to Supervisor:** it will forthwith send to the Supervisor a copy of each notice that it sends to any of the NZX, the Holders, holders of Ordinary Shares, and the Registrar of Financial Service Providers; and
 - (i) **Supervisor action:** it will pass all resolutions and take all other action necessary to ensure that the required number of Ordinary Shares are issued to each Holder on Conversion of that Holder's Bonds in accordance with the terms of issue (including the Series Supplement) of any relevant Series of Bonds.
- 13.2 **Series Supplement:** In respect of each Series, the Issuer undertakes to the Supervisor that it will, for so long as any Bonds of that Series are outstanding:
- (a) **Series Supplement:** comply in all material respects with and perform its obligations under the Series Supplement for that Series;
 - (b) **Agency Agreement:** comply in all material respects with and perform its obligations under the Agency Agreement for that Series (if any) and use all reasonable endeavours to ensure that the Registrar for that Series also does so;
 - (c) **Registrar:** give notice to the Holders of that Series, the Supervisor and each relevant Credit Support provider of any resignation or removal of the Registrar for that Series and the appointment of any replacement Registrar promptly following such event, provided that any resignation or removal of the Registrar shall not be effective until the new Registrar is duly appointed; and
 - (d) **Register:** ensure that a Register for that Series is maintained and cause the Registrar for that Series to keep the Register for that Series pursuant to the Agency Agreement for that Series.
- 13.3 **Appointment of Auditor:**
- (a) **Consultation with Supervisor:** For so long as any Retail Series is outstanding, the Issuer must:

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

13.4 **Other:** For so long as any Bonds of a Retail Series are outstanding, the Issuer must:

- (a) **Requested information and reports:** if requested by the Supervisor (or a person authorised by the Supervisor to exercise its powers), within the time and in the manner (which must be reasonable in the circumstances) specified by the Supervisor:

- (i) make available to the Supervisor (or other authorised person) all documents and records relating to the Issuer; and
- (ii) provide the Supervisor (or other authorised person) with any other reports or information, required by the Supervisor (or other authorised person).

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

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

14. DEFAULT

14.1 **Events of Default:** The Supervisor may at its discretion and shall if directed to do so by a Special Resolution of Holders of any Series or, if the Conditions relating to such Class of Bonds so require with the consent or at the direction of the relevant Credit Support provider for such Class, by written notice to the Issuer, declare the Principal Amount of the Bonds (together with accrued interest and any other amounts specified in the relevant Series Supplement) to be immediately due and payable (and on such declaration they shall become immediately due and payable) following the occurrence of any of the following events provided that the relevant event is continuing unremedied:

- (a) **Insolvency:** the Issuer:
 - (i) is insolvent or unable to pay its indebtedness as it falls due; or
 - (ii) stops or suspends payment to creditors generally, or begins negotiations or takes any proceedings to reschedule any of its indebtedness to creditors generally in respect of or in expectation of insolvency or being unable to pay its indebtedness as it falls due; or
 - (iii) makes, or proposes to make, an assignment, arrangement or compromise with, or for the benefit of, its creditors generally in

respect of or in expectation of insolvency or being unable to pay its indebtedness as it falls due; or

- (iv) ceases to carry on its business; or
 - (b) **Enforcement:** a distress, attachment, execution or other legal process is levied or enforced on or against assets of the Issuer for an amount of or in excess of NZ\$10,000,000 (or its equivalent in any other currency), and is not discharged or stayed within 30 days (other than where contested in good faith in appropriate proceedings) or a receiver, trustee, manager, administrator or similar officer is appointed in respect of any of them or any substantial part of their assets; or
 - (c) **Dissolution:** an order is made, resolution passed or other step taken by a person (other than where contested in good faith in appropriate proceedings) for the winding-up or dissolution of the Issuer, except for the purpose of and followed by a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Supervisor before that step is taken; or
 - (d) **Corporations (Investigation and Management) Act 1989:** the Issuer is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed or any step is taken with a view to any such appointment in respect of it under that Act (including a recommendation by the Financial Markets Authority supporting such an appointment); or
 - (e) **Enforcement of Security:** the holder of any security interest exercises any power of sale in respect of, or otherwise enforces its security interest over, the whole or any substantial part of the assets of the Issuer; or
 - (f) **Cross Default:** any indebtedness of the Issuer in respect of borrowed money or under a guarantee (other than indebtedness the liability for which is being contested in good faith in appropriate proceedings) of or in excess of NZ\$10,000,000 (or its equivalent in any other currency):
 - (i) is not paid when due or, where a grace period for payment applies, within that grace period; or
 - (ii) is declared due before it would otherwise have been due by reason of any default or event of default (howsoever described); or
 - (g) **Series Supplement:** any event occurs which is specifically mentioned in the Series Supplement for that Series as an event of default for that Series.
- 14.2 **Distribution of funds:** All moneys received by the Supervisor in respect of Bonds from the Issuer on or after the Date of Enforcement shall (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to those Bonds) be held and applied:
- (a) first, subject to any direction made by any court, in payment of all amounts due to the Supervisor under this Deed (including all expenses, losses and liabilities sustained or incurred by the Supervisor under this Deed, all fees payable to the Supervisor under this Deed, and any Default Interest on each such amount);
 - (b) secondly, in or towards payment to the Holders of Unsubordinated Bonds, rateably in proportion to the Bond Moneys owing to them in respect of the Bonds held by them;

- (c) thirdly, in or towards payment to the Holders of Term Subordinated Bonds (if any) rateably in proportion to the Bond Moneys owing to them in respect of the Term Subordinated Bonds held by them;
- (d) fourthly, in or towards payment to the Holders of Perpetual Bonds (if any) rateably in proportion to the Bond Moneys owing to them in respect of the Perpetual Bonds held by them; and
- (e) then, the surplus (if any) of such moneys, in payment to the Issuer or to such other persons (including a liquidator of the Issuer) as may be lawfully entitled thereto.

14.3 **Currency of Proceeds:** The Supervisor shall distribute moneys in the currency in which it holds or receives them (the "**Currency of Proceeds**"). The Supervisor and any Holder may agree otherwise.

14.4 **Currency of Proceeds Different from Currency of Indebtedness:** Where, in respect of any Holder and any distribution to be made under clause 14.2 the Currency of Proceeds is different from the currency in which that Holder's Bonds (or any part of that Holder's Bonds) is denominated (the "**Currency of Indebtedness**"):

- (a) any part of a Holder's Bonds denominated in a currency other than the Currency of Proceeds shall be notionally converted into the Currency of Proceeds on the date of distribution at the current exchange rates (as determined by the Supervisor in its sole discretion);
- (b) the amounts owing to each Holder in the Currency of Proceeds (either actually or notionally converted in accordance with paragraph (a)) shall be utilised in determining the rateable entitlement of each Holder;
- (c) in any distribution the Supervisor shall distribute to each Holder its entitlement in the Currency of Proceeds; and
- (d) for the purpose of determining by what amount the indebtedness due under any Bonds denominated in a currency other than the Currency of Proceeds has been reduced, the amount distributed shall be deemed to be the amount in the Currency of Indebtedness equivalent to the amount distributed in the Currency of Proceeds converted at the rate of exchange referred to in paragraph (a) above.

15. TAXES

15.1 **Deductions or withholdings:** All amounts payable under a Bond must be paid:

- (a) free of any restriction or condition;
- (b) free and clear of and (except to the extent required by law or as provided for in this clause 15) without any deduction or withholding on account of any taxes; and
- (c) without deduction or withholding on account of any other amount whether by way of set-off or otherwise (except as provided in this clause 15).

15.2 **Non-resident withholding tax:** Where New Zealand's non-resident withholding tax regime applies to a payment made to a Holder ("**Foreign Holder**"), New Zealand non-resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to such Holder, subject to clause 15.3

- 15.3 **Approved Issuer Levy:** If the Issuer is lawfully able to pay Approved Issuer Levy to enable New Zealand non-resident withholding tax to apply at the rate of zero percent in respect of any payment of interest (or deemed interest) to a Foreign Holder, the Issuer, or the person making payment on its behalf, shall if requested in writing by the Holder pay the Approved Issuer Levy to the appropriate authority and shall deduct the amount paid from the interest (or deemed interest) payable to that Holder in lieu of deducting New Zealand non-resident withholding tax at the rate otherwise applicable from that payment.
- 15.4 **Resident withholding tax:** Where New Zealand's resident withholding tax regime applies to a payment made to Holders, New Zealand resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to such Holders unless:
- (a) an appropriate exemption certificate is produced to the Issuer on or before the Record Date for the relevant payment; and
 - (b) the Issuer is permitted by the terms of section RE 29 of the Income Tax Act 2007 to make the payment free of resident withholding tax.
- 15.5 **Indemnity:** If, in respect of any Bond, the Issuer becomes liable to make any payment of, or on account of, tax payable by or in respect of any Holder, then the Issuer shall be indemnified by the relevant Holder in respect of such liability. Any moneys paid by the Issuer in respect of such liability may be recovered from the Holder as a debt due to the Issuer and may be withheld from any further payments (if any) to that Holder. Nothing in this clause 15.5 will prejudice or affect any other right or remedy of the Issuer.
- 15.6 **No gross-up:** The Issuer shall not be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Bonds pursuant to this clause 15.
- 15.7 **Maximum rate:** Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder provides evidence to the Issuer that a lesser rate is applicable.
- 15.8 **FATCA:** The Issuer may withhold or make deductions from payments due to a Holder where it is required to do so under or in connection with FATCA, and will not be required to pay any further amounts on account of such withholding or deduction to a Holder or otherwise reimburse or compensate, or make any payment to, a Holder for or in respect of any such withholding or deduction.
- 15.9 **Tax status:** A Holder must, no later than two Business Days prior to the first Record Date, notify the Issuer of its country of residence for tax purposes and, if the Holder is not tax resident in New Zealand, whether the Holder is engaged in business in New Zealand through a Fixed Establishment in New Zealand and whether they hold the Bonds in connection with that Fixed Establishment. A Holder must notify the Issuer prior to any subsequent Record Date of any change in circumstances from those previously notified, or provide any other information requested, that could affect the payment or withholding obligations of the Issuer. The Issuer shall be entitled for the purposes of this clause 15 to rely, without further enquiry, upon any statement made by or on behalf of a Holder in relation to that Holder's tax status or tax residency.

16. APPOINTMENT OF SUPERVISOR

- 16.1 **Appointment:** The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor for the Holders (in relation to a Wholesale Series, only to the

extent necessary to discharge its duties set out in clause 18.2) on the terms and conditions of this Deed including, without limitation:

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

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

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

16.3 **Duties of Supervisor:** The Supervisor:

- (a) must:
 - (i) act honestly in acting as supervisor under this Deed;
 - (ii) in exercising its powers and performing its duties as supervisor, act in the best interest of the Holders; and
 - (iii) exercise reasonable diligence in carrying out its functions as supervisor;
- (b) must do all things it has the power to do to cause any contravention or alleged contravention of the Issuer Obligations in respect of the Bonds to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Holders;

(c) subject to any court order made under section 210 of the FMC Act, must act in accordance with any direction given by a Special Resolution of Holders that is not inconsistent with any enactment, rule of law or this Deed in relation to:

- (i) seeking a remedy to a contravention or alleged contravention of the Issuer Obligations in respect of the Bonds; and
- (ii) any other matter connected with the Supervisor's functions; and

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

17. SUPERVISOR'S REMUNERATION, EXPENSES AND INDEMNITIES

17.1 **Remuneration:** The Issuer shall pay to the Supervisor for its services as Supervisor such remuneration as shall from time to time be agreed between the Issuer and the Supervisor provided that if the Issuer and the Supervisor fail to agree on any amount payable under this sub-clause the dispute shall be referred to a single arbitrator if the parties can agree on one and otherwise to arbitration, in accordance with the Arbitration Act 1996.

17.2 **Expenses:** The Issuer shall also pay all expenses reasonably incurred by or on behalf of the Supervisor (including, for the avoidance of doubt, all legal expenses) in connection with:

- (i) the preparation, execution and registration of this Deed;
- (ii) the exercise by the Supervisor of any right, power, duty or privilege conferred by this Deed on the Supervisor or upon any Holder, including the taking of any expert advice deemed necessary or expedient by the Supervisor;
- (iii) the convening, and holding and carrying out of any directions or resolutions, of any meeting of Holders;
- (iv) any application under the trusts and provisions of this Deed for its consent to, or approval of, any act or matter; and

(b) all expenses (including, for the avoidance of doubt, all legal expenses) reasonably incurred by or on behalf of the Supervisor in connection with any breach or default in the observance or performance by the Issuer of any provision of this Deed.

17.3 **Indemnity by the Issuer:** Subject to clause 21.1 and without prejudice to the right of indemnity by law given to supervisors, the Supervisor and every attorney, manager, agent or other similar person appointed by the Supervisor pursuant to this Deed shall be indemnified by the Issuer in respect of all losses, liabilities and expenses incurred in the execution of or purported execution of the powers or trusts hereof and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted, or in any way relating to the provisions of this Deed, other than a claim arising out of the Supervisor's failure to comply with the standard of care imposed on it by clause 21.1, and the Supervisor may retain and pay out of any moneys in its hands arising from the trusts of this Deed all sums necessary to give effect to this indemnity and also the remuneration and disbursements of the Supervisor provided for in this Deed.

- 17.4 **No indemnity by Holders:** Subject to clause 21.1, notwithstanding anything contained in this Deed or any rule of law, no Holder shall in any circumstances be or become personally liable in respect of, or be liable to indemnify the Supervisor for, any liability incurred by the Supervisor in acting as supervisor pursuant to this Deed.
- 17.5 **Remuneration, expenses etc continuing:** The fees and other payments payable pursuant to this clause shall continue to be payable until the trusts of this Deed shall be finally wound up and whether or not the trusts hereof shall be in the course of administration by or under the direction of the court.
- 17.6 **Payment:** All expenses incurred and payments made by the Supervisor in the lawful exercise of the powers conferred by this Deed, and all remuneration payable to the Supervisor, shall be payable by the Issuer at the times agreed (or in the absence of agreement, on demand) and, if not paid when due, shall carry Default Interest in accordance with clause 7.6 until paid.

18. SUPERVISOR'S POWERS

- 18.1 **General Powers:** The powers, authorities and discretions conferred on the Supervisor by this Deed shall be in addition to any powers, authorities and discretions which may from time to time be vested in supervisors by law in relation to Retail Bonds or (if applicable) Wholesale Bonds and to any powers, authorities and discretions which may from time to time be vested in the Supervisor as the Holder of any Bond.
- 18.2 **Wholesale Series:** The Supervisor shall have no powers or duties in relation to Wholesale Series except:
- (a) the powers and duties explicitly set out in the Conditions for any Wholesale Bonds; and
 - (b) the power to compel the Issuer to call a meeting of Holders of Wholesale Bonds or any Class of Holders of Wholesale Bonds when requested to do so by Holders of Wholesale Bonds in accordance with this Deed or by a Class of Holders of Wholesale Bonds in accordance with this Deed.
- 18.3 **Retail Series:** In relation to each Retail Series the Supervisor shall, in addition to any powers provided by law, have the following powers and duties, subject to the terms of the Series Supplement in relation to the relevant Series:
- (a) **Investment:** Any moneys held by the Supervisor which are subject to the trusts of this Deed may, at the discretion of the Supervisor, be invested in the name of the Supervisor or its nominee in any investment whatsoever, with power to vary such investments for others of a like nature and to deal with, or dispose of, such investments. The income (less any commissions properly payable to the Supervisor) arising from all such investments made by the Supervisor will belong to the person in respect of whom such moneys are held by the Supervisor.
 - (b) **Applications to court:** Having regard to any other powers or remedies available to it under this Deed or at law for the protection of the interests of Retail Holders and to all other circumstances relevant to the general interests of such Holders, the Supervisor may apply to the court for an order:
 - (i) under section 208 of the FMC Act, if the Supervisor is satisfied that:
 - (aa) the Issuer is unlikely to be able to pay all money owing in respect of one or more Retail Series as and when due;

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

and it may support or oppose any application to the court under those sections made by or at the instance of the FMA or any Retail Holder (where applicable). The Supervisor shall, subject to clause 21.1, be indemnified by the Issuer against all expenses incurred in relation to any such application or proceedings, provided that the Supervisor must consult with the Issuer prior to making any such application before the Date of Enforcement.

- (c) **Monitoring role:** Subject to any Series Supplement, the Supervisor must exercise reasonable diligence to ascertain whether or not the Issuer has breached the Conditions of any Bonds but, until it has received notice to the contrary from the Issuer, the Auditor or any Holder, is entitled to assume that no such breach has occurred. The Supervisor shall exercise reasonable diligence to ascertain whether or not the assets of the Issuer that are or may be available, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of the Bonds as they become due subject, in the case of any Subordinated Bonds, to clause 6.11.
- (d) **Waiver:** Subject to clause 22, the Listing Rules and to any direction or request given by the Holders, the Supervisor may at any time by notice in writing to the Issuer waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Issuer of any provision expressed or implied in this Deed in respect of the Retail Bonds provided the Supervisor is satisfied that such a waiver will not have a material adverse effect on Retail Holders.
- (e) **Material breach:** If any breach of this Deed occurs or any circumstances occur which may result in such a breach which the Supervisor reasonably considers may be materially prejudicial to the interests of any Holders, the Supervisor shall be entitled in its absolute discretion to require the Issuer to (and the Issuer shall thereby become obliged to) report to the Holders the circumstances and the nature of such breach and any other relevant information concerning the Issuer which the Supervisor has received in relation to this Deed and which it reasonably considers to be material to those Holders, and invite those Holders to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Supervisor Powers under this Deed. If the Issuer fails to give that report the Supervisor shall be entitled to do so itself.
- (f) **Represent Holders:** The Supervisor may, either of its own volition or pursuant to any directions or in accordance with any policy given or indicated by any meeting of Holders, represent and act on behalf of those Holders in any matter concerning them generally.

- (g) **Power to remedy breach:** The Supervisor's powers to remedy any breach of this Deed are subject to any other provision of this Deed which is inconsistent with the exercise of such powers.
- (h) **Represent Credit Support provider:** Except as specifically set out in this Deed or a Transaction Document, the Supervisor has no duties or responsibilities to any Credit Support provider. In particular the Supervisor is not required to provide to any Credit Support provider any credit or other information relating to the Issuer.
- (i) **Power to engage expert:** The Supervisor may engage an expert (for example, an auditor, investigating accountant, valuer or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to assist the Supervisor to:
 - (i) determine the financial position of the Issuer; or
 - (ii) review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 18.3(i), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance and (without limiting clause 17) the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

19. EXERCISE OF SUPERVISOR'S POWERS

- 19.1 **Discretion:** Except as otherwise expressly provided in this Deed or in any Series Supplement, the Supervisor:
- (a) has absolute discretion as to the exercise of the Supervisor Powers and as to the conduct of any action, proceeding or claim (provided it has acted with reasonable care and diligence); and
 - (b) may refrain from exercising any Supervisor Power until directed by Special Resolution of Holders or of the affected Class of Holders to do so.
- 19.2 **Reliance:** The Supervisor shall be entitled without liability for loss, to obtain, accept and act on, or (other than in relation to paragraph (ii) below) to decline and elect not to act on:
- (a) any communication or document (including any fax or email) reasonably believed by it to be genuine and correct;
 - (b) any resolution which the Supervisor believes to have been properly passed at any meeting of Holders or affected Class of Holders;
 - (c) advice and statements of solicitors, accountants and other experts reasonably selected by it or the Issuer;
 - (d) a certificate signed by or on behalf of the Issuer as to any matters of fact which might reasonably be expected to be within the knowledge of the Issuer or that any particular transaction, step or thing is expedient or commercially desirable and not detrimental to the interests of the Holders generally or of any Class of Holders generally, as sufficient evidence of such fact or the expediency or desirability of such transaction, step or thing; and

- (e) the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Deed, as conclusive evidence of the facts stated therein.
- 19.3 **Transaction Documents:** The Supervisor is under no obligation to the Holders to monitor compliance by the Issuer with any Transaction Document to which the Supervisor is not a party except as expressly provided in this Deed. The Supervisor is entitled to assume that the Issuer is complying with all its obligations under those documents until the Supervisor has actual knowledge of non-compliance.
- 19.4 **Delegation:**
- (a) Subject to sub-clause (b) below, the Supervisor, whenever it thinks it expedient in the interests of the relevant Holders to do so, may:
 - (i) delegate at any time to any person any of the Supervisor Powers which cannot conveniently be exercised by it or through its employees, upon such terms and conditions it thinks fit provided that any such delegation shall not relieve the Supervisor of its responsibilities under this Deed; and
 - (ii) authorise any person as it thinks fit to act as its representative at any meeting.
 - (b) Notwithstanding any provision of this Deed, the Supervisor must not delegate any of its functions under clause 16.1 (except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act).
- 19.5 **Supervisor's consent:** Any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor thinks fit.
- 19.6 **Subscribers' money:** The Supervisor shall not be responsible for monitoring the application by the Issuer of the money paid by subscribers or purchasers of the Bonds.
- 19.7 **Safe custody:** The Supervisor may hold or place this Deed and any other documents with any bank or any person whose business includes the undertaking of safe custody of documents or with any lawyer or firm of lawyers (in each case reasonably considered by the Supervisor to be of good repute) and the Supervisor is not responsible for or required to insure against any loss incurred in connection with that deposit.
- 19.8 **Confidentiality:** Unless ordered to do so by law or court order, the Supervisor shall not be required to disclose to any Holder any confidential financial or other information made available to the Supervisor by the Issuer.
- 19.9 **Interests of foreign Holders:** In the exercise of any trust, duty, power, authority or discretion under this Deed the Supervisor shall have regard to the interests of the Holders as a whole and shall not have regard to the consequences of such exercise for individual Holders resulting from their being, for any purpose, domiciled or resident in, or otherwise connected with or subject to the jurisdiction of, any particular country or place other than New Zealand.
- 19.10 **Fiduciary relationship:**
- (a) For the purposes of this clause 19.10:
 - (i) "**Unrelated Supervisor Personnel**" shall mean any directors, officers, employees, contractors of the Supervisor or other persons

not involved in any manner whether directly or indirectly in administering or carrying out or enforcing the Supervisor's rights and obligations in terms of this Deed.

- (ii) **"Related Supervisor Personnel"** shall mean any directors, officers, employees, contractors of the Supervisor or other persons involved in any manner whether directly or indirectly in administering or carrying out or enforcing the Supervisor's rights and obligations in terms of this Deed,
- (b) Nothing expressed in this Deed or implied by law shall prohibit any Unrelated Supervisor Personnel from being a shareholder or stockholder of the Issuer or any of its Subsidiaries provided that the Supervisor establishes and enforces appropriate "Chinese Walls" procedures to separate any such arrangements from all Related Supervisor Personnel. In particular without limiting the generality of the foregoing no Unrelated Supervisor Personnel shall receive or have access to any information or be involved in any manner such that they could be influenced in the conduct of any of their actions by any Related Supervisor Personnel. For the avoidance of doubt, nothing expressed in this Deed or implied by law shall prohibit any Unrelated Supervisor Personnel or Related Supervisor Personnel (where such persons are acting purely in their personal capacities), from being a shareholder or stock holder of the Issuer or any of its Subsidiaries or dealing in the same in each case to the extent permitted by law; and neither shall such be a breach of the fiduciary duties of the Supervisor hereunder.
- (c) Nothing expressed in this Deed or implied by law shall prohibit the Supervisor or any of its related companies (ail hereinafter in this clause where the context permits being included in the expression "the Supervisor" including, for these purposes, any directors, officers, employees or contractors of the Supervisor acting in their professional and not personal capacities in the course of their directorship, employment or contract) from being a creditor of the Issuer or any related company of the Issuer or from acting in any representative capacity for a Holder or otherwise entering into contracts and dealing with a Holder in the ordinary course of its business. The Supervisor may enter into any transactions with the Issuer or any related party of the Issuer and shall not be accountable to the Issuer or its related parties or the Holder for any profits arising from any such transactions or otherwise entering into any contracts and arrangements with the Issuer or any related parties in the ordinary course of business of the Supervisor.

20. REPLACEMENT OF SUPERVISOR

20.1 **Retirement and Removal of Supervisor:** Subject to the appointment and acceptance of a successor Supervisor as provided in this clause 20:

- (a) the Supervisor may retire at any time, without assigning any reason therefore, upon giving at least 30 days' notice in writing to the Issuer;
- (b) the Holders may remove the Supervisor from office by Special Resolution; and
- (c) the FMA or the Issuer may remove the Supervisor from office under Part 2 of the Financial Markets Supervisors Act.

20.2 **Requirements for resignation and removal:** The Supervisor may not:

- (a) be removed or resign under clause 20.1(a) or (b) unless:

- (i) all functions and duties of its position have been performed; or
 - (ii) another licensed supervisor (as defined in the FMC Act) has been appointed, and accepted the appointment, in its place; or
 - (iii) the court consents; or
- (b) be removed by the Issuer under clause 20.1(a) without the FMA's consent.
- 20.3 **Appointment of new Supervisor:** If any of the circumstances described in clause 20.1 occur, subject to clause 20.2 and 20.4, the Issuer will have the right to appoint a successor Supervisor, which must be a person who is licensed to act as a supervisor under the Financial Markets Supervisors Act.
- 20.4 **Approval by Special Resolution:** Where at any time there are Retail Bonds outstanding under this Deed, then the removal of the Supervisor pursuant to clauses 20.1(b) and 20.2(b), and the appointment of any successor Supervisor pursuant to clause 20.3, shall be subject to approval by a Special Resolution. Only a body corporate or other person authorised in accordance with the provisions of the FMC Act shall be appointed as a Supervisor in this Deed.
- 20.5 **Failure to appoint Supervisor:**
- (a) In the event that any new Supervisor proposed by the Issuer is not approved by a Special Resolution, then any Retail Holder shall be entitled to nominate an alternative party to be a Supervisor (provided such Supervisor is authorised in accordance with the provisions of the FMC Act) and such party shall be appointed as the new Supervisor if first approved by a Special Resolution. In the event that more than one person is nominated by the Retail Holders then the Retail Holders shall vote on the various nominees and the nominee that receives the most number of votes shall be deemed to be proposed by the Issuer and the appointment of that nominee shall be proposed to the Retail Holders and shall be appointed as the Supervisor if first approved by a Special Resolution.
 - (b) If within 30 days after receiving notice of the Supervisor's intention to retire the Issuer fails to call a meeting of Holders in accordance with this clause 20, or to exercise the power vested in it by this clause of appointing a new Supervisor or new Supervisors, the Holders may by Special Resolution exercise such power to the exclusion of the Issuer.

21. LIABILITY OF SUPERVISOR

- 21.1 **Supervisor not indemnified:** No provision of this Deed shall have the effect of exempting the Supervisor from, or indemnifying the Supervisor against:
- (a) in relation to a Wholesale Series, liability for wilful breach of trust where the Supervisor fails to show the degree of care and diligence required of the Supervisor having regard to the Supervisor Powers and the provisions of this Deed; and
 - (b) in relation to a Retail Series, liability where the Supervisor fails to comply with the duties set out in clause 16.3.
- 21.2 **No assumption of duty:** Notwithstanding any other provision of this Deed but subject to clause 18.2 and the provisions of any Series Supplement, the Supervisor does not assume any duty of care to the Issuer, any creditors of the Issuer, the Wholesale

Holders or any other person other than the Retail Holders (subject to and in accordance with this Deed) in exercising the Supervisor Powers, and shall not, subject to clause 21.1, be liable:

- (a) to any person (including the Issuer and any Holders) in any way except for wilful default, gross negligence or wilful breach of trust where the Supervisor has failed to show the degree of care and diligence required of it having regard to the provisions of this Deed; or
- (b) for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Retail Holders.

21.3 **Liability:** Nothing in this Deed imposes upon the Supervisor, or obliges the Supervisor to acknowledge, any personal liability to pay any amount which has not first been received by the Supervisor in its capacity as Supervisor under this Deed, and any such liability will cease in respect of any amount so received and disbursed by the Supervisor in good faith in the reasonable belief that the disbursement is authorised under this Deed (including any amount which the Supervisor has received and disbursed to any Holders prior to the Supervisor receiving actual notice of the commencement of Winding-Up).

22. AMENDMENTS TO TRUST DEED

22.1 **Limited right to amend:** Except as provided in this clause 22, the Issuer may not cancel, vary or amend any provision of this Deed while any Bonds are outstanding. Any amendment to this Deed must be in writing signed by the Issuer and the Supervisor.

22.2 Amendments affecting Retail Holders:

- (a) **Right to amend:** In the case of an amendment affecting Retail Holders, the provisions of this Deed may not be amended or replaced unless the amendment or replacement is made in writing signed by the Issuer and the Supervisor and is made:
 - (i) with the consent of the Supervisor; or
 - (ii) (despite anything to the contrary in this Deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this Deed) under section 109 of the FMC Act, sections 22(7) or 37(6) of the Financial Markets Supervisors Act or any other power to amend or replace this Deed under an enactment.
- (b) **Supervisor consent:** Subject to section 112(2)(b) of the FMC Act, the Supervisor must not consent to an amendment to, or a replacement of, this Deed unless:
 - (i) either:
 - (aa) the amendment or replacement is approved by, or is contingent on approval by, the Retail Holders; or
 - (bb) the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on the Retail Holders; and

- (ii) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this Deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.
- (c) **Retail Holder consent:** The approval of the Retail Holders for the purposes of clause (b)(i)(aa) must be the approval of a Special Resolution of:
 - (i) the Retail Holders; or
 - (ii) each Class of Retail Holders of the Notes that is or may be adversely affected by the amendment or replacement.

22.3 Amendments affecting Wholesale Holders:

- (a) **Limited right to amend:** In the case of an amendment affecting (in the opinion of the Issuer) Wholesale Holders only, except as provided in paragraphs (b) and (c) the Issuer may not cancel, vary or amend any provision of this Deed or of any Series Supplement while any Wholesale Bonds are outstanding.
- (b) **Amendment without consent affecting Wholesale Holders:**
 - (i) In relation to each Wholesale Series the provisions of this Deed (for the avoidance of doubt, including each relevant Series Supplement in relation to Wholesale Bonds) may be amended without the consent of Wholesale Holders where such amendment (in the opinion of the Issuer):
 - (aa) is of a minor, formal, administrative or technical nature; or
 - (bb) is to correct a manifest error, or
 - (cc) is to comply with the requirements or a modification of the requirements of any applicable law, or any rules of any stock exchange; or
 - (dd) is necessary for the purpose of obtaining or maintaining a quotation of any Bonds on any stock exchange; or
 - (ee)
 - (ff) is by way of the entry into a Series Supplement for a particular Wholesale Series; or
 - (gg) is agreed to by the Wholesale Holders pursuant to clause 22.3(c),

and, in any such case, the Issuer is of the opinion that such amendment will not be materially prejudicial to the interests of Holders of that Class generally.

- (c) **Amendment approved by Special Resolution:** Without limiting clause 22.2, but subject to clause 22.5, in relation to each Class the provisions of this Deed may be amended if the amendment has been approved by a Special Resolution of Wholesale Holders or, if the Conditions of a Wholesale Series relating to such Class of Bonds so require, with the consent or the direction of the relevant Credit Support provider for such Class. Where the Wholesale Holders hold Bonds from more than one Wholesale Series then, subject to any

Series Supplement in respect of a Wholesale Series providing to the contrary, this Deed in respect of each such Wholesale Series is deemed to be amended in accordance with the amendment approved by that Class of Holders in accordance with this clause 22.3(c).

22.4 **Single Meeting:** Where an amendment requiring approval of the Holders pursuant to clauses 22.2(c) or 22.3(c) relates to or arises from any general change in the constitution, affairs or business of the Issuer, such approval shall not be required to be dealt with by way of separate meetings of each such Class of Holders.

22.5 **Notice:** Notice of any proposed amendment or replacement made under clauses 22.2(c) or 22.3(c) shall be given by the Issuer to each Holder or, if it affects one or more Classes of Holders but not all Holders, to the Holders of each affected Class of Holders not less than 14 days before the date on which it is intended that such amendment or replacement take effect, but the non-receipt of notice by any such Holder shall not affect the validity of any such amendment or replacement.

23. BENEFIT OF DEED

23.1 The Issuer acknowledges, in relation to each Series and the Holders of the Bonds of that Series, that this Deed (including, for the avoidance of doubt, the Series Supplement for that Series) is made for the benefit of, and subject to clause 1.7 is intended to be enforceable by, any person who is from time to time a Holder of the Bonds of that Series, the Registrar for that Series, and the Supervisor.

24. WAIVER

24.1 **Temporary Variation:** In addition to, and not in abrogation of or substitution for, clause 22 (but subject to any applicable law and except to the extent expressly provided otherwise in the Conditions applicable to any Bonds):

(a) the Wholesale Holders may, by Special Resolution or, if the Conditions relating to such Class of Bonds so require, with the consent or the direction of the relevant Credit Support provider for such Class; and

(b) the Supervisor may, in respect of any Retail Series,

temporarily vary the provisions of this Deed applicable to the relevant Wholesale Bonds and/or Retail Bonds in each case for such period and on such terms as:

(c) may be deemed appropriate provided that the Supervisor shall be satisfied that the interests of the affected Retail Holders generally will not be materially and adversely prejudiced thereby; or

(d) may in the case of Retail Bonds, be agreed by the Supervisor pursuant to clause 24.3.

24.2 **Waiver:** Subject to any applicable law and except to the extent expressly provided otherwise in the Conditions for any Bonds, the Supervisor may if it is satisfied that the interests of the Holders generally will not be materially prejudiced thereby, and shall if so directed by a Special Resolution of Holders or, if the Conditions relating to such Class of Bonds so require, with the consent or the direction of the relevant Credit Support provider for such Class, waive, in whole or in part, for a specified period or indefinitely and on such terms and conditions (if any) as may be deemed expedient, any breach or anticipated breach by the Issuer of this Deed or any Conditions of any Bonds.

24.3 **Exemptions:** Except to the extent expressly provided otherwise in the Conditions for any Bonds, if:

- (a) the Issuer is granted an exemption, or an exemption is applicable to the Issuer, in relation to any obligation imposed upon the Issuer by or pursuant to the FMC Act, the Companies Act or the Financial Reporting Act 1993 which is materially the same as or analogous to any obligation of the Issuer under this Deed or any Bonds; and
- (b) two Authorised Officers of the Issuer (at least one of whom is a director of the Issuer) certify that such amendment, temporary variation or waiver will not have a material adverse effect on the Issuer or be or become materially and adversely prejudicial to the general interests of Holders,

then the Supervisor may, in respect of any Series, agree to amend or temporarily vary this Deed or the Conditions for the relevant Bonds or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

25. NOTICES

25.1 Any notice to be given to any Holder shall be in writing and may be given either personally, by email, by fax or by sending it by post to the Registered Address of the Holder. Each notice or other communication to be given or made under this Deed to any person must not be effective until received by the recipient, and any such notice or communication shall be deemed to be received:

- (a) (where a notice is sent by post) subject to clause 25.3, on the day after properly addressing, pre-paying and posting a letter containing the notice;
- (b) (where a notice is given by email) on completion of transmission to the relevant email address; or
- (c) (where a notice is given by fax) upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient,

provided that any notice or communication received or deemed received after 5:00pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, shall be deemed not to have been received until the next Business Day in that place.

25.2 Any notice, request, certificate, approval, demand, consent or other communication to be given or made under this Deed may be given by email, but only where the recipient has agreed in writing that that communication, or communications of that type, may be given or made by email.

25.3 If any Holder has no registered address within New Zealand and has not supplied an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then any notice to be given to such Holder shall be posted to that Holder at such international address and shall be deemed to have been received by that Holder 24 hours after the time of posting.

25.4 A notice may be given to the manager of a mentally disordered person, or the persons entitled to Bonds in consequence of the death or bankruptcy of a Holder, by sending it through the post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the

purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

- 25.5 If any Holder has no Registered Address and has not supplied an address for the giving of notices, or if any two notices posted to a Holder are returned on consecutive occasions, then, notwithstanding anything contained elsewhere in this Deed, until the Holder shall give notice in writing of some other address, the address of the Holder for all purposes of this Deed shall be deemed to be the registered office of the Issuer.
- 25.6 Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.
- 25.7 Any notice, communication or information required by this Deed to be given to the Supervisor by the Issuer, or to the Issuer by the Supervisor or any Holder, shall be in writing and be signed by a duly authorised officer of the party giving the notice and shall not be effective until received by the recipient.

26. RIGHTS OF HOLDERS

26.1 Neither the Supervisor nor the Issuer may take action that affects the rights attached to any Bonds unless that action has been approved by a Special Resolution of each Interest Group.

26.2 For the purposes of clause 26, the rights attached to any Bonds include:

- (a) the rights, privileges, limitations, and conditions attached to those Bonds by this Deed or the Constitution, including voting rights;
- (b) the right to have the procedure set out in this section, and any further procedure required by this Deed for the amendment or alteration of rights, observed by the Issuer and the Supervisor; and
- (c) the right that a procedure required by this Deed for the amendment or alteration of rights not be amended or altered.

26.3 For the purposes of clause 26:

- (a) the issue of further bonds, shares or other securities which rank equally with, or in priority to, any existing Bonds, whether as to voting rights, distributions or otherwise; and
- (b) any amendment made to this Deed pursuant to clause 22,

are deemed not to be actions affecting the rights attached to those existing Bonds.

27. MEETINGS OF HOLDERS

27.1 **Meetings:** Meetings of Holders and any Class of Holders are to be convened and held in accordance with the provisions of Schedule 2.

27.2 **Resolutions of Holders:** Any matter relating to this Deed or the Bonds may be agreed or approved by the relevant Class of Holders by signing (in any number of counterparts) a memorandum in writing, recording the matter so agreed or approved.

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

28. TRANSFER AND TRANSMISSION OF BONDS

28.1 Subject to clause 4.3 and any other restriction of this Deed as may be applicable, any Holder may transfer all or any Bonds in accordance with clause 28.2 and:

- (a) any Bonds disposed of by an "authorised transaction" or a "licensed market transaction" within the meaning of the FMC Act may be transferred in accordance with the provisions of that Act;
- (b) any Bonds transferred in accordance with any "designated settlement system" (as defined in, and for the purposes of, the Reserve Bank of New Zealand Act 1989);
- (c) every transfer not falling within the provisions of sub-clause (a) or (b) above shall be effected by written transfer in such form as the Issuer may approve and such transfer shall be signed by the transferor and, if the Issuer so requires, the transferee.

28.2 The Issuer may require reasonable evidence proving the title of the transferor or the transferor's right to transfer the Bonds. Subject to the Issuer being satisfied that the provisions of this section and all statutory provisions have been complied with, the transfer shall be registered in the Register.

28.3 The transferor of a Bond shall be deemed to remain the Holder until the name of the transferee is entered in the Register in respect thereof.

28.4 The Issuer or the Registrar may decline to register any transfer of Bonds where:

- (a) the Issuer has a lien on the relevant Bonds or any of them;
- (b) the transferor does not provide such evidence (if any) as may reasonably be required by the Issuer to show the right of the transferor to make the transfer; or
- (c) registration of the transfer (together with registration of any further transfer or transfers held and awaiting registration) would result in less than the Minimum Number standing in the name of the transferee. This power shall not be exercised before due enquiry has been made as to whether any further transfers to the same transferee are pending and whether such transfers would increase the holding to the Minimum Number.

28.5 The Issuer may at any time give notice to any Holder holding less than the Minimum Number that such Holder's holding is less than the Minimum Number and that, unless the Holder notifies the Issuer in writing within such reasonable period as is specified in the notice (being not less than three months) of such Holder's objection, the provisions of clause 28.7 shall apply.

28.6 A Holder upon whom notice has been served under clause 28.7 shall ensure that within one month (or such longer period as the Issuer may determine) after receiving the notice, the relevant Bonds are disposed of or further Bonds are acquired to bring the relevant holding to the Minimum Number. If, after such period, the Issuer is not satisfied that suitable arrangements have been made for the disposal, or acquisition of further Bonds, the Issuer may arrange for the sale of the relevant Bonds on behalf of the Holder, through the NZX, at the best price reasonably obtainable at the relevant time.

For this purpose, the Holder shall be deemed to have authorised the Issuer to act on behalf of such Holder in relation to the sale of the relevant Bonds, and to sign all documents and give all instructions relating to such sale and transfer as may be required to give effect to it. The net proceeds of sale shall be held on trust by the Issuer for, and paid to, the Holder.

- 28.7 Any instruments of transfer which have been registered may be retained by the Issuer or the Registrar. If the Issuer or the Registrar, pursuant to the powers contained in this Deed, refuses to register a transfer, it shall promptly send to the transferor and proposed transferee notice of the refusal and shall return any written transfer to the transferee together with such documents which may have been left with the transfer.
- 28.8 The executors or administrators of a deceased Holder (not being one of several joint Holders) and, in the case of the death of one or more of several joint Holders, the survivor or survivors, shall be the only persons recognised as having any title or interest in the Bonds held by such Holder or Holders. Nothing contained in this subclause shall release the estate of a deceased joint Holder from any liability in respect of any Bond which had been jointly held by that Holder with another person.
- 28.9 Any manager of a mentally disordered person or any person becoming entitled to a Bond in consequence of the death or bankruptcy of a Holder shall, upon such evidence being produced as may from time to time be properly required by the Issuer, have the right either to be registered as a Holder in respect of the Bond or, instead of being so registered, to make such transfer of the Bond as the mentally disordered, deceased or bankrupt person could have made. The Issuer shall in either case have the same right to decline or suspend registration as it would have had in the case of a transfer of the Bond by the mentally disordered, deceased or bankrupt person before such person became mentally disordered, or before the death or bankruptcy of such person, as the case may be.
- 28.10 If the person so becoming entitled elects to be registered personally, the person shall deliver or send to the Issuer a notice in writing signed by the person stating that the person so elects. If the person elects to have another person registered, the person shall transfer the relevant Bond to such other person. All the limitations, restrictions and provisions of this Deed relating to the right to transfer and the registration of transfers of Bonds shall be applicable to any such notice or transfer as if the mental disorder, death or bankruptcy of the Holder had not occurred and the notice or transfer were a transfer signed by that Holder.
- 28.11 Where any Holder becomes mentally disordered, dies or becomes bankrupt, the manager or personal representatives or the assignee of the Holder's estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the Issuer, be entitled to the same distributions and other advantages, and to the same rights (whether in relation to meetings of the Holders or to voting or otherwise) as the Holder would have been entitled to if the Holder had not become mentally disordered, died or become bankrupt. Where two or more persons are jointly entitled to any Bond in consequence of the death of the Holder they shall, for the purposes of this Deed, be deemed to be joint holders of the Bond.
- 28.12 The Issuer:
- (a) may, in its discretion, if so requested by a Holder or a transferee of Bonds; and
 - (b) shall, if so requested by a Holder who produces satisfactory evidence that Bonds held by that Holder are held as bare Supervisor or nominee and two or more other persons are separate beneficial owners of parcels of those Bonds or have other separate relevant interests in parcels of those Bonds,

cause the Bonds held or acquired by that Holder or transferee to be registered in two or more separately identifiable parcels. Thereafter, communications with that Holder, and distributions to those Holders shall (in the case of paragraph (a) so far as the Issuer considers it convenient or appropriate) be made, as if the separate registered parcels were each held by different Holders.

- 28.13 If required by the Listing Rules, the Issuer shall issue, or shall cause to be issued, to a Holder who obtains or disposes of Bonds in accordance with this clause 28, a statement in accordance with, and in the time required by, the Listing Rules.

29. RELEASE

- 29.1 Upon being indemnified to its satisfaction pursuant to clause 17.3 and upon proof being given to the reasonable satisfaction of the Supervisor that all sums owing or outstanding in respect of the Bonds or otherwise under this Deed have been paid or satisfied or that provision for such payment or satisfaction has been made in accordance with the provisions of this Deed and upon payment or retention of all costs, charges and expenses incurred by, or payable to, the Supervisor in relation to this Deed and the remuneration of the Supervisor and all other money payable hereunder, the Supervisor shall, at the request and cost of the Issuer, execute a deed of release of this Deed and shall thereupon retire. For the avoidance of doubt, payment on any Credit Wrapped Bonds by the provider of Credit Support in respect of those Bonds shall not constitute payment or satisfaction of those Bonds for the purposes of this clause 29.

30. MISCELLANEOUS

- 30.1 **Registration of Deed:** If the Issuer proposes to issue a Retail Series, it shall promptly, at its own cost, lodge this Deed, the Series Supplement in respect of that Series and any amendment to this Deed or such Series Supplement as required by the FMC Act and shall pay all costs and expenses incidental to doing so.
- 30.2 **Waivers and remedies:** Time shall be of the essence of this Deed but no delay in acting, or failure to act, by a Holder is a waiver of any of that Holders rights. The rights provided in this Deed do not exclude any rights provided by law.
- 30.3 **Partial invalidity:** An invalid provision in this Deed shall not affect the enforceability of the remaining provisions of this Deed.
- 30.4 **Further issues:** The Issuer may from time to time, without the consent of the Holders, issue Bonds or other debt obligations on such other terms and conditions as the Issuer may think fit.
- 30.5 **Documents:** Copies of this Deed, the relevant Series Supplement, the Credit Support (if any) and the Offer Document (if any) relating to Bonds held by the relevant Holder, the Agency Agreement in relation to the relevant Series and any other Transaction Document in relation to the relevant Series will be made available by the Issuer for inspection during usual business hours by any Holder at the registered office of the Issuer being, at the date of this Deed:

Trustpower Building
108 Durham Street
Tauranga
Private Bag 12023
Tauranga 3142

Each Holder will be deemed to have notice of the provisions of this Deed and each other Transaction Document in relation to the relevant Series.

- 30.6 **Survival:** The indemnities given in this Deed will survive the repayment of all the Bonds and the termination of this Deed.
- 30.7 **Counterparts:** This Deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this Deed by signing any such counterpart.
- 30.8 **Facsimile signature:** The parties may sign a counterpart copy of this Deed by photocopying a facsimile of this Deed and signing that photocopy. The transmission by facsimile by a party to the other of a signed counterpart copy of this Deed shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original.

31. GOVERNING LAW

- 31.1 **Governing Law:** This Deed shall be construed and take effect as a contract and declaration of trust made in New Zealand and shall be governed by New Zealand law.
- 31.2 **Submission to jurisdiction:** The Issuer and the Supervisor submit to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Deed.

EXECUTION

Issuer

BAY ENERGY LIMITED by:



Signature of director

Richard Aitken

Name of director



Signature of director

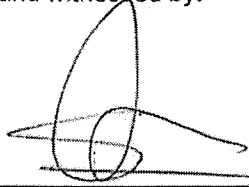
Ian Knowles

Name of director

Supervisor

TRUSTEES EXECUTORS LIMITED by:

and witnessed by:



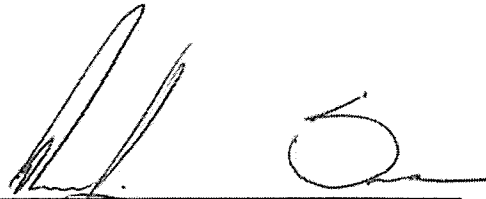
Signature of witness

Sean Roberts

Name of witness Client Services Manager
Wellington

Occupation

City/town of residence

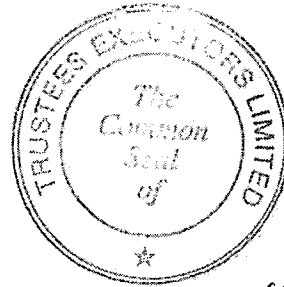


Signature of authorised signatory

Robert P Russell

Stuart McLaren

Name of authorised signatory



CTS2016-108 (1/2)

SCHEDULE 1: PARTICULARS OF BONDS IN REGISTER

1. Series number
2. Type of Bond
3. Issue Date
4. First Interest Accrual Date
5. Early repayment dates
6. Dates and amounts of any prepayments
7. Maturity Date
8. Principal Amount
9. Name, address and (where known) tax residency of Holder
10. Minimum denomination
11. Increments
12. Interest Rate
13. Interest Payment Dates
14. Details of the account to which payments in respect of the Bond are to be made
15. Transfers of the Bond
16. Cancellation of the Bond
17. Details of any resident withholding tax exemption certificates held by Holder
18. Whether the Bond is convertible
19. Any other information required by law

SCHEDULE 2: MEETINGS OF HOLDERS

1. DEFINITIONS

1.1 In this schedule:

"representative" means:

- (a) in the case of a Holder being an individual, a person appointed by an instrument by way of proxy or by a power of attorney;
- (b) in the case of a Holder being a company, a person appointed by an instrument of proxy or power of attorney, or a person authorised pursuant to the Companies Act or pursuant to its constitution or any other empowering provision.

"**Special Resolution**" means a resolution passed at a duly convened meeting of the Holders approved by Holders holding Bonds with a Principal Amount of not less than 75% of the combined Principal Amount of Bonds held by those persons who are entitled to vote and who vote on the question.

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

2. CONVENING OF MEETINGS

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

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

2.3 **Meeting required by Holders:**

- (a) The Supervisor shall at the request in writing of Holders holding not less than 5% of the aggregate Principal Amount of all Bonds in a Class then outstanding convene a meeting of the Holders.
- (b) Any such request shall state the nature of the business proposed to be dealt with at the meeting.

2.4 **Access to Register:** For the purpose of enabling the Supervisor to satisfy itself as to the validity of any request by Holders pursuant to clause 2.3 of this schedule the Issuer shall allow the Supervisor and/or its agents full access to the Register, whether the Register is for the time being closed or not.

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

3. PLACE OF MEETINGS

3.1 Each meeting shall be held in the city or town in which the registered office of the Issuer is situated or at such other place as the Trustee determines or approves.

4. NOTICE OF MEETINGS

- 4.1 **Prior notification to Supervisor:** At least 10 days before the Issuer gives notice of a meeting it shall advise the Supervisor in writing of the intended place, day and hour thereof and the precise nature of the business to be transacted thereat and shall obtain the prior approval in writing of the Supervisor to the documents it proposes to send to Holders. If the Supervisor so requires, the documents shall include any statement which the Supervisor wishes to make in relation to the meeting and the matters to be considered thereat.
- 4.2 **Persons to be notified:** At least 15 Working Days' notice of every meeting (exclusive of the day of dispatch of the notice, the following day and the day of the meeting) shall be given in the manner provided in clause 23 of the deed to the following persons;
- (a) in the case of a meeting of all Holders, to every Holder;
 - (b) to every person upon whom the ownership of any Bond devolves by reason of that person being a legal personal representative or an assignee in bankruptcy of a Holder where the Holder but for death or bankruptcy would in accordance with sub-clause (a) be entitled to receive notice of the meeting;
 - (c) to the Supervisor if the meeting is convened by the Issuer, and to the Issuer if the meeting is convened by the Supervisor;
 - (d) to every director and an auditor of the Issuer; and
 - (e) to the NZX.
- 4.3 **Contents of notice:** The notice shall specify the place, day and hour of the meeting and the nature of the business to be transacted at the meeting in sufficient detail to enable a Holder to form a reasoned judgement in relation to it, but it shall not be necessary to specify in the notice the terms of any resolution to be proposed at the meeting except in the case of a resolution proposed to be passed as a Special Resolution in which case the text of the proposed resolution shall be set out. The notice must state the right of the Holder to appoint a proxy. The Issuer shall send a form of proxy to every Holder entitled to attend and vote at the meeting, with the notice convening the meeting.
- 4.4 **Short or Informal notice:** Notwithstanding any other provision in this clause 4, a meeting may be called by shorter notice than that specified in clause 4.2 of this schedule, or without any formal notice, and without compliance with clauses 4.1, 4.2 and 4.3 of this schedule, and shall be deemed to have been duly called, if it is so agreed by all Holders entitled to vote at the meeting, prior to, at, or subsequent to that meeting.
- 4.5 **Accidental omission:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person entitled thereto shall not invalidate the proceedings at that meeting.
- 4.6 **Form of resolutions:** So far as reasonably practicable, the resolutions proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.
- 4.7 **Special Resolutions:** If a Special Resolution is to be submitted to the meeting:
- (a) a draft of the proposed notice of the meeting must be given to the Supervisor at least 10 Working Days before the notice is given under regulation 4.2 (or any lesser period approved by the Supervisor); and
 - (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (but only if the

Supervisor has provided those comments in writing to the Issuer at least 5 Working Days before the notice is given under clause 4.2)

- 4.8 **Irregularity in Notice:** An irregularity in a notice of a meeting is waived if:
- (a) all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver; or
 - (b) the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Holders.
- 4.9 **Notice of adjourned meeting:** If a meeting is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.
5. **QUORUM**
- 5.1 **Quorum required:** No business shall be transacted at a meeting of Holders if a quorum is not present.
- 5.2 **Quorum for Special Resolution:** A quorum for a meeting of Holders at which a Special Resolution is to be submitted is present if Holders or their proxies are present who hold Bonds with a combined Principal Amount of no less than 25% of the Principal Amount of Bonds held by those Holders who are entitled to vote on the business to be transacted at the meeting.
- 5.3 **Quorum for other business:** The quorum for the transaction of any business (other than the passing of a Special Resolution) at a meeting of all Holders shall be holders present in person or by representative of at least 5% of the aggregate Principal Amount of all Bonds then outstanding, and in any case no less than 2 Holders present.
- 5.4 **Quorum not present:** Despite clauses 5.1 to 5.3, if a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called under section 120(1)(b) of the FMC Act, the meeting is dissolved; and
 - (b) in the case of any other meeting, the meeting is adjourned to the day that is 10 Working Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their proxies present are a quorum.
- 5.5 **Audio, visual or electronic communication:** To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.
6. **RIGHT TO ATTEND AND SPEAK**
- 6.1 Any director, officer of or solicitor for, the Supervisor or any other person authorised in that behalf by the Supervisor and any Director or the secretary of, or solicitor for, the Issuer or any other person authorised in that behalf by the Issuer, may attend any meeting and all such persons shall have the right to speak at the meeting.

7. CHAIRMAN

- 7.1 **Wholesale Series:** At a meeting of Wholesale Holders a person appointed, by a resolution of Holders, from the Holders or any representatives present will preside as chairman at a meeting.
- 7.2 **Retail Series:** A person nominated in writing by the Supervisor shall preside at every meeting of Holders. If no such person is nominated, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders present shall appoint a person to be chairman of the meeting.

8. ADJOURNMENT

- 8.1 **Chairman may adjourn:** The chairman may adjourn the meeting from time to time and from place to place.
- 8.2 **Business at adjourned meeting:** No business shall be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

9. AUTHORITY TO VOTE

- 9.1 **Voting:** A Holder who is an individual may vote personally or by his or her proxy and a Holder which is a company may vote by its representative provided that, for so long as any Bonds are listed on the NZX, no Holder shall be entitled to vote on any matter in respect of which such person is prohibited from voting by the Listing Rules.
- 9.2 **No consequence:** Without prejudice to any remedy (other than those which take legal effect against the Issuer or the Supervisor) which any Holder may have against any disqualified person who casts a vote at a meeting in breach of clause 9.1, no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of clause 9.1. Any objection by a Holder to the accuracy or completeness of any list of Holders who are disqualified from voting on a resolution pursuant to clause 9.1, which has been supplied by the Issuer to the NZX or to any Holder on request pursuant to the Listing Rules, shall be disregarded by the Issuer and the chairperson of the relevant meeting if it is notified to the Issuer later than one full Working Day before the time fixed for commencement of the meeting.
- 9.3 **Entitled to vote:** The following persons shall be exclusively entitled to vote in person or by proxy or representative in respect of the Bonds mentioned:
- (a) The persons registered as Holders on the Register in respect of the Bonds recorded as owned by them respectively.
 - (b) The persons who are entitled to receive notice of the meeting pursuant to clause 4.2(b) of this schedule in respect of the Bonds devolving upon them respectively.

10. PROXIES

- 10.1 **In writing:** The instrument appointing a proxy shall be in writing signed by the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a company, signed by an officer or attorney so authorised or by any director, secretary, general manager, investment manager or other person who appears to the Supervisor to have authority to appoint a proxy on behalf of such company.
- 10.2 **Proxy need not be Holder:** A person appointed to act as a proxy need not be a Holder.

10.3 **Deposit of proxy:** The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified by a solicitor or Notary Public or in such other manner as the Supervisor shall approve, shall be deposited at such place as the Supervisor, or the Issuer with the approval of the Supervisor, may in the notice convening the meeting appoint or (if no such place is appointed) then at the registered office of the Issuer not less than 48 hours (or such shorter period as the Issuer may nominate in the notice convening the meeting) before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid provided that the Supervisor may in its sole discretion at any time:

- (a) waive any of the foregoing requirements in relation to any power of attorney or other authority;
- (b) approve and elect to treat as valid any instrument of proxy notwithstanding that it is received or produced at a place other than that specified in the notice or out of time.

10.4 **Form of proxy:** An instrument of proxy may be in any usual or common form or in any other form which the Supervisor may approve and shall, to the extent the subject matter and form of the resolutions reasonably permit, provide for two way voting on all resolutions, enabling the Holder to instruct the proxy as to the casting of the vote on each resolution.

10.5 **Proxy form must not name proxy:** The Issuer shall not issue any form of instrument of proxy with a proxy named in it either by name or by reference to an office which that proxy holds, but the Issuer may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Holder desires to appoint them or any of them.

10.6 **Proxy valid for meeting:** A proxy, whether in a usual or common form or not, shall, unless the contrary is stated thereon, be valid for the meeting to which it relates and for any adjournment thereof and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy shall be valid after the expiration of 12 months from the date of its execution but this provision shall not be construed to apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

10.7 **Proxy in favour of chairman:** An instrument of proxy which is expressed to be in favour of:

- (a) the chairman; or
- (b) the chairman of the meeting,

shall be valid and effectual as though it were in favour of a named person and shall in the case of paragraph (a) constitute the person holding the office of the chairman of the Issuer and in the case of paragraph (b) constitute the person who chairs the meeting for which the proxy is used whether on adjournment or not, the lawful proxy of the appointer.

11. APPOINTMENT OF ATTORNEY

11.1 Any Holder may by power of attorney appoint an attorney (who need not be a Holder) to vote and act on behalf of the Holder at any meeting. An attorney shall be entitled to produce evidence of appointment at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting or for the taking of a poll at which the

attorney proposes to vote or act. An attorney, if so empowered, may appoint a proxy for the Holder granting the power of attorney.

12. CORPORATE REPRESENTATIVE

- 12.1 A person authorised pursuant to section 143 of the Companies Act, or pursuant to any other enactment or applicable empowering provision, by a Holder that is a company, to act for it at any meeting shall in accordance with such authority (until it is revoked by the company concerned) be entitled to exercise the same powers on behalf of the company as that company could exercise if it were an individual Holder and shall be entitled to produce evidence of the authority to act at any time before the time appointed for the holding of, or at, the meeting or adjourned meeting or for the taking of a poll at which the person proposes to vote.

13. RIGHTS OF REPRESENTATIVES

- 13.1 **Rights:** A representative shall have the right to speak at the meeting and to demand or join in demanding a poll and shall (except when and to the extent to which the representative is specially directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.
- 13.2 **Supervisor may be representative:** The Supervisor and any officer of the Supervisor may be appointed a representative.
- 13.3 **Vote to remain valid:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form of appointment shall be valid notwithstanding the previous death, insanity or (in the case of a company) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or of the authority under which the proxy was executed or the transfer of the Bond in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Supervisor, or the Issuer at its registered office, before the commencement of the meeting or adjourned meeting at which the proxy or power of attorney or other form of appointment is used.

14. VOTING PROCEDURE

- 14.1 **Show of hands unless poll demanded:** A resolution put to the vote at a meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or by the Supervisor or any person acting on behalf of the Supervisor or by Holders holding or representing not less than 5% of all Bonds. Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 14.2 **Poll:** If a poll is duly demanded it shall be taken in such manner as the chairman may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll is demanded
- 14.3 **Election of chairman:** A poll demanded on the election of a chairman other than the nominee of the Supervisor, or on a question of adjournment, shall be taken either immediately or at such time (not being more than 30 days after the date of the meeting) and place as the chairman may direct. The result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

- 14.4 **No disturbance:** The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- 14.5 **Casting of votes:** On a poll votes may be given either personally or by representative. On a poll a person entitled to more than one vote need not use all that person's votes, or cast all the votes used in the same way.
- 14.6 **Number of votes:** Every Holder who is present at a meeting (whether personally, by representative or by proxy) and entitled to vote shall, on a show of hands, be entitled to one vote only and on a poll, be entitled to one vote for every Bond of which that Holder is the holder.
- 14.7 **Joint Holders:** In the case of joint Holders the vote of the senior who tenders a vote, whether in person or by representative, shall be accepted to the exclusion of the votes of the other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

15. DISQUALIFICATION

- 15.1 No Holder shall be entitled to be present or to vote on any question, either personally or by proxy or representative, and no person shall be entitled to be present or to vote as proxy, attorney or representative for any Holder at any meeting or upon a poll or be reckoned in a quorum, in respect of any Bond held by a Holder, whether alone or jointly, whilst any sum is due and payable to the Issuer in respect of any such Bond.

16. POWERS EXERCISABLE BY SPECIAL RESOLUTION

- 16.1 Where a particular majority is not required by this Deed or by law, any matter arising at any meeting of Holders duly convened and held shall be determined by a simple majority of the persons voting thereon on a show of hands or, if a poll is duly demanded, by a majority consisting of not less than 50% plus one of the votes given on such poll.
- 16.2 Without limiting the rights, powers and discretions conferred on the Supervisor by the deed, a meeting of the Holders shall, in addition to all other powers which by the Deed are specified as exercisable by Special Resolution, have the following powers exercisable by Special Resolution, namely power to:
- (a) sanction either unconditionally or upon any conditions:
 - (i) the release of the Issuer from any of its obligations under the Deed;
 - (ii) the release of the Deed in whole or in part;
 - (b) sanction any variation, release, waiver or compromise or any arrangement in respect of the rights of the Holders against the Issuer or against its undertakings and assets howsoever such rights shall arise;
 - (c) assent to any variation or addition to the provisions contained in the Deed or any deed or other instrument collateral or supplemental thereto, or the conditions attaching to the Bonds, proposed or agreed to by the Issuer;
 - (d) subject to the FMC Act, discharge, release or exonerate the Supervisor from all liability in respect of any act or omission for which the Supervisor has or may become responsible under the Deed;

- (e) sanction any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other company where such sanction is necessary;
- (f) subject to the provisions of the Deed, remove any Supervisor and approve the appointment of, or appoint, a new Supervisor;
- (g) authorise or direct the Supervisor to concur in and execute any supplemental deed or other document embodying any sanction, authority, approval, assent, variation, release, waiver, compromise, direction or request;
- (h) direct the Supervisor to take, or to refrain from taking, any other action under or pursuant to, or in connection with, any of the provisions of the Deed; and
- (i) sanction the exchange of Bonds for, or the conversion of Bonds into, shares, stock, debentures, debenture stock or other obligations of the Issuer or any other company formed or to be formed.

17. SPECIAL RESOLUTION

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

18. MINUTES OF MEETINGS

- 18.1 Minutes of all resolutions and proceedings at every meeting of Holders shall be made by the Supervisor, or if the Supervisor shall not be present at such meeting by some person appointed by the chairman of such meeting, and duly entered in books from time to time provided for that purpose by the Supervisor at the expense of the Issuer and any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had or by the chairman of the next succeeding meeting of Holders shall be prima fade evidence of the matters stated therein and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to be duly passed and had. Copies of such minutes shall be furnished by the Supervisor to the Issuer as early as possible after the holding of the meeting to which they refer.

19. FURTHER REGULATIONS

- 19.1 Subject to all other provisions contained in this schedule and the Deed the Supervisor may without the consent of the Holders prescribe such further regulations in respect of the convening and holding of meetings of Holders, attendance and voting thereat, and other matters incidental thereto, as the Supervisor may in its sole discretion determine.

20. GROUP MEETINGS

- 20.1 A meeting of the Holders in an Interest Group, or an Affected Group, or a Relevant Group may be called by the Supervisor or the Issuer at any time, and shall be called on the written request of holders of Bonds carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this Deed including the definition of Special Resolution relating to meetings of Holders apply, with all necessary modifications, to a meeting of an Interest Group, an Affected Group or a Relevant Group, except that:

- (a) the necessary quorum is two or more Holders in the group present in person or by proxy or representative, or, if there is only one Holder in the Group, that Holder present in person or by proxy or representative;
- (b) if the Issuer so elects, one meeting may be held of Holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any Holder in the group, present in person or by proxy or representative, may demand a poll.

21. RESOLUTIONS IN WRITING

- 21.1 **Special Resolution:** Anything that may be done by Holders by a resolution or Special Resolution passed at a meeting of Holders may be done by a resolution in writing signed by not less than 75% of the combined Principal Amount of Bonds held by those persons who are entitled to vote.
- 21.2 **Counterparts:** Any such resolution may consist of several documents in similar form, each signed by one or more Holders.
- 21.3 **Execution:** Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.