

BAY ENERGY LIMITED (TO BE RENAMED TRUSTPOWER LIMITED)

Issuer

TRUSTEES EXECUTORS LIMITED

Supervisor

SERIES SUPPLEMENT - SERIES 1 BONDS

RUSSELL McVEAGH

DEED dated *14 September* 2016

PARTIES

BAY ENERGY LIMITED (to be renamed **TRUSTPOWER LIMITED**) (company number 565426) ("**Issuer**")

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

INTRODUCTION

This deed is a Series Supplement entered into pursuant to clause 2.4 of the Master Trust Deed to provide for the constitution and issue of the Bonds described in this Series Supplement.

1. INTERPRETATION

1.1 Master Trust Deed

The terms of the Master Trust Deed (including the definitions, the rules of construction and the miscellaneous provisions of clauses 1.1 to 1.8 of the Master Trust Deed) shall apply in this Series Supplement and to the Bonds constituted by this Series Supplement except to the extent modified in this Series Supplement. To that extent, or in the event of any conflict between the provisions of this Series Supplement and those of the Master Trust Deed, the provisions of this Series Supplement shall prevail over those of the Master Trust Deed.

1.2 Additional or modified defined terms

In this Series Supplement, unless the context otherwise requires:

"Accession Certificate" means the accession certificate dated on or about 14 September 2016, given by the Issuer in favour of the Supervisor pursuant to the Negative Pledge Deed.

"Accounts" means the latest annual audited, or semi-annual unaudited, consolidated financial statements (including a Statement of Financial Position, income statement and statement of cash flows) of the Consolidated Group which have been prepared in accordance with NZ GAAP and where the context permits includes the Auditor's certificate.

"Bond" means a bond issued on the terms and conditions set out in this Series Supplement.

"Business Day" means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Auckland and Wellington (and this definition will apply in all respects to the Bonds notwithstanding the definition of "Business Day" in clause 1.1 of the Master Trust Deed).

"Core Business" means the business of generation of electricity, trading and retailing of energy and telecommunication services in New Zealand and generation, marketing and trading of electricity and related products and services in Australia.

"EBITDA" means, in any period for the Consolidated Group or the Guaranteeing Group, gross revenue in the relevant period (excluding equity accounted gains, extraordinary gains or losses, capital gains or losses and unrealised gains or losses resulting from

foreign currency borrowings and financing transactions, Risk Management Products and mark to market adjustment of financial instruments (including electricity hedges) required by NZ GAAP) less all operating expenses for the Consolidated Group or the Guaranteeing Group (as the case may be) for that period (excluding from operating expenses depreciation, amortisation, Interest Expense, other non-cash charges, and income taxes).

"Face Value" means \$1.00.

"Financial Period" means a period of 12 months ending on the last day of September and March in any year.

"Guaranteeing Group" has the meaning given to that term in the Negative Pledge Deed.

"Intangible Assets" means assets which according to NZ GAAP should be classified as intangible assets.

"Interest Expense" means, at any date in relation to the Consolidated Group or the Guaranteeing Group, any amount equal to all interest and other financing costs incurred in respect of the Consolidated Group or the Guaranteeing Group (as the case may be), calculated on a consolidated basis in accordance with NZ GAAP, for the 12 months ending on that date, including (without limitation):

- (a) the amount of all discounts and similar allowances on the issue or disposal of debt instruments;
- (b) all finance charges under leases, and hire purchase agreements of a financing nature;
- (c) the amount of all dividends paid or payable (other than dividends the payment of which are solely at the discretion of the Issuer) on Redeemable Shares issued by any member of the Consolidated Group or the Guaranteeing Group (as the case may be);
- (d) all realised gains and losses resulting from foreign currency borrowings and financing transactions and Risk Management Products; and
- (e) all other expenses and amounts that are required by NZ GAAP to be treated as interest or financing costs,

but not including:

- (f) interest and financing costs on moneys borrowed or raised to acquire, develop or improve fixed assets, to the extent that they have been capitalised in the accounts of the Consolidated Group or the Guaranteeing Group (as the case may be); or
- (g) any interest the payment of which has been and continues to be suspended; or
- (h) unrealised gains and losses resulting from foreign currency borrowings and financing transactions and Risk Management Products; or
- (i) mark to market adjustment of financial instruments (including electricity hedges) required by NZ GAAP.

"Interest Rate" means 7.10% per annum.

"**Issue Date**" means 26 October 2016, or such other date that the Issuer may determine.

"**Master Trust Deed**" means the master trust deed dated on or about 14 September 2016 and made between the Issuer and the Supervisor.

"**Maturity Date**" means 15 December 2017.

"**Negative Pledge Deed**" means the negative pledge deed to be dated on or about 5 September 2016 between the Issuer and certain guaranteeing subsidiaries in favour of certain lenders as named therein, as amended and restated from time to time.

"**Net Debt**" means, on any date in relation to the Consolidated Group, the Total Debt on that date less an amount equal to the aggregated consolidated value of cash or cash equivalents that would be disclosed by a Statement of Financial Position if one were prepared as at that date.

"**NZ GAAP**" means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013.

"**Opening Date**" means 26 September 2016, or such other date that the Issuer may determine.

"**Permitted Lease Transaction**" means a transaction under which the Issuer disposes (including, without limitation, by way of sale or lease) of assets ("**relevant assets**") and/or rights (including the right to acquire title) in respect of the relevant assets, in circumstances where:

- (a) the Issuer obtains, or (as the case may be) retains, the use and benefit of the relevant assets under a lease or similar arrangement (whether directly from the owner or acquirer of rights in respect of the relevant assets pursuant to the disposal transaction referred to above, or from any other intermediate lessee or lessees); and
- (b) the Issuer certifies to the Supervisor that the following conditions are satisfied:
 - (i) at least 85% of the value of the scheduled payment obligations of the Issuer under such lease or similar arrangement are defeased;
 - (ii) arrangements consistent with market practice in the relevant leasing jurisdiction ("**relevant market practice**") exist to confer on the Issuer the right to acquire, or resume title to or ownership of, the relevant assets, or otherwise obtain the equivalent economic effect, on a lease termination or another (prior) date, upon payment of option exercise or similar scheduled payment amounts which (other than any which have been defeased and after taking into account the Issuer's rights to realise or apply any defeasance assets relating to the transaction and to utilise the proceeds thereof in, or towards, satisfaction of the reacquisition or resumption price) do not exceed a nominal amount,

and for the purposes of this definition:

- (A) "**defeased**" means either that:
 - (i) the Issuer's obligations are legally defeased (including by way of payment); or
 - (ii) either:

- (aa) such obligations are assumed by an acceptable credit entity in accordance, or consistent, with relevant market practice; or
- (bb) the lessor has recourse (whether by way of security or otherwise) to securities or other payment obligations issued by an acceptable credit entity in accordance, or consistent, with relevant market practice,

in each case such that such obligations are treated as extinguished (including, without limitation, by virtue of defeasance in accordance with New Zealand International Accounting Standards 39 or any successor reporting standard) for the purpose of NZ GAAP;

- (B) **"acceptable credit entity"** means a person who has, or whose relevant obligations are guaranteed by a person who has, a credit rating for its senior unsecured long term debt obligations of not less than AA- from Standard & Poor's Ratings Group and Aa3 from Moody's Investor Services, Inc. (or, in each case, any respective successor organisation thereto); and
- (C) **"scheduled payments"** means payments (whether by way of rental, purchase option exercise price or similar payments) payable in fixed amounts and on fixed future dates irrespective of any contingency (other than continuation of the lease and, in the case of an option exercise price, the exercise of the relevant option), and shall exclude payments which are payable only upon the occurrence of other contingencies or the payment of which is not certain.

"Permitted Security" means:

- (a) any security interest which arises by operation of law; or
- (b) any right of netting of indebtedness, set-off, combination or consolidation of accounts, or similar provision, contained in any Risk Management Product entered into between the Issuer and its bankers as part of normal banking arrangements; or
- (c) any security interest constituted by or arising under any Permitted Lease Transaction; or
- (d) any security interest constituted by a retention of title to, or other interest in, personal property to secure the payment of the purchase price thereunder or which is a purchase money security interest (as that term is defined under the PPSA), so long as:
 - (i) such security interest arises in the ordinary course of business of the Issuer; and
 - (ii) the obligation so secured is not in default; and
 - (iii) such security interest is discharged within 180 days of such obligation being incurred; or
- (e) any security interest that is created or provided for by:

- (i) a lease (other than a lease constituting a finance lease for the purposes of NZ GAAP or a lease under a sale and lease-back transaction) for a term of more than one year (as defined in the PPSA) in respect of which the Issuer is the lessee;
 - (ii) a commercial consignment (as defined in the PPSA) in respect of which the Issuer is consignee; or
 - (iii) a transfer or purchase of an account receivable or chattel paper (in each case as defined in the PPSA) on normal commercial arm's length terms in respect of which the Issuer is transferor or vendor,
- and that does not secure payment or performance of an obligation; or
- (f) any security interest created in favour of co-venturers pursuant to any agreement relating to an unincorporated joint venture over interests in, or assets of, such unincorporated joint venture; or
 - (g) any security interest that is created or permitted to arise or subsist with the prior written consent of the Supervisor; or
 - (h) any security interest created as security over any asset acquired, developed or constructed after the date of this Series Supplement to secure the cost of acquiring, developing and/or constructing such asset where the financier's right of action to enforce repayment of the amount secured is limited to a right of action or claim against such assets or any assets, revenues, contracts, licenses or similar rights derived from the asset acquired, developed or constructed; or
 - (i) any security interest of the same nature created or permitted to subsist in replacement of, or substitution for, any security interest referred to in the foregoing paragraphs.

"PPSA" means the Personal Property Securities Act 1999.

"Redeemable Shares" means:

- (a) shares which are redeemable in cash, or by the issue of other redeemable shares, either compulsorily, or at the option of the holder or issuer of such shares; and
- (b) units in any trust which are analogous in nature to the shares referred to in paragraph (a), if that unit trust is a member of the Consolidated Group or Guaranteeing Group, or if a member of the Consolidated Group or Guaranteeing Group is responsible for the redemption of those units.

"Registrar" means Computershare Investor Services Limited.

"Reporting Date" has the meaning given to that term in clause 3.7.

"Risk Management Products" means all swap or exchange agreements (currency or interest), forward rate agreements, option transactions and future transactions in respect of interest rates or financial instruments, and includes any agreement or transaction substantially similar to any of the foregoing.

"Series Supplement" means this deed and, for the avoidance of doubt, includes the terms of the Master Trust Deed as applied in this deed in accordance with, and subject to, clause 1.1.

"Statement of Financial Position" means, in relation to the Consolidated Group or any person, a consolidated statement of financial position of the Consolidated Group or that person prepared as at any date in accordance with NZ GAAP.

"Total Debt" means, on any date in relation to the Consolidated Group, the gross amount of all financing liabilities calculated on an aggregated consolidated basis in accordance with NZ GAAP (without double-counting), including:

- (a) the amount of all debt instruments;
- (b) the principal amount of all finance leases and hire purchase agreements;
- (c) the amount of all Redeemable Shares issued by any member of the Consolidated Group; and
- (d) all other liabilities that are required by NZ GAAP to be treated as financing liabilities.

Total Tangible Assets means, at any date in relation to the Consolidated Group or the Guaranteeing Group, the aggregate amount on a consolidated basis of all assets of the Consolidated Group or the Guaranteeing Group (as the case may be) which would be disclosed in a Statement of Financial Position if one was prepared as at that date, including future asset revaluations of generation assets, land and buildings if such revaluations, in addition to complying with NZ GAAP, are conducted by an independent, qualified valuer and excluding Intangible Assets.

"Transaction Documents" means this Series Supplement, the Master Trust Deed and the Accession Certificate.

1.3 **Modification of other terms in Master Trust Deed**

The terms "**Holder**", "**Bonds**", "**Bond Moneys**" and "**Register**" have the meanings given them in the Master Trust Deed but, in this Series Supplement, refer only to the Bonds of this Series, to the Holders of those Bonds, and to the Register in relation to this Series.

2. **FORM OF BONDS**

2.1 **Issue of Bonds**

The Bonds issued pursuant to this Series Supplement constitute a Series, and shall be described as Series 1 Bonds.

2.2 **Status**

- (a) The Bonds are Unsubordinated Bonds.
- (b) The Bonds are not Convertible Bonds.

2.3 **Type**

The Bonds are Retail Bonds and this Series is a Retail Series.

2.4 **Interest Rate Basis**

The Bonds are Fixed Rate Bonds. Clause 9 of the Master Trust Deed (relating to the suspension of interest) does not apply to this Series of Bonds.

2.5 Selling restrictions

- (a) Bonds may only be offered for sale or sold in conformity with all applicable laws and regulations in any jurisdiction in which they are offered, sold or delivered.
- (b) No offer, sale or delivery of the Bonds or distributions of 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.

2.6 Minimum Principal Amount

- (a) The Minimum Principal Amount for subscription and holding of Bonds is \$5,000 and thereafter multiples of \$1,000.
- (b) The Minimum Number is 5,000.

2.7 Time for payments

Steps will be taken to process the mailing or direct credit of a payment by the Issuer to a Holder prior to 5.00pm on the relevant Interest Payment Date (or, if that date is not a Business Day, the next Business Day after that date) or other date on which payment is required to be made.

2.8 Other matters

The Bonds carry no right to participate in any offering of securities by the Issuer, and the Issuer reserves the right at all times to issue securities to any person in any manner.

3. TERMS AND CONDITIONS OF THE SERIES 1 BONDS

3.1 Term

The term of the Bonds is the period from the Issue Date for the Bonds until the Maturity Date.

3.2 Interest Rate

Interest will accrue on each Bond at the rate per annum equal to the Interest Rate.

3.3 Interest Payment Dates and calculation of interest

- (a) The Interest Payment Dates for the Bonds shall be 15 March, 15 June, 15 September and 15 December in each year up to the Maturity Date (commencing on the first such date to fall after the Issue Date) and the Maturity Date.
- (b) Interest payable on each Bond shall be paid in arrear and shall be paid in equal quarterly instalments on each Interest Payment Date (other than the first Interest Payment Date) with the amount of interest so payable in respect of each Bond being:

$$\frac{\text{Principal Amount} \times (\text{Interest Rate divided by } 100)}{4}$$

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- (c) Any interest on a Bond payable other than on an Interest Payment Date shall be calculated on the basis of the number of days elapsed and a 365 day year in respect of the period from (and including) the immediately preceding Interest Payment Date to (but excluding) the date for payment of that interest.
- (d) Interest on a Bond will be paid to, or to the order of, the Holder of that Bond as at the Record Date in respect of the relevant payment of interest.

3.4 First Interest Payment Date

Any interest on a Bond payable on the first Interest Payment Date will be equal to the amount of interest payable on each Bond on each quarterly instalment date under clause 3.3(b), as if that Bond has been issued on, and interest accrued on that Bond from, 15 September 2016.

3.5 Final Redemption

Unless previously repaid, prepaid, redeemed or purchased and cancelled, the Issuer will redeem all of the Bonds on the Maturity Date for an amount equal to the aggregate of:

- (a) the Principal Amount of each such Bond;
- (b) all accrued but unpaid interest in respect of each Bond; and
- (c) any other amount due and payable in respect of the Bonds.

Payment of such amount in respect of each Bond will be paid to, or to the order of, the person whose name appears in the Register as the relevant Holder on the Record Date in respect of the Interest Payment Date falling on the Maturity Date.

3.6 Early Redemption

- (a) The Bonds are issued with an Early Redemption Option meaning that the Issuer may redeem the Bonds on any early redemption date (as defined in clause 7.1(c) of the Master Trust Deed) for an amount in respect of each Bond equal to:

- (i) the greater of:
 - (aa) an amount equal to its Face Value; and
 - (bb) the average price, weighted by volume, of all trades of Bonds through the NZX over the 10 Business Days up to (but excluding) the fifteenth Business Day before the relevant early redemption date, net of accrued interest (if any),

and less all withholding tax and other withholdings or deductions required to be made (whether pursuant to clause 15 of the Master Trust Deed or otherwise).

Where the Bonds have not traded on the NZX for at least half of the 10 Business Days specified in clause 3.6(a)(i)(bb), the average price of the Bonds for that period (net of any accrued interest) will be determined by an Independent Adviser;

- (ii) all accrued but unpaid interest in respect of each Bond; and

- (iii) any other amount due and payable in respect of the Bonds.
- (b) The Issuer will not elect any early redemption date that would result in a Record Date for the payment of interest (other than the record date for the Maturity Date) occurring during the pricing period for the purposes of clause 3.6(a)(i)(bb). Payment of an amount pursuant to this clause 3.6 in respect of each Bond will be paid to, or to the order of, the Holder of that Bond as at the Record Date in respect of the payment.

3.7 Financial covenants

The Issuer covenants that:

- (a) on each Reporting Date, Net Debt of the Consolidated Group divided by Total Tangible Assets of the Consolidated Group will not exceed 50%;
- (b) Total Tangible Assets of the Guaranteeing Group will at no time be less than 85% of the Total Tangible Assets of the Consolidated Group; and
- (c) for the Financial Period ending on each Reporting Date, EBITDA of the Guaranteeing Group will not be less than 85% of EBITDA of the Consolidated Group.

For the purposes of this clause 3.7, the expression "**Reporting Date**" means the Reporting Date referred to in the director's certificate given to the Supervisor pursuant to clause 5.2(a)(iii) of this Series Supplement.

3.8 Default Interest

Any default interest due and payable by the Issuer pursuant to clause 7.6 of the Master Trust Deed shall be paid on the next occurring Interest Payment Date.

4. ISSUE

4.1 Conditions precedent to first issue of Bonds

The Issuer shall not be entitled to issue any Bonds constituted by this Series Supplement until such time as the Supervisor has confirmed to it in writing that it has received the following and found them satisfactory in form and substance:

- (a) a certificate from a director of the Issuer in substantially the form set out in Schedule 1;
- (b) a certificate of compliance with sections 104 to 106 of the FMC Act signed by the Issuer and the Supervisor;
- (c) evidence that a copy of the Master Trust Deed and this Series Supplement has been lodged with the Registrar (as defined in the FMC Act) in accordance with section 103(1)(a)(ii);
- (d) a legal opinion from Russell McVeagh to (and able to be relied upon by) the Supervisor regarding the enforceability of the Master Trust Deed and this Series Supplement;
- (e) an original of each of Transaction Document each duly executed by all relevant parties; and

- (f) a legal opinion from Buddle Findlay to (and able to be relied upon by) the Supervisor in relation to the Supervisor.

4.2 **Conditions precedent on issuance**

In addition to the requirements set out in clause 4.1, the Issuer shall not issue any Bonds unless the representations and warranties contained in clause 12.1 of the Master Trust Deed are true and correct in all material respects by reference to the facts and circumstances existing as at the Issue Date for the Bonds.

5. **UNDERTAKINGS**

5.1 **Negative pledge**

- (a) Subject to clause 5.1(b) of this Series Supplement, the Issuer will not create or permit to subsist any security interest whatever over the whole or any part of its assets other than a Permitted Security.
- (b) Notwithstanding clause 5.1(a) of this Series Supplement, the Issuer may, in addition to any Permitted Security, create or permit to subsist security interests where the aggregate value of all assets of the Issuer in respect of which security interests have been created or permitted to subsist does not exceed at any time an amount equal to 7.5% of Total Tangible Assets of the Consolidated Group at that time.

5.2 **Undertakings**

The Issuer undertakes to the Supervisor that, for so long as any Bonds are outstanding:

(a) **Financial information**

it will furnish, or cause to be furnished or made available, to the Supervisor:

- (i) as soon as practicable (and in any event within 120 days) after the last day of each of its financial years, the Accounts of the Consolidated Group, duly audited, and made up as at the last day of that financial year;
- (ii) as soon as practicable (and in any event within 60 days) after the last day of the first half of each of its financial years, the unaudited Accounts of the Consolidated Group, made up as at the last day of that half year;
- (iii) as soon as practicable (and in any event within 45 days of the end of each Financial Period) a certificate signed by one director of the Issuer in, or substantially in, the form set out in Schedule 2 or such other form agreed between the Issuer and the Supervisor; and
- (iv) such other information required under the terms of any separate written agreement between the Issuer and the Supervisor in the manner and at the times agreed therein;

(b) **Auditor's report**

it will provide to the Supervisor, at the same time as the latest audited Accounts of the Consolidated Group are provided in accordance with clause 5.2(a)(i) of this Series Supplement, a separate report by the Auditor stating:

- (i) whether, in the course of performing its duty as Auditor, it has become aware of any matter which, in its opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by the Master Trust Deed or this Series Supplement, by the FMC Act, FMC Regulations or by law or regulation, and if so giving particulars thereof;
- (ii) whether or not its audit has disclosed any matter, and if so giving particulars thereof, calling in its opinion for further investigation by the Supervisor in the interests of the Holders;
- (iii) that it has perused the compliance certificates provided under clause 5.2(a)(iii) of this Series Supplement since the last report by the Auditor and that, so far as matters which it has observed in the performance of its duties are concerned, the statements made and the facts stated in each such certificate are in its opinion reasonable; and
- (iv) that it has performed an audit of the Register;

(c) **Accounting practice**

it will ensure that the Accounts furnished or made available to the Supervisor under clause 5.2(a) above:

- (i) are prepared in accordance with NZ GAAP consistently applied (except to the extent agreed by the Supervisor); and
- (ii) give a true and fair view in accordance with NZ GAAP of the financial position of the Issuer and the Consolidated Group and the results of the operations of the Issuer and the Consolidated Group as at the date, and for the period ending on the date, to which those Accounts are prepared;

(d) **Insurance covenants**

it will, at all times:

- (i) insure all such insurable assets as, in accordance with prudent commercial practice, are insured, and keep them insured to such extent and against such risks as it is prudent to insure against;
- (ii) take out and maintain public liability insurance and such other insurance as it is prudent to insure against;
- (iii) upon request, provide the Supervisor with particulars of all such insurance and, if required by the Supervisor, copies of the policies; and
- (iv) promptly pay all premiums and sums of money necessary to keep in force the insurances required by this clause;

(e) **No change in Core Business**

it will not (unless the Supervisor agrees otherwise) make a material change in the nature of the Core Business of the Consolidated Group. For the purposes of this clause, a business will be deemed to be immaterial if the assets utilised in carrying on that business (when aggregated with the assets in all other non-

core businesses of the Consolidated Group at the relevant time) do not exceed 15% of Total Tangible Assets of the Consolidated Group at that time; and

(f) **Negative Pledge Deed guaranteeing group ratios**

it will promptly notify the Supervisor if it becomes aware that any breach of a guaranteeing group coverage ratio specified in the Negative Pledge Deed has occurred or is reasonably likely to occur, or that any amendment to, or waiver of, any such ratio has occurred.

5.3 **Approved issuer levy**

For the purposes of clause 15.3 of the Master Trust Deed the Issuer has elected to register this Series for Approved Issuer Levy as at the date of this Series Supplement.

6. **ADDITIONAL EVENTS OF DEFAULT**

For the purposes of clause 14.1(g) of the Master Trust Deed the following shall each be an additional Event of Default in relation to this Series:

(a) **Failure to Pay**

the Issuer fails to pay any amount payable under the Master Trust Deed or this Series Supplement in respect of the Bonds on its due date (or within 2 Business Days after its due date where non-payment on its due date has arisen solely by reason of a technical computer or similar error outside the control of the Issuer); or

(b) **Breach of Financial Covenants**

the Issuer fails to perform or comply in any respect with any of its obligations under clause 3.7 of this Series Supplement; or

(c) **Representations and Warranties**

any representation, warranty or statement by the Issuer in or in connection with the Master Trust Deed or this Series Supplement is not true, accurate and complied with in all material respects, or is or proves to have been untrue, inaccurate or not complied with in any material respect when made or repeated or deemed to have been made or repeated; or

(d) **Breach of Other Obligations**

the Issuer fails to perform or comply in any material respect with any of its obligations under the Master Trust Deed or this Series Supplement (other than as referred to in clauses 6(a) and 6(b) of this Series Supplement) and, in the case of a failure that is capable of remedy, that failure is not remedied within 20 Business Days of receipt by the Issuer of a notice from the Supervisor specifying the default and requiring its remedy.

7. **MISCELLANEOUS**

7.1 **Counterparts**

This Series Supplement may be signed in any number of counterparts, all of which together constitute one and the same instrument, and either of the parties may execute this Series Supplement by signing any such counterpart.

7.2 Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Series Supplement will be delivered by each of the parties (each a "**Delivering Party**") immediately on the earlier of:

- (a) physical delivery of an original of this Series Supplement, executed by the relevant Delivering Party, into the custody of the Supervisor or the Supervisor's solicitors; or
- (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this Series Supplement, executed by the relevant Delivering Party, to the Supervisor or the Supervisor's solicitors.

7.3 Governing law

This Series Supplement shall be governed by and construed in accordance with New Zealand law.

7.4 Submission to jurisdiction

The Issuer submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Series Supplement.

7.5 Benefit of Negative Pledge Deed

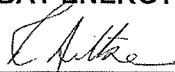
- (a) The Issuer has issued the Accession Certificate to the Supervisor giving the Supervisor and the Holders the benefit of the Negative Pledge Deed.
- (b) The Supervisor, on behalf of the Holders, is to be a Lender and the Bonds and all other amounts outstanding under this Series Supplement are Indebtedness (as defined in the Negative Pledge Deed) and have the benefit of clauses 2 and 3 (and any defined term within, and amendment to, those clauses) of the Negative Pledge Deed and every other provision of the Negative Pledge Deed except those expressly disapplied or limited as set out below.
- (c) The Supervisor agrees that (without limiting any term of this Series Supplement or any clause of the Master Trust Deed applicable to the Bonds):
 - (i) nothing in clauses 4 to 9 (inclusive) (or any defined term within, or amendment to, those clauses) of the Negative Pledge Deed (the "**Non-Applicable Provisions**") applies to the Supervisor, the Holders or the Bonds, and (to the fullest extent effective) each of the Supervisor and the Holders shall be deemed not to be a Lender for the purposes of the Non-Applicable Provisions and shall have no rights or obligations under or in respect of the Non-Applicable Provisions;
 - (ii) nothing in clause 10 (or any defined term within, or amendment to, that clause) of the Negative Pledge Deed applies to the Supervisor, the Holders or the Bonds to the extent that it relates to an amendment to any Non-Applicable Provision, and (to the fullest extent effective)

each of the Supervisor and the Holders shall be deemed not to be a Lender for the purposes of amendments to the Non-Applicable Provisions (including, without limitation, for the purpose of determining a Majority of Lenders (as defined in the Negative Pledge Deed) in respect of any such matter and for the purpose of the Issuer giving any notice under clause 16.1 of the Negative Pledge Deed in respect of any such matter); and

- (iii) without limiting clauses 7.5(c)(i) and (ii) above, the consent of the Supervisor or the Holders is not required for any waiver to, or consent, confirmation or other determination required in respect of, the Non-Applicable Provisions and (to the fullest extent effective) each of the Supervisor and the Holders shall be deemed not to be a Lender for any such purpose (including, without limitation, for the purpose of determining a Majority of Lenders (as defined in the Negative Pledge Deed) in respect of any such matter and for the purpose of the Issuer giving any notice under clause 16.1 of the Negative Pledge Deed in respect of any such matter).
- (d) For the avoidance of doubt, nothing in the Non-Applicable Provisions is intended to limit or otherwise affect the Supervisor's rights and obligations under this Series Supplement.

EXECUTED AS A DEED


BAY ENERGY LIMITED by:



Signature of director

Richard Aitken


Name of director



Signature of director

Ian Knowles

Name of director



SIGNATURE OF AUTHORIZED SIGNATORY

Robert P Russell

NAME OF AUTHORIZED SIGNATORY

TRUSTEES EXECUTORS LIMITED by:

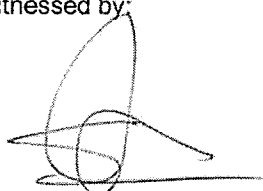
and witnessed by:



Signature of authorised signatory

Stuart McLaren

Name of authorised signatory



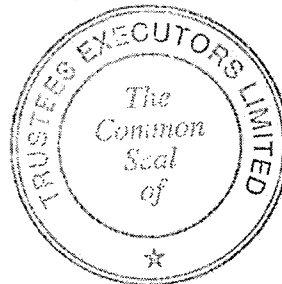
Signature of witness

Sean Roberts
Client Services Manager
Wellington

Name of witness

Occupation

City/town of residence



C752016-109 (1h)

SCHEDULE 1 TO THE SERIES SUPPLEMENT: FORM OF DIRECTOR'S CERTIFICATE

TO: Trustees Executors Limited (the "Supervisor")

AND: Russell McVeagh

I, [•], a director of Bay Energy Limited ("Company") certify as follows:

1. BOARD RESOLUTIONS

- 1.1 The board of directors of the Company ("**Board**") has passed all necessary resolutions to:
- (a) approve the transactions ("**Transactions**") contemplated by the documents listed in the schedule ("**Documents**"), and the Documents themselves;
 - (b) authorise signing of the Documents by or on behalf of the Company in the manner in which they have actually been signed; and
 - (c) authorise the persons specified in paragraph 12 to give any notices and other communications, and take any other action required, under or in connection with the Documents on behalf of the Company.
- 1.2 The resolutions were duly passed at a meeting of the Board which was properly convened and in respect of which all quorum requirements were duly observed.
- 1.3 The resolutions remain in full force and effect.

2. DIRECTORS' SELF INTERESTED TRANSACTIONS

- 2.1 To the best of my knowledge and belief and after making due enquiry of each other director (as that term is defined in section 126 of the Companies Act 1993 (the "**Act**")) of the Company, none of the directors (as so defined) of the Company has an interest (as that term is defined in section 139 of the Act) in the Transactions.
- 2.2 In approving the Documents and the Transactions, the Board, after taking into account all relevant factors, is of the view that the Company is receiving or will receive fair value under them.

3. CORPORATE BENEFIT

- 3.1 In approving the Documents and the Transactions, the Board, after taking into account all relevant factors, is of the view that the Company's entry into and performance of the Documents and the Transactions is in the best interests of the Company.

4. SHAREHOLDER RESOLUTIONS

- 4.1 It has been determined that the Transactions do not constitute a Major Transaction for the purposes of section 129 of the Act.

5. DUE EXECUTION

- 5.1 Each of the Documents has been properly signed and delivered by the Company.
- 5.2 The Company is entering into the Documents solely for its own benefit and not as trustee or nominee or agent of any third party.

6. SOLVENCY

- 6.1 I am not aware of any liquidation proceedings which have been commenced against the Company by any person, or which are intended or anticipated by the Company.
- 6.2 Having taken into account all relevant factors the Board is of the view that the value of the consideration or benefit received, or to be received, by the Company under the Transactions is not less than the value of the consideration provided, or to be provided, by the Company.
- 6.3 The Company:
- (a) is able to pay its due debts;
 - (b) is not engaged or about to engage in business for which its financial resources are unreasonably small;
 - (c) will be able to perform its obligations under the Documents and the Transactions when required to do so;
 - (d) will not become unable to pay its due debts as a result of the Documents and the Transactions; and
 - (e) has, by entering into the Documents and the Transactions, no intention to prejudice a creditor (within the meaning of subpart 6 of Part 6 of the Property Law Act 2007).

7. PROPER PURPOSE

- 7.1 The directors have acted for a proper purpose in approving the Transactions and the Documents.

8 ENTRY INTO DOCUMENTS

- 8.1 I am not aware that the Company's entry into the Documents will cause any existing borrowing, guarantee or similar limit binding on the Company to be exceeded.

9 FINANCIAL ASSISTANCE

- 8.1 The Transactions do not include or involve any provision by the Company (directly or indirectly) of financial assistance in connection with the acquisition of a share issued or to be issued by the Company.

10. CONSTITUTION

- 10.1 The copy of the constitution of the Company held on its records as maintained at the office of the Registrar of Companies at Auckland as at the date of this certificate is complete and includes all alterations to date.

11. AUTHORISATIONS

- 11.1 All consents and other authorisations required by the Company in connection with the entry into, execution and performance of the Documents and the Transactions have been obtained on an unconditional and unqualified basis and remain in full force and effect.

12. AUTHORISED SIGNATORIES

- 12.1 The following are the true signatures of the persons who have been authorised (any two together) to give any notices and other communications, and to take any other action required, under or in connection with the Documents on behalf of the Company.

Name	Position	Signature

Date:

Signed by:

SCHEDULE

1. A master trust deed dated on or about the date of this certificate between Bay Energy Limited as issuer and Trustees Executors Limited as supervisor.
2. A series supplement dated on or about the date of this certificate between Bay Energy Limited as issuer and Trustees Executors Limited as supervisor.
3. An accession certificate dated on or about the date of this certificate given by Bay Energy Limited as issuer in favour of Trustees Executors Limited as supervisor.
4. Any other agreement, notice or document required under or in connection with the documents referred to above.

SCHEDULE 2 - FORM OF DIRECTOR'S COMPLIANCE CERTIFICATE

To: Trustees Executors Limited

This certificate is given by the undersigned, being a director of Bay Energy Limited (to be renamed Trustpower Limited) (the "**Company**"), and is given pursuant to clause 5.2(a)(iii) of the Series Supplement dated [•] (as amended from time to time) (the "**Series Supplement**").

I certify that as at [•] (the "**Reporting Date**"):

- A. Net Debt of the Consolidated Group was: \$[]
- B. Total Tangible Assets of the Consolidated Group were: \$[]
- C. Total Tangible Assets of the Guaranteeing Group were: \$[]
- D. EBITDA of the Consolidated Group was: \$[]
- E. EBITDA of the Guaranteeing Group was: \$[]

I confirm that:

- (a) Net Debt of the Consolidated Group divided by Total Tangible Assets of the Consolidated Group did not, as at the Reporting Date, exceed 50%;
- (b) Total Tangible Assets of the Guaranteeing Group were not less than 85% of the Total Tangible Assets of the Consolidated Group at any time during the Financial Period ending on the Reporting Date; and
- (c) For the Financial Period ending on the Reporting Date, EBITDA of the Guaranteeing Group was not, for that period, less than 85% of EBITDA of the Consolidated Group.

Terms defined in the Series Supplement shall have the same meaning in this certificate.

Dated:

Signed:

Director

Name: