

Amendment and Restatement Deed relating to a Master Trust Deed

Mercury NZ Limited (previously Mighty
River Power Limited) (Issuer)

The New Zealand Guardian Trust
Company Limited (the Supervisor)



AMENDMENT AND RESTATEMENT DEED RELATING TO A MASTER TRUST DEED

Date: 21 May 2019

PARTIES

Mercury NZ Limited (previously Mighty River Power Limited) (the *Issuer*)

The New Zealand Guardian Trust Company Limited (the *Supervisor*)

BACKGROUND

- A The Issuer and the Supervisor are parties to a Master Trust Deed dated 4 April 2003 (the *Master Trust Deed*).
- B The parties to this deed have agreed to amend and restate the terms of the Master Trust Deed to comply with and to reflect the requirements of the Listing Rules as amended, recent changes to tax laws, and certain other amendments, on the terms and conditions set out in this deed.
- C In relation to each Wholesale Series:
- (i) for the purposes of clause 20.2(b) of the Master Trust Deed the Issuer is of the opinion that the amendments are to comply with the requirements of applicable law or are of a minor, formal, administrative or technical nature; and
 - (ii) the Supervisor agrees to waive the requirement under clause 20.2(e) of the Master Trust Deed to give notice to Wholesale Holders of the amendments made by this document, on the condition that the Issuer gives notice of such amendments within 5 Business Days from the Effective Date by way of announcement to NZX Limited.
- D For the purposes of clause 20.1 of the Master Trust Deed:
- (i) the Issuer and Supervisor are satisfied that the amendments contained in this deed do not have a material adverse effect on the Retail Holders; and
 - (ii) the Supervisor has certified that the Master Trust Deed, as amended by this deed, will comply with sections 104 to 106 of the Financial Markets Conduct Act 2013.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this document, unless the context requires otherwise, words and expressions defined, and references construed, in the Master Trust Deed (as amended by this document) and not otherwise defined or construed in this document have the same



meanings and constructions when used in this document. In addition, unless the context requires otherwise, *Effective Date* means the date of this document.

2 **AMENDMENT AND RESTATEMENT**

With effect on and from the Effective Date the Master Trust Deed is amended and restated in the form set out in the Schedule to this document.

3 **CONTINUATION**

Each of the parties to this document agrees that on and from the Effective Date:

- (a) the Master Trust Deed as amended by clause 2 of this document will continue in full force and effect; and
- (b) all references in each other agreement between them to the Master Trust Deed will be a reference to the Master Trust Deed as amended and restated by this document.

4 **COUNTERPARTS**

This document may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. Once the parties have signed the counterparts, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

5 **GOVERNING LAW**

This document will be governed by New Zealand law.

6 **DELIVERY**

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each of the parties to this deed immediately on the earlier of:

- (a) physical delivery of an original of this deed, executed by that party, into the custody of each of the other parties or its solicitors; or
- (b) transmission by that party or its solicitors (or any other person authorised in writing by that party) of a facsimile, photocopied or scanned copy of an original of this deed, executed by that party, to each of the other parties or its solicitors.



EXECUTED AND DELIVERED AS A DEED

The Issuer

MERCURY NZ LIMITED
by two Directors:

Director

Director

The Supervisor

**THE NEW ZEALAND GUARDIAN TRUST
COMPANY LIMITED** by:

in the presence of:

Name:
Occupation:
Address:

Authorised Signatory

Authorised Signatory



EXECUTED AND DELIVERED AS A DEED

The Issuer

MERCURY NZ LIMITED

by two Directors:


Director

Director

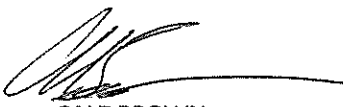
The Supervisor

**THE NEW ZEALAND GUARDIAN TRUST
COMPANY LIMITED** by:

in the presence of:

 ACT 1731

Name: Kelly Yu
Occupation: Corporate Trusts Administrator
Address: Auckland


CALE BROWN

Authorised Signatory



Authorised Signatory
MARK JEPSON



SCHEDULE

[see attached]

Master Trust Deed

Mercury NZ Limited (previously Mighty River Power Limited) (*Issuer*)

The New Zealand Guardian Trust Company Limited
(*Supervisor*)



TABLE OF CONTENTS

INTRODUCTION	1
1 INTERPRETATION	1
1.1 Definitions	1
1.2 References	6
1.3 Construction	7
2 APPOINTMENT OF SUPERVISOR	8
3 CONSTITUTION AND ISSUE OF BONDS	8
3.1 Issue of Bonds	8
3.2 Supplemental Trust Deed	8
3.3 Terms of issue	9
3.4 Status	9
3.5 Purchase, cancellation or reissue	9
4 AGREEMENT TO PAY	9
4.1 Payment of Bond Moneys	9
4.2 Pro tanto satisfaction	9
4.3 Unclaimed money	10
4.4 Receipt by Holders	10
4.5 Deductions or withholdings	10
4.6 Reinstatement	12
4.7 Business Day	12
5 CERTIFICATES	12
5.1 Certificates	12
5.2 Execution	12
5.3 Replacement certificates	12
5.4 Certificates not documents of title	12
6 REGISTER	13
6.1 Establishment and maintenance	13
6.2 Registrar	13
6.3 Change of address	13
6.4 Disclosure and Inspection	13
6.5 Co-ownership of Bonds	14
6.6 Audit	14
6.7 Register conclusive	14
6.8 Legal requirements	14
7 TRANSFER OF BONDS	14
7.1 Transfer	14
7.2 Death, insanity or bankruptcy of Holder	15
8 REPRESENTATIONS AND WARRANTIES	15
8.1 Representations and warranties	15
8.2 Representations and warranties continuing	16



9	GENERAL COVENANTS	17
9.1	Negative pledge	17
9.2	Non-disposal of assets	19
9.3	Net Worth	19
9.4	Information	20
9.5	Breach of issuer obligations	20
9.6	Insolvency	20
9.7	Events of Default	21
9.8	Maintain consents	21
9.9	Compliance with laws, etc	21
9.10	Pay taxes	21
9.11	Agency Agreement	21
9.12	Supplemental Trust Deed	21
9.13	Documents	21
9.14	Appointment of Auditors	22
9.15	Financial Markets Conduct Act	23
10	REPORTING	23
10.1	Financial statements	23
10.2	Directors' certificate	24
10.3	Auditors' report	24
10.4	Notices	25
11	EVENTS OF DEFAULT	25
11.1	Events of Default	25
11.2	Acceleration	28
12	ENFORCEMENT	28
12.1	Supervisor's powers of enforcement	28
12.2	Enforcement of Holders' Rights	28
13	DISTRIBUTION	29
13.1	Distribution of funds	29
13.2	Payment of Principal Amounts before interest	29
13.3	Supervisor's powers to postpone distribution	29
13.4	Notice of distribution	30
14	POWERS OF INVESTMENT	30
15	APPLICATIONS TO COURT	30
15.1	Court application	30
15.2	Indemnity	31
16	DUTIES AND SUPPLEMENTAL POWERS OF SUPERVISOR	31
16.1	General responsibilities and duties	31
16.2	Representation and warranty	32
16.3	Reliance on advice	32
16.4	Resolutions	33
16.5	Application of funds	33
16.6	Custody of documents	33
16.7	Defects in title	33



16.8	Discretion as to powers	34
16.9	Delegation	34
16.10	Power to engage expert	34
16.11	Indemnity by Issuer	35
16.12	Limitation on indemnity	35
16.13	Other dealings	35
16.14	Represent Holders	36
16.15	Acting on instructions	36
16.16	Confidential information	36
16.17	Power to apply to Court	36
16.18	Binding on all Holders	36
16.19	No obligation to consult	36
16.20	Knowledge of default	36
16.21	Limit of Supervisor's liability	37
16.22	Wholesale issues	37
16.23	No Additional Duty of Care	37
16.24	Supervisor's consent	38
16.25	Material Breach	38
17	SUPERVISOR'S POWERS CUMULATIVE	38
18	SUPERVISOR'S REMUNERATION	38
18.1	Remuneration	38
18.2	Expenses	38
18.3	Payments	38
19	CHANGE OF SUPERVISOR	39
19.1	Resignation or removal of Supervisor	39
19.2	Appointment of a new Supervisor	39
19.3	Successor Supervisor	40
19.4	Notice	40
19.5	Issuer Acknowledgement	40
20	AMENDMENTS	41
20.1	Limited right to amend	41
20.2	Amendment without consent	42
20.3	Amendment approved by Holders	42
20.4	Single meeting	42
20.5	Notice	43
21	WAIVER	43
21.1	Temporary variation	43
21.2	Waivers	43
22	CONSTRUCTION BY REFERENCE TO ANALOGOUS OBLIGATIONS AND EXEMPTIONS	44
23	SUBSTITUTION	44
23.1	Substitution	44
23.2	Release of substituted issuer	45
23.3	Completion of Substitution	46



24	NOTICES	46
24.1	Notices	46
24.2	Effectiveness	47
24.3	Proof of Notice	47
25	MEETINGS OF HOLDERS	47
25.1	Convened by the Issuer	47
25.2	Convened by the Supervisor	47
25.3	Other Rules	48
26	RELEASE	48
27	PARTIAL INVALIDITY	48
28	GOVERNING LAW AND JURISDICTION	48
29	COUNTERPARTS	48
30	SURVIVAL	48
	SCHEDULE 1	49
	SCHEDULE 2	61



Date: 4 April 2003, as amended and restated on 21 May 2019

PARTIES

Mercury NZ Limited (previously Mighty River Power Limited) (*Issuer*)

The New Zealand Guardian Trust Company Limited (*Supervisor*)

INTRODUCTION

- A The Issuer proposes to enter into this Master Trust Deed to provide for the constitution and issue from time to time of Bonds.
- B Each series of Bonds issued by the Issuer will be constituted by and issued on terms set out in a Supplemental Trust Deed made between the Issuer and the Supervisor. The terms of a Supplemental Trust Deed may modify the terms of this Master Trust Deed in relation to the relevant Series.
- C The Supervisor has agreed at the request of the Issuer to act as supervisor for the benefit of the Holders of each Retail Series and, to the limited extent provided for in this deed, for the benefit of the Holders of each Wholesale Series, on the terms and conditions of this deed applicable to that Series.

IT IS AGREED:

1 INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise requires:

Approved Issuer Levy means, in relation to any payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) under any Bond, the levy payable by the Issuer in accordance with section 86J of that Act to enable the payment of that interest to be made to any non-resident for tax purposes with a deduction for New Zealand non-resident withholding tax at the rate of zero percent pursuant to section RF 12(2) of the Income Tax Act 2007;

Auditors means the qualified auditors for the time being of the Issuer;

Bonds means unsecured bonds, notes or other debt securities in any form and however described (whether subordinated or unsubordinated) issued pursuant to this deed and constituted by a Supplemental Trust Deed;

Bond Moneys means, at any time and in relation to any Bonds, all moneys (including principal, interest, fees and costs) payable on or in relation to those Bonds to the relevant Holders pursuant to the relevant Conditions;

Business Day means any day (other than a Saturday or a Sunday) on which banks are generally open for business in Auckland and Wellington and, if a Supplemental Trust Deed specifies a city or cities in relation to a Series for this purpose, that city or those cities;



Certificate means, in respect of any Bond, any certificate or confirmation issued by or on behalf of the Issuer pursuant to clause 5.1 evidencing the issue of that Bond, and includes any replacement Certificate issued pursuant to clause 5.3;

Class means a category of Bonds which constitutes a separate class of Bonds being:

- (a) all Retail Bonds;
- (b) all Wholesale Bonds;
- (c) in relation to matters affecting a Series only, that Series; or
- (d) any category of Bonds which in the reasonable opinion of the Issuer (in consultation with the Supervisor if in relation to a Retail Series) at any particular time, for any particular purpose, constitutes a separate class of Bonds within either Wholesale Bonds or Retail Bonds, or both, as the case may be;

Class of Holders means the Holders of a Class of Bonds;

Companies Act means the Companies Act 1993;

Conditions means, in relation to a Series, the terms and conditions applicable to that Series set out in the Supplemental Trust Deed for that Series and (as modified by that Supplemental Trust Deed) this Master Trust Deed;

Date of Enforcement means the date on which a notice is given by the Supervisor pursuant to clause 11 of this Master Trust Deed;

debt security has the meaning given to it in the FMCA;

this deed means:

- (a) this Master Trust Deed; and
- (b) where used or to be interpreted in relation to any particular Series or the Holders or Bonds of that Series, includes the Supplemental Trust Deed for that Series and relates to this Master Trust Deed as modified by that Supplemental Trust Deed;

Event of Default means, subject to clause 11.2, any of the events or circumstances set out in clause 11.1;

Extraordinary Resolution has the meaning given to it in Schedule 1;

Financial Reporting Act means the Financial Reporting Act 2013;

Financial Statements means, as at any date for the Group or any Person, financial statements for the Group or that Person (consolidated in the case of the statements for the Group) prepared as at that date in accordance with GAAP;



FMA means the Financial Markets Authority;

FMCA means the Financial Markets Conduct Act 2013;

FMC Regulations means the Financial Markets Conduct Regulations 2014;

FMSA means the Financial Markets Supervisors Act 2011;

GAAP means, at any time:

- (a) New Zealand generally accepted accounting practice as defined in section 8 of the Financial Reporting Act; or
- (b) where the Issuer has a choice as to any accounting practice, any accounting practice adopted by the Issuer which:
 - (i) is in accordance with New Zealand generally accepted accounting practice at that time; and
 - (ii) has been accepted by the Auditors as applicable to and appropriate to be adopted by the Issuer;

Group means the Issuer and its Subsidiaries for the time being;

Holder means:

- (a) in relation to any Bond, the Person for the time being entered in the Register as the holder of such Bond; or
- (b) in relation to a Bond expressed in the relevant Supplemental Trust Deed to be payable to bearer, the bearer of that Bond;

Information Memorandum means in relation to any Series and/or Tranche:

- (a) the prospectus and the investment statement, product disclosure statement or other disclosure document required under clause 26 of Schedule 1 of the FMCA (as applicable), or such other document required by law which may replace a product disclosure statement or disclosure document required under clause 26 of Schedule 1 of the FMCA, relating to that Series and/or Tranche; and
- (b) (in each case) all documents to be distributed with or which form part of the relevant document, which, in each case, has been prepared by, or on behalf and with approval of, the Issuer in relation to the relevant Series and/or Tranche.

Material Adverse Effect means, with regard to a Person, that something has a material adverse effect on:

- (a) the financial condition or business of that Person; or



- (b) that Person's ability to perform and comply with its obligations under this deed; or
- (c) the Supervisor's ability to recover the Bond Moneys or to enforce performance of that Person's obligations under this deed;

Master Trust Deed means this master trust deed entered into between the Issuer and the Supervisor;

Net Worth means, at any date, the amount by which Total Assets exceed Total Liabilities at that date;

outstanding means, in relation to the Bonds, all the Bonds issued in accordance with this deed other than:

- (a) any Bonds which have been repaid or redeemed pursuant to the relevant Conditions;
- (b) any Bonds:
 - (i) for which the date for repayment or redemption pursuant to the relevant Conditions has occurred; and
 - (ii) the repayment or redemption moneys (including any interest accrued on those moneys to the date for such repayment or redemption) for which have been duly paid to or to the order of the Supervisor or to any relevant paying agent and remain available for payment; and
- (c) any Bonds which have become void or have been purchased by or on behalf of the Issuer and cancelled pursuant to the relevant Conditions;

Person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of a state, in each case whether or not having separate legal personality;

Principal Amount means, in relation to a Bond, the amount (other than interest, fees and costs) payable on the redemption or repayment of that Bond as set out in the Conditions applicable to that Bond, including the premium (if any) payable on redemption or repayment in accordance with the Conditions of that Bond;

Principal Subsidiary means a Subsidiary the total assets of which at the relevant date, determined on a consolidated basis where the Subsidiary itself is a holding company of one or more other Subsidiaries, exceed 10% or more of Total Assets as at that date;

Project Finance Debt means indebtedness (whether actual or contingent) of the debtor company incurred to finance the acquisition or development of any asset where the creditor's right of action to enforce repayment of that indebtedness is limited to a right of action against the asset so financed and/or rights associated with that asset;



Register means, in respect of any Series, the register of Bonds for that Series maintained by the Registrar in New Zealand in accordance with:

- (a) this deed; and
- (b) the Registrar and Agency Agreement in respect of that Series (if any);

Registered Address means, in respect of a Holder of registered Bonds, its address for the time being recorded in the Register;

Registrar means, in respect of any Series, the Person (whether it be the Issuer or any other Person appointed by it for the purpose) which maintains the Register in respect of that Series and undertakes the other functions (if any) specified in its terms of appointment;

Registrar and Agency Agreement means, in respect of a Series, the registrar and agency agreement (if any) entered into between the Issuer and the Person appointed as registrar, calculation agent and/or paying agent for the Bonds of that Series;

Retail Series means a Series of Bonds which may, in accordance with the relevant Conditions, be offered or sold under a regulated offer or in accordance with clause 19 of Schedule 1 of the FMCA, and *Retail Bond* means a Bond which is part of a Retail Series and *Retail Holder* means a Holder of a Retail Bond;

Security Interest means a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, financial lease, sale-and-repurchase and sale-and-leaseback arrangement or other security interest of any nature, but does not include any security interest (other than a financial lease) which is a security interest only because it is deemed to be one by virtue of falling within section 17(1)(b) of the Personal Property Securities Act 1999;

Series means the Bonds issued pursuant to a particular Supplemental Trust Deed (which may be issued in one or more Tranches);

Subordinated Debt means a liability which on the winding up of the debtor company and to the extent permitted by law is deferred in point of payment to all other liabilities (not being liabilities which are similarly deferred) whether secured or unsecured, present or future, of the debtor company;

Subsidiary means a company which is a subsidiary of the Issuer within the meaning of section 2 of the Companies Act or in accordance with GAAP;

Supplemental Trust Deed means a deed supplemental to this Master Trust Deed entered into by the Issuer and the Supervisor pursuant to clause 3.2 constituting and setting out the conditions of a particular Series;

Total Assets means, at any date, the aggregate amount on a consolidated basis of all assets of the Group at that date and which would be disclosed as assets by the Financial Statements for the Group if they were prepared as at that date;



Total Liabilities means, at any date, the aggregate amount on a consolidated basis of all liabilities of the Group at that date and which would be disclosed as liabilities (other than contingent liabilities and Subordinated Debt) by Financial Statements for the Group if they were prepared as at that date;

Tranche means Bonds of the same Series in respect of which all terms are identical in all respects (except as to some or all of the issue date, maturity date, interest rate and/or frequency of payment of interest);

Treasury Product means a currency or interest rate swap, interest cap collar or floor agreement, currency or interest rate option, foreign currency transaction or dealing line, or any combination of the above or any similar or substitute hedging, currency or interest rate risk management or other treasury product;

Trust Powers means, in relation to a Series, the trusts, powers, authorities or discretions vested in the Supervisor by this deed in relation to that Series; and

Wholesale Series means a Series of Bonds which, in accordance with the relevant Conditions, are only to be offered or sold to wholesale investors for the purposes of the FMCA, and *Wholesale Bond* means a Bond which is part of a Wholesale Series and *Wholesale Holder* means a Holder of a Wholesale Bond.

1.2 **References**

Except to the extent that the context otherwise requires, any reference in this deed to:

borrowed money means any indebtedness in respect of money borrowed or raised, whether or not for cash and by whatever means, including acceptances, deposits, discountings, factorings, finance or capital leases, hire purchase agreements, sale and leasebacks, sales and repurchases and any form of balance sheet financing, and also includes any indebtedness for the deferred purchase price of assets or services (other than goods or services obtained on normal commercial terms in the ordinary course of trading);

consent means any consent, authorisation, registration, filing, agreement, notarisation certificate, permission, licence approval authority or exemption from, by or with a governmental agency;

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, and also includes any Stock Exchange or other self-regulatory organisation established under statute;

indebtedness means any obligation (whether present or future, actual or contingent, secured or unsecured, as principal, surety or otherwise) relating to the payment or repayment of money;

issuer obligations has the meaning set out in the FMCA, being an obligation imposed on the Issuer under this deed in respect of the relevant Series, the terms of the offer of that Series, the FMCA or any court order relating to that Series;



qualified auditor has the meaning set out in section 461E of the FMCA;

regulated offer shall be construed in accordance with the FMCA;

retail investor has the meaning set out in the FMCA, being a person who is not a wholesale investor in relation to the offer of Bonds.

tax includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called (including approved issuer levy), imposed or levied by any governmental agency, in each case together with any interest, penalty, charge, fee or other amount imposed or made on or in relation to any of the foregoing; Or

wholesale investor has the meaning set out in clause 3(2) and 3(3) of schedule 1 of the FMCA.

1.3 **Construction**

Except to the extent that the context otherwise requires, in the construction of this deed:

- (a) *Headings*: headings are inserted for convenience only and do not affect the construction of this deed;
- (b) *Clauses*: references to clauses, sub-clauses, paragraphs and Schedules are to the clauses, sub-clauses and paragraphs of, and schedules to, this Master Trust Deed;
- (c) *Statutes*: references to any legislation or any provision of legislation are taken to be references to that legislation or provision as from time to time amended, re-enacted or substituted and include statutory regulations or instruments from time to time made and in force under that legislation or provision;
- (d) *Agreements*: references to any deed (including this deed), agreement or other instrument are to be read as referring to that deed, agreement or other instrument as from time to time modified, supplemented or novated;
- (e) *Statutory definitions*: unless inconsistent with specific definitions contained in this deed, words defined in the Companies Act, the FMCA or the Financial Reporting Act have the same meanings in this deed. In the case of conflict the definitions in the FMCA prevail over those in the Companies Act and the Financial Reporting Act, and the definitions in the Financial Reporting Act prevail over those in the Companies Act;
- (f) *Singular*: unless the context otherwise requires, the singular includes the plural and vice versa;
- (g) *Gender*: words denoting any gender include the other gender;



- (h) *Successors and assigns*: each reference to a party to this Master Trust Deed is to be read as a reference to that party and its successors and permitted assigns; and
- (i) *Writing*: a reference to *in writing* or *written* includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.4 **No effect**

The parties agree that this Master Trust Deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA, the FMC Regulations (together, the *Applicable Laws*) or any term implied in this Master Trust Deed by the Applicable Laws.

2 **APPOINTMENT OF SUPERVISOR**

The Issuer appoints the Supervisor, and the Supervisor accepts appointment, as supervisor for the Holders:

- (a) on the terms and conditions contained in this deed and implied by law; and
- (b) with the rights, powers, duties and obligations in respect of the Bonds conferred by this deed or by law.

3 **CONSTITUTION AND ISSUE OF BONDS**

3.1 **Issue of Bonds**

- (a) The Issuer may from time to time constitute and issue Bonds in accordance with this Master Trust Deed. Bonds may be issued to the Persons, in the amounts, on the terms and conditions and at the times determined by the Issuer from time to time.
- (b) Bonds shall be issued on the basis that the relevant Series may be offered or sold under a regulated offer (being Retail Bonds) or that the relevant Series is not permitted to be offered or sold to retail investors, and is sold to wholesale investors (being Wholesale Bonds), in each case as specified in the selling restrictions in the relevant Supplemental Trust Deed.

3.2 **Supplemental Trust Deed**

Bonds will be constituted and issued in Series. Each Series will be subject to conditions set out in a Supplemental Trust Deed for that Series and (as modified by that Supplemental Trust Deed) this Master Trust Deed. The Issuer agrees to execute and deliver to the Supervisor in respect of each Series a Supplemental Trust Deed. If and to the extent that:

- (a) the Supplemental Trust Deed for a Series modifies this Master Trust Deed;
or
- (b) the provisions of that Supplemental Trust Deed conflict with the provisions of this Master Trust Deed,



that Supplemental Trust Deed prevails over this Master Trust Deed in relation to that Series.

3.3 **Terms of issue**

- (a) Each Bond is issued subject to and with the benefit of the Conditions applicable to that Bond. All of those provisions and Conditions bind the Issuer, the Supervisor and the Holder, and all Persons claiming under or through them. Each Holder is taken to have been given notice of the applicable Conditions.
- (b) The Issuer acknowledges that, in relation to any particular Series, this deed is made for the benefit of and, subject to clause 12.2, is intended to be enforceable by any person who is, from time to time, a Holder of Bonds comprising the relevant Series and the Supervisor.

3.4 **Status**

The Bonds are and at all times will:

- (a) be unsecured and (except to the extent expressly provided otherwise in a Supplemental Trust Deed in relation to a Series) unsubordinated obligations of the Issuer; and
- (b) (except to the extent expressly provided otherwise in a Supplemental Trust Deed in relation to a Series) rank equally without any preference or priority among themselves and at least equally with all the Issuer's other present and future unsecured, unsubordinated indebtedness except indebtedness preferred solely by operation of law.

3.5 **Purchase, cancellation or reissue**

Except as provided in the Conditions in relation to a Series, the Issuer may:

- (a) purchase Bonds from any Person, at any time, on any market or by private treaty and at any price; and
- (b) cancel any Bonds so purchased,

but is not obliged to do either such thing.

4 **AGREEMENT TO PAY**

4.1 **Payment of Bond Moneys**

The Issuer agrees to pay to (or to the order of) the Supervisor the Bond Moneys in respect of each Bond as and when due and payable in accordance with the applicable Conditions (including in the currency and in the manner required by those Conditions).

4.2 **Pro tanto satisfaction**

Every payment to Holders of (or on account of) the Bond Moneys due and payable on their Bonds in accordance with the applicable Conditions satisfies pro tanto the indebtedness the Issuer agrees to pay under clause 4.1.



4.3 **Unclaimed money**

Subject to the Conditions in relation to a Series, the parties agree, in relation to any payment of Bond Moneys sent or made by or on behalf of the Issuer to a Holder at its last Registered Address that is returned unclaimed (*unclaimed money*), that:

- (a) all unclaimed money must be:
 - (i) either retained by the Issuer for the relevant Holder or (if held by or on behalf of the Supervisor) paid by or on behalf of the Supervisor to the Issuer, without limiting the rights of the Person entitled to the unclaimed money in priority to the Issuer; and
 - (ii) retained by the Issuer for the Holder until claimed;
- (b) the Issuer is not obliged to invest or pay interest on the unclaimed money; and
- (c) if the unclaimed money is not claimed within five years after its due date:
 - (i) it is taken to be forfeited to the Issuer for the Issuer's benefit; and
 - (ii) the Person who otherwise would have been entitled to it is entitled to receive payment only of an amount equal to the amount forfeited if the Person produces evidence which satisfies the Issuer that the Person would have been entitled to receive that payment if the unclaimed money had not been forfeited.

4.4 **Receipt by Holders**

The receipt by the Holder or (in the case of joint Holders) by any one of the Holders of the Bond Moneys from time to time due in respect of any Bonds is a good discharge to the Issuer despite any express or implied notice the Issuer has of the right, title, interest or claim of any other Person to or in those Bonds or the Bond Moneys payable in respect of them.

4.5 **Deductions or withholdings**

Except as provided in the Conditions in relation to a Series:

- (a) *Payments free and clear*: each payment under each Bond must be made:
 - (i) free of any restriction or condition;
 - (ii) free and clear of, and (except to the extent required by law or as provided in this clause 4.5) without deduction or withholding on account of, any taxes; and
 - (iii) (except to the extent required by law or as provided in this clause 4.5) without any deduction or withholding (whether by way of set-off, counterclaim or otherwise);



- (b) *Non-resident withholding tax:* New Zealand non-resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to Holders who are not resident or deemed resident in New Zealand for tax purposes or who are not engaged in business in New Zealand through a fixed establishment in New Zealand. If the Issuer is lawfully able to pay Approved Issuer Levy in respect of any payment of interest (or deemed interest) to such a Holder and the payment of Approved Issuer Levy will have the effect of reducing the rate of non-resident withholding tax applicable to that payment of interest to 0%, the Issuer (or the Registrar for the relevant Series on its behalf) must, if so requested by such Holder:
- (i) pay the Approved Issuer Levy to the appropriate authority; and
 - (ii) deduct the amount paid from the interest (or deemed interest) payable to that Holder in lieu of deducting New Zealand non-resident withholding tax from that payment at the rate otherwise applicable;
- (c) *Resident withholding tax:* New Zealand resident withholding tax will be deducted from payments of interest (or payments deemed by law to be interest) to a Holder who receives such payments subject to the New Zealand resident withholding tax rules (or would do in the absence of an applicable exemption), unless the Holder establishes to the satisfaction of the Issuer (or the Registrar for the relevant Series on its behalf) by means of production of a certificate of exemption from resident withholding tax or otherwise, that no such tax need be deducted;
- (d) *Highest rate:* if the Issuer is to make any deduction or withholding on account of New Zealand withholding taxes from any payment to a Holder as stated in this clause 4.5, it must make the deduction or withholding at the highest rate applicable unless the Holder can demonstrate to the Issuer (and the Issuer accepts) that a lesser rate is appropriate;
- (e) *No gross-up:* the Issuer is not 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 under clause 4.5(b) or (c). If, in respect of any Bond, the Registrar for the relevant Series or the Issuer becomes liable to make any payment of, or on account of, tax payable by any Holder, then the relevant Holder will indemnify the Registrar for the relevant Series and the Issuer in respect of that liability. Any moneys paid by the Registrar for the relevant Series or the Issuer in respect of the liability may be recovered from the Holder as a debt due to the Registrar for the relevant Series or to the Issuer and may be withheld from any further payments to that Holder. Nothing in this clause 4.5(e) limits or affects any other right or remedy of the Registrar for the relevant Series or the Issuer; and
- (f) *Tax status:* the Issuer and the Registrar for the relevant Series are entitled for the purposes of this clause 4.5 to rely upon any evidence produced or statement made by (or on behalf of) a Holder in relation to that Holder's tax status or tax residency.



4.6 **Reinstatement**

If any payment made to a Holder by or on behalf of the Issuer is rescinded, avoided or required to be reimbursed by law:

- (a) that payment is to be taken not to have discharged or affected the liability of the Issuer in respect of the payment; and
- (b) the 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 the payment had not been made.

4.7 **Business Day**

Any amount payable by the Issuer under the Bonds or this deed on a day which is not a Business Day must instead be paid on the next succeeding Business Day.

5 **CERTIFICATES**

5.1 **Certificates**

Subject to the Conditions in relation to a Series, the Issuer agrees to issue to every Retail Holder a Certificate in relation to the Bonds held by it in such form (including computer generated records or statements) and manner (not being inconsistent with the provisions of this deed, the Conditions, the FMCA or any applicable law) as from time to time may be determined by the Issuer and including all information required under the FMCA (if applicable).

5.2 **Execution**

Certificates may be executed by or on behalf of the Issuer (including by a Registrar or any issuing agent on behalf of the Issuer) manually, electronically, by facsimile or in any other manner permitted by applicable law. Any Certificate bearing the facsimile signature of a Person authorised to execute it at the date of printing will be valid even if the signatory has ceased to be so authorised at the date of issue or at any time after the date of issue.

5.3 **Replacement certificates**

With the consent in each case of the Holder concerned, the Issuer may issue:

- (a) a replacement Certificate in substitution for a lost, stolen, damaged, defaced, destroyed or incorrect Certificate;
- (b) a balance Certificate where the indebtedness, liabilities or obligations evidenced by a Certificate have been discharged in part; or
- (c) several Certificates in substitution for one Certificate or vice versa,

subject in each case to receiving satisfactory indemnification and security which the Issuer may reasonably request.

5.4 **Certificates not documents of title**

Except:

- (a) to the extent required by any applicable law; or



- (b) if the relevant Bonds are expressed in the Supplemental Trust Deed for those Bonds to be bearer Bonds which may be transferred by delivery,

no Certificate constitutes a document of title. Rather, entitlement in respect of Bonds evidenced by the relevant Certificate will be determined solely by reference to the Register for that Series of Bonds.

6 REGISTER

6.1 Establishment and maintenance

The Issuer agrees to ensure the Registrar establishes and maintains a Register for each Series in New Zealand complying with all applicable laws. Each Register must:

- (a) have entered in it all details required by the FMCA and any other applicable law or the Conditions and such other details as the Issuer thinks fit; and
- (b) be kept in a form and manner enabling it to be conveniently and properly audited.

There must be a separate Register for each Series. One or more Registers may be maintained by the same Registrar.

6.2 Registrar

Each Register for a Series shall be kept by a Registrar pursuant to the Registrar and Agency Agreement. Separate Registrars may be appointed in respect of each Series. The Registrar may be:

- (a) the Issuer itself (maintaining the Register among its general accounting records or separately); or
- (b) any other Person appointed by the Issuer as Registrar in respect of that Series.

The Issuer will give notice to the Supervisor of any resignation or removal of the Registrar for a Series and the appointment of any replacement Registrar promptly following such event.

6.3 Change of address

Each Holder (whether joint or several) agrees to notify the relevant Registrar promptly of any change of its name or address and, upon receipt of notice, the Registrar must alter the relevant Register accordingly.

6.4 Disclosure and Inspection

The Supervisor or the Issuer may inspect any Register and take copies of or extracts (including electronic copies) from it at any reasonable time without the requirement to pay any fee. The Issuer shall also ensure that the Registrar retains and makes available for inspection, and provides copies of or extracts from, the Register as required by, and in accordance with, the FMCA. The Issuer shall ensure that the Registrar discloses to any Holder who so requests any



information held on the Register which relates to the Bonds registered in the name of that Holder.

6.5 **Co-ownership of Bonds**

If:

- (a) two or more Persons are registered as Holders of the same Bond or Bonds then, unless the contrary is expressed in the relevant application, transfer form or otherwise, those Persons are taken to hold the Bond or Bonds as joint tenants; and
- (b) two or more Persons apply to be registered as Holders as tenants in common, the Registrar may, after notifying those 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 would comply with any relevant Conditions in that regard (including as to the minimum Principal Amount of Bonds), the Registrar may refuse to accept the application.

6.6 **Audit**

Each Register in respect of any Retail Series must be audited in accordance with applicable auditing and assurance standards by the Auditor (or by such other firm of qualified auditors as the Supervisor may from time to time approve):

- (a) in the ordinary course of any periodic audit of the Issuer (or in the ordinary course of any periodic audit of the relevant Registrar where the auditor is not the Auditor) at least annually and within 4 months of the Issuer's balance date; or
- (b) at any other time (at the cost of the Issuer) upon reasonable request by the Supervisor.

6.7 **Register conclusive**

The Register is to be conclusive evidence of the ownership of the Bonds by the Persons named in the Register as the Holders. The Holders entered in the Register are to be regarded as the beneficial owners of the Bonds registered in the Register in their names respectively and all Persons (including the Issuer) may act accordingly. The Registrar will not be bound to enter in the Register any notice of any trust, or (except as ordered by a Court) to recognise any trust or equity affecting the ownership of any Bond or the moneys represented by it.

6.8 **Legal requirements**

The Issuer agrees to comply (or procure compliance) with all statutory requirements in respect of each Register.

7 **TRANSFER OF BONDS**

7.1 **Transfer**

Bonds may be transferred by the Holders in accordance with the procedures, and on the production of the transfer and other documentation, as are determined by the Issuer to be appropriate either generally or for a particular Series (and



whether in the relevant Supplemental Trust Deed or otherwise). In any case the transferor of registered Bonds is taken to remain the Holder until the name of the transferee has been entered in the Register. Bonds expressed in the relevant Supplemental Trust Deed to be bearer Bonds are to be transferred by delivery.

7.2 **Death, insanity or bankruptcy of Holder**

Any Person becoming entitled to any Bonds as a consequence of the death, insanity or bankruptcy of a Holder may, if the Person produces such evidence as to its right or title as the Issuer requires, be registered as the Holder or may transfer the Bonds in accordance with the provisions of this deed. The executors or administrators of a deceased Holder (not being one of several joint Holders) will be the only Persons recognised by the Issuer and the Supervisor as having any title to or interest in the Bonds so held by that Holder. If any Holder who held any Bonds jointly dies, the surviving joint Holder or Holders will be the only Person or Persons recognised by the Issuer and the Supervisor as having any title to or interest in such Bonds. The Issuer may retain money which is payable upon any Bonds to which this clause 7.2 applies until a transmission or transfer of the Bonds has been registered on such terms and conditions as it considers reasonable.

8 **REPRESENTATIONS AND WARRANTIES**

8.1 **Representations and warranties**

The Issuer represents and warrants to the Supervisor for the benefit of the Holders of each Series that:

- (a) *Status:* it:
 - (i) is duly incorporated and existing under the laws of its place of incorporation;
 - (ii) is a separate legal entity capable of suing and being sued; and
 - (iii) has the power and authority to own its assets and to conduct the business which it conducts and/or proposes to conduct;
- (b) *Powers:* it has the power to enter into, and exercise its rights and perform and comply with its obligations under, this deed and to issue the Bonds;
- (c) *Authorisations and consents:* all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents) in order to:
 - (i) enable it lawfully to enter into, and exercise its rights and perform and comply with its obligations under, this deed and to issue the Bonds;
 - (ii) ensure that those obligations are valid, legally binding and enforceable; and
 - (iii) make this deed admissible in evidence in the courts of New Zealand,



have been taken, fulfilled and done;

- (d) *Non-contravention*: its entry into, exercise of its rights and/or performance of or compliance with its obligations under this deed or any transaction contemplated thereby (including the issue of Bonds) do not and will not violate or exceed any borrowing or other power or restriction granted or imposed by:
 - (i) any law to which it is subject; or
 - (ii) its constitution;
- (e) *Obligations binding*: its obligations under this deed and the Bonds are valid, binding and (subject to equitable principles of general application and insolvency laws affecting creditors' rights generally) enforceable;
- (f) *Accounts*: the latest annual or semi-annual consolidated Financial Statements of the Group as delivered to the Supervisor:
 - (i) include those most recently prepared for the last period and as at the last date for which Financial Statements have been prepared;
 - (ii) except as stated in the notes to them, comply with GAAP;
 - (iii) give a true and fair view of the consolidated financial position of the Group as at the date and for the period to which they relate in accordance with GAAP; and
 - (iv) include (in the case of the annual Financial Statements of the Group) a true and complete copy of any auditors' report;
- (g) *Non-violation of other agreements*: its entry into, exercise of its and/or performance of or compliance with its obligations under this deed or any transaction contemplated (including the issue of Bonds) do not and will not:
 - (i) violate, to an extent or in a manner which has or is likely to have a material adverse effect on it, any agreement to which it is a party or which is binding on it or its assets; or
 - (ii) result in the existence of, or oblige it to create, any security interest over those assets; and
- (h) *Supplemental Deed*: any representations and warranties expressed to be for the benefit of such Holders in the Supplemental Deed in relation to such series are true and correct.

8.2 Representations and warranties continuing

Each of the representations and warranties in clause 8.1 is taken to be repeated on each date on which Bonds are issued and on each date for payment of interest on the Bonds by reference to the facts and circumstances then existing.



9 GENERAL COVENANTS

The Issuer agrees with the Holders of each Series and with the Supervisor (for the benefit of the Holders in respect of each Retail Series only) that while any Bond Moneys remain outstanding:

9.1 Negative pledge

It will not create or permit to exist any Security Interest over any of its assets or any of the assets of any Principal Subsidiary except for Security Interests:

- (a) *Operation of law*: either:
 - (i) arising by operation of law or statute in the ordinary course of business; or
 - (ii) securing taxes or other governmental or regulatory levies, duties or imposts,

where the money secured by the Security Interest is not in default or is being contested in good faith by appropriate proceedings; or
- (b) *Deferred purchase or title retention*: consisting of any deferred purchase or title retention arrangement relating to goods purchased in the ordinary course of business where:
 - (i) the Security Interest in the goods is discharged by payment of the purchase price; and
 - (ii) payment is made within six months of the date of creation of the Security Interest; or
- (c) *Netting and set off*: consisting of any rights or obligations (whether arising by operation of law, by contract or otherwise) of or in the nature of:
 - (i) netting, set-off, combination or consolidation of accounts; or
 - (ii) analogous rights or obligations in relation to or affecting any credit balances or other financial obligations owing to or by the Issuer or, as the case may be, the relevant Principal Subsidiary,

other than such rights or obligations which have been created with the intention of providing a particular creditor or class of creditors with preferential rights over creditors generally; or
- (d) *Intra Group*: given in favour of any other member of the Group; or
- (e) *Project Finance Debt*: over any asset that secures Project Finance Debt incurred to finance the acquisition or development of that asset; or



- (f) *Electricity Industry Participation Code*: provided to the clearing manager of the New Zealand Electricity Market in accordance with part 14A of the Electricity Industry Participation Code 2010; or
- (g) *Subsidiary*: over any asset of a company that becomes a Principal Subsidiary after the date of this Master Trust Deed:
 - (i) that was created prior to (and not in contemplation of) the company becoming a Principal Subsidiary; and
 - (ii) where the maximum principal amount secured by that Security Interest is not increased after the expiration of the Security Interest; or
- (h) *Acquired asset*: existing over any asset at the time of its acquisition where:
 - (i) the Security Interest was not created in contemplation of the acquisition; and
 - (ii) the maximum principal amount secured is not increased after the acquisition; or
- (i) *Sale and Leaseback*: consisting of the sale-and-leaseback by the Issuer or any Principal Subsidiary of an existing asset or assets where:
 - (i) at least 85% of the liability to make lease or other payments under that arrangement is fully defeased from the sale proceeds of that asset or assets; and
 - (ii) the arrangement confers on the relevant company the right to repurchase on reasonable terms for a nominal amount the asset or assets subject to that arrangement; or
- (j) *Consent*: created or permitted to exist with the prior written consent of the Supervisor; or
- (k) *Substitution*: created in substitution of any Security Interest otherwise permitted under this clause 9.1 (other than paragraphs (a), (b) and (c)) where the principal amount secured is no greater than the amount secured under the original Security Interest; or
- (l) *Other*: over any asset to secure indebtedness if the aggregate principal amount of the indebtedness so secured by all Security Interests created or permitted to exist under this clause 9.1(l) does not exceed 5% of the Total Assets.

For the purposes of this clause 9.1 the principal amount of any indebtedness payable under a Treasury Product and secured by a Security Interest is the maximum amount that would be payable by the relevant member of the Group in



respect of that indebtedness on termination of the relevant agreement relating to the relevant obligations:

- (i) determined in accordance with any applicable provisions of the relevant agreement; and
- (ii) being the net amount payable in cash by the relevant Group member after giving effect to any provisions relating to set-off or netting against, or amalgamation with, other amounts payable by or to the counterparty. If the relevant Group member would not be liable to pay any net amount on termination of that agreement, the principal amount of that indebtedness is taken to be zero.

9.2 **Non-disposal of assets**

It will not, and will procure that each Principal Subsidiary will not, dispose of any of its assets (whether in a single transaction or in a series of related transactions) unless:

- (a) *Ordinary course*: the disposal is made in the ordinary course of business; or
- (b) *Fair value*: the disposal is for fair value on normal commercial terms; or
- (c) *Group*: the disposal is of assets to a member of the Group; or
- (d) *Comparable assets*: the disposal is of assets in exchange for, or for cash which is to be and is applied in or towards the purchase of, assets comparable in type and value; or
- (e) *Grant/surrender of lease/licence*: the disposal is by way of the grant or surrender of a lease, licence or tenancy to occupy real property (in each on normal commercial terms); or
- (f) *Money borrowed*: the disposal consists of the application of the proceeds of money borrowed or raised for the purposes for which it was borrowed or raised; or
- (g) *Required by law*: the disposal is required by law; or
- (h) *Investments*: the disposal consists of the temporary application of funds in the purchase or making of prudent money market investments in accordance with any applicable treasury policies, or the realisations of those investments; or
- (i) *Security Interest*: the disposal is the creation of a Security Interest permitted under clause 9.1.

9.3 **Net Worth**

- (a) It will ensure that Net Worth will not at any time when Bond Moneys are outstanding be less than \$500,000,000.



- (b) If at any time after the date of this Master Trust Deed there is any change to GAAP or any change in the interpretation or application of GAAP or to any accounting practice adopted by the Issuer as in effect and/or applied at the date of this Master Trust Deed:
 - (i) the Issuer and the Supervisor will (at the request of either of them) negotiate in good faith with a view to agreeing such amendments to clause 9.3(a) and/or the definitions of the terms used to determine Net Worth as are necessary to leave the Issuer in no better and no worse position than that contemplated at the date of this Master Trust Deed; and
 - (ii) if no such amendments are agreed, Net Worth will be calculated by reference to GAAP and the accounting practices as in effect and/or applied at the date of this Master Trust Deed.

- (c) No failure by the Issuer to comply with its obligation under clause 9.3(a) constitutes a breach of this deed or an Event of Default if:
 - (i) within 45 days after the Issuer first becoming aware of the failure, it notifies the Supervisor as to the steps it proposes to take in order to remedy the failure; and
 - (ii) within 30 days after the expiry of that 45 day period the Issuer has received the proceeds of further share capital or Subordinated Debt in an amount such that, if that amount were added to Net Worth immediately prior to the relevant breach, then this clause would have been complied with.

9.4 **Breach of issuer obligations**

If it has reasonable grounds to believe that it may have contravened, or is likely to contravene, any of its issuer obligations in a material respect in respect of a Series, as soon as practicable, it will report to the Supervisor in writing of the possible contravention and advise the Supervisor of the steps (if any) that it 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.

9.5 **Insolvency**

It will, on becoming aware of information on the basis of which it could reasonably form the opinion that it is likely to become insolvent (as defined in the FMCA), as soon as practicable:

- (a) disclose to the Supervisor all information relevant to that matter that is in its possession or under its control and that was obtained in the course of, or in connection with, the performance of its functions as issuer; and
- (b) advise the Supervisor of the steps (if any) that it intends to take in respect of that matter and the date by which the steps are to be taken.



9.6 Events of Default

It will, promptly upon becoming aware of the same:

- (a) notify the Supervisor and any Wholesale Holders of the occurrence of any Event of Default and any event or circumstance which with the lapse of time, giving of notice or fulfilment of any other requirement would constitute an Event of Default;
- (b) advise the Supervisor and any Wholesale Holders of the steps (if any) that it intends to take in respect of that matter and the date by which the steps are to be taken.

9.7 Maintain consents

It will maintain in full effect all necessary consents required to enable it to perform or comply fully with its material obligations under this deed.

9.8 Compliance with laws, etc

It will duly and promptly comply with all laws, directives and consents non-compliance with which would have or would be likely to have a material adverse effect on it.

9.9 Pay taxes

It will:

- (a) file tax returns as required by law; and
- (b) pay and discharge all taxes upon it or against its property to the date upon which penalties become due,

except to the extent that those taxes are being contested in good faith by the taking of appropriate steps.

9.10 Agency Agreement

It will comply in all material respects with its obligations under the Registrar and Agency Agreement and use reasonable endeavours to ensure that the Registrar does so.

9.11 Supplemental Trust Deed

It will comply in all material respects with its obligations under this Master Trust Deed and each Supplemental Deed.

9.12 Documents

It will:

- (a) make copies of this Master Trust Deed, the relevant Supplemental Deed, the Information Memorandum relating to the Bonds held by the relevant Holder, the Agency Agreement and any other Transaction Document in relation to the relevant Series available for inspection during usual business hours by any Holder at the registered office of the Issuer (or such other office as the Issuer may notify the Holders from time to time); and



- (b) retain, make available for inspection, provide and deliver copies of any document or information as required by, and in accordance with, the FMCA for such fee as permitted by the FMCA.

9.13 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:

- (a) make available to the Supervisor all documents and records relating to the Issuer; and
- (b) provide the Supervisor with any other reports (which have been, if requested by the Supervisor, signed by one authorised officer), information, confirmations or financial statements required by the Supervisor (or other authorised person).

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

9.14 Additional information

It will:

- (a) at the same time as it notifies the Registrar of Financial Service Providers under section 95 of the FMCA, notify the Supervisor of any "prescribed change" as defined in section 95(2) of the FMCA; and
- (b) provide the Supervisor, or any other person who is entitled to request a document or other information from the Issuer, with the requested document or information as soon as practicable.

9.15 Auditor reporting

The Issuer will provide any information to the Auditor which is required to enable the Auditor to comply with the reporting obligations contained in sections 198 and 199 of the FMCA and take all other steps reasonably requested by the Auditor in relation to compliance with those sections.

9.16 Appointment of Auditors

- (a) It will, for so long as any Retail Bonds are outstanding, and before recommending the appointment or reappointment of persons as auditors of the Issuer:
 - (i) consult with the Supervisor on such appointment or reappointment and the nature and scope of any assurance engagement in relation to the Issuer's compliance with this deed;
 - (ii) ensure that any comments of the Supervisor concerning the proposed Auditors are brought to the attention of the persons appointing or reappointing the Auditors;



- (iii) give the Supervisor an opportunity to be a party to the assurance engagement for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the Supervisor's powers or duties;
- (iv) ensure that the terms of appointment of the Auditors, whether the Auditors are conducting an audit, review or other engagement, include that the Auditors will give the Supervisor an opportunity to meet with the Auditors, without any representative of the Issuer being present, to raise or discuss:
 - (A) at the beginning of such audit, review or engagement, any issues or concerns relevant to the exercise or performance of the Supervisor's powers or duties; and
 - (B) matters arising in the performance of such audit, review or engagement and to answer any questions the Supervisor may have concerning such engagement.
- (b) For so long as any Retail Bonds are outstanding, the Issuer will notify the Supervisor if the Auditors resign from appointment, or decline to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditors for resigning their appointment or declining to accept appointment or reappointment. The Issuer must not attempt to prevent any person who has resigned its appointment as an auditor, or declined to accept an appointment or reappointment as an auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.

9.17 **Financial Markets Conduct Act**

It will, where that Series is a Retail Series, comply with the provisions of the FMCA and the FMC Regulations applicable to the Retail Bonds.

10 **REPORTING**

The Issuer agrees with the Supervisor that while any Retail Bonds remain outstanding:

10.1 **Financial statements**

It will, within four months after the end of the Issuer's financial year and three months after its financial half-year end, give to the Supervisor a copy of:

- (a) where the Issuer is required by law to prepare them, the Financial Statements of the Issuer; and or (as applicable)
- (b) the consolidated Financial Statements of the Group,

for the preceding financial year or half-year (as the case may be) prepared in accordance with the Financial Reporting Act and audited (in the case of Financial Statements for a financial year).



10.2 **Directors' certificate**

It will, at the same time as the Issuer gives to the Supervisor each set of Financial Statements required by clause 10.1, give to the Supervisor a certificate in the form required by Schedule 2 (or such other form as the Supervisor may have agreed) signed by two Directors of the Issuer. For the avoidance of doubt, the certificate given in relation to the first half of a financial year shall relate to the six month period ending on that date, and the certificate given in relation to the end of a financial year shall relate to the whole of the financial year.

10.3 **Auditors' report**

It will, at the same time as the Issuer gives to the Supervisor the audited Financial Statements required by clause 10.1, give to the Supervisor a report by the Auditors stating as of the end of the relevant financial year:

- (a) *Breaches*: whether or not in the performance of their duties as Auditors they have become aware of:
 - (i) any breach of the provisions of this deed or the Conditions; or
 - (ii) any of the circumstances described in section 199(2) of the FMCA and any other matter which in their opinion is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by the FMCA and the FMC Regulations, by this deed or by law,and, if so, giving particulars;
- (b) *Register*: whether or not:
 - (i) they or another firm of qualified auditors (and, if it is another firm, which one or ones) has or have audited each Register;
 - (ii) to the extent that the Auditors have audited each Register, the Issuer or the Registrar has duly maintained the Register for each Series in accordance with the FMCA; and
 - (iii) in their opinion there is reasonable assurance that, in all material respects, the Register for that Series has been duly maintained in accordance with the FMCA and correctly contains the information required by section 217 of the FMCA; and
- (c) *Director's Certificates*: that:
 - (i) they have reviewed the certificate given pursuant to clause 10.2 in relation to the financial year in respect of which the annual audited Financial Statements required by clause 10.1 have been prepared (the *Directors' Certificate*); and
 - (ii) so far as matters which they have observed in the performance of their duties as auditors are concerned, nothing has come to their



attention to show that the statements made in the Director's Certificate are not correct,

and including any other information required to be included in that report by the FMCA or the FMC Regulations, provided that the Auditor's report, with the consent of the Trustee, may contain such other statements (in addition to or substitution of any of the above statements) as the Trustee approves.

10.4 **Notices**

It will give to the Supervisor copies of any report, notice or circular at the same time as it is publicly distributed by the Issuer to any stock exchange or to any Class of Holders.

11 **EVENTS OF DEFAULT**

11.1 **Events of Default**

If any of the following events occurs:

- (a) *Default in payment:* Either:
 - (i) default is made for more than two Business Days after due date in the payment of the Principal Amount of any Bonds forming part of that Series or for more than five Business Days after the due date for payment of any other of the Bond Moneys in relation to that Series; or
 - (ii) default is made in payment of any other moneys due and payable under this deed for 10 Business Days after demand in writing from the Supervisor; or
- (b) *Breach of other obligations:* the Issuer fails to perform or comply with any of its other issuer obligations under this deed in a material respect, and, where the failure is capable of remedy, that failure is not remedied:
 - (i) in the manner and within the period expressly provided by this deed; or
 - (ii) in the absence of any express provision, within 30 days after the date that the Supervisor notifies the Issuer of the failure and requests its remedy; or
- (c) *Breach of warranty:* any representation, warranty or statement by the Issuer in this deed:
 - (i) is not true, accurate or complied with in all material respects; or
 - (ii) 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 and this has a Material Adverse Effect on the Issuer; or

- (d) *Insolvency*: the Issuer or any Principal Subsidiary:
 - (i) is unable to pay its indebtedness as it falls due or is presumed to be so under any law;
 - (ii) stops or suspends payment of any of its indebtedness generally; or
 - (iii) with a view to avoiding or in expectation of insolvency, begins negotiations or takes any proceedings to reschedule any of its indebtedness; or
 - (iv) with a view to avoiding or in expectation of insolvency, makes (or proposes to make) a general assignment, arrangement, scheme, compromise or composition with or for the benefit of, its creditors in respect of its indebtedness generally; or
- (e) *Enforcement*: either:
 - (i) a distress, attachment, execution or other legal process for an amount of or in excess of \$10,000,000 in aggregate (or its equivalent in other currencies) is levied or enforced on or against assets of the Issuer or a Principal Subsidiary and is not discharged or stayed within 30 days;
 - (ii) a receiver, trustee, manager or similar officer is appointed in respect of the Issuer or a Principal Subsidiary or the whole or any material part of the Issuer's or a Principal Subsidiary's assets and is not discharged within 30 days; or
- (f) *Enforcement of Security Interest*: a Security Interest over or affecting an asset of the Issuer or a Principal Subsidiary and securing an amount of or in excess of \$10,000,000 in aggregate (or its equivalent in other currencies) is enforced; or
- (g) *Dissolution*: an order is made or resolution passed for the dissolution of the Issuer or a Principal Subsidiary, except:
 - (i) 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
 - (ii) where the relevant person is solvent and its assets available for distribution are distributed to another member of the Group; or
- (h) *Corporations (Investigation and Management) Act 1989*: the Issuer or a Principal Subsidiary is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989 or a statutory manager is appointed to it; or



- (i) *Cessation of business*: the Issuer ceases or threatens to cease to conduct all or a substantial part of its business (except for the purposes of and followed by an amalgamation permitted under this deed or solvent reconstruction or reorganisation on terms approved by the Supervisor); or
- (j) *Cross default*: any indebtedness for or in respect of borrowed money of the Issuer or a Principal Subsidiary of or in excess of \$10,000,000 in aggregate (or its equivalent in other currencies):
 - (i) is not paid within any applicable grace period or (if no grace period applies) when due; or
 - (ii) becomes due before it would otherwise have been due by reason of any default or event of default (however described); or
- (k) *Avoidance or repudiation*:
 - (i) this deed ceases to have effect (in whole or in any material part) or is or becomes void, voidable, illegal, invalid or unenforceable in any material respect (other than by reason of any waiver) and this is reasonably regarded by the Supervisor as being material in the context of the obligations secured by this deed; or
 - (ii) the Issuer repudiates (or does or causes to be done an act, omission, matter or thing evidencing an intention to repudiate) this deed; or
- (l) *Supplemental Trust Deed*: any event occurs which is specified in the Supplemental Trust Deed for a Series as an event of default for that Series.

then at any time thereafter, provided that event is continuing unremedied:

- (A) *Wholesale Series*: a Wholesale Holder may, without prejudice to any other remedies which that Holder may have:
 - (1) where that Event of Default occurs under clause 11.1(a) in relation to a Bond held by that Holder; or
 - (2) where that Event of Default occurs under any other paragraph of this clause 11 and the Holders of the Wholesale Bonds (or in the case of clause 11.1(l), the Holders of the Bonds of the relevant Series) resolve by Extraordinary Resolution to do so,declare all (but not some only) of the Wholesale Bonds held by that Holder to be immediately due and payable by notice in writing to the Issuer; and
- (B) *Retail Series*: the Supervisor may in its discretion (and shall immediately upon being directed to do so by an Extraordinary Resolution passed by Holders of the Retail Bonds or in writing by Holders of in aggregate not less than 50% of the Principal Amount of the outstanding Retail Bonds) declare



the Bonds of each Retail Series to be immediately due and payable by notice in writing to the Issuer declaring that:

- (1) the event is an Event of Default in respect of that Series; and
- (2) the Bond Moneys relating to that Series are due and payable.

11.2 **Acceleration**

If the Supervisor declares that any Bond Moneys are immediately due and payable in accordance with clause 11.1, those Bond Moneys are immediately due and payable. Any amounts due and payable in relation to any Bond will be the aggregate of:

- (a) the Principal Amount of the relevant Bond;
- (b) accrued interest on that Principal Amount at the rate applicable to the Bonds to the date of payment as set out in the Conditions for the Bonds; and
- (c) any other Bond Moneys which may be payable in relation to that Principal Amount, or any other amount specified for the purposes of this clause 11.2 in the Supplemental Trust Deed for the relevant Series.

12 **ENFORCEMENT**

12.1 **Supervisor's powers of enforcement**

- (a) If any Bond Moneys in respect of a Retail Series become immediately due and payable pursuant to clause 11, the Supervisor may in its discretion (and must if directed to do so by an Extraordinary Resolution of the Holders of any Retail Series or in writing by Holders of any Retail Series holding in aggregate not less than 50% of the Principal Amount of the outstanding Bonds of that Series) institute and pursue those proceedings against the Issuer as it thinks fit to enforce payment of those Bond Moneys.
- (b) If any Bond Moneys in respect of a Wholesale Series becomes immediately due and payable pursuant to clause 11, a Wholesale Holder may institute and pursue those proceedings against the Issuer as it thinks fit to enforce payment of those Bond Moneys.

12.2 **Enforcement of Holders' Rights**

- (a) The Supervisor holds its rights and benefits under this deed including:
 - (i) the right to enforce the Issuer's duty to repay the Principal Amount, or to pay interest, under the terms of the Retail Bonds;
 - (ii) the right to enforce the Issuer's obligations and duties under this deed and the FMCA in relation to the Retail Bonds; and
 - (iii) if applicable, any charge or security for repayment,



in trust for, and for the benefit of, the Retail Holders and, only to the extent expressly set out in the relevant Supplemental Trust Deed for a Wholesale Series, the Holders of that Wholesale Series. No Retail Holder shall be entitled to enforce any of its rights or remedies under this deed directly against the Issuer unless the Supervisor fails to enforce such rights or remedies after having become bound to do so in accordance with this deed.

- (b) Wholesale Holders may enforce any of their rights or remedies under this deed in relation to Bonds in a Wholesale Series directly against the Issuer.

13 **DISTRIBUTION**

13.1 **Distribution of funds**

All moneys received by the Supervisor in respect of any Retail Series on or after the Date of Enforcement must (subject to payment of any debts or liabilities having priority to the moneys due to Holders pursuant to the Bonds) be held and applied:

- (a) *Amounts due to Supervisor*: 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 interest payable under this deed on each such amount);
- (b) *Bond Moneys*: secondly, in or towards payment to the Holders of that Retail Series, rateably in proportion to the Bond Moneys actually or contingently owing to them in respect of the Bonds held by them;
- (c) *Issuer or other person*: thirdly, the surplus (if any) of such moneys, in payment to the Issuer or to such other Person (including a liquidator of the Issuer) who may be lawfully entitled to them.

13.2 **Payment of Principal Amounts before interest**

If the Supervisor in the general interests of a Class of Holders considers it is expedient to do so, payment to that Class may be made on account of Principal Amounts before all or part of the interest is paid.

13.3 **Supervisor's powers to postpone distribution**

If the amount at any time available for distribution to the Holders of any Series under clause 13.1 is less than 10% of the Bond Moneys owing in respect of that Series, the Supervisor may at its discretion invest those funds in accordance with clause 14. The investments together with the resulting income may be accumulated until the accumulations (and any other funds for the time being under the control of the Supervisor and applicable for the purpose) amount to a sum sufficient to pay 10% of the Bond Moneys in respect of that Series. In that event, the accumulations and funds must be applied in the manner specified in clause 13.1.



13.4 **Notice of distribution**

The Supervisor agrees to give not less than 7 days' notice to the Holders of the relevant Series of the day, place and time fixed for any payment to them under clause 13.1. After that day those Holders will be entitled to interest only on the balance (if any) of the money owing on the Bonds held by them after deducting the amount (if any) payable in respect of the Bonds on that day.

14 **POWERS OF INVESTMENT**

Any money held by the Supervisor subject to the trusts contained in this deed may, at the Supervisor's discretion, be invested in the name of the Supervisor or its nominee in any investments permitted for the investment of trust funds as determined by the Supervisor (including, if the Issuer so requests, in the purchase of or subscription for Bonds). The Supervisor will have the power to vary those investments and from time to time to deal with or dispose of them or any part of them. The income arising from them made by the Supervisor belong to the Issuer until the Bond Moneys have become immediately due and payable.

15 **APPLICATIONS TO COURT**

15.1 **Court application**

The Supervisor may, at any time, apply to the court for an order:

- (a) under section 208 of the FMCA, if the Supervisor is satisfied that:
 - (i) the Issuer is unlikely to be able to pay the Bond Moneys of one or more Series as and when due;
 - (ii) the Issuer is insolvent;
 - (iii) the security of benefits or the financial position or management of the Issuer is otherwise inadequate;
 - (iv) there is a significant risk that the interests of Holders will be materially prejudiced for any other reasons; or
 - (v) the provisions of this deed are no longer adequate to give protection to the interests of any of the relevant Holders; or
- (b) pursuant to section 210 of the FMCA and within 20 Business Days (or, with leave of that court, within any longer period) after the passing of an Extraordinary Resolution of Holders directing it not to comply with an Extraordinary Resolution of Holders;
- (c) for an order that the powers and trusts contained in this deed in relation to such Series be exercised under the direction of the Court; and
- (d) for any other order or direction in relation to the execution and administration of such powers and trusts as may be available and the Supervisor deems expedient.



The Supervisor may assent to, approve of, or oppose any application to the Court made by the Financial Markets Authority or any affected Holder. Nothing in this clause 15.1 limits clause 16.17.

15.2 **Indemnity**

The Issuer agrees to indemnify the Supervisor against all expenses and liabilities incurred in relation or incidental to any such application or proceedings in priority to the relevant Bond Moneys.

16 **DUTIES AND SUPPLEMENTAL POWERS OF SUPERVISOR**

In addition to the provisions of the law relating to supervisors, but subject always to the provisions of the FMCA:

16.1 **General responsibilities and duties**

The Supervisor:

- (a) is responsible for acting on behalf of the Retail Holders in relation to the Issuer, any matter connected with this deed or the terms of the offer of a Retail Series and any contravention or alleged contravention of the issuer obligations in respect of a Retail Series;
- (b) is responsible for supervising the Issuer's performance of its issuer obligations and in order to ascertain whether or not the assets of the Issuer and each Subsidiary that are or may be available, whether by way of security or otherwise, are sufficient or likely to be sufficient to discharge the payment obligations of the Issuer in respect of Retail Bonds as they become due;
- (c) is responsible for performing and exercising any other functions, duties and powers conferred or imposed on the Supervisor by this deed, the FMCA and the FMSA;
- (d) must:
 - (i) act honestly in acting as supervisor;
 - (ii) in exercising its powers and performing its duties as supervisor, act in the best interests of the Holders; and
 - (iii) exercise reasonable diligence in carrying out its functions as supervisor;
- (e) must do all the things it has the power to do to cause any contravention or alleged contravention of the issuer obligations in respect of a Retail Series to be remedied unless it is satisfied that the contravention will not have a material adverse effect on the Holders of that Retail Series;
- (f) subject to any court order made under section 210 of the FMCA, must act in accordance with any direction given by an Extraordinary Resolution of



Holders or an affected Class 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 a Retail Series; and
 - (ii) any other matter connected with the Supervisor's functions; and
- (g) 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 FMCA) would exercise in the same circumstances.

16.2 **Representation and warranty**

The Supervisor represents and warrants to the Issuer and the Retail Holders that it is licensed (as that term is defined in the FMCA) and that such licence covers the supervision of all Bonds issued under this deed. The representation and warranty contained in this clause 16.2 shall be deemed to be repeated for the benefit of the Issuer and each Retail Holder on the Issue Date and each date interest is payable under any Bond.

16.3 **Reliance on advice**

The Supervisor in relation to this deed may (without liability for loss) obtain, accept and act on:

- (a) *Advice*: the opinion or advice of or any information obtained from any barrister, solicitor, valuer, broker, surveyor, auctioneer, chartered accountant, auditor or other expert, whether obtained by the Issuer or by the Supervisor or otherwise, even though it may subsequently be found to contain some error or not be authentic;
- (b) *Directors' certificate*: a certificate signed by any two Directors on behalf of the Directors of the Issuer:
 - (i) as to any fact or matter prima facie within their knowledge or the knowledge of the Issuer and upon which the Supervisor may require to be satisfied, in the exercise of any of the trusts, powers, authorities and discretions and provisions of this deed; or
 - (ii) that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of (or does not or is not likely to have a material adverse effect on) the Holders or any Class of Holders,

as sufficient evidence of that fact or matter or the expediency or desirability of that dealing, transaction, step or thing; and

- (c) *Certificates under this deed*: 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 in time.



The Supervisor may decline to accept and elect not to act on any such opinion, advice, information, certificate or statement.

16.4 **Resolutions**

The Supervisor will not be responsible for acting or relying upon any resolution purporting to have been passed at any meeting of the Holders or any Class of Holders:

- (a) in respect of which a proper record has been made; and
- (b) which the Supervisor believes to have been properly and regularly passed,

even though afterwards it appears that the resolution is not binding or valid by reason of a defect in the convening of the meeting or the proceedings at the meeting or otherwise.

16.5 **Application of funds**

The Supervisor will not be responsible for the money tendered by the applicants for or subscribed by the subscribers of the Bonds or be bound to see to the application of that money.

16.6 **Custody of documents**

The Supervisor may:

- (a) place this deed (and any deeds and other documents of title relating to the Bonds which the Supervisor is entitled to possess) with a banker or company whose business includes undertaking the safe custody of documents or any solicitor; and
- (b) make those arrangements it considers fit for allowing the Issuer or its solicitors or the Auditors access to or possession of all or any of those deeds or documents whenever the Supervisor deems it necessary or convenient to do so.

The Issuer agrees to pay all sums required to be paid in respect of such deposits of deeds and documents.

16.7 **Defects in title**

The Supervisor is not:

- (a) obliged to enquire into or liable for any defects in the title of the Issuer to its assets whether the defects might have been discovered on an examination or enquiry or remedied or not; or
- (b) liable to the Issuer or any Holder of any Bonds payable to bearer for accepting as valid any Certificate for the Bonds which is subsequently found to be forged or not authentic.



16.8 **Discretion as to powers**

Except as expressly provided otherwise in this deed or any Supplemental Trust Deed, the Supervisor has absolute and uncontrolled discretion as to:

- (a) the exercise or non-exercise of all trusts, powers, authorities and discretions vested in it by this deed; and
- (b) the commencement, prosecution, variation, discontinuance or compromise of any action proceeding or claim.

The Supervisor will not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise of those trusts, powers, authorities and discretions. Any consent given by the Supervisor pursuant to this deed may be given subject to such conditions as the Supervisor considers fit.

16.9 **Delegation**

The Supervisor may, to the extent permitted by section 111(2) of the FMCA and the FMSA:

- (a) *Delegate to other Persons:* at any time delegate to any Person any of the trusts, powers or discretions vested in the Supervisor by this deed which cannot conveniently be exercised by it or through its employees upon such terms and conditions (including the giving of power to sub-delegate) as the Supervisor in the interests of the Holders considers fit;
- (b) *Agents:* employ an agent to transact all business and do all acts required to be done under this deed including the receipt and payment of money and attendance by it at any meeting; and
- (c) *Officers:* delegate to any of its officers any of the trusts, powers, authorities and discretions vested in the Supervisor by this deed which owing to the place in which they are to be exercised cannot conveniently be exercised by the Supervisor,

provided that any such delegation shall not relieve the Supervisor of its responsibilities under this deed.

16.10 **Power to engage expert**

The Supervisor may engage an expert (for example, a qualified auditor, investigating accountant, valuer or actuary) if the Supervisor considers on reasonable grounds, that it requires the assistance of the expert to:

- (a) determine the financial position of the Issuer; or
- (b) review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 16.10 the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance and (without limiting clause 18.2) the fees and expenses of the



expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

16.11 **Indemnity by Issuer**

Without limiting the right of indemnity by law given to supervisors, the Issuer will indemnify the Supervisor against all expenses, losses and liabilities reasonably sustained or incurred in carrying out or purporting to carry out the trusts, powers, authorities or discretions vested in the Supervisor pursuant to this deed or otherwise for any action taken, or omitted to be taken, in accordance with the provisions of this deed, other than a claim arising out of a wilful default or gross negligence of, or wilful breach of trust by, the Supervisor.

16.12 **Limitation on indemnity**

The Supervisor's rights to be indemnified in relation to the performance of the Supervisor's licensee obligations (as that term is defined under section 4 of the FMSA) under this deed shall not apply to any liability which arises from a failure by the Supervisor to properly perform its duties under clauses 16.1(d) and 16.1(g) and no other provision of this deed that is contrary to the foregoing shall have any effect.

16.13 **Other dealings**

Nothing in this deed prohibits the Supervisor, its holding company, any of its subsidiaries or any of the subsidiaries of its holding company (each a *Relevant Company*) or the directors or officers of the Relevant Company from:

- (a) being a Holder or a holder of shares or other securities of the Issuer or any associated company of the Issuer; or
- (b) acting in any representative capacity for a Holder or any such holder of shares or other securities.

Without limitation, the Relevant Company may so act on its own account or as executor, administrator, supervisor, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity. In doing so, it will not be deemed to be a breach of this deed or obligations imposed or implied by law arising out of the fiduciary relationship between the Supervisor and the Holders.

The Relevant Company will not by reason of its fiduciary capacity be prevented from:

- (i) making any contracts or entering into any transactions with the Issuer or any associated company of the Issuer in the ordinary course of the business of the Relevant Company; or
- (ii) undertaking any insurance, financial or agency service for any of them; or
- (iii) accepting or holding the office of supervisor for the holders of any debentures or debenture bonds or other securities (whether secured or unsecured) issued by the Issuer or by any other company.



The Relevant Company will not be accountable to the Issuer or to any other company or the Holders for any profits arising from any such contracts, transactions or offices.

16.14 Represent Holders

The Supervisor may, if it wishes to do so, or pursuant to any directions of any Holders or Class of Holders, represent the Holders generally in any investigation, negotiation, action, transaction or proceedings affecting the interests of the Holders or that Class of Holders.

16.15 Acting on instructions

Whenever any authorisation, approval or direction in respect of the taking of any action or other matter is given to the Supervisor by Extraordinary Resolution under the provisions of this deed, the Supervisor:

- (a) may act in reliance upon the authorisation or approval; or
- (b) must act in accordance with the direction,

and is not responsible for any loss, costs, damages, expenses or inconvenience resulting from actions taken in reliance on the authorisation, approval or direction. However, the Supervisor is not obliged to do so unless it is first indemnified to its reasonable satisfaction against all reasonable expenses, losses and liabilities it may sustain or incur by so doing.

16.16 Confidential information

The Supervisor will not (except to the extent required by law) be required to disclose to any Holder any confidential information made available to the Supervisor by the Issuer in connection with this deed.

16.17 Power to apply to Court

The Supervisor is entitled at any time to apply to a Court for directions as to what course of action it should follow in relation to any matter arising out of this deed.

16.18 Binding on all Holders

Any action taken by the Supervisor in accordance with this clause 16 is binding on all of the Holders.

16.19 No obligation to consult

Except where expressly required otherwise in this deed, the Supervisor is not obliged to consult with the Holders before giving any consent, approval or agreement or making any determination under this deed.

16.20 Knowledge of default

The Supervisor:

- (a) may assume that the Issuer is complying with this deed; and
- (b) is not taken to have knowledge of the occurrence of an Event of Default in relation to a Series,



unless any of its officers having responsibility for the transaction actually become aware of the relevant non-compliance or Event of Default or the Supervisor has received written notice from a Holder or the Issuer stating that the non-compliance or Event of Default has occurred and describing it.

16.21 **Limit of Supervisor's liability**

The Supervisor has no liability to the Holders of the Retail Bonds for anything done, or omitted to be done:

- (a) in good faith giving effect to a direction given to it by the Holders of the Retail Bonds; or
- (b) unless the Supervisor has failed to show the degree of care and diligence required of it having regard to:
 - (i) the powers, authorities, discretions or responsibilities conferred or imposed upon it by this deed or by law; and
 - (ii) the limitations on those powers, authorities, discretions and responsibilities in this deed.

16.22 **Wholesale issues**

- (a) The Supervisor shall have no powers or duties in relation to any Wholesale Series except the powers and duties explicitly set out in the Conditions for any series of Wholesale Bonds.
- (b) Where any authorisation or direction in respect of the taking of any action or other matter may, under the provisions of this deed, be given to the Supervisor by an Extraordinary Resolution of Wholesale Holders, the Supervisor may act in reliance upon such authorisation or (as the case may be) shall act in accordance with any such direction, and shall not be responsible for any costs, damages, expenses, liabilities or inconvenience that may result from the actions so taken in reliance thereon, provided that the Supervisor shall not be so bound to act unless first indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may render itself liable and all costs, damages, expenses and liabilities which it may incur by so doing.

16.23 **No Additional Duty of Care**

Notwithstanding any other provision of this Master Trust Deed but subject to the provisions of any Supplemental Trust Deed, 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 Master Trust Deed) in exercising the Trust Powers, and shall not be liable 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 Master Trust Deed.



16.24 **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.

16.25 **Material Breach**

If any breach of this deed occurs which the Supervisor reasonably considers may be materially prejudicial to the interests of any Retail Holders, the Supervisor shall be entitled in its absolute discretion to require the Issuer to report to the Retail 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 Trust Powers under this deed. If the Issuer fails to give that report the Supervisor shall be entitled to do so itself.

17 **SUPERVISOR'S POWERS CUMULATIVE**

The powers, authorities and discretions vested in the Supervisor by this deed are in addition to the powers, authorities and discretions:

- (a) vested in supervisors by law; and
- (b) vested in the Supervisor as a Holder.

18 **SUPERVISOR'S REMUNERATION**

18.1 **Remuneration**

The Issuer agrees to pay to the Supervisor such fees as may be from time to time agreed by them in writing.

18.2 **Expenses**

The Issuer agrees to pay all out of pocket expenses (including legal fees on a full indemnity basis and travelling expenses) reasonably incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation and execution of this Master Trust Deed, any collateral or supplemental deed, any Information Memorandum; and
- (b) the exercise of any power or discretion or the execution of any trust conferred on the Supervisor under this deed (including the taking of any expert advice reasonably deemed necessary by the Supervisor).

18.3 **Payments**

The fees, expenses, indemnities and other amounts payable under this deed to the Supervisor are payable by the Issuer:

- (a) at the times agreed; or
- (b) in the absence of agreement, on demand.



19 CHANGE OF SUPERVISOR

19.1 Resignation or removal of Supervisor

Subject to the appointment and acceptance of a successor Supervisor as provided in this clause 19:

- (a) the Supervisor may resign at any time by giving not less than 90 days' written notice to the Issuer;
- (b) the Issuer may remove the Supervisor from office by giving not less than 30 days' written notice to the Supervisor;
- (c) the Holders may remove the Supervisor from office by giving not less than 90 days' written notice to the Issuer and Supervisor upon the passing of an Extraordinary Resolution of each Class of Holders to that effect; or
- (d) the FMA or the Issuer may remove the Supervisor from office in accordance with the FMSA.

19.2 Requirements for Retirement and Removal

The Supervisor may not:

- (a) be removed or resign under clauses 19.1(a), (b) or (c) unless:
 - (i) all functions and duties of the position have been performed;
 - (ii) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
 - (iii) the court consents; and
- (b) be removed by the Issuer under clause 19.1(b) without the Financial Market Authority's consent.

19.3 Appointment of a new Supervisor

If any of the circumstances described in clauses 19.1(a) to (d) occur, the Issuer will, subject to clauses 19.2(a)(i) and (iii) and 19.2(b) (where applicable), have the right to appoint a successor Supervisor, which must be a person who is authorised to act as a supervisor under the Financial Markets Supervisors Act 2011.

19.4 Approval by Extraordinary Resolution

Where the successor Supervisor is to be appointed and at such time as there are Retail Bonds outstanding under this deed and any Supplemental Deed, then the removal of the Supervisor and the appointment of the successor Supervisor shall be subject to approval by an Extraordinary Resolution of Retail Holders.

19.5 Failure to appoint Supervisor

Other than where the successor Supervisor requires approval pursuant to clause 19.4 (*Approval by Extraordinary Resolution*), if a successor Supervisor has not been appointed by the Issuer or has not accepted an appointment within 60 days



after any such notice, then the retiring Supervisor may, on behalf of the Issuer, appoint a successor Supervisor. In circumstances where the successor Supervisor requires approval by an Extraordinary Resolution of Retail Holders, any failure of the Issuer to appoint or have appointed a successor Supervisor will entitle the Retail Holders, by an Extraordinary Resolution of Retail Holders, to appoint a new Supervisor.

19.6 **Successor Supervisor**

Where an appointment under this clause 19 is accepted by a successor Supervisor:

- (a) the successor Supervisor will succeed to, and become vested with, all the rights, powers and obligations of the retiring Supervisor under this deed;
- (b) as from that time, the retiring Supervisor will be discharged from its rights, powers and obligations;
- (c) the retiring Supervisor must transfer to the successor Supervisor all moneys, investments, property and books held by the Supervisor under this deed;
- (d) the successor Supervisor shall execute all such documents which are necessary or appropriate and in such form as may be reasonably required by the other parties to this deed, such that the successor Supervisor is bound by all the covenants on the part of the Supervisor under this deed from the date of such appointment; and
- (e) the Issuer shall execute all such documents which are necessary or appropriate and in such form as may be reasonably required by the retiring Supervisor, such that the retiring Supervisor is indemnified to its satisfaction in respect of the effectiveness of its retirement and any actions of the successor Supervisor.

19.7 **Notice**

The Issuer agrees to notify all Holders of the appointment of any new Supervisor as soon as reasonably practicable following the appointment and to lodge notice of the change in Supervisor with the Registrar of Financial Service Providers within 5 working days.

19.8 **Issuer Acknowledgement**

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 Supplemental Trust Deed for that Series) is made for the benefit of, and is intended to be enforceable by, any person who is from time to time a Holder of the Bonds of that Series (but subject to clause 12) and the Supervisor.



20 AMENDMENTS

20.1 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:

- (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 FMCA, sections 22(7) or 37(6) of the Financial Markets Supervisors Act 2011 or any other power to amend or replace this deed under an enactment.

(b) *Supervisor consent*

Subject to section 112(2)(b) of the FMCA, the Supervisor must not consent to an amendment to, or a replacement of, this deed unless:

- (i) either:
 - (A) the amendment or replacement is approved by, or is contingent on approval by, the Retail Holders; or
 - (B) the Issuer and the Supervisor are 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 FMCA on the basis set out in the certificate.

(c) *Holder consent*

The approval of the Retail Holders for the purposes of clause 20.1(b)(i)(A) must be the approval of an Extraordinary Resolution of:

- (i) the Retail Holders; or
- (ii) each class of Retail Holders of the Bonds that is or may be adversely affected by the amendment or replacement.

(d) *Written agreement*

Any amendment to this deed pursuant to this clause 20.1 must be in writing signed by the Issuer and the Supervisor.

20.2 Amendments affecting Wholesale Holders

(a) *Limited right to amend*



In relation to each Wholesale Series, except as provided in clauses 20.2(b) and (c), the Issuer may not cancel, vary or amend any provision of this deed while any Wholesale Bonds are outstanding. Any amendment to this deed pursuant to this clause 20.2 must be in writing signed by the Issuer and the Supervisor.

(b) *Amendment without consent*

In relation to each Wholesale Series, the provisions of this deed may be amended without the consent of the Wholesale Holders of that Wholesale Series where, in the opinion of the Issuer, the amendment:

- (i) is of a minor, formal, administrative or technical nature;
- (ii) is to correct a manifest error;
- (iii) is to comply with the requirements (or a modification of the requirements) of any applicable law or any rules of any stock exchange in New Zealand or elsewhere;
- (iv) is necessary for the purposes of obtaining or maintaining a quotation of Bonds of such Series on any stock exchange in New Zealand or elsewhere;
- (v) is in respect of any of the provisions of reporting to the Supervisor under this deed or in respect of clauses 16 and 18; or
- (vi) is agreed to by the Supervisor pursuant to clause 22; or
- (vii) will not be, and will not be likely to be, materially prejudicial to the interests of the relevant Holders.

Notice of any such amendment must be provided to the relevant Holders by the Issuer within 30 days of the amendment being made.

(c) *Amendment approved by Holders*

Without limiting clause 20.2(b), in relation to each Class of Wholesale Holders the provisions of this deed may be amended if the amendment has been approved (provided that where an amendment proposed by a Class of Wholesale Holders affects another Class of Wholesale Holders, the amendment must be also approved by that other Class of Wholesale Holders in accordance with the provisions of this clause 20.2(c)) by an Extraordinary Resolution of that Class of Wholesale Holders.

Where the relevant Class of Wholesale Holders holds Bonds from more than one Wholesale Series, this deed is taken to be amended in respect of each such Wholesale Series in accordance with the amendment approved by that Class of Wholesale Holders in accordance with this clause 20.2(c).

(d) *Single meeting*

Where an amendment requiring approval of the Wholesale Holders pursuant to clause 20.2(c) relates to or arises from any general change in



the constitution, affairs or business of the Issuer, the approval of any Wholesale Holder may be obtained at a meeting of all Wholesale Holders and will not be required to be dealt with by way of separate meetings of each Class of Wholesale Holders unless the Issuer determines that there is a material difference in the effect of such resolution on those Classes.

- (e) *Notice*
Notice of any proposed variation under clause 20.2(b) or (c) must be given by the Issuer to each Holder of each affected Class of Holders not less than 14 Business Days before the date on which it is intended that such variation will take effect. The non-receipt of notice by any such Holder will not affect the validity of any such variation.

20.3 **Notice of Amendment**

Within 5 working days after an amendment to, or replacement of, this deed, the Issuer must ensure that notice of the amendment or replacement and a copy of the certificate relating to such amendment or replacement is lodged with the Registrar of Financial Service Providers.

21 **WAIVER**

21.1 **Temporary variation**

The Supervisor may temporarily vary the provisions of this Master Trust Deed or the Conditions applicable to any Wholesale Series in each case for such period and on such terms as:

- (a) the Supervisor may deem appropriate if it is satisfied that the variation will not have a material adverse effect on the interests of the Holders; or
- (b) may be agreed by the Supervisor pursuant to clause 22; or
- (c) may be approved by Extraordinary Resolution of the relevant Class of Holders.

21.2 **Waivers**

Subject to any applicable law and, to the extent any waiver is an amendment, the requirements of clause 20, and except to the extent expressly provided otherwise in the Conditions for any Series, the Supervisor may by notice to the Issuer waive any breach or anticipated breach by the Issuer of this deed or of the Conditions applicable to any Series either wholly or in part for a specified period or indefinitely and on such other terms and conditions as:

- (a) it deems expedient if it is satisfied that the waiver will not have a material adverse effect on the interests of the affected Holders and that no such waiver will prejudice the rights of the Supervisor or the Holders in respect of any other breach; or
- (b) may be agreed by the Supervisor pursuant to clause 22; or
- (c) may be approved by Extraordinary Resolution of the relevant Class of Holders.



22 **CONSTRUCTION BY REFERENCE TO ANALOGOUS OBLIGATIONS AND EXEMPTIONS**

Except to the extent expressly provided otherwise in the Conditions for any Series, if:

- (a) the Issuer is granted an exemption (or an exemption is applicable to the Issuer) in relation to any obligation imposed on the Issuer by or pursuant to the FMCA, the Companies Act or the Financial Reporting Act which is materially the same as or analogous to any obligation of the Issuer under this deed or any Bonds; and
- (b) two Directors of the Issuer certify that such modification, temporary variation or waiver will not have a Material Adverse Effect on the Issuer or be or become materially prejudicial to the general interests of Holders or any Class of Holders,

then, subject to clause 20, the Supervisor may agree to modify or temporarily vary this deed or the Bonds or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

23 **SUBSTITUTION**

23.1 **Substitution**

The Issuer may, with the consent of the Supervisor but without the consent of the Holders of any Series, substitute any Person incorporated in New Zealand (*Substituted Obligor*) in place of the Issuer (or of any previous substitute under this clause) as the principal debtor under this deed and the Bonds either generally or in relation to one or more Series if:

- (a) the Substituted Obligor succeeds to and becomes bound by all the terms and conditions of this deed and the Supplemental Trust Deed for the relevant Series by entering into such agreements and documents (*Substitution Documents*), each in form and substance satisfactory to the Supervisor, as the Supervisor may reasonably deem appropriate;
- (b) such amendments are made to any other documents (including any Information Memorandum in respect of the relevant Bonds) as the Supervisor may reasonably deem appropriate;
- (c) any two directors of the Substituted Obligor certify that the Substituted Obligor will be solvent immediately after the substitution;
- (d) (if the relevant Bonds, or any of them, are rated) each public rating agency which has assigned a rating to the relevant Bonds confirms in writing that following the substitution the rating assigned to the relevant Bonds in force immediately prior to the substitution taking effect will be maintained or increased;



- (e) (if the relevant Bonds, or any of them, are listed on a stock exchange), such Bonds remain listed on such stock exchange immediately after the substitution taking effect;
- (f) (if the Issuer has a long term debt rating) each public rating agency which has assigned a long term debt rating to the Issuer has confirmed that the Substituted Obligor has, immediately prior to the substitution taking effect, a long term debt rating no lower than that then assigned to the Issuer;
- (g) prior to the substitution being effected, the Substituted Obligor warrants and represents to the Supervisor for the benefit of Holders that:
 - (i) it has obtained all necessary governmental and regulatory approvals and consents for the substitution;
 - (ii) it has obtained all necessary governmental and regulatory approvals and consents for the performance by it of its obligations under this Master Trust Deed, the Supplemental Trust Deed for the Series and the Substitution Documents (collectively the *Transaction Documents*) and the relevant Bonds and that they are in full force and effect; and
 - (iii) the obligations assumed by it are legal, valid and binding; and
- (h) legal opinions (in form and substance reasonably satisfactory to the Supervisor) have been delivered to the Supervisor confirming that, following the substitution:
 - (i) the Transaction Documents and the Bonds will constitute legal, valid and binding obligations of the Substituted Obligor, enforceable against it;
 - (ii) the Substituted Obligor is validly incorporated in its jurisdiction of incorporation;
 - (iii) all necessary governmental and regulatory consents are in full force and effect; and
 - (iv) amounts payable to any Holders will not be reduced by the existence of any applicable taxes (by deduction from such amounts or otherwise) except for such taxes (if any) in respect of which the Substituted Obligor has agreed to make compensating payments to the Holders.

23.2 **Release of substituted issuer**

Any Substitution Document entered into pursuant to clause 23.1(a) will, if so expressed, release the Issuer from any or all of its obligations under the Transaction Documents and the Bonds for the relevant Series. Notice of the substitution must be given to the Holders of the Series within 14 days after the execution of the Substitution Documents and compliance with the other requirements of clause 23.1.



23.3 **Completion of Substitution**

After notice has been given in accordance with clause 23.2:

- (a) the Substituted Obligor is taken to be the principal debtor and to have all the rights, powers and obligations of the Issuer under the Transaction Documents as if the Substituted Obligor were originally named in the Transaction Documents in place of the Issuer; and
- (b) this deed and the terms of the relevant Bonds are taken to be amended as necessary to give effect to the substitution.

24 **NOTICES**

24.1 **Notices**

Any notice, demand, consent or request (a *Notice*) under this deed must be in writing and may be signed or given by or on behalf of the Person giving the Notice by it or on its behalf or by an officer, employee, agent, attorney or solicitor of it and may be given:

- (a) *To or by Holders*: to Holders of registered Bonds by prepaid letter addressed to their respective Registered Addresses, or in the case of a Notice to a corporation or to the Supervisor, at its registered office or principal place of business and to Holders of bearer Bonds in the manner provided in the relevant Conditions; or
- (b) *Parties to this deed*: by any party to this deed to any other party (unless that other party has by not less than 14 days' written notice specified another address) by making or delivering it to that other party at the address shown below:

if to the Issuer to:

Mercury NZ Limited
The Mercury Building
33 Broadway
Newmarket
Auckland, 1023

Email: investor@mercury.co.nz
with a copy to legal@mercury.co.nz
Attention: Chief Financial Officer

if to the Supervisor to:

The New Zealand Guardian Trust Company Limited
Level 6
191 Queen Street
Auckland

Facsimile No: 09 969 3732
Attention: General Manager – Corporate Trusts



24.2 **Effectiveness**

Notices given pursuant to this deed are taken to have been made or given:

- (a) *Delivery*: in the case of delivery, when received;
- (b) *Fax*: in the case of facsimile, when despatched;
- (c) *Mail*: in the case of posting, on the second day following the date of posting;
- (d) *Email*: in the case of email, when despatched.

However, (except in the case of Notices to or by the Holders of Bonds) if any Notice would be deemed made or given after 4.00pm on any business day in the locality of the recipient (*local business day*) or on any day that is not a local business day, the Notice is taken to be given at 9.00am on the next succeeding local business day.

24.3 **Proof of Notice**

In proving the making or giving of any Notice:

- (a) *Execution*: it is not be necessary to prove that any facsimile was manually or originally executed by the Person giving it;
- (b) *Addresses etc*: it is sufficient to prove that the Notice was delivered or sent properly addressed encoded numbered and stamped or in the customary manner of the method of notification adopted;
- (c) *Joint Holders*: a Notice to joint Holders of registered Bonds is taken to have been properly made or served on each Holder if made or given in accordance with this deed to the Holder whose name is listed first in the Register for those Bonds.

25 **MEETINGS OF HOLDERS**

25.1 **Convened by the Issuer**

At the request in writing of the Supervisor or of any Holder(s) holding at least 5% in Principal Amount of the Bonds or of any Series, the Issuer must summon a meeting of all the Holders or, as the case may be, all the relevant Class of Holders for the purpose of considering the latest audited financial statements of the Issuer or giving directions to the Supervisor in relation to the exercise of its powers under this deed and applicable law. The Issuer may, if it has first notified the Supervisor of its intention to summon the meeting and the time and place of the meeting, summon a meeting of the Holders or any Class of Holders for such purpose as the Issuer considers appropriate.

25.2 **Convened by the Supervisor**

At any time the Supervisor (after such consultation with the Issuer which is reasonable in the circumstances as to the nature of the business the subject of the proposed meeting) may summon a meeting of Holders or any Class of Holders to consider such business as shall be placed before such meeting.



25.3 Other Rules

The Supervisor may without the consent of the Holders agree with the Issuer to the adoption of supplemental rules or procedures for meetings of Holders and/or variations to the rules and procedures applying to such meetings set out in Schedule 1. Subject to the foregoing, meetings of Holders must be conducted in accordance with the rules and procedures set out in Schedule 1.

26 RELEASE

Upon being indemnified to its reasonable satisfaction and upon proof being given to the reasonable satisfaction of the Supervisor that all Bond Moneys 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.

27 PARTIAL INVALIDITY

A provision of this deed has no effect to the extent that it contravenes, or is inconsistent with, the FMCA, the FMC Regulations or any term implied into this deed by the FMCA or the FMC Regulations. An invalid provision in this deed shall not affect the enforceability of the remaining provisions of this deed.

28 GOVERNING LAW AND JURISDICTION

This deed is governed by, and construed in accordance with, New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this deed.

29 COUNTERPARTS

This Master Trust Deed may be executed in any number of counterparts, all of which taken together constitute one and the same instrument. Any party may execute this Master Trust Deed by executing any such counterpart.

30 SURVIVAL

The indemnities given in this deed will survive the repayment of all the Bonds and the termination of this deed.

IN WITNESS WHEREOF this Master Trust Deed is executed by the parties as of the date first written above.



SCHEDULE 1

Rules and procedures for meetings of Holders (clause 25.3)

1 INTERPRETATION

- 1.1 References in this Schedule to *Holders* include only the Holders comprising the Class or Classes for which any meeting is convened, except where the context indicates otherwise, and *Bonds* shall be construed accordingly. References in this Schedule to *regulations* are references to the provisions of this Schedule.
- 1.2 *Appointed Time* means the day and time at which any meeting of Holders or the taking of a poll of Holders (not at a meeting of Holders) is due to be held.
- 1.3 *Authorised Person* means, in respect of a meeting involving Retail Holders, the person authorised by the Supervisor to receive and count votes at that meeting, or, if no such person is authorised, the Supervisor.
- 1.4 *Extraordinary Resolution* means a resolution passed:
- (a) at a meeting of Holders properly convened and held in accordance with this Schedule, by which
 - (i) in the case of Bonds other than Retail Bonds, at least 75% of the persons voting at the meeting upon a show of hands; or
 - (ii) in the case of Retail Bonds (or if a poll is duly demanded in the case of Bonds other than Retail Bonds) then at least 75% of the votes given on a poll,voted in favour of the resolution; or
 - (b) in accordance with regulation 14.1 below.
- 1.5 *Proxy Closing Time* means 48 hours before the Appointed Time of the relevant meeting of Holders or taking of a poll of Holders.
- 1.6 *Representative* has the meaning given to that word in regulation 9.4.

2 CONVENING AND PLACE

2.1 Meeting required by law

The Issuer shall, whenever required to do so pursuant to the Companies Act or the FMCA or any other applicable law, convene a meeting of the Holders.

2.2 By Holders

The Issuer shall whenever required to do so pursuant to clause 25 of the Trust Deed or by the FMCA, convene a meeting of the Holders or Holders of the relevant Class of Holders.



2.3 By Issuer or authorised person

The Issuer may at any time convene a meeting of all or any Class of Holders, and shall, at the request in writing of a person authorised by the FMC Regulations to call a meeting of a Class of Retail Holders, convene a meeting of that Class of Retail Holders.

2.4 By Supervisor

The Supervisor may at any time convene a meeting of all or any Class of Retail Holders, or the Issuer shall, at the request in writing on the Supervisor. The Supervisor will not be obliged to convene a meeting of Retail Holders pursuant to such provisions until it has been indemnified (to its satisfaction) against all costs and expenses to be incurred.

2.5 Place of meeting

Meetings must be held in the city or town in which the registered office of the Issuer is situated or at such other place as the Supervisor approves.

2.6 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 variations to the rules and procedures applying to such meeting set out in this schedule, as the Supervisor and the Issuer may agree from time to time.

2.7 Methods of holding meetings

A meeting of Holders may be held by a quorum of Holders of their Representatives:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication provided that, in the case of a meeting of Retail Holders, the Supervisor approves such means and each Retail Holder or its Representative complies with any conditions imposed by the Supervisor in relation to the use of such means; or
- (c) by a combination of both of the methods described in regulation 2.7(a) and (b) above.

3 NOTICE OF MEETINGS

3.1 Persons to be notified

Notice of every meeting must be given in the manner provided in the Trust Deed (namely in clause 24) to the following:

- (a) every Holder entered in the Register as at the close of business on a date not less than 5 Business Days and not more than 15 Business Days prior to the date of despatch of the notice (the material accompanying the notice of the meeting must specify the date selected);



- (b) every personal representative or assignee in bankruptcy of any such Holder who, to the actual knowledge of the relevant Issuer, is deceased or insolvent;
- (c) the Supervisor, if the Issuer has convened the relevant meeting and vice versa; and
- (d) the Auditor and every director of the Issue.

3.2 **Time for notification**

At least 15 Business Days' notice of every meeting will be given. The period of notice will be exclusive of the day on which the notice is served or deemed to be served and the day for which it is given.

3.3 **Contents of notice**

The notice will specify:

- (a) the place and Appointed Time of the meeting;
- (b) the general nature of the business to be transacted, in sufficient detail to enable a Holder to form a reasoned judgement in relation to it;
- (c) the right of a Holder to appoint a Representative; and
- (d) the Authorised Person (if any) for the meeting.

It will not be necessary to specify in the notice the terms of any resolution to be proposed, except in the case of a resolution proposed to be passed as an Extraordinary Resolution, in which case, the text of such Extraordinary Resolution must be specified in the Notice.

3.4 **Prior notification to Supervisor of Extraordinary Resolution**

The Issuer shall, at least 10 working days (or any lesser period approved by the Supervisor) before the Issuer gives notice of a meeting, advise the Supervisor in writing of the intended place and time of the meeting and the nature of the business to be conducted and shall, in respect of a meeting of any Retail Holders, obtain the prior written approval of the Supervisor to any documents it proposes to send to the relevant Retail Holders (such approval not to be unreasonably withheld or delayed). If the Supervisor so requires, the documents shall include any statement or comments which the Supervisor wishes to make in relation to the meeting and the matters to be considered at the meeting provided the Supervisor provides such statement or those comments in writing to the Issuer 5 Business Days (or any lesser period approved by the Issuer) before the notice of meeting is given under regulation 3.2.

3.5 **Accidental Omission and Irregular Notice**

- (a) The accidental omission to give any notice or a valid notice to, or non-receipt of notice by, any person entitled to receive notice will not invalidate the proceedings at any meeting.



- (b) Any irregularity in notice shall be waived if:
- (i) all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or lack of formal notice or if all such Holders agree to the waiver before, at or after that meeting; or
 - (ii) in the case of a meeting involving Retail Holders, the Supervisor indicates at the meeting that it is satisfied that the irregularity or lack of formal notice has not resulted in and is unlikely to result in any material prejudice to the Retail Holders.

4 **QUORUM**

4.1 **Quorum required**

No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business. A Holder is present at a meeting for the purposes of this Schedule 1 and part of the quorum if that Holder is present in person or by Representative or is participating in that meeting by means of audio, audio and visual or electronic communication.

4.2 **Quorum for Extraordinary Resolution**

Subject to regulation 4.4, the quorum for passing an Extraordinary Resolution of Holders will be Holders present in person or by Representative holding or representing at least 25% in nominal amount of the Bonds or (in the case of a meeting of any Class of Holders) of the Bonds of the relevant Class.

4.3 **Quorum for other business**

Subject to regulation 4.4, the quorum for the transaction of any business at a meeting of Holders other than the passing of an Extraordinary Resolution will be at least two Holders present in person or by Representative holding or representing at least 10% in nominal amount of the Bonds or (in the case of a meeting of any Class of Holders) of the Bonds of the relevant Class.

4.4 **Quorum not present**

If within 30 minutes (or any shorter period as the chairperson of the meeting may select and the Supervisor agrees to) from the Appointed Time a quorum is not present the meeting, if convened upon the request of Holders, will be dissolved. In any other case it will stand adjourned to a day and time (not being less than 10 Business Days) and to a place as may be appointed by the chairperson. At such adjourned meeting the Holders present will (regardless of their number or the nominal amount of Bonds held or represented by them) be a quorum for the transaction of business including the passing of Extraordinary Resolutions.

4.5 **Notice of adjourned meeting**

Notwithstanding regulation 3.1, notice of an adjourned meeting at which an Extraordinary Resolution is to be submitted must be given to the same Persons as those who were given notice of the original meeting (in the case of Holders notwithstanding that the date of despatch of the notice of the adjourned meeting may be more than 15 Business Days after the date on which the identity of



Holders was taken from the Register) and otherwise shall be given in the same manner (except in respect of the period of notice) as notice of the original meeting. Such notice will state that the Holders present at the adjourned meeting will form a quorum, whatever the nominal amount of Bonds held or represented by them. No notice will be required of any other adjourned meeting.

5 **RIGHT TO ATTEND AND SPEAK**

Any director, officer or solicitor of the Supervisor and any other person authorised in that behalf by the Supervisor, any Director, the Secretary or solicitor of the Issuer or any other person authorised in that behalf by the Issuer and the Auditors and any officer or employee of the Auditors may attend any meeting (including any adjourned meeting) and all such persons will have the right to speak at the meeting.

6 **CHAIRPERSON**

6.1 **Chairperson**

A person nominated in writing by the Supervisor will preside as chairperson at every meeting and 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 (or adjournment thereof), the Holders present and eligible to vote at the meeting will choose one of their number to be chairperson. Failing such choice, the Issuer may appoint the chairperson.

6.2 **Adjournment**

The chairperson may, with the consent of any meeting at which a quorum is present, and will, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

6.3 **Business at adjourned meeting**

No business will be transacted at any adjourned meeting except business, which might have been lawfully transacted at the meeting from which the adjournment took place.

7 **RECOGNITION OF OWNERSHIP**

The Persons registered as Holders in the Register at Proxy Closing Time will be recognised and treated as the legal holders of the Bonds specified in the Register whether such persons are or are not in fact the beneficial owners of such Bonds.

8 **AUTHORITY TO VOTE**

8.1 **Voting**

An individual Holder may vote personally or by his Representative and a Holder which is a corporation may vote by its Representative. A Holder may appoint more than one Representative, each such Representative being authorised to act on behalf of the Holder in respect of a specified Principal Amount of Bonds, provided that only one proxy is appointed to exercise the rights relating to a particular Note held by that Holder.



8.2 **Entitlement**

- (a) The persons named in the Register as Holders at the Proxy Closing Time or the personal representatives or assignees in bankruptcy of any such Holder will be exclusively entitled to vote in person at the meeting in respect of the Bonds recorded as owned by them.
- (b) For the purpose of establishing voting entitlements at a meeting the Register will be closed as of the close of business on the Business Day immediately preceding the day on which the Proxy Closing Time falls and will remain closed until after the relevant meeting has been closed or adjourned.

9 **PROXIES**

9.1 **In writing**

The instrument appointing a proxy must be in writing signed, or in the case of an electronic notice sent, by the appointor or of his or her attorney or, if the appointer is a corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.

9.2 **Proxy need not be a Holder**

A person appointed to act as a proxy need not be a Holder and a holder of a proxy has the right to speak at the meeting (or any adjournment thereof).

10 **HOLDER MAY APPOINT ATTORNEY**

Any Holder may by power of attorney appoint an attorney or attorneys (who need not be a Holder) to vote and act on his or her behalf at any meeting (and any adjournment thereof). An attorney will be entitled to produce evidence of his or her appointment at any time before the Appointed Time of the meeting or for the taking of a poll or at any time before an adjourned meeting, at which he or she proposes to vote, or at such meeting or adjourned meeting. Such attorney as so empowered may appoint a proxy for the Holder granting the power of attorney.

11 **CORPORATE REPRESENTATIVES**

11.1 **Authority**

A person authorised or permitted by law, by a Holder which is a corporation to act for it as its representative at any meeting or any adjourned meeting will be entitled to exercise the same powers on behalf of that corporation as that corporation could exercise if it were an individual Holder. A person so authorised will be entitled to produce evidence of his or her appointment at any time before the Appointed Time of the meeting or for the taking of a poll or at any time before an adjourned meeting, at which he or she proposes to vote, or at such meeting or adjourned meeting.



12 VOTING

12.1 General voting

An Extraordinary Resolution put to the vote of a meeting in the case of Retail Bonds will be taken by poll. Any other resolution put to the vote of a meeting will be decided on a show of hands or by voice as determined by the chairman, unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- (a) the chairperson;
- (b) the Supervisor;
- (c) the Issuer or any representative of the Issuer; or
- (d) by one or more Holders holding or representing not less than 5% in nominal amount of the Bonds for the time being outstanding or (as the case may be) of the appropriate Class of Bonds.

Unless a poll is so demanded, a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

12.2 Poll

If a poll is duly demanded it will be taken in such manner as the chairperson may direct. The result of such poll will be deemed to be the resolution of the meeting at which the poll was demanded. On a poll a person entitled to more than one vote need not use all his or her votes or cast all the votes he or she uses in the same way.

12.3 Chairman has casting vote

In case of an equality of votes whether on a show of hands or on a poll the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a casting vote in addition to the votes (if any) to which he or she may be entitled as a Holder or on behalf of Holders.

12.4 Number of votes

On a show of hands each person present at the meeting and entitled to vote (whether personally or by Representative) will have one vote only. On a poll every Holder who is present in person or by Representative will be entitled to one vote for every \$1.00 of the Principal Amount of Bonds of which he or she or it is the Holder. Any Bonds for the time being held by the Issuer or any related company (as defined in section 2(3) of the Companies Act) of the Issuer will not whilst held confer any right to vote.

12.5 Election of chairman

A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairperson may direct. The result of such



poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

12.6 No disturbance

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

12.7 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.

12.8 Disqualification

A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Bonds in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used. Neither the Issuer nor any Subsidiary of the Issuer shall be entitled to vote in respect of any Bonds held by them.

12.9 Voting by other means

- (a) A Holder may exercise the right to vote at any meeting by casting a postal vote, a vote by email or a vote using any other electronic means permitted by the Issuer or, in the case of a meeting involving Retail Holders, the Supervisor.
- (b) A Holder may cast a vote using the above means on all or any of the matters to be voted on at a meeting by sending a notice of the manner in which that Holder's Bonds are to be voted on to the Issuer or, in the case of a meeting involving Retail Holders, the Authorised Person for that meeting. Such notice must reach that person before the Proxy Closing Time unless the Issuer or the Authorised Person (as the case may be), in its absolute discretion, elects to accept any notice notwithstanding that that notice is received or produced at a place other than that specified above or out of time.
- (c) The Issuer or, in the case of a meeting involving Retail Holders, the Authorised Person for that meeting (as applicable) must:
 - (i) collect together all of those votes received by it;
 - (ii) in relation to each resolution to be voted on at that meeting, count the number of Holders voting for and against the resolution and the number of votes cast for and against the resolution by each Holder;



- (iii) sign a certificate that it has carried out the duties set out in regulations 12.9(c)(i) and (ii) above and that sets out the results of the counts required by regulation 12.9(c)(ii); and
- (iv) ensure that the certificate required by regulation 12.9(c)(iii) above is presented to the chairman.

13 EXTRAORDINARY RESOLUTION

13.1 Powers

Without limiting the rights powers and discretions conferred on the Supervisor by this deed and subject to regulation 14 below (in particular to the proviso to regulation 14.1) and except as expressly provided in the Conditions for any Series, a meeting of Holders will, in addition to all other powers which by this deed are specified as exercisable by Extraordinary Resolution (including as set out in this regulation 13.1) have the power to:

- (a) power to sanction either unconditionally or upon any conditions the release of the Issuer from the payment of all or any part of the Bond Moneys;
- (b) power to sanction the exchange of Bonds for or the conversion of Bonds into shares, Bonds, debentures, debenture Bonds or other obligations or securities of the Issuer or any other company formed or to be formed;
- (c) power to postpone the day when any Bonds shall become payable and to suspend or postpone or, with the concurrence of the Issuer, to accelerate the payment of interest on Bonds;
- (d) power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Holders against the Issuer howsoever such rights shall arise;
- (e) power to assent to any alteration or addition to the provisions contained in the Trust Deed or the Conditions proposed or agreed to by the Issuer and to authorise the Supervisor to concur in and execute any supplemental trust deed embodying any such alteration or addition;
- (f) power to give any sanction, assent, release or waiver of any breach or default by the Issuer under any of the provisions of the Trust Deed or the Conditions;
- (g) power to discharge, release or exonerate the Supervisor from all liability in respect of any act of commission or omission for which the Supervisor has or may become responsible under the Trust Deed;
- (h) power to sanction any scheme for the reconstruction of the Issuer or for the amalgamation of any such person with any other company where such sanction is necessary;



- (i) subject to the provisions of the Trust Deed, power to remove any Supervisor and to approve the appointment of or appoint a new Supervisor;
- (j) power to give any consent, approval, dispensation, authorisation or waiver, or to take any other action, able to be given or taken by the Supervisor or the Holders under the provisions of the Trust Deed or the Conditions;
- (k) power to consent to, approve, authorise and direct the Supervisor in respect of any of the matters referred to in regulation 13.1.(j) or any of the foregoing paragraphs of this regulation 13.1, or as to any other matter which may be necessary to carry out and give effect to any Extraordinary Resolution;
- (l) power to authorise the Supervisor to concur in and execute any supplemental deed or other document embodying such sanction, authority or approval, assent, release, waiver, direction or request referred to or otherwise permitted by this regulation 13.1.

13.2 **Binding on Holders**

An Extraordinary Resolution passed at a meeting of Holders duly convened and held in accordance with the regulations contained in this Schedule will be binding upon all the Holders whether present or not present at the meeting and each of the Holders and the Supervisor (subject to the provisions of its indemnity contained in the Trust Deed) will be bound to give effect thereto accordingly. The passing of any such resolution will as between the Supervisor and the Holders be conclusive evidence that the circumstances justify the passing thereof (the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution).

13.3 **Minutes**

Minutes of all resolutions and proceedings at every meeting will be made by the Supervisor or if the Supervisor is not present, by some person appointed by the chairperson of such meeting. Minutes must be entered in books from time to time provided for that purpose by the Supervisor at the expense of the Issuer. Any such minutes, if purporting to be signed by:

- (a) the chairperson of the meeting at which such resolutions were passed or proceeding had; or
- (b) any persons appointed by the said chairperson of the meeting for the purpose; or
- (c) the chairperson of the next succeeding meeting of Holders, will be prima facie evidence of the matters stated in those minutes.

13.4 Until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made will be deemed to have been duly held and convened and all resolutions passed or proceedings had at that meeting to be duly passed and had. Copies of such minutes must be furnished by the



Supervisor to the Issuer as early as possible after the holding of the meeting to which they refer.

13.4 **Class**

A resolution which in the opinion of the Supervisor affects one Class of Holders only (and which does not affect any other Holders) will be deemed to have been duly passed if passed at a separate meeting of the Holders of Bonds of that Class. All the preceding provisions of this Schedule will apply to such meetings mutatis mutandis as though references to Bonds and Holders were references to the Bonds of the Class in question and to the Holders of such Bonds respectively. Whenever there are Bonds outstanding which do not form a single Class then the provisions of this Schedule will have effect subject to the following:

- (a) a resolution which affects one Class only of Bonds is deemed to have been duly passed if passed at a properly convened and held meeting of the Holders of that Class;
- (b) a resolution which affects more than one class of Bonds, but does not give rise to a conflict of interest between the Holders of any of the Classes so affected, is deemed to have been duly passed if passed at a single properly convened and held meeting of the Holders of all Classes so affected;
- (c) a resolution which affects more than one Class of Bonds and gives or may give rise to a conflict of interest between the Holders of any of the Classes so affected is deemed to have been duly passed if passed at separate properly convened and held meetings of the Holders of each Class so affected; and
- (d) in respect of each meeting referred to in regulations 16.1(a) to 16.1(c) (inclusive), the provisions of this Schedule apply with the necessary modifications as though references in them to Bonds and Holders were references to the relevant Class or Classes and to the Holders of the Bonds comprised in such Class or Classes, respectively.

13.5 **Reliance**

The Issuer and Supervisor may rely on, and the Holders will be bound by, a legal opinion from a leading law firm in New Zealand to the effect that a resolution affects one Class only or, if it affects more than one Class of Bonds, does not give rise to a conflict of interest, for the purposes of determining the meeting or meetings which need to be held for the purposes of this regulation 16.

14 **RESOLUTIONS IN WRITING**

14.1 **Extraordinary Resolution**

Anything that may be done by Holders by a resolution or Extraordinary Resolution passed at a meeting of Holders may be done by a resolution in writing signed by not less than 75% of the Holders having the right entitled to vote on that resolution, holding in aggregate the Bonds conferring the right to cast not less than 75% of the votes which could be cast on that resolution.



14.2 **Counterparts**

Any such resolution may consist of several documents in similar form (including letters, electronic mail or other similar means of communication), each signed by one or more Holders.

14.3 **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.



SCHEDULE 2

Form of Directors' Certificate (clause 10.2)

Date:

To: [Supervisor]

This certificate is given by the undersigned on behalf of the Directors of Mercury NZ Limited (previously Mighty River Power Limited) (the *Company*) and pursuant to clause 10.2 of the Master Trust Deed dated 4 April 2003 between the Company as Issuer and [] as Supervisor (the *Master Trust Deed*) and any Supplemental Trust Deed entered between the parties (together the *Trust Documents*).

Terms defined in the Trust Documents have the same meaning where used in this certificate.

We, the undersigned, certify as follows:

- 1 To the best of our knowledge and belief (having made all due enquiry) during the period of [6/12] months ending on 20 (the *Reporting Date*):
 - (a) there is no matter which has occurred relating to the Company or any of its Subsidiaries which has adversely affected or may adversely affect the ability of the Company to perform its obligations under the Trust Documents and in respect of the Bonds, or which may adversely affect the interests of the Holders [*if any matter has occurred, state details*];
 - (b) the Company has complied with its issuer obligations, including all provisions binding upon it under the Trust Documents, [*if not, set out the particulars of the contravention and proposals to remedy the failure*];
 - (c) no event has happened that has caused an Event of Default to occur [*if such an event has occurred, specify particulars*];
 - (d) the Register has been duly maintained in accordance with the terms of the Trust Documents [*if the Register has not been duly maintained, set out the particulars of the failure to maintain*];
 - (e) all Bonds which have fallen due for payment have been paid or otherwise satisfied;
 - (f) all interest on Bonds has been paid or otherwise satisfied;
 - (g) except as disclosed in the notes to the annual/semi-annual Financial Statements of the Issuer made up as at and for the period ending on the Reporting Date, there have been no material changes in accounting policies or the valuation policies of assets or liabilities [*or state material changes*].
- 2 As at the date of this certificate, and having considered the financial position (including contingent liabilities) of the Company as a going concern (which the



Directors are satisfied will be the case) and such budgets, reports, projections, certificates and assurances as they deem necessary and the anticipated trading transactions and sources of finance arranged or expected on reasonable grounds to be arranged during the 12 months from the Reporting Date, to the best of our knowledge and belief the Company will be able to meet all its liabilities (including maturing Bonds and interest on Bonds) which fall due or are anticipated to become payable during the 12 months from the Reporting Date in accordance with accepted commercial practice.

3 Following are the calculations of the covenant in clause 9.3 of the Master Trust Deed, and the aggregate Principal Amount of the Bonds outstanding and any interest that is due but unpaid, in each case as at the Reporting Date:

(a) Net Worth	\$[]
(b) Total Assets	\$[]
(c) Total Liabilities	\$[]
(d) Aggregate Principal Amount of Bonds outstanding	\$[]
(e) Interest due but unpaid	\$[]

4 The only Principal Subsidiaries as at the Reporting Date are the following:

- []
- []
- [].

.....
Director

.....
Director



EXECUTION PAGE

Issuer

SIGNED on behalf of
MERCURY NZ LIMITED
by two Directors:

Director

Director

Supervisor

EXECUTED by **THE NEW ZEALAND
GUARDIAN TRUST COMPANY LIMITED**
by:

Authorised Signatory

Authorised Signatory

in the presence of:

Signature

Name

Address

Occupation

MERCURY NZ LIMITED
CERTIFICATE OF COMPLIANCE
(section 108(2)(b) of the Financial Markets Conduct Act 2013)

We refer to:

- 1 the amendment and restatement deed (*MTD Amending Deed*) dated on or around the date of this certificate amending and restating a master trust deed (*Master Trust Deed*) dated 4 April 2003 (as amended and/or restated from time to time) between Mercury NZ Limited (*Mercury*) and The New Zealand Guardian Trust Company Limited (*Supervisor*); and
- 2 the amendment and restatement deed (*STD Amending Deed*) dated on or around the date of this certificate amending and restating a supplemental trust deed (capital bonds) (*Supplemental Trust Deed*) dated 6 June 2014 (as amended and/or restated from time to time) between Mercury and the Supervisor.


In this certificate, the *Amended Trust Deeds* means the Master Trust Deed as amended and restated by the MTD Amending Deed and the Supplemental Trust Deed as amended and restated by the STD Amending Deed.

We certify that:

- (a) we are satisfied that the MTD Amending Deed and STD Amending Deed do not have a material adverse effect on the Retail Holders (as defined in the Amended Trust Deeds); and
- (b) the Amended Trust Deeds comply with sections 104 to 106 of the Financial Markets Conduct Act 2013 (*FMCA*) on the basis that:
 - (i) the Amended Trust Deeds contain the provisions required by sections 104 to 106 of the FMCA; and
 - (ii) we have received a legal opinion which confirms that the Amended Trust Deeds comply with sections 104 to 106 of the FMCA.

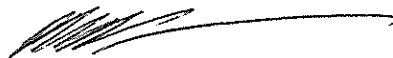
Dated 21 May 2019

Signed for and on behalf of
The New Zealand Guardian Trust Company Limited by: ACT 1730



CALE BROWN

Authorised Signatory



MARK JEPHSON

Authorised Signatory