

2017 Capital Bonds Trust Deed

PARTIES

Genesis Energy Limited
Issuer

The Parties Listed in Schedule 1
Guarantors

Trustees Executors Limited
Supervisor

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DEED dated 10 May 2017

PARTIES

Genesis Energy Limited
("Issuer")

The Parties Listed in Schedule 1
(each an "Original Guarantor" and together the "Original Guarantors")

Trustees Executors Limited
("Supervisor")

INTRODUCTION

- A. The Issuer wishes to issue unsecured, subordinated Bonds to be constituted under this deed.
- B. Each Guarantor has agreed to guarantee on an unsecured, subordinated basis to Holders and the Supervisor the due and punctual payment of all amounts payable on the Bonds.
- C. The FMC Act requires the appointment of a supervisor in respect of the Bonds and the execution by the Issuer and the Supervisor of a trust deed.
- D. The Supervisor has accepted appointment to act as supervisor on behalf of the Holders in accordance with this deed.

COVENANTS

1. INTERPRETATION

1.1 Definitions: In this deed, unless the context otherwise requires:

"Agency Agreement" means the Registry Services and Plan Management agreement between the Issuer and the Registrar dated 1 July 2015.

"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 the Stamp and Cheque Duties Act 1971.

"Approved Issuer Regime" means Part VIB of the Stamp and Cheque Duties Act 1971, the application of which enables the payment of interest (as defined in section 86F of the Stamp and Cheque Duties Act 1971) 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 under section RF 12(2) of the Income Tax Act 2007.

"Auditors" means the Auditor-General and any auditors appointed to carry out the audit for the time being of the Group on the Auditor-General's behalf.

"Board" means, in relation to an Obligor, the board of directors of that Obligor.

"Bonds" means the unsecured, subordinated capital bonds constituted by this deed and which are for the time being outstanding, and includes the Conditions.

"**Bond Moneys**" means, in relation to a Bond at any time, the Principal Amount, interest (if any) and other moneys payable on or in relation to the Bond.

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

"**Capital Gazette**" means the New Zealand Gazette published or purporting to be published under the authority of the New Zealand Government, and includes a supplement.

"**Commencement of Liquidation**" means, in relation to an Obligor, the commencement of Liquidation or the removal of the Obligor from the register pursuant to section 317 of the Companies Act.

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

"**Conditions**" means the terms and conditions from time to time applicable to the Bonds in the form set out in schedule 2 (as modified from time to time in accordance with this deed).

"**Event of Default**" has the meaning given in the Conditions.

"**Extraordinary Resolution**" means a resolution approved at a meeting of Holders duly convened and held in accordance with schedule 3 by Holders holding Bonds with a Principal Amount of no less than three-quarters of the Principal Amount of Bonds held by those persons who are entitled to vote and who vote on the question.

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

"**Financial Statements**" means, at any date in respect of the Group, consolidated financial statements of the Group as at that date which comply with NZ GAAP.

"**Fixed Establishment**" has the meaning given to that term in the Income Tax Act 2007.

"**FMA**" means the Financial Markets Authority.

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

"**FMC Regulations**" mean the Financial Markets Conduct Regulations 2014.

"**Group**" means, at any date, the Issuer and its Subsidiaries at that date.

"**Guarantee**" means the guarantee contained in clause 3.

"**Guarantor**" means the Original Guarantors and each Subsidiary of the Issuer that accedes as a Guarantor in accordance with clause 4, unless, in any case, the Guarantor has been released from liability under this deed in accordance with clause 5.

"**Guaranteed Moneys**" means, at any time, all moneys payable by the Issuer on or in relation to the Bonds to the Holders pursuant to this deed at that time.

"**Holder**" means, in relation to a Bond, and, at any time, the person whose name is entered into the Register as the holder of the Bond.

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

"**Liquidation**" means, in relation to an Obligor:

- (a) the process of liquidation provided for in Part XVI of the Companies Act; or

- (b) any analogous procedure following which the Obligor will cease to validly exist, or be duly incorporated; or
- (c) the Obligor becoming subject to statutory management under the Corporations (Investigation and Management) Act 1989,

but excludes a reconstruction or amalgamation:

- (a) on terms approved by Extraordinary Resolution; or
- (b) under Part XIII of the Companies Act where the successor to the Obligor assumes the obligations of the Obligor under this deed and the Bonds.

"Liquidator" means, in relation to an Obligor, any official (including a statutory manager) in whom management of the Obligor may become vested for the purposes of liquidating its assets and repaying its debts and administering to the eventual cessation of its business.

"Listed" means listed and quoted on the NZDX market, and **"Listing"** has a corresponding meaning.

"Listing Rules" means the NZSX/NZDX Listing Rules in force from time to time.

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

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

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

"NZX" means NZX Limited.

"Obligors" means, at any time, the Issuer and each Guarantor at that time, and **"Obligor"** means any of them.

"Offer Documents" means any prospectus, investment statement, disclosure or other offering document relating to the issue of the Bonds, in each case which has been prepared in accordance with all applicable laws in force at that time, by, or on behalf and with the approval of, the Obligors, and shall include (in each case) all documents to be distributed with or which form part of the relevant document.

"Ordinary Resolution" means a resolution passed at a meeting of Holders duly convened and held in accordance with schedule 3 by a majority consisting of not less than one half of the votes cast on that resolution or, if a poll is required, by not less than one half of the votes cast on the poll.

"Principal Amount" means, in relation to a Bond, the principal amount of the Bond as recorded in the Register.

"Proxy Closing Time" means 48 hours before the time appointed for commencement of the relevant meeting of Holders or the taking of a poll of Holders.

"Register" means the register of Bonds to be established and maintained in accordance with this deed, the Agency Agreement and section 214 of the FMC Act.

"Registrar" means Computershare Investor Services Limited or any other persons as may be appointed by the Issuer to maintain the Register.

"Senior Creditors" means, in relation to an Obligor, persons to whom Senior Indebtedness of that Obligor is owed.

"**Senior Indebtedness**" means, in relation to an Obligor, all indebtedness (present or future) of that Obligor:

- (a) a claim in respect of which would be admitted in a Liquidation of that Obligor; and
- (b) which is not by its terms expressed to rank in a Liquidation subordinate to, or equally with the Bonds or, as the case may be, the Guarantees.

"**Statement**" means a statement issued by the Issuer to a Holder in relation to the Bonds held by the Holder, if applicable, in compliance with the Listing Rules.

"**Subsidiary**" means, in relation to any person, a subsidiary of that person within the meaning of section 5 of the Companies Act (or any other person which would be a subsidiary of that person if that person and the other person were both registered under the Companies Act).

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

- (a) "**class**" and "**supervisor**" have the meanings given to them in the FMC Act;
- (b) a "**clause**" or "**schedule**" is a reference to a clause of, or the schedule to, this deed;
- (c) a "**company**" means any company or body corporate wherever incorporated or domiciled and, where the context so permits, includes an individual;
- (d) the "**dissolution**" of any person includes the bankruptcy, winding up or liquidation, removal from the register of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets;
- (e) a "**governmental agency**" includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law. It also includes any self-regulatory organisation established under statute or any stock exchange;
- (f) a "**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute or other legislative measure, in each case of any jurisdiction whatever and "**lawful**" and "**unlawful**" shall be construed accordingly;
- (g) something having a "**material adverse effect**" on the Bonds is a reference to it having a material adverse effect on the ability of the Issuer and the Guarantors (taken as a whole) to pay interest or repay any principal amount on the Bonds when due in accordance with the terms of this deed and the Conditions;
- (h) "**month**" means calendar month;
- (i) "**outstanding**" means, in relation to Bonds, all Bonds other than those which have been:
 - (i) Redeemed in accordance with this deed and the Conditions; or
 - (ii) purchased and cancelled in accordance with this deed and the Conditions,

provided that, for the purposes of (1) ascertaining the right to attend and vote at any meeting of the Holders, and (2) the exercise of any discretion, power or

authority which the Supervisor is required, expressly or impliedly, to exercise in or by reference to the interests of the Holders, those Bonds which are beneficially held by or on behalf of the Issuer or any of its Subsidiaries and not cancelled shall (unless no longer so held) be deemed not to remain outstanding;

- (j) **"person"** includes an individual, firm, company, corporation or unincorporated body of persons, organisation or trust, and any state or governmental agency, in each case whether or not having a separate legal personality;
- (k) **"regulated offer"** shall be construed in accordance with the FMC Act;
- (l) **"tax"** includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any government or governmental agency together with any interest, penalty, charge, fee or other amount imposed or made on or in respect of any of the foregoing; and
- (m) **"written"** and **"in writing"** includes all means of reproducing words in a tangible and permanently visible form.

1.3 **Miscellaneous:**

- (a) **Definitions in Companies Act and FMC Act:** Except where otherwise expressly provided in this deed, words defined in the Companies Act or the FMC Act have the same meanings in this deed.
- (b) **Headings:** The introduction to and headings in this deed are inserted for convenience only and are to be ignored in construing this deed.
- (c) **Plural, singular and gender references:** Unless the context otherwise requires, words denoting the singular number only are to include the plural and *vice versa* and words denoting any gender are to include all genders.
- (d) **References to legislation:** References to any legislation or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted.
- (e) **Modified, novated, supplemented, varied and replaced document:** References to any document (however described) will include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (f) **Schedules:** Each schedule has the same form and effect as if set out in the body of this deed and references to this deed include the schedules and the Conditions.
- (g) **References to time:** Anything which may be done at any time may also be done from time to time.

1.4 **Definitions in Conditions:** Words and expressions defined in the Conditions and not otherwise defined in this deed have the same meanings where used in this deed unless the context otherwise requires.

1.5 **Non-Business Days:** Anything which is required by this deed or the Conditions to be done on, or as of, a day which is not a Business Day is to be done on, or as of, the next Business Day.

2. ISSUE AND CONSTITUTION OF BONDS

2.1 **Constitution of Bonds:** The Issuer may constitute and issue the Bonds in accordance with this deed.

2.2 **Conditions of issue:** Each Bond is to be issued subject to the Conditions in accordance with this deed.

2.3 **Deed and Conditions binding:** This deed and the Conditions are binding on each Obligor, the Supervisor, the Holders and all persons claiming through or under them respectively and the Bonds are to be held subject to this deed and the Conditions.

2.4 **Payment of Issue Price:** Each applicant for Bonds must pay to the Issuer, upon application, the Issue Price for the Bonds set out in that application for Bonds following which, subject to acceptance of that application by the Issuer in full or in part, the Issuer must issue that Holder with the appropriate number of Bonds for which the application is accepted.

2.5 **Covenant to observe this deed and the Conditions:**

(a) **Indebtedness:** The Issuer acknowledges its indebtedness to each Holder, and to the Supervisor on behalf of the Holders, in relation to the payment of the Bond Moneys.

(b) **Payment:** The Issuer covenants with the Supervisor that it will:

(i) pay the Bond Moneys to, or as directed by the Supervisor; and

(ii) comply with, perform and observe all the provisions of this deed and the Conditions.

(c) **Payment in satisfaction of obligations:** Each payment in respect of the Bonds duly made to the Holders or the Supervisor will be in satisfaction of the relevant obligation of the Issuer to the Holders and the Supervisor under this deed.

(d) **Benefit of covenants:** The Supervisor is to take and hold the benefit of the covenants given to it under this deed by the Issuer in respect of the Bonds and by the Guarantors in respect of the Guarantees, (in each case other than those covenants intended to be for the benefit of the Supervisor for its own account) for the Holders generally. No Holder is entitled to enforce any of its rights or remedies under this deed directly against an Obligor unless the Supervisor fails to enforce such rights or remedies within a reasonable period after having become bound to do so in accordance with this deed.

2.6 **Holder absolute owner:** Each Obligor and the Supervisor is, notwithstanding any notice to the contrary, entitled to treat the Holder of any Bond as its absolute and beneficial owner and is not required to recognise any trust or equity or security interest affecting such ownership (except as required by law or order of any competent court).

2.7 **Cancellation on purchase or Redemption:** Each Bond which is Redeemed will be deemed to be cancelled, and none of the Obligors or the Supervisor will have any further liabilities or obligations in respect of that Bond or the relevant Holder. The Issuer or any of its wholly owned Subsidiaries may at any time purchase a Bond for its own account. Each Bond so purchased by the Issuer or a wholly owned Subsidiary may be cancelled by written notice from the Issuer to the Registrar (with a copy to the Supervisor) to that effect and none of the Obligors or the Supervisor will have any further liabilities or obligations in respect of that Bond or the relevant Holder.

- 2.8 **Validity of issued Bonds:** Neither the Supervisor nor any person named as a Holder on the Register in relation to any Bond need be concerned or obliged to enquire whether any Bond purporting to be evidenced by the Register has been issued in accordance with this deed or, if the Bonds are Listed, the Listing Rules. Each Bond issued for valuable consideration will be deemed to be validly issued and constituted by this deed notwithstanding that the issue of such Bond was in breach of any provision of this deed, but without prejudice to the Supervisor's rights under or in accordance with this deed against the Issuer in respect of any such breach.
- 2.9 **Payment of brokerage or commission:** The Issuer may pay a commission, procuration, application or issue fee or brokerage to any person in respect of subscribing for, underwriting the issue of, or obtaining issues of, or arranging the sale of, the Bonds.
- 2.10 **Unclaimed payments:** Any payment made by an Obligor or the Supervisor to any Holder at its address last entered in the Register which is returned unclaimed and remains unclaimed by the person entitled to it during the 12 month period thereafter, must be paid to that Obligor to be held by it for the Holder concerned without any liability to invest or pay interest on that amount. Unless otherwise required by law, any money not so claimed within a period of six years from the original date of payment may be applied by that Obligor for its own purposes, and that Obligor and the Supervisor will have no further liability in respect of the amount concerned.
- 2.11 **Reinstatement:** If any payment made to the Supervisor or to any Holder by or on behalf of an Obligor is avoided by law, such payment will be deemed not to have discharged or affected the liability of that Obligor in respect of which that payment was made. In this circumstance, the Supervisor, the Holder and that Obligor will each be restored to the position in which it would have been, and will be entitled to exercise all the rights which each would have had, if such payment had not been made.
- 2.12 **Listing:** The Issuer may seek to have Bonds Listed and quoted on the NZDX market.
- 2.13 **Statements:** Where Bonds are accepted for quotation on the NZDX market, the Issuer must issue, or cause to be issued, to each Holder, a Statement in relation to each Bond issued to that Holder, in accordance with, and in the time required by, the Listing Rules.

3. GUARANTEE

- 3.1 **Guarantee:** Each Guarantor unconditionally and irrevocably guarantees, to the Holders and the Supervisor the due and punctual payment by the Issuer of the Guaranteed Moneys as and when the same shall become due and payable in accordance with this deed, and the due observance and punctual performance of, and compliance by the Issuer with, its obligations under this deed, to the Holders and the Supervisor, during the term of this Guarantee.
- 3.2 **Payment on Demand:** Whenever any default has been made by the Issuer in payment of all or part of the Guaranteed Moneys to Holders or the Supervisor, each Guarantor shall on demand by the Holders (subject to clause 2.5(d)) or the Supervisor, pay all amounts then due and payable with respect to the Guaranteed Moneys.
- 3.3 **Guarantor as Principal Debtor:** The liability of each Guarantor under this Guarantee is deemed to be the liability of a principal debtor and not merely a surety and, subject to clause 5, such liability will not be affected or diminished, nor will any security or guarantee provided by a Guarantor be released or discharged, by any act, indulgence, omission or matter which but for this clause would have operated to release that Guarantor wholly or partly from its liabilities under this deed, including:
- (a) **Granting of Time:** the granting of any time, credit, indulgence, waiver or other concession to an Obligor or any other person whether by the Supervisor, the

Holders or any other person (whether or not at the request of that Obligor or other such person);

- (b) **Insolvency:** the dissolution of an Obligor or any other person or the appointment of any administrator, receiver, manager, inspector, trustee, statutory manager or other similar person in respect of that Obligor or any other person over the whole or any part of its or their respective assets or any step being taken in respect of such dissolution or appointment;
 - (c) **Change in Position:** an Obligor or any other person being or becoming a party to an amalgamation, assignment for the benefit of creditors, scheme of arrangement, compromise, scheme of reconstruction or change in constitution, composition, status or control in each case however arising, including by reason of a change in constitutive documents or by incorporation or the death, incapacity, retirement, appointment or admission of any partner, trustee or other person;
 - (d) **Liability Ceasing:** the liability of an Obligor or any other person ceasing from any cause whatever (including any release or discharge by the Supervisor or by operation of law);
 - (e) **Other Agreements:** any other person providing or joining in providing any agreement, guarantee or security or the failure by an Obligor or any other person to provide, or being incompetent to give this Guarantee or any other agreement, guarantee or security required by the Supervisor or the Holders;
 - (f) **Other Obligations:** any agreement, guarantee (including this Guarantee), security or right held by or available to the Supervisor or the Holders at any time being or becoming in whole or in part void, voidable, defective or unenforceable for any reason or being released, discharged or varied in whole or in part;
 - (g) **Variation:** any amendment, variation, waiver, compounding, compromise, release, abandonment, relinquishment or renewal of any agreement (including any alteration or addition to this deed), guarantee, security or any assets, or any rights of the Supervisor or the Holders against an Obligor or any other person (a "**change in circumstance**") or any failure to notify an Obligor or such person of such change in circumstance; or
 - (h) **Enforcement:** the enforcement of, or failure to enforce (including the failure to make a valid demand in respect of), any rights under any agreement, guarantee or security or any law.
- 3.4 **Independent Obligation:** Each Guarantee is a principal obligation and is in addition to and independent of and not in substitution for any other agreement, guarantee, security or right which the Supervisor or the Holders may have at any time, and will not merge with or in any way be prejudiced or affected by, or prejudice or affect, any such agreement, guarantee, security or right. Subject to clause 2.5(d), the Supervisor and the Holders may enforce a Guarantee without first taking steps or proceedings against the Issuer or any other person.
- 3.5 **Continuing:** Each Guarantee is to be a continuing guarantee and will, subject to clause 5, remain in full force and effect by way of continuing security until the whole of the Guaranteed Moneys has been fully paid and/or satisfied and will not be considered as wholly or partially satisfied, discharged or affected by any intermediate payment or settlement of account.
- 3.6 **Exercise of the Guarantor's Rights:** So long as a Guarantor has any indebtedness for Guaranteed Moneys which is unpaid or unsatisfied:
- (a) **No Competition:** any right of the Guarantor, by reason of the performance of any of its obligations under its Guarantee, to be indemnified by the Issuer or any other person, to directly or indirectly prove in the estate of the Issuer or any other person,

to take the benefit of or enforce any agreement, security or other guarantee or exercise any other right it may have to receive the benefit of any distribution or payment shall be exercised and enforced only in such manner and on such terms as the Holders by an Extraordinary Resolution, may require; and

(b) **Moneys on Trust:** any amount received or recovered by the Guarantor:

(i) as a result of any exercise of any such right; or

(ii) in the dissolution of the Issuer or any other person,

shall be held in trust for the Holders and the Supervisor and immediately paid to them.

3.7 **Payment in Gross:** Any distribution, payment or other money whatever received at any time by the Supervisor or the Holders which may be applied in reduction of a Guarantor's indebtedness for Guaranteed Moneys will be regarded as a payment in gross without any right on the part of the Guarantor to stand in the place of the Supervisor or the Holders in respect of, or to claim the benefit of, any moneys so received against the Guarantor until the whole of the Guaranteed Moneys have been paid or satisfied so that, in the event of the dissolution of the Issuer or any other person, the Supervisor or the Holders may, subject to clause 2.5(d), prove against it for the whole indebtedness of the Issuer in relation to the Guaranteed Moneys until the whole of the Guaranteed Moneys have been paid or satisfied.

3.8 **Suspense Account:** The Supervisor may retain in a suspense account and appropriate (subject to the provisions of this deed) at its discretion any amount received from a Guarantor in respect of its indebtedness for Guaranteed Moneys until the Supervisor has received one hundred cents in the dollar in respect of the Guarantor's indebtedness for Guaranteed Moneys.

3.9 **Indemnity:** If all or any of the Guaranteed Moneys (or any sum which, if recoverable, would have formed part of the Guaranteed Moneys) are or may be irrecoverable from a Guarantor, or if all or any of such moneys are not recoverable from the Guarantors by the Supervisor or (subject to clause 2.5(d)) the Holders under the Guarantees, then and in each such case:

(a) **Indemnity:** each Guarantor as a separate and additional liability under this deed indemnifies and will keep indemnified the Supervisor and the Holders in respect of such moneys; and

(b) **Payment:** each Guarantor, as a principal debtor, will, on demand, pay to the Supervisor or (as the case may be) the Holders (subject to clause 2.5(d)), a sum equal to the amount of such moneys,

and the terms of this deed shall (with all necessary modifications) apply so far as possible to this indemnity.

3.10 **Not Affected:** The indemnity in clause 3.9 shall apply to all or any of the Guaranteed Moneys (or any sum which, if recoverable, would have formed part of the Guaranteed Moneys) which is or may be irrecoverable for any reason (whether or not within the knowledge of the Supervisor or the Holders) including any legal or equitable limitation, disability or incapacity of or affecting a Guarantor or any other person, any transaction relating to such moneys being or becoming at any time void, voidable, defective or otherwise unenforceable and any other circumstances which allow a Guarantor to avoid paying such sums, in whole or in part.

3.11 **Marshalling:** None of the Supervisor or the Holders shall be under any obligation to marshal or appropriate in favour of a Guarantor.

4. FURTHER GUARANTORS

- 4.1 **Method of joining:** The Issuer may, at any time after any person becomes a Subsidiary, procure that such Subsidiary becomes a Guarantor by executing a deed in, or to the effect of, the form prescribed in schedule 4.
- 4.2 **Copy of deed:** The Issuer shall, following execution by a Subsidiary of a deed in or to the effect of the form provided in schedule 4, give to the Supervisor a copy of that deed.

5. RELEASE OF GUARANTORS

- 5.1 **When Guarantor may be released:** Subject to clause 5.2, any Guarantor may be released from all its obligations and liabilities as a Guarantor under this deed, if:
- (a) it will cease to be a Subsidiary upon the disposal of the shares in its capital by the Group and if two directors of the Issuer certify in writing for the benefit of the Supervisor that, in their opinion, the disposal of shares is commercially desirable and that the consideration being obtained is satisfactory having regard to the terms and circumstances of the sale; or
 - (b) two directors of the Issuer certify in writing for the benefit of the Supervisor that, in their opinion, the release of the Guarantor will not have a material adverse effect on the Bonds; or
 - (c) it is to be liquidated or dissolved and all of its assets available for distribution will be distributed to another Guarantor or the Issuer; or
 - (d) the Supervisor has consented in writing to the release of that Guarantor.
- 5.2 **Conditions precedent to release:** No Guarantor may be released pursuant to clause 5.1 unless (except where clause 5.1(d) applies) no breach of the provisions of this deed has occurred and remains unremedied or will occur as a result of such release.
- 5.3 **Method of release:** Release of a Guarantor pursuant to clause 5.1 shall be effected by the Issuer and the relevant Guarantor executing a deed of release in, or to the effect of, the form set out in schedule 5.
- 5.4 **Advice to Supervisor:** The Issuer shall provide to the Supervisor, within 14 days after execution a copy of each deed of release executed pursuant to clause 5.3.

6. SUBORDINATION AND STATUS OF BONDS AND THE GUARANTEE

- 6.1 **Status and subordination:** Each Bond is the direct, unsecured, subordinated obligation of the Issuer and ranks equally without any preference with all other Bonds. Each Guarantee is the direct, unsecured, subordinated obligation of the relevant Guarantor. In any distribution of assets by an Obligor in Liquidation (including by way of exercise of rights of set-off) the rights of the Supervisor and the Holders to the Bond Moneys or, as the case may be, the Guaranteed Moneys are to be subordinated to all moneys payable by the relevant Obligor to its Senior Creditors, so that in any such distribution no payment will be made on account of the Bond Moneys or, as the case may be, the Guaranteed Moneys to the Supervisor or the Holders until the Senior Creditors of that Obligor have been paid in full.
- 6.2 **Priority:** The Supervisor agrees, and, by subscribing or purchasing a Bond each Holder will be deemed to agree, that:
- (a) **Agreement to accept lower priority:** in accordance with section 313(3) of the Companies Act, the Holder is accepting a lower priority in respect of the debt

represented by the Bond and the Guarantees than that which it would otherwise have under section 313; and

- (b) **Deed to take effect in accordance with its terms:** nothing in section 313 of the Companies Act will prevent this deed from having effect in accordance with its terms.
- 6.3 **Subordinated contingent debt:** In the Liquidation of an Obligor, neither the Supervisor nor any Holder is entitled to prove for the Bond Moneys or, as the case may be, the Guaranteed Moneys except as a debt which is subject to, and contingent upon, prior payment of the Senior Creditors of that Obligor in full.
- 6.4 **Other indebtedness permitted:** Nothing in this deed, prior to the Commencement of Liquidation of an Obligor, in any way restricts the right of that Obligor to incur indebtedness or issue obligations or securities ranking in priority to, or equally with, or subordinate to, the indebtedness and obligations of that Obligor in respect of any Bonds or, as the case may be, the Guarantees.
- 6.5 **No subordination of Supervisor's entitlement:** Nothing in this deed subordinates or otherwise affects or prejudices, or defers in priority of payment, the payment of the costs, charges, expenses, liabilities, indemnified amounts, remuneration or other moneys payable to the Supervisor (or any officer, employee or agent of the Supervisor) as provided for, or referred to, in this deed, all of which will be payable to the Supervisor at the time and in the manner provided by this deed.
- 6.6 **Trust:** Any payment, whether voluntarily or in any other circumstances, received by the Supervisor or a Holder from or on account of an Obligor (including by way of credit, set-off or otherwise) or from the Liquidator or any receiver, administrator, manager or statutory manager of an Obligor in breach of this clause 6 is to be held by the Supervisor or the relevant Holder in trust for and to the order of the Senior Creditors of that Obligor. The trust hereby created will, subject to clause 6.11, be for a term expiring on the earlier of the date on which all Senior Creditors of that Obligor have been paid in full or the date on which the Liquidator determines that Obligor has no further assets with which to satisfy the claims of the creditors.
- 6.7 **Contracts (Privity) Act 1982:**
- (a) For the purposes of the Contracts (Privity) Act 1982, but subject to paragraph (b) below, this clause 6 is intended to confer a benefit upon the Senior Creditors of the Obligors and to be enforceable by the Senior Creditors of the Obligors directly.
- (b) For the purposes of section 6 of the Contracts (Privity) Act 1982, any amendments made to this deed in accordance with clause 11.5 (but not amendments to this clause 6) shall be binding upon the Senior Creditors of the Obligors whether or not they have consented to such amendment.
- 6.8 **Enforcement:**
- (a) **Claims by Holders:** No Holder may claim or prove in the Liquidation of an Obligor for any amount owing to him or her under any Bond or, as the case may be, a Guarantee to the extent that the Supervisor has claimed or proved for, or has determined to claim or prove for, such amount in such Liquidation on behalf of such Holder, and any claim or proof made contrary to this clause must be withdrawn by such Holder.
- (b) **Enforcement by Holders:** No Holder may proceed against an Obligor or the Supervisor for the enforcement or performance of any provision of this deed or the Conditions that is solely for the benefit of the Supervisor.

- 6.9 **Distribution on Liquidation:** Any amount received by the Supervisor under or in respect of this deed or the Bonds in or upon the Commencement of Liquidation of an Obligor and not paid to the Liquidator must be applied, and pending such application must be held by the Supervisor upon trust to be applied, subject to any direction made by any court and except as required by law:
- (a) **Supervisor's expenses:** first, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor (or any officer, employee or agent of the Supervisor) and of all remuneration, indemnified amounts and other moneys payable to the Supervisor (or any officer, employee or agent of the Supervisor) as provided or referred to in this deed;
 - (b) **Senior Creditor's indebtedness:** secondly, in payment to that Obligor to be held by it upon trust to apply the same in or towards the discharge of the indebtedness of that Obligor to its Senior Creditors according to their respective rights and interests and, pending payment of those amounts to that Obligor, any such amount received by the Supervisor must be held by it on trust to pay the same to that Obligor to be held on the trusts constituted or to be constituted under this clause;
 - (c) **Holder's indebtedness:** thirdly, subject to the indebtedness of that Obligor to its Senior Creditors having been paid or satisfied or provided for in full, in or towards payment to each Holder, *pari passu* in proportion to the Principal Amounts of the Bonds held by him or her, of the aggregate Bond Moneys or, as the case may be, the Guaranteed Moneys; and
 - (d) **Surplus to Obligor:** fourthly, in payment of the surplus (if any) of such moneys to that Obligor, or to such other person as may otherwise be lawfully entitled to those moneys.
- 6.10 **Reliance on Liquidator:** Following the Commencement of Liquidation of an Obligor, the Supervisor will be entitled and is authorised to call for and to accept as conclusive evidence a certificate from the Liquidator for the time being regarding the amount of indebtedness to Senior Creditors of that Obligor which has not been satisfied or otherwise provided for and the Supervisor shall be entitled to rely upon a statement in writing from the Liquidator to the effect that all such indebtedness has been satisfied or discharged.
- 6.11 **Termination of trusts:** The trusts contained in this deed in favour of the Senior Creditors of an Obligor terminate on the date which is 80 years after the date of execution of this deed, except to the extent that any interests under such trusts have vested at that date and without affecting the contractual rights and obligations of that Obligor and the Supervisor under this deed, and any amounts which would, but for this clause, have been held on trust for the Senior Creditors will be held on trust for that Obligor absolutely.
- 6.12 **Permitted payments and receipts:** Until the Commencement of Liquidation of an Obligor, that Obligor is entitled to pay, and a Holder or the Supervisor or any other person on behalf of a Holder is entitled to receive payment from or on behalf of that Obligor of, any Bond Moneys or, as the case may be, the Guaranteed Moneys, and the Supervisor is entitled to pay any amounts to or for the benefit of the Holders or any other person on behalf of any Holders. The payment and receipt prior to the Commencement of Liquidation of an Obligor of any such amount will not constitute a breach of, or be subject to, clause 6.1 and such payment is to be received free of any obligation on the recipient of that payment to refund or return the same, or to hold the same in trust, in accordance with this deed.
- 6.13 **Permitted proceedings:** Nothing in this deed excludes, limits, defers or otherwise affects:
- (a) **Proceedings seeking directions from court:** the right of the Supervisor to seek directions from a court in accordance with the FMC Act or to take any other proceedings seeking the directions of, or guidance by, any court or other authority

as to the performance of its functions and duties hereunder or otherwise in relation to this deed; or

- (b) **Proceedings seeking declaratory judgment:** any proceedings taken by the Supervisor or any Holder at any time seeking a judgment or order declaratory of the rights or obligations of any Holder or any party to this deed; or
- (c) **Other proceedings:** the right of the Supervisor or a Holder, in the circumstances expressly permitted by this deed and the Conditions, to take any action permitted by this deed.

6.14 **Interest payable following Commencement of Liquidation:** Nothing in this deed limits the application of section 311 of the Companies Act, and the Supervisor and each Holder may, notwithstanding any provision in this deed, claim for interest payable thereunder (such interest to form part of the Bond Moneys).

7. THE REGISTER

7.1 **Register:** The Issuer shall at all times while Bonds are outstanding cause the Registrar to maintain the Register, which must record in respect of each Bond:

- (a) **Name and address:** the name and address of each person registered as a Holder and the details of the account to which payments in relation to the Bonds are to be made;
- (b) **Issue Date:** the Issue Date of each Bond;
- (c) **Transfers:** details of all of Bonds, including the date of registration of each transfer;
- (d) **Cancellation:** all Redemptions or purchases and cancellations of Bonds;
- (e) **Tax:** the tax residency of the Holder and details of any RWT exemption certificate (as defined in section YA 1 of the Income Tax Act 2007) held by the Holder and such other information as is provided to the Registrar in accordance with clause 7.7; and
- (f) **Other information:** such other information as may be required by law and the Listing Rules or by the Supervisor.

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

7.3 **Register conclusive:** Except as ordered by a court of competent jurisdiction, the Obligors, the Supervisor and the Registrar are each entitled to recognise the Holder of a Bond as the absolute owner of the Bond and shall not be bound by any actual or constructive notice of any trust (express, implied or constructive), encumbrance, security or other adverse interest to which any Bond may be subject. No recognition of any trust (express, implied or constructive), encumbrance, security or other adverse interest shall be entered on the Register. In the event of any conflict between any certificate, notice of registration or Statement issued in respect of a Bond and the Register, the Register shall prevail.

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

7.5 **Co-ownership of Bonds:**

- (a) Where two or more persons are registered as Holders of the same Bond(s) by virtue of any application for Bonds, transfer or other instrument, then, unless the contrary is expressed in the application, transfer, or other instrument, those persons will be deemed to hold the Bond(s) as joint tenants with right of survivorship.
- (b) If two or more persons apply (on an application for any Bonds or by transfer or other instrument), to be registered as Holders as tenants in common, the Registrar may, after notifying the persons of its intention to do so, divide the Bonds into parcels which represent each such person's share. If the Bonds cannot be divided into shares each of which share would comply with the applicable minimum Principal Amounts (and any minimum multiples thereof), the Registrar may refuse to accept the application, transfer or other instrument (as the case may be).

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

7.7 **Tax details:** Each Holder shall give written notice to the Registrar of its country of residency for taxation purposes and, if not resident in New Zealand for taxation purposes, of whether the Holder is engaged in business in New Zealand through a Fixed Establishment in New Zealand and whether the Bonds are held for the purposes of the business carried on by the Holder through such Fixed Establishment, and such other information as the Registrar or the Issuer may request in order to determine whether or at what rate it is required to make any deduction or withholding on account of tax from any payment under this deed or a Bond.

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

7.9 **Register compliance:** The Issuer shall comply with, and shall use all reasonable endeavours to ensure that the Registrar complies with all statutory requirements and the requirements of this deed relating to the keeping of the Register and the details entered in the Register. Without limitation to the generality of the foregoing, the Register shall be audited by the Auditors or another firm annually and at such other times as the Supervisor may request in writing if the Supervisor has reasonable grounds for believing that the requirements of this clause 7.9 are not being complied with in relation to the Register. If a firm other than the Auditors audit the Register, the Issuer must ensure that other firm provides a confirmation that the Register has been duly maintained, such confirmation to be provided at the same time as the latest Audited Financial Statements are provided in accordance with clause 9.3(a)(i).

7.10 **No liability:** The:

- (a) Registrar will not be liable for any breach by the Issuer of any representation, obligation or undertaking (including the non-payment of any money due), and nor will the Registrar be liable for any negligent act, error or omission on the part of the Issuer, nor for acting in accordance with any written instruction or direction of the Issuer or with the written consent or approval of the Issuer.
- (b) Supervisor shall not be liable to the Obligors or any Holder or former Holder for relying on the Register or for accepting in good faith as valid any detail recorded on the Register subsequently found to be forged, irregular or not authentic.

8. TAXES

8.1 **Deductions or withholdings:** All sums payable under this deed or a Bond must be paid:

- (a) free of any restriction or condition;
- (b) free and clear of, and (except to the extent required by law or as provided in this clause 8) without any deduction or withholding on account of any taxes; and
- (c) (except to the extent required by law or as provided in this clause 8) without deduction or withholding on account of any other amount whether by way of set-off or otherwise.

8.2 **Non-resident withholding tax and Approved Issuer Levy:** Where New Zealand non-resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to any Holder unless otherwise stated in the Offer Documents or unless the relevant Holder notifies the Obligors that it elects that non-resident withholding tax be deducted from payments to it instead of the Approved Issuer Regime being applied, if the relevant Obligor is lawfully able to apply the Approved Issuer Regime in respect of any payment of interest (or deemed interest) to Holders, and elects to do so in respect of the Bonds, the relevant Obligor (or, if applicable, the Registrar on behalf of the Issuer) shall pay Approved Issuer Levy (if any) to the appropriate authority and shall deduct and retain for its own benefit an amount equal to the amount so paid (if any) from the interest (or deemed interest) payable to those Holders in lieu of deducting New Zealand non-resident withholding tax from that payment at the rate otherwise applicable.

8.3 **Resident withholding tax:** Where New Zealand resident withholding tax must be deducted from payments of interest (or payments deemed by law to be interest) to any Holder (including, if applicable, any other person who beneficially derives interest under a Bond) the relevant Obligor or the Registrar for the Bonds on its behalf, will deduct resident withholding tax unless the Holder is able to establish to the satisfaction of the relevant Obligor (or, if applicable, the Registrar on behalf of the Issuer) either by means of an appropriate exemption certificate or otherwise before the Record Date for the relevant payment that no such tax need be deducted.

8.4 **No gross-up:** No Obligor will be required to and will not make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made under clauses 8.2 to 8.3. If, in respect of a Bond, the Registrar, the Supervisor or an Obligor becomes liable to make any payment of, or on account of, tax payable by any Holder (including, if applicable, any other person who beneficially derives interest under a Bond), then the Registrar, the Supervisor or that Obligor, as the case may be, shall be indemnified by the relevant Holder in respect of such liability (in the case of the Supervisor subject to clause 11.8). Any moneys paid by the Registrar, the Supervisor or that Obligor in respect of such liability may be recovered from the relevant Holder as a debt due to the Registrar, the Supervisor or the Obligor and may be withheld from any further payments to the Holder. Nothing in this clause 8.4 will prejudice or affect any other right or remedy of the Registrar, the Supervisor or that Obligor.

8.5 **Maximum rate:** Deductions of non-resident or resident withholding tax will be made at the maximum rates from time to time applicable unless a Holder (or, if applicable, any person who beneficially derives interest under a Bond) provides evidence to the Obligors or the Registrar (acceptable to it) that a lesser rate is applicable.

8.6 **Tax status:** Each Obligor and the Registrar shall be entitled for the purposes of this clause 8 to rely, without further enquiry, upon any evidence produced or statement made by, or on behalf of, a Holder in relation to the Holder's tax status or tax residency, and to regard the Holders entered in the Register as the only beneficial owners of, or the only persons who beneficially derive interest under, the Bonds.

9. WARRANTIES AND COVENANTS

9.1 **Representations and warranties:** Each Obligor represents and warrants to the Supervisor that on the date of this deed and on each date of issue of the Bonds:

- (a) **Incorporation:** it is a company duly incorporated under the laws of New Zealand;
- (b) **Power:** it has power to enter into this deed and perform its obligations under this deed and, in the case of the Issuer, to issue the Bonds and to perform its obligations under the Bonds;
- (c) **Consents and authorisation:** it has all the necessary consents and has taken all necessary corporate and other action to authorise the execution and performance of this deed and, in the case of the Issuer, the Bonds;
- (d) **Obligations legally binding:** its obligations under this deed and, in the case of the Issuer, the Bonds are legally binding and enforceable, subject to general equitable principles and to bankruptcy, insolvency or similar laws affecting creditors generally; and
- (e) **No breach of agreement, laws etc:** the execution and performance of this deed and the Bonds will not constitute a breach under any law or regulation by which an Obligor is bound, including the constitutional documents of the relevant Obligor and if the Bonds are Listed, the Listing Rules.

9.2 **Covenants:** The Issuer and, in the case of paragraphs (d), (f), (i), (j) and (k) below, each Guarantor covenants with the Supervisor and each Holder that it each will:

- (a) **Agency Agreement:** comply with and perform all material obligations under the Agency Agreement and use all reasonable endeavours to ensure that the Registrar also does so;
- (b) **Notice of Breach:**
 - (i) promptly notify the Supervisor of the occurrence of any Event of Default; and
 - (ii) if it has reasonable grounds to believe that it has breached, or may have breached, any of the terms of this deed relating to Bonds or the terms of an offer of Bonds, as soon as practicable, notify the Supervisor in writing of the breach or possible breach and the steps (if any) that it has taken or intends to take in light of the breach or possible breach, and the date by which the steps were taken or are to be taken;
- (c) **Notify Supervisor of non-payment:** promptly notify the Supervisor if the Issuer intends not to, or fails to, make a payment on the Bonds when due;
- (d) **This deed:** comply with and observe its obligations under this deed;
- (e) **Registrar:** maintain a Registrar and give notice in accordance with clause 17 to the relevant Holders of any resignation or removal of the Registrar and the appointment of any replacement Registrar as soon as reasonably practicable following such event;
- (f) **Authorisations:** obtain, effect and promptly renew from time to time all authorisations required under any applicable law to enable it to perform and comply fully with this deed or required on its part for the validity or enforceability of this deed;

- (g) **Give Supervisor notices:** send a copy to the Supervisor of each notice given by it to Holders generally;
- (h) **Quotation of Bonds and provide information:** if the Bonds are Listed, use reasonable endeavours to ensure that the Bonds are, upon their issue, quoted on the NZDX market and that such quotation is maintained;
- (i) **Information:** whenever so requested, give to the Supervisor such information as may reasonably be required for the purposes of the discharge of the duties, trusts and powers vested in the Supervisor under this deed or imposed upon it by law;
- (j) **Compliance with legislation etc:** at all times comply with the Companies Act, Financial Reporting Act 2013, the FMC Act, the FMC Regulations, the Listing Rules and all other applicable laws; and
- (k) **Corporate existence:** maintain its corporate existence and not amalgamate, merge or consolidate with any person unless the resulting or surviving entity assumes, to the satisfaction of the Supervisor, its obligations under this deed and, in the case of the Issuer, under the Bonds.

9.3 **Financial covenants:** The Issuer covenants with the Supervisor that, so long as any Bonds are outstanding:

- (a) **Financial and other information:** the Issuer will deliver to the Supervisor:
 - (i) as soon as practicable (and in any event within 3 months after the end of each financial year), in respect of each of its financial years, a copy of the Audited Financial Statements of the Group made up as at the last day of that financial year;
 - (ii) as soon as practicable (and in any event within 3 months after the last day of the first half of each financial year), in respect of the first half of each financial year, a copy of the Financial Statements of the Group for the preceding half-year, made up as at the last day of that half-year;
 - (iii) upon written request by the Supervisor, such information relating to the Group or the Group's business or financial condition as may reasonably be required by the Supervisor for the purposes of the discharge of the duties, trusts and powers vested in the Supervisor under this deed or imposed on it by law;
 - (iv) from time to time within 14 days after request by the Supervisor, summary financial information about any wholly-owned Subsidiary of the Issuer that is not a Guarantor and that is included in the most recent Financial Statements provided under sub-clauses (i) or (ii) above (as the case may be); and
 - (v) within the timeframe specified by the Supervisor by written notice (provided that such timeframe is reasonable in the circumstances), any report required by the Supervisor in respect of any Bonds signed by at least 2 directors on behalf of the board of the Issuer.
- (b) **Accounting principles:** the Issuer will ensure that all Financial Statements delivered to the Supervisor under clauses 9.3(a)(i) and (ii):
 - (i) are prepared in accordance with NZ GAAP, consistently applied except to the extent disclosed in those Financial Statements;

- (ii) give a true and fair view in accordance with NZ GAAP of the financial position of the Group and the result of the operations of the Group as at the date, and for the period ending on the date, to which those Financial Statements are prepared; and
 - (iii) are signed by two of the directors of the Issuer and are accompanied by all documents and reports required by law to be annexed to or to accompany them; and
- (c) **Auditor's report:** at the same time as the latest Audited Financial Statements are provided in accordance with clause 9.3(a)(i), the Issuer will ensure that there is delivered to the Supervisor a separate report by the Auditors stating:
- (i) whether, in the course of performing their duties as Auditors, they have become aware of any non-payment by the Issuer of any interest on any of the Bonds and if so the amount of the interest so unpaid;
 - (ii) the aggregate Principal Amount of Bonds on issue and outstanding;
 - (iii) whether they, as Auditors, have audited the Register, and if not, whether another firm (and which firm if any) has audited the Register, and to the extent that the Auditors have audited the Register, whether the Register has been duly maintained;
 - (iv) whether in the performance of their duties as Auditors they have become aware of any matter which, in their opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by this deed or the FMC Act, and if so giving particulars thereof;
 - (v) whether their audit has disclosed any matter, and if so giving particulars thereof, calling in their opinion for further investigation by the Supervisor in the interests of the Holders; and
 - (vi) that they have perused the reports given by the Board of the Issuer pursuant to clause 9.4 since the last report by the Auditors (or the date of this deed, whichever is later) and that, 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 such reports by the directors are not correct.

9.4 **Board report:** The Issuer covenants with the Supervisor that, so long as any Bonds are outstanding, it will deliver to the Supervisor not later than the times of delivery of the latest Financial Statements pursuant to clauses 9.3(a)(i) and 9.3(a)(ii), a report signed by two directors on behalf of the Board of the Issuer stating:

- (a) to the best of their knowledge and belief having made due enquiry, during the immediately preceding financial year or half-year (as the case may be) whether:
 - (i) any matter has arisen relating to the Issuer or any Guarantor which would adversely affect the ability of the Issuer to perform its obligations under this deed and the Bonds and, if so, details of that matter;
 - (ii) the Issuer has duly observed, performed and complied in all respects with its obligations under this deed (and, if not, details of the contravention);
 - (iii) any Bonds have been Redeemed, or purchased by the Issuer or its Subsidiaries and, if so, details of the Redemption or purchase;

- (iv) the Register has been maintained and audited in accordance with this deed;
 - (v) the Issuer or any Guarantor is in material default in the payment of amounts due to Senior Creditors;
 - (vi) the Issuer and each Guarantor has remained solvent; and
- (b) the aggregate Principal Amount of the Bonds outstanding at the end of the financial year or half-year (as the case may be).

9.5 **Auditors:** In the terms of engagement of its Auditors, the Issuer shall procure that its Auditors shall:

- (a) acknowledge its obligations as auditor under the FMC Act; and
- (b) carry out the audit of the Audited Financial Statements referred to in clause 9.3(a)(i) in accordance with NZ accounting standards.

9.6 **Appointment of Auditors:**

- (a) **Consultation with Supervisor:** The Issuer must:
 - (i) before recommending the appointment or reappointment of a person as an Auditor:
 - (aa) consult with the Supervisor on the appointment or reappointment; and
 - (bb) ensure that any comments of the Supervisor concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the Auditor;
 - (ii) notify the Supervisor if the Auditor resigns from appointment, or declines to accept appointment or reappointment, and must pass on to the Supervisor any explanation provided by the Auditor for resigning from appointment or declining to accept appointment or reappointment; and
 - (iii) not attempt to prevent a person who has resigned from appointment as the Auditor, or declined to accept appointment or reappointment as the Auditor, from offering an explanation, or disclosing to the Supervisor the reason, for resigning or declining appointment or reappointment.
- (b) **Specified Engagement:** The Issuer must, before recommending the appointment or reappointment of a person as the Auditor:
 - (i) give the Supervisor an opportunity to be a party to an assurance engagement carried out by an auditor in relation to the Issuer's compliance with this deed for the purpose of the Supervisor obtaining assurance of matters relevant to the exercise or performance of the powers or duties of the Supervisor; and
 - (ii) consult with the Supervisor on the nature and scope of any such engagement.
- (c) **Terms of Appointment:** the Issuer must ensure that the following terms are included in the terms of appointment of an auditor in its capacity as Auditor:

- (i) that the Auditor will, at the beginning of the audit, review, or engagement, give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, in order to allow the Supervisor an opportunity to raise any issues or concerns relevant to the exercise or performance of the powers or duties of the Supervisor; and
- (ii) that the Auditor will give the Supervisor an opportunity to meet with the Auditor, without any representative of the Issuer being present, to discuss matters arising in the performance of the audit, review, or engagement and to answer any questions the Supervisor may have concerning the audit, review, or engagement.

10. SUPERVISOR'S POWER TO WAIVE

10.1 Subject to clause 11.5 (if applicable) and to any direction or request given by the Holders, the Supervisor may from time to time by notice in writing to the Obligors waive in part or in whole, for a specified period or completely, and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by an Obligor of any of the provisions of this deed or the Conditions, provided the Supervisor is satisfied that such a waiver will not have a material adverse effect on the Holders. Any such waiver will not affect the rights of the Supervisor and the Holders in respect of any other breach, but will be binding on all Holders. Notwithstanding anything in this deed or otherwise contained or implied or any rule of law to the contrary, the Supervisor will not be deemed to have given any such waiver unless the waiver is given by the Supervisor in writing.

11. APPOINTMENT OF AND POWERS AND DISCRETIONS OF SUPERVISOR

11.1 **Appointment:** The Issuer hereby appoints the Supervisor, and the Supervisor accepts appointment, as trustee for the Holders in respect of the Bonds, with the rights, powers, functions, duties and obligations set out in this deed, the FMC Act and FMC Regulations including, without limitation:

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

11.2 **Powers:** In addition to the powers, authorities and discretions which may be vested in trustees by law relating to trustees, and to facilitate the discharge of its duties under this deed, it is expressly declared that:

- (a) **Act on advice:** the Supervisor may, subject to the provisions of this deed, without liability for loss, obtain, accept and act on, or decline and elect not to accept and act on:
- (i) the opinion or advice of, or any information obtained from, any barrister, solicitor, valuer, financial adviser, auditor, chartered accountant or other expert, even though it may subsequently be found to contain some error or not be authentic;
 - (ii) a certificate or report signed by any two directors of the Issuer as to any fact or matter *prima facie* within their knowledge as sufficient evidence of that fact or matter; and
 - (iii) the statements contained in any certificate or report given in accordance with this deed as conclusive evidence of the facts stated in that certificate or report;
- (b) **Resolution of Holders:** the Supervisor will not be liable to the Obligors or any Holder for acting or relying upon any resolution purporting to have been passed at any meeting of the Holders in respect of which a proper record has been made and which the Supervisor believes to have been properly passed, even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or in the proceedings conducted at the meeting or for any other reason;
- (c) **Proceeds of Bonds:** the Supervisor will not be liable to the Obligors or any Holder for the receipt or application by the Issuer of the proceeds of the issue of Bonds or be bound to see to the application of those proceeds to the persons entitled to them;
- (d) **Breach of deed or Bonds:** to the extent permitted by law, the Supervisor will not be bound to take steps to ascertain whether or not the Obligors have committed any breach of the provisions of this deed or, in the case of the Issuer, any of the Bonds and shall cease to be entitled to assume without enquiry that no such breach is occurring or has occurred, only upon:
- (i) the Supervisor becoming aware that, or receiving specific advice that, a breach has, or appears to have, occurred or threatens to occur, from the Board of the Issuer or the Auditors; or
 - (ii) the Supervisor receiving notice of an Event of Default;
- (e) **Duty of care:** the Supervisor will not be liable to the Obligors or the Holders unless the Supervisor has acted in gross negligence, fraudulently, dishonestly or in wilful breach of trust or any law or had otherwise failed to show the degree of care and diligence required of it having regard to the powers, authorities and discretions conferred or imposed upon it by this deed or by law;
- (f) **Exercise of trusts, powers, authorities, discretions and responsibilities:** except as otherwise expressly provided in this deed, the Supervisor as regards all trusts, powers, authorities, discretions and responsibilities vested in it by this deed, will have absolute discretion as to their exercise or non-exercise and as to the commencement, modification, discontinuance, compromise or conduct of any action, proceeding or claim and, provided it acts in good faith and in accordance with sections 112 and 113 of the FMC Act, it will not be responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of such;

- (g) **Power to delegate:**
- (i) subject to sub-clause (ii) below, the Supervisor may, whenever it thinks it expedient in the interests of the Holders to do so:
 - (aa) delegate at any time to any person any of the trusts, powers, authorities, discretions or responsibilities 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 power to sub-delegate) as the Supervisor may reasonably think fit (provided that the Supervisor shall remain liable for the actions of any delegate);
 - (bb) authorise such person as it thinks fit to act as its representative at any meeting; and
 - (cc) apply to the court at any time for directions in relation to any matter or for an order that the powers and trusts contained in this deed be exercised under the direction of the court, or, consent to, approve or oppose any application to court by an Obligor or by or at the instance of any Holder;
 - (ii) notwithstanding any provision of this deed, the Supervisor shall not delegate any of its functions set out in clause 11.1 except as expressly permitted by the FMC Act or as permitted by, and then subject to, conditions imposed under the Financial Markets Supervisors Act;
- (h) **Consents:** 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 reasonably thinks fit;
- (i) **Power to remedy breach:** the Supervisor's powers to remedy any breach of this deed are subject to any other provision of this deed which is inconsistent with the exercise of such powers;
- (j) **Duties to the Group:** the Supervisor has no duties and responsibilities under this deed, other than under clause 6.9, to any Holder which is the Issuer or any of its Subsidiaries;
- (k) **Power to invest:** any moneys held by the Supervisor and subject to the trusts constituted or to be constituted under this deed may, at the discretion of the Supervisor, be invested in the name of the Supervisor or its nominee in any investments it considers fit with power to vary or transpose such investments for others of a like nature and deal with or dispose of such investments, and all income from such investments will belong to the person in respect of whom such moneys are held by the Supervisor;
- (l) **Attend general meetings:** any representative of the Supervisor, being a person authorised to act for the purposes of this clause by any director, general manager or secretary of the Supervisor, is entitled to attend any general meeting of the Issuer or meeting of Holders, and to be heard at any such meeting which he or she attends on any part of the business of the meeting which concerns the Supervisor as such or the Holders;
- (m) **Listing Rules:** the Supervisor shall not be required to monitor compliance by the Issuer or any other party with the Listing Rules and, in the absence of notice to the contrary from the Issuer or NZX, shall be entitled to assume that the Issuer is so complying (if the Bonds are Listed). In the event of non-compliance with any Listing Rule the Supervisor, in determining the action to be taken or not taken by it,

shall be entitled to have regard to the actions of NZX in relation to that non-compliance by the Issuer;

- (n) **Materiality:** the Supervisor may determine whether or not a failure by an Obligor to perform any obligation under this deed is in its opinion capable of remedy or will have a material adverse effect on Holders and any such determination shall be conclusive and binding upon the Holders;
- (o) **Event of Default:** where, following an Event of Default, the Issuer has failed to comply with its obligations under clause 3 of the Conditions, the Supervisor may and shall forthwith (subject to being indemnified as provided in clause 11.4) upon being directed to do so in writing by Holders holding together not less than 10% of the aggregate Principal Amount of the Bonds or if so directed by an Ordinary Resolution and subject at all times to clause 6, institute and pursue all such proceedings, suits or other legal actions, execute any judgments obtained, exercise all such rights of set-off or other rights or remedies available at law, compromise and effect compositions, and for all or any of the purposes aforesaid may execute and do all such assurances and things as the Supervisor may think fit on behalf of the Holders, to enforce the obligations of the Issuer under clause 3.2 of the Conditions, exercise the power of enforcement available to it and apply all moneys received in accordance with the provisions of this deed; and
- (p) **Power to engage expert:** the Supervisor may, in respect of any Bonds, engage from time to time an expert (for example, an auditor, investigating accountant, valuer or actuary) if it considers, on reasonable grounds, that it requires the assistance of the expert to assist the Supervisor to:
 - (i) determine the financial position of the Issuer; or
 - (ii) review the business, operation, management systems or the governance of the Issuer.

Where the Supervisor engages an expert pursuant to this clause 11.2(p), the Issuer shall provide reasonable assistance to the expert to allow the expert to provide the assistance, and the fees and expenses of the expert, which must be reasonable in the circumstances, shall be paid by the Issuer.

11.3 Discretion to consult Holders: Subject to clause 16, following any breach of this deed by an Obligor, the occurrence of any circumstances which may result in such a breach which the Supervisor reasonably considers may have a material adverse effect on Holders or whenever the Supervisor otherwise deems that it would be in the interests of Holders to do so, the Supervisor may, in its absolute discretion:

- (a) report to the Holders, or any of them, the circumstances and nature of such breach and any other information concerning that Obligor which the Supervisor has received under or in relation to this deed or the Bonds and which it reasonably considers to be material to the Holders or any of them; and
- (b) invite the Holders or any of them to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Supervisor's powers under this deed or the Bonds or as to any action or omission to act by the Supervisor in relation to the breach.

Any such report may be given in such manner as is considered by the Supervisor to be the most practicable and expedient in all the circumstances.

11.4 Supervisor's right to be indemnified: Subject to clause 11.8 the Supervisor may decline to take any action or exercise any power or discretion or comply with or implement any direction or request given in accordance with this deed whether or not it is otherwise bound to so act unless and until the Supervisor and each of its officers, employees or agents are

first indemnified by the Holders to its or their satisfaction against all actions, proceedings, claims and demands to which any of them may be rendered liable and all costs, charges, losses, damages and expenses which it or they may incur by so doing.

11.5 **Amendments:**

- (a) **Amendments or replacements:** The provisions of this deed or the Conditions may not be amended or replaced unless the amendment or replacements is made:
- (i) with the consent of the Supervisor; or
 - (ii) (despite anything to the contrary in this deed or in any enactment, rule of law, or agreement, including anything relating to the consent of any person to the making of amendments to this deed) under section 109 of the FMC Act, sections 22(7) or 37(6) of the Financial Markets Supervisors Act or any other power to amend or replace this deed under an enactment.
- (b) **Supervisor consent:** The Supervisor must not consent to an amendment to, or a replacement of, this deed unless:
- (i) either:
 - (aa) the amendment or replacement is approved by, or is contingent on approval by, the Holders; or
 - (bb) the Issuer and the Supervisor are satisfied that the amendment or replacement does not have a material adverse effect on the Holders; and
 - (ii) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this deed, as amended or replaced, will comply with sections 104 to 106 of the FMC Act on the basis set out in the certificate.
- (c) **Holder consent:** The approval of the Holders for the purposes of clause 11.5(b)(i)(aa) must be the approval of an Extraordinary Resolution of:
- (i) the Holders; or
 - (ii) each class of Holders that is or may be adversely affected by the amendment or replacement.
- (d) **Notification:** Any such amendment or replacement under this clause 11.5 will be binding on all Holders. No such amendment or replacement will be effective unless it is in writing signed by the Issuer and the Supervisor. Notice of any amendment or replacement to this deed relating to or affecting any Bonds or the terms and conditions of any Bonds shall be provided to the Holders of such Bonds affected by the amendment within 10 Business Days of the amendment being made, unless the Supervisor notifies the Issuer that such notification is not required to be provided to the Holders of such Bonds.

- 11.6 **Fiduciary relationship:** The Supervisor may not be a Holder on its own account. However, nothing in this deed prohibits the Supervisor or its holding company or any of their Subsidiaries or their officers or shareholders (all for the purposes of this clause, where the context permits, being included in the expression the Supervisor) from being a Holder in any trustee, agency, nominee or other representative capacity, or from being a creditor or shareholder of, or having any other interest in, the Issuer or of any of its Subsidiaries or from acting in any other fiduciary, contractual, agency or representative capacity for a Holder or the Issuer or any of its Subsidiaries without breach of any obligations established by this

deed or otherwise imposed or implied by law arising out of any such relationship. The Supervisor may enter into any transaction with the Issuer or any of its Subsidiaries in the ordinary course of business and will not be accountable to the Holders for any profits arising from such transactions.

11.7 **Exercise of Supervisor's duties:** The duties of the Supervisor in respect of the Bonds shall be construed and interpreted to recognise and take into account:

- (a) the characteristics of the Bonds as direct, unsecured, subordinated, Redeemable, cumulative, interest bearing debt obligations of the Issuer and the characteristics of the Guarantees as direct, unsecured, subordinated, obligations of each Guarantor;
- (b) the limitations on the rights of the Holders and the Supervisor on behalf of the Holders (other than upon or in relation to an Event of Default) in respect of any breach by an Obligor of this deed and the Conditions; and
- (c) the limitations of the rights of the Supervisor to make any directions or otherwise interfere in the conduct of the business of an Obligor,

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

11.8 **Supervisor's liability:** No provision of this deed shall have the effect of indemnifying the Supervisor against liability where the Supervisor fails to:

- (a) act honestly in acting as a supervisor;
- (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Holders;
- (c) exercise reasonable diligence in carrying out its functions as a supervisor; or
- (d) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

11.9 **Enforcement of Holders' rights:** The Supervisor holds the following in trust for the benefit of Holders:

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

12. MEETINGS OF HOLDERS

12.1 **Regulations of meetings:** Each meeting of Holders is to be convened and held in accordance with schedule 3.

- 12.2 **Represent Holders:** The Supervisor may, of its volition or in accordance with any directions or in accordance with an Extraordinary Resolution, represent Holders in any investigation, negotiation, action, transaction, matter or proceedings affecting the interests of Holders.
- 12.3 **Notify Supervisor:** The Issuer must ensure that the Supervisor receives the notices and communications that any Holder is entitled to receive in relation to a meeting of Holders.
- 12.4 **FMC Regulations:** Regulation 78 and Schedule 11 of the FMC Regulations (other than clauses 2 and 5 of Schedule 11 of the FMC Regulations) do not apply to this deed.

13. INDEMNITY OF SUPERVISOR

13.1 Subject to clause 11.8 and without prejudice to the right of indemnity by law given to trustees, the Supervisor and each of its officers, employees, attorneys or agents are entitled to be indemnified by the Issuer, on an unsubordinated basis, in respect of all liabilities and expenses incurred by it or any of them in the performance or exercise or attempted or purported performance or exercise of any of the trusts, powers, authorities or discretions conferred on the Supervisor or any of them by this deed and against all actions, proceedings, costs, losses, claims and demands in respect of any matter or thing done or omitted in any way relating to this deed other than liabilities, expenses, actions, proceedings, costs, losses, claims or demands arising out of:

- (a) **Fraud, bad faith or dishonesty:** fraud, gross negligence, wilful breach of trust or dishonesty on the part of the Supervisor or any of its officers, employees, attorneys or agents; or
- (b) **Breach of duty of care:** breach of trust where the Supervisor fails to show the degree of care and diligence required of the Supervisor having regard to the powers, authorities and discretions conferred on the Supervisor by this deed; or
- (c) **Clause 11.8:** any of the matters discussed in clause 11.8 above,

and the Supervisor may retain and pay out of any moneys it holds upon the trusts of this deed, all sums necessary to effect and satisfy that indemnity, together with the remuneration and reimbursements of the Supervisor as provided for in this deed.

14. RETIREMENT, REMOVAL AND NEW APPOINTMENT OF SUPERVISOR

- 14.1 **Retirement of Supervisor:** Subject to clause 14.2, in the case of retirement or removal under paragraphs (a), (b) or (c) below:
- (a) **Retirement by Supervisor:** the Supervisor may retire at any time without assigning any reason upon giving 90 days notice (or such lesser period of notice as the Issuer may agree) in writing to the Issuer, subject to the due appointment of a new trustee and the transfer to such new trustee of all moneys and investments held by the Supervisor under this deed;
 - (b) **Removal by Issuer:** the Issuer may at any time without assigning any reason upon giving at least 90 days notice in writing to the Supervisor (or such lesser period of notice as the Supervisor may agree), remove the Supervisor (including any new trustee appointed upon the retirement or removal of any previous Supervisor);
 - (c) **Extraordinary Resolution:** the Holders may remove the Supervisor from office by giving not less than 90 days notice in writing to the Issuer and the Supervisor upon the passing of an Extraordinary Resolution to that effect.

- (d) **FMA Removal:** the Supervisor may be removed by the FMA or the Issuer under Part 2 of the Financial Markets Supervisors Act.

14.2 **Requirements for Retirement and Removal:** The Supervisor may not:

- (a) be removed or retire under clauses 14.1(a), 14.1(b) or 14.1(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;
- (b) be removed by the Issuer under clause 14.1(b) without the FMA's consent.

14.3 **Appointment of new Supervisor:**

- (a) **Appointment by the Issuer subject to approval by Holders:** If any of the circumstances described in clause 14.1 occur, subject to clauses 14.2(a)(i) and 14.2(a)(ii) and 14.2(b) (where applicable), the power to appoint a new trustee or trustees of this deed is vested in the Holders by way of an Extraordinary Resolution and in the Issuer, but no new trustee may be appointed by the Issuer unless such appointment is first approved by an Extraordinary Resolution. Upon the Supervisor notifying the Issuer that it wishes to retire, or upon the Issuer wishing to appoint a new trustee, the Issuer must promptly call a meeting of the Holders for the purposes of approving an appointment of a new trustee and, if such approval is given, the Issuer may exercise its power of appointment.
- (b) **Appointment by Holders:** If the Issuer, within 60 days of receiving notice of the Supervisor's intention to retire, fails to call a meeting of the Holders in accordance with clause 14.3(a) or to exercise the power vested in it under that clause to appoint a new trustee or new trustees, in either case, the Holders may by Extraordinary Resolution exercise such power to the exclusion of the Issuer.
- (c) **Notification of new Supervisor:** The Issuer must notify all Holders of the identity of any new trustee appointed as soon as reasonably possible following such appointment.

15. **SUPERVISOR'S REMUNERATION AND EXPENSES**

15.1 **Basic remuneration:** The Issuer will pay to the Supervisor remuneration for its services as Supervisor in accordance with the terms of any current agreement contained in letters exchanged between the Issuer and the Supervisor.

15.2 **Expenses:** The Issuer will also pay all reasonable costs, charges, taxes or duties (including legal expenses) properly incurred by or on behalf of the Supervisor in connection with:

- (a) **Preparation, execution and modification of deed:** the preparation, execution and modification (and release when applicable) of this deed;
- (b) **Exercise of powers:** any proper exercise by the Supervisor of any power or discretion conferred on the Supervisor or upon any Holders by this deed or in respect of the Bonds, or the performance of its duties;
- (c) **Breach by Issuer:** any breach, default or non-compliance by an Obligor of or with any obligation under this deed or, in the case of the Issuer, the Bonds;

- (d) **Meetings of Holders:** the convening and holding of any meeting of Holders and carrying out of any directions or resolutions of such a meeting; and
- (e) **Other matters:** any other matters dealt with in the agreement referred to in clause 15.1.

15.3 **Liability not terminated:** The remuneration and payments payable under this clause 15 will continue to be payable until the trusts of this deed are finally wound up (whether or not the Issuer is in Liquidation or the trusts of this deed are in course of administration by or under the direction of the court).

16. DISCLOSURE OF INFORMATION

16.1 Notwithstanding any other provision of this deed, an Obligor is not required to provide any information to a Holder where:

- (a) it would be unlawful to do so; or
- (b) the information is confidential; or
- (c) in the relevant Obligor's reasonable opinion, the information is commercially sensitive,

but may be required, in accordance with this deed, to provide such information to the Supervisor. An Obligor may request, in providing such information to the Supervisor, the Supervisor to undertake to keep such information confidential (including as against Holders) and the Supervisor shall be entitled to, and shall, give and honour that undertaking unless the Supervisor has legal advice that to do so would prevent the Supervisor fulfilling its duty to Holders.

17. NOTICES

17.1 Each notice to be given in accordance with this deed will be deemed effective if made in writing, delivered or posted by pre-paid mail or sent by facsimile or electronic mail addressed to:

- (a) in the case of each Obligor:

Genesis Energy Limited
The Genesis Energy Building
660 Great South Road
PO Box 17188
Greenlane
Auckland 1546
New Zealand

Telephone: (09) 580 2094
Facsimile: (09) 580 4894
Email: dan.dillane@genesisenergy.co.nz
TreasuryMgmt@genesisenergy.co.nz

Attention: General Counsel

- (b) in the case of the Supervisor:

Address: Trustees Executors Limited
PO Box 3222

L5 10 Customhouse Quay
Wellington

Email: gjo@trustees.co.nz

Attention: The Client Services Manager

(c) in the case of a Holder:

- (i) the address of such Holder last entered in the Register; or
- (ii) if a Holder has an address outside of New Zealand entered in the Register but has supplied to the Issuer an address within New Zealand or an electronic address for the giving of notices, then notices for that Holder shall be posted to such physical address or sent electronically to such electronic address; or
- (iii) if a Holder has an address outside of New Zealand entered in the Register and has not supplied to the Issuer an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices for that Holder shall be posted to such physical address or sent electronically to such electronic address,

or, in the case of paragraph (a) or (b) above, such other address as an Obligor or the Supervisor may from time to time in writing nominate to the others.

17.2 Each Notice will be deemed to be given, in the case of personal delivery, when delivered, and in the case of post, two Business Days after the date of posting. If sent by facsimile, notices will be deemed to be given when sent or, if sent on other than a Business Day or after 5 p.m. on any Business Day, the next Business Day. If sent pursuant to clause 17.1(c)(iii), notices shall be deemed to have been received by that Holder 24 hours after the time of posting or sending.

17.3 **Joint holders:** In the case of joint holders of Bonds a notice given to the Holder whose name stands first in the Register in respect of such holding shall be sufficient notice to all the joint holders.

18. GOVERNING LAW

18.1 This deed is governed by the laws of New Zealand.

19. DISCHARGE OF DEED

19.1 The Supervisor will, upon being reasonably satisfied that no moneys are actually or contingently owing under this deed or any Bond, execute a discharge of this deed whenever requested by the Issuer so to do, but any such discharge will be without prejudice to any indemnity given by the Issuer in favour of the Supervisor or any unremedied breach or unperformed obligation under the deed.

20. INVALIDITY

20.1 If any provision of this deed or the Bonds is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired to the maximum extent permitted under law.


2.1: Appendix A - Hybrid Bond Board Approval



EXECUTED AS A DEED

Issuer

GENESIS ENERGY LIMITED by:




Signature of Director
DAME JENNY SHIPLEY

Name of Director

Signature of Authorised Signatory

Name of Authorised Signatory

in the presence of:



Signature of Witness
Cherie Launero

Name of Witness
General Counsel

Occupation
Auckland

City/town of residence

EXECUTED AS A DEED

Issuer

GENESIS ENERGY LIMITED by:

Mave England

Signature of Director

Signature of Authorised Signatory

Name of Director

Mave England

Name of Authorised Signatory

in the presence of:

John Gordon

Signature of Witness

John Gordon

Name of Witness

Lawyer

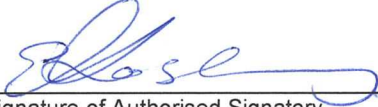
Occupation

Auckland

City/town of residence

Supervisor

TRUSTEES EXECUTORS LIMITED by:



Signature of Authorised Signatory

Elaine Lois Mosley

Name of Authorised Attorney

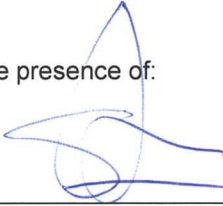


Signature of Authorised Signatory

Stuart McLaren

Name of Authorised Signatory

in the presence of:



Signature of Witness

Name of Witness

Sean Roberts
Client Services Manager
Wellington

Occupation

City/town of residence



G10 2017-19 (1/3)

Original Guarantors

GENESIS POWER INVESTMENTS LIMITED
GP NO. 2 LIMITED
GP NO. 5 LIMITED
KUPE HOLDINGS LIMITED
NATIONAL PETROLEUM LIMITED
PETROLEUM EQUITIES LIMITED
NEPHRITE ENTERPRISES LIMITED
KUPE ROYALTIES LIMITED

by:



Signature of Director
(Director of each of the above companies)

Signature of Director
(Director of each of the above companies)

Marc England
Name of Director
(Director of each of the above companies)

Chris Jewell
Name of Director
(Director of each of the above companies)

SCHEDULE 1

ORIGINAL GUARANTORS

Genesis Power Investments Limited
GP No.2 Limited
GP No.5 Limited
Kupe Holdings Limited
National Petroleum Limited
Petroleum Equities Limited
Nephrite Enterprises Limited
Kupe Royalties Limited

SCHEDULE 2

CONDITIONS OF THE BONDS

1. DEED

1.1 **Deed binding:** The terms and conditions from time to time applicable to the Bonds are set out in this schedule 2. These Conditions are subject to and form part of the provisions of the trust deed dated 10 May 2017 ("**Deed**") between Genesis Energy Limited as issuer, the Guarantors as defined therein and Trustees Executors Limited as trustee.

1.2 **Notice of deed:** Holders are entitled to the benefit of, are bound by, and are deemed to have notice of, the Deed.

1.3 Interpretation:

(a) Unless otherwise specified, a reference to a clause is a reference to a clause of these Conditions.

(b) Terms defined in the Deed have the same meanings in these Conditions.

1.4 **Definitions:** In these Conditions unless the context otherwise requires:

"**Accrued Interest**" has the meaning given in clause 2.3.

"**Administrative Action**" means any judicial decision, official administrative pronouncement, published or private ruling, response to application for a ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt a procedure or regulation).

"**Appointed Person**" has the meaning given in clause 4.10.

"**Calculation Period**" means the period from (and including) a Reset Date (or the Issue Date in the case of the first Calculation Period) to (but excluding) the next Reset Date.

"**Change of Control**" means:

- (a) the Shareholding Ministers hold, whether directly or indirectly, 50% or less of the issued ordinary voting share capital of the Issuer; or
- (b) the Shareholding Ministers cease to be able to nominate and appoint at least 50% of the directors of the board of the Issuer; or
- (c) the Shareholding Ministers cease to control, whether directly or indirectly, the exercise of more than 50% of the maximum number of votes that can be exercised at a shareholders meeting of the Issuer.

"**Change of Control Announcement**" means any formal public announcement or statement by or on behalf of the Issuer or the Shareholding Ministers, or any actual or potential bidder or adviser of the Issuer or the Shareholding Ministers, relating to any potential Change of Control.

"**Change of Control Period**" means the period:

- (a) commencing on the date that is the earlier of:
 - (i) the date of the relevant Change of Control; and

- (ii) the date of the earliest Change of Control Announcement; and
- (b) ending 90 days after the Date of Announcement.

"Credit Rating" means, in relation to the Issuer at any time, the issuer credit rating granted by the Rating Agency at that time to the Issuer.

"Date of Announcement" means the date of public announcement by or on behalf of the Issuer or the Shareholding Ministers that a Change of Control has occurred.

"Deferral Date" has the meaning given in clause 2.3.

"Deferred Interest Payment" has the meaning given in clause 2.2.

"Election Notice" has the meaning given in clause 4.1.

"Election Process" means the process described in clause 4.

"Event of Default" means any of the following events:

- (a) the Issuer fails to pay any Unpaid Interest on a Mandatory Unpaid Interest Payment Date in accordance with clause 2.4(b); or
- (b) the Issuer fails to comply with clause 2.6; or
- (c) the Issuer fails to give a Holder Put Event Notice to Holders and the Supervisor in accordance with the requirements in clause 3.7; or
- (d) the Issuer fails to pay the amount payable on redemption of the Bonds under clause 3.8; or
- (e) the Issuer fails to pay the Repurchase Price for the Bonds in connection with an Election Process when required under clause 4; or
- (f) an Insolvency Event occurs in respect of the Issuer.

"First Interest Payment Date" means in relation to a Bond, the date falling 3 months after the Issue Date.

"First Reset Date" means in relation to a Bond the date falling 5 years after the Issue Date.

"Holder Put Event" means the occurrence of a Change of Control and a Rating Downgrade.

"Holder Put Event Notice" has the meaning given in clause 3.7.

"Independent Adviser" means an adviser appointed pursuant to clause 1.5.

"Insolvency Event" means, in relation to the Issuer, any of the following events:

- (a) the Commencement of Liquidation; or
- (b) an encumbrancer takes possession or a trustee, receiver, receiver/and manager, administrator inspector under any companies or securities legislation, or similar official is appointed in respect of the Issuer.

"Insolvent" means that an entity does not satisfy the solvency test contained in section 4 of the Companies Act.

"Interest Payment" means an interest payment under clause 2.1 or, as the case may be, clause 2.8.

"Interest Payment Date" means the First Interest Payment Date and each date falling every 3 months thereafter up to (and including) the Maturity Date.

"Interest Period" means, in relation to a Bond:

- (a) the period from (and including) the Issue Date to (but excluding) the First Interest Payment Date; and
- (b) thereafter, the period from (and including) an Interest Payment Date until (but excluding) the next Interest Payment Date (or, if the Bond is Redeemed on a date that is not an Interest Payment Date, the Redemption Date).

"Interest Rate" has the meaning given in clause 2.1.

"Intermediate Equity Content" means, in relation to securities, an equity content of "intermediate" has been assigned to the securities by the Rating Agency.

"Issue Date" means the date on which a Bond is issued as recorded for that Bond in the applicable Register.

"Issue Price" means \$1.00 in respect of each Bond.

"Issuer Notice" has the meaning given in clause 3.4.

"Mandatory Unpaid Interest Payment" has the meaning in clause 2.4.

"Mandatory Unpaid Interest Payment Date" has the meaning in clause 2.4.

"Margin" has the meaning given in clause 2.1.

"Maturity Date" means the maturity date as recorded for a Bond in the applicable Register.

"Minimum Holding" has the meaning given in clause 5.4.

"Minimum Transfer Amount" has the meaning given in clause 5.4.

"New Conditions" means the new conditions applicable to the Bonds set out in an Election Notice.

"New Zealand Holder" means a Holder who has:

- (a) a valid New Zealand IRD number;
- (b) a valid New Zealand bank account number; and
- (c) a New Zealand address.

"Notification Date" has the meaning given in clause 4.1.

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

"Offer" means the invitation made by the Issuer under the applicable Offer Documents for prospective investors to apply for Bonds.

"**Optional Unpaid Interest Payment**" has the meaning given in clause 2.4.

"**Rating Agency**" means Standard & Poor's (Australia) Pty Limited or its successors.

"**Rating Agency Event**" means:

- (a) receipt by the Issuer of advice from the Rating Agency that, as a result of a change in criteria, the Bonds will no longer be assigned an Intermediate Equity Content classification from the Rating Agency; or
- (b) the Issuer ceases to hold a Credit Rating.

"**Rating Downgrade**" means, that within the Change of Control Period:

- (a) the Issuer ceases to hold a Credit Rating; or
- (b) the Credit Rating assigned to the Issuer is lowered by the Rating Agency (and for the avoidance of doubt, a change to the rating outlook does not constitute a change to the Credit Rating) and the lowered Credit Rating is lower than BBB+ (or equivalent thereof) in the case of the Rating Agency or the nearest equivalent in the case of any other rating agency,

provided that no Rating Downgrade will occur by virtue of a particular withdrawal or lowering of rating within the Change of Control Period unless the Rating Agency:

- (c) confirms that the withdrawal or reduction was the result, in whole or in part, of the relevant Change of Control; and
- (d) does not reinstate the rating applied prior to the withdrawal or lowering prior to the end of the Change of Control Period.

"**Record Date**" means:

- (a) in relation to a payment made under clause 2, the date which is 10 calendar days before the due date for the payment; and
- (b) in relation to an Election Process, the date which is two Business Days prior to the date on which the applicable Election Notice is given,

and if that date is not a Business Day, the preceding Business Day, or such other date as may be required by NZX.

"**Redemption**" means the redemption of a Bond in accordance with clause 3 and "**Redeem**" or "**Redeemable**" have corresponding meanings.

"**Redemption Date**" means the Maturity Date or such earlier date on which Redemption is to occur in accordance with clause 3.

"**Repurchase Price**" has the meaning given in clause 4.5(a).

"**Resale Facility**" means the facility for the resale of the Bonds established in accordance with clause 4.6 in connection with an Election Process.

"**Reset Date**" means:

- (a) the First Reset Date; and
- (b) if:

- (i) the applicable Election Process is a Successful Election Process, the date so specified in any Election Notice; or
- (ii) no Election Notice is given for a Reset Date, or if the applicable Election Process is not a Successful Election Process, the fifth anniversary of that Reset Date.

"**Shareholding Ministers**" means the Minister of Finance and the Minister for the time being responsible for the Issuer.

"**Step-up Percentage**" means 0.25%.

"**Successful Election Process**" has the meaning given in clause 4.4.

"**Tax Event**" means the receipt by the Issuer of an opinion from a reputable legal counsel, or other tax adviser (such tax advisor to be acceptable to the Supervisor) that, as a result of:

- (a) any amendment to, clarification of, or change (including any announced prospective change) in the laws, treaties, or any regulations affecting taxation of New Zealand or any political subdivision or taxing authority of New Zealand;
- (b) any Administrative Action; or
- (c) any amendment to, clarification of, or change in an Administrative Action that provides for a position that differs from the current generally accepted position,

in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known, which amendment, clarification, change or Administrative Action is effective or such pronouncement or decision is announced on or after the date on which the relevant Bonds were issued, the interest payable on the Bonds, including interest which has been deferred, is not fully deductible under the New Zealand Income Tax Act 2007.

"**TCS BaNCS**" means the clearing and settlement system currently operated by NZX in New Zealand, or any successor to that system.

"**Unpaid Interest**" has the meaning given in clause 2.3.

- 1.5 **Independent Adviser:** If an Independent Adviser is required for the purpose of clause 3.8 of these Conditions, the Supervisor shall select an investment banker, chartered accountant, or other financial adviser (in each case independent and appropriately qualified having regard to the purpose of the appointment) and shall notify the Issuer of the name of that adviser within two Business Days of a request to do so by the Issuer. The Issuer shall within two Business Days thereafter advise the Supervisor whether or not it approves that adviser (provided that the Issuer will have no approval right in respect of the adviser if an Event of Default has occurred and is continuing at that time). The Issuer shall not unreasonably withhold its approval of any such adviser. If the Issuer does not approve an adviser, the Supervisor shall select another until an adviser is so approved, but the Issuer shall not be entitled to withhold its approval to more than three advisers proposed by the Supervisor in good faith.

2. INTEREST PAYMENTS

- 2.1 **Interest Payments:** Subject to clauses 2.2 and 2.8, each Bond entitles the Holder on a Record Date, to receive in respect of an Interest Period an interest payment calculated according to the following formula:

$$\text{Interest Payment} = \frac{\text{Interest Rate} \times \text{Issue Price}}{4}$$

where:

"Interest Rate" (expressed as a percentage per annum):

- (a) during the first Calculation Period means the Five Year Swap Rate plus the Margin; and
- (b) for each Interest Period during any subsequent Calculation Period, is calculated according to the following formula:

$$\text{Interest Rate} = \text{Swap Rate} + \text{Margin}$$

where:

"Five Year Swap Rate" (expressed as a percentage per annum) means the rate per annum expressed on a percentage yield basis, and rounded up to the nearest two decimal places, which is the average of the bid and offered swap rates displayed at or about 11.00am New Zealand time on the first day of the relevant Calculation Period on page FISSWAP (or any successor page) of the Reuters monitor screen for an interest rate swap with a five year term, adjusted to a quarterly basis as necessary.

If such rate does not appear on page FISSWAP, the relevant Five Year Swap Rate shall be the average of the mid point of the bid and offered swap rates quoted by three registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Issuer) at or around 11.00am New Zealand time, on the first day of the relevant Calculation Period (or, in respect of the GPLFA Bonds, 10 July 2013) for an interest rate swap with a five year term (adjusted to a quarterly basis as necessary).

"Swap Rate" (expressed as a percentage per annum) means, for an Interest Period during a Calculation Period other than the first Calculation Period, the rate per annum expressed on a percentage yield basis, and rounded up to the nearest two decimal places, which is the average of the bid and offered swap rates displayed at or about 11.00 am New Zealand time on the first day of the relevant Calculation Period on page FISSWAP (or any successor page) of the Reuters monitor screen for an interest rate swap with a term equal to the Calculation Period, adjusted to a quarterly basis as necessary.

If such rate does not appear on page FISSWAP, the relevant Swap Rate shall be the average of the mid point of the bid and offered swap rates quoted by three registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Issuer) at or around 11.00am New Zealand time, on the first day of the relevant Calculation Period for an interest rate swap with a term equal to the Calculation Period (adjusted to a quarterly basis as necessary).

"Margin" (expressed as a percentage per annum) means in respect of each Interest Period:

- (a) during the first Calculation Period, the Margin as specified by the Issuer in the applicable Offer Documents;
- (b) during any subsequent Calculation Period which commences on a Reset Date in respect of which a Successful Election Process has been undertaken, such other percentage (if any) as may be specified by the Issuer in the applicable Election Notice as the Margin; and
- (c) during any subsequent Calculation Period which commences on a Reset Date in respect of which a Successful Election Process has not been undertaken, the Margin that applied in the final Interest Period of the immediately preceding Calculation Period (as calculated in accordance with paragraphs (a) or (b) above (as applicable)) plus the Step-up Percentage (provided the Step-up Percentage has not been added to the Margin since the last Successful Election Process).

A Holder is not entitled to an Interest Payment in respect of an Interest Period until the relevant date specified in clause 2.7, and then only subject to clause 2.2

- 2.2 **Deferral of Interest Payments:** The Board of the Issuer may, at any time prior to an Interest Payment Date, notify the Holders and the Supervisor that the Interest Payment due on the Interest Payment Date shall be deferred (and where an Interest Payment has not been paid on its due date, notice of its deferral shall be deemed to have been given), in which case that Interest Payment shall be deferred ("**Deferred Interest Payment**"). This clause 2.2 does not apply to an Interest Payment scheduled to be made on a Redemption Date or the interest component of the Repurchase Price payable on a Reset Date.
- 2.3 **Accrual of interest on Deferred Interest Payments:** If an Interest Payment has been deferred in accordance with clause 2.2, that Deferred Interest Payment shall itself accrue interest at a rate equal to the prevailing Interest Rate from (and including) the Interest Payment Date on which that Interest Payment was deferred ("**Deferral Date**") until (but excluding) the day on which that Deferred Interest Payment together with all accrued interest on that Deferred Interest Payment ("**Accrued Interest**", and together with the Deferred Interest Payment, "**Unpaid Interest**") is paid in full in accordance with clause 2.2 or 2.4 provided that neither the Supervisor nor any Holder shall be entitled to take any action (including for the avoidance of doubt, any action to Liquidate the Issuer) to recover that Unpaid Interest until the Mandatory Unpaid Interest Payment Date relating to the Unpaid Interest that was first owing, but without prejudice to the right of the Supervisor or any Holder to prove in respect of such Unpaid Interest in the Liquidation of the Issuer. Accrued Interest will be calculated on a daily basis and, in respect of Unpaid Interest, compound on each Interest Payment Date.
- 2.4 **Payment of Unpaid Interest:** If an Interest Payment has been deferred in accordance with clause 2.2, the Issuer:
- (a) may, in its absolute discretion, pay all or part of the Unpaid Interest relating to that Deferred Interest Payment ("**Optional Unpaid Interest Payment**") on an Interest Payment Date; and
 - (b) shall, if any Unpaid Interest has not been paid in full by the Issuer in accordance with paragraph (a) above or clause 3.8(a)(ii) by the earlier of the Maturity Date and the fifth anniversary of the relevant Deferral Date ("**Mandatory Unpaid Interest Payment Date**"), pay all Unpaid Interest (including the Unpaid Interest that was first owing and any Unpaid Interest amounts that have subsequently accrued on the Mandatory Unpaid Interest Payment Date ("**Mandatory Unpaid Interest Payment**"),
- in each case to those persons registered as Holders on the Record Date in respect of that Optional Unpaid Interest Payment or Mandatory Unpaid Interest Payment as the case may be.
- 2.5 **No default:** The deferral of an Interest Payment under clause 2.2 will not constitute a default by the Issuer for any purpose.
- 2.6 **Restrictions in the case of deferral:** The Issuer covenants with the Supervisor and each Holder that at any time while any Unpaid Interest remains outstanding, it shall not:
- (a) unless approved by Holders by way of an Extraordinary Resolution, pay any dividend on, or make any other distribution in respect of, or pay any interest on, any shares or securities ranking in liquidation, pari passu or after the Bonds; or
 - (b) without the consent of the Supervisor:
 - (i) acquire, redeem, or repay any of its shares or other securities ranking, in liquidation, pari passu or after the Bonds; or

- (ii) provide financial assistance for the acquisition of its shares or other securities ranking in liquidation, pari passu or after the Bonds.

2.7 **Interest Payment Dates:** Interest Payments (other than Deferred Interest Payments) will be payable on:

- (a) each Interest Payment Date; and
- (b) (if the Redemption Date is not an Interest Payment Date) the Redemption Date in respect of any Bonds to be Redeemed on that date.

2.8 **First and last Interest Payments:** The Interest Payment made on:

- (a) the First Interest Payment Date in respect of each Bond shall be calculated according to the following formula:

$$\text{Interest Payment} = \frac{\text{Interest Rate} \times \text{Issue Price} \times N}{365}$$

where "N" means, in respect of a Bond, the number of days from (and including) the Issue Date to (but excluding) the First Interest Payment Date; and

- (b) the Redemption Date of a Bond which is not also an Interest Payment Date shall be calculated according to the following formula:

$$\text{Interest Payment} = \frac{\text{Interest Rate} \times \text{Issue Price} \times N}{365}$$

where "N" means, in respect of a Bond, the number of days from (and including) the immediately preceding Interest Payment Date to (but excluding) the Redemption Date for that Bond.

3. REDEMPTION

3.1 **Redemption at Maturity:** The Issuer shall Redeem all Bonds on the Maturity Date.

3.2 **Redemption on Default:** Upon the occurrence of an Event of Default, whether or not within the control of the Issuer, the Bonds will become immediately due and payable and the Issuer shall Redeem the Bonds on the next Business Day following the Event of Default.

3.3 **Redemption at election of Issuer:** The Issuer may elect to Redeem:

- (a) all or some Bonds on a Reset Date;
- (b) all or some Bonds on any Interest Payment Date after a Reset Date if a Successful Election Process has not been undertaken in respect of that Reset Date;
- (c) all (but not some only) Bonds at any time if a Change of Control has occurred; or
- (d) all or some Bonds at any time if a Tax Event, or a Rating Agency Event has occurred,

provided that if some but not all of the Bonds are to be Redeemed, there must be no less than 100,000,000 Bonds on issue following that Redemption.

3.4 **Issuer Notice:** To elect to Redeem under clause 3.3, the Issuer must give a notice ("**Issuer Notice**") according to this clause 3.4. The Issuer Notice must:

- (a) in the case of a Redemption under clause 3.3(a) or 3.3(b), be given no less than 10 Business Days before the relevant Redemption Date;
- (b) in the case of a Redemption under clause 3.3(c) or 3.3(d), state as the Redemption Date the next Interest Payment Date unless the Issuer determines an earlier date having regard to the best interests of Holders (collectively) and the relevant event;
- (c) if less than all Bonds are being Redeemed, state the proportion of Bonds to be Redeemed for each Holder.

3.5 **Partial Redemption:** If some but not all Bonds are Redeemed, the Issuer must, in each case, endeavour to treat all Holders on an approximately proportionate basis but may adjust to take account of the effect on marketable parcels and other logistical considerations.

3.6 **Effect of Issuer Notice:** An Issuer Notice is irrevocable and, once given, constitutes a promise by the Issuer to Redeem the Bonds as stated in that notice.

3.7 **Redemption at election of Holder:** If a Holder Put Event occurs and the Issuer has not previously Redeemed all outstanding Bonds in accordance with clause 3.3(c), a Holder may elect to require the Issuer to Redeem all (but not only some) of the Bonds held by that Holder.

- (a) If a Holder Put Event occurs, the Issuer shall, within 30 days after that Holder Put Event occurs, give notice (a "**Holder Put Event Notice**") to Holders and the Supervisor. The Holder Put Event Notice shall state that a Holder Put Event has occurred and either:
 - (i) if the Issuer has elected to Redeem all outstanding Bonds, that the Issuer has elected to Redeem all of the Bonds held by each Holder on the Interest Payment Date specified in the notice sent to Holders under clause 3.4(b); or
 - (ii) if the Issuer has elected not to Redeem all outstanding Bonds:
 - (aa) that each Holder may, within 20 days after the date of receipt of the Holder Put Event Notice, elect that the Issuer is to Redeem all (but not only some) of the Bonds held by that Holder by completing and returning the accompanying form to the Issuer; and
 - (bb) be accompanied by a form which a Holder may complete and return to the Issuer, by which a Holder may elect that the Issuer is to Redeem all (but not only some) of the Bonds held by that Holder on the next Interest Payment Date after the date that such written notice is received by the Issuer.
- (b) If, after the 20 day period referred to in clause 3.7(a)(ii)(aa) has elapsed, the number of Holders that have elected to have their Bonds Redeemed means that subsequent to the Redemption of those Bonds less than 100,000,000 Bonds will remain outstanding, the Issuer may elect to Redeem all remaining outstanding Bonds by providing notice to those Holders who did not elect to have their Bonds Redeemed within 10 days after the date on which the period referred to in clause 3.7(a) has elapsed and the Issuer will Redeem all outstanding Bonds on the next Interest Payment Date.

3.8 **Payment on Redemption:**

- (a) If Bonds are to be Redeemed in accordance with clause 3.1, 3.2, 3.3(a), 3.3(d) or 3.7, on the Redemption Date, the Issuer must pay to the Holder in respect of each Bond which is Redeemed the sum of:
 - (i) the Issue Price;
 - (ii) any Unpaid Interest on that Bond; and
 - (iii) any Interest Payment scheduled to be paid on that date in accordance with clause 2.7.
- (b) If Bonds are to be Redeemed in accordance with clause 3.3(b) or 3.3(c) the Issuer must pay to the Holder in respect of each Bond which is Redeemed the greater of:
 - (i) the amount calculated under clause 3.8(a) above; and
 - (ii) the market price of the Bonds, being the average price, weighted by volume, of all trades of Bonds through the NZDX market over the ten Business Days prior to the 15th day before the relevant Redemption Date (except where the Bonds have not traded on the NZDX market for at least five Business Days during that period in which case the market price of the Bonds will be determined by an Independent Advisor), plus any accrued interest from the end of that period up to (but excluding) the relevant Redemption Date.

4. **ELECTION PROCESS**

4.1 **Notification of Election Process:** No earlier than six months and not later than 30 Business Days before a Reset Date, the Issuer may issue a notice to Holders entered on the Register at the close of business on the Record Date for the Election Process (an "**Election Notice**") that will include the New Conditions, if any, of the Bonds that will apply with effect from the Reset Date if a Successful Election Process occurs. The applicable Election Notice (including any explanatory notes accompanying that notice) will include:

- (a) the date by which a duly completed Election Notice must be returned to the Issuer ("**Notification Date**") which must comply with clause 4.3(a);
- (b) the timing of the next Reset Date (which must coincide with the beginning of an Interest Period); and
- (c) the New Conditions that are to apply to the Bonds with effect from the applicable Reset Date.

4.2 **Supervisor Confirmation:** The Issuer shall seek the Supervisor's confirmation that it is prepared to continue to act as Supervisor in respect of the Bonds as modified by the New Conditions specified in an Election Notice (such confirmation not to be unreasonably delayed or withheld, and not being required where the New Conditions differ from the previous terms and conditions of the Bonds only as to Interest Payment Dates, Interest Rate, Margin, Reset Dates or Step-up Percentage).

4.3 **Holder's election to retain or sell:**

- (a) The Notification Date must fall no earlier than 15 Business Days after the Election Notice is given and no later than 10 Business Days prior to the applicable Reset Date.

- (b) Each Holder may, on or prior to the Notification Date, complete and sign the Election Notice and return it to the Issuer in the manner described in the Election Notice.
- (c) The Election Notice will provide for a Holder to indicate:
 - (i) **Retain Bonds:** the Bonds in respect of which the Holder accepts the New Conditions set out in the Election Notice (which may include some or all of the Bonds held by that Holder as at the Record Date for the Election Process);
 - (ii) **Sell Bonds:** the Bonds which the Holder wishes to sell through the Election Process; and
 - (iii) **Other:** such other information that the Issuer might require.
- (d) If:
 - (i) **No election indicated:** the Issuer receives an Election Notice but the Election Notice does not indicate whether or not the Holder elects to retain or sell all or part of their Bonds through the Election Process;
 - (ii) **No Election Notice received:** the Issuer does not receive a properly completed Election Notice from the Holder on or before the Notification Date;
 - (iii) **Minimum remaining Bonds:** the Issuer receives an Election Notice, but implementation of the election made by the Holder would result in him or her remaining a Holder of Bonds with an aggregate Principal Amount of less than the Minimum Holding; or
 - (iv) **Multiple of 1,000:** the Issuer receives an Election Notice and the Holder has elected to retain some of its Bonds, but the number to be retained is not an integral multiple of 1,000,
 then:
 - (v) in the case of (i) above, the Holder will, subject to clause 4.8, be deemed to have elected to retain such number of Bonds subject to the New Conditions in respect of which no such indication has been given;
 - (vi) in the case of (ii) above, the Holder will, subject to clause 4.8, be deemed to have elected to retain all of the Bonds held by it subject to the New Conditions;
 - (vii) in the case of (iii) above, the Holder will, subject to clause 4.8 and to it holding more than the Minimum Holding, be deemed to have elected to retain such number of Bonds as is equal to the Minimum Holding subject to the New Conditions and be deemed to have elected to sell the remainder of the Bonds through the Election Process; and
 - (viii) in the case of (iv) above, the Issuer will round the number of Bonds down to the nearest integral multiple of 1,000.

4.4 Successful Election Process:

- (a) Within five Business Days of the Notification Date, the Issuer may (at its discretion) notify the Holders and the Supervisor either that:

- (i) it will purchase all Bonds held by Holders that have elected to sell their Bonds as part of the Election Process ("**Successful Election Process**"); or
 - (ii) a Successful Election Process has not occurred in relation to the Election Process.
- (b) If no notification has been made by the time specified in clause 4.4(a), the Issuer will be deemed to have confirmed that a Successful Election Process has occurred and a Successful Election Process will be deemed to have occurred.

4.5 Repurchase Price:

- (a) Subject to a Successful Election Process having been notified or deemed pursuant to clause 4.4, any Bond that a Holder has elected to sell in connection with an Election Process must be purchased by the Issuer on the Reset Date for an amount equal to the sum of:
- (i) the Issue Price;
 - (ii) any Unpaid Interest on that Bond; and
 - (iii) any Interest Payment scheduled to be paid on the Reset Date,
- (the sum of sub-paragraphs (i) - (iii) above being for the purposes of this clause 4 only the "**Repurchase Price**").
- (b)
- (i) No deductions or withholdings on account of commissions, brokerage or otherwise will be made from any payment of the Repurchase Price made to the relevant Holder in accordance with clause 4.5(a), other than deductions or withholdings required by law.
 - (ii) For the avoidance of doubt, payment of the Repurchase Price by the Issuer on the Reset Date shall satisfy the Issuer's obligation to pay interest on any Bonds that a Holder has elected to sell pursuant to clause 4.3.
 - (iii) If a Holder has elected to retain some or all of its Bonds, the Issuer shall pay all interest due on those retained Bonds on the Reset Date to the Holder whose name is on the Register on the Record Date for that Interest Payment Date.

4.6 Process:

- (a) The Issuer may, prior to the Reset Date, establish a resale facility which the Issuer may conduct itself or may involve the use of one or more investment banks, stockbrokers or other similar professional organisations whereby Bonds are sold for value on the Reset Date.
- (b) The Issuer may itself purchase or sell Bonds through the Resale Facility.
- (c) Each Bond purchased by the Issuer as part of an Election Process may either be (at the Issuer's discretion):
- (i) cancelled by the Issuer by notice in writing to the Supervisor and Registrar (in which case neither the Issuer nor the Supervisor will have any further liabilities or obligations in respect of that Bond); or

- (ii) held by the Issuer as treasury stock.

- 4.7 **Acceptance of New Conditions:** As from the Reset Date applicable to a Successful Election Process, the Bonds shall be deemed to be amended by incorporation into the Conditions of the New Conditions applicable thereto as if such New Conditions were expressly set out in the Conditions.
- 4.8 **Overseas Holders:** The Issuer will have an absolute discretion to treat any Holder that has not or is unable to provide the Issuer with the evidence required to satisfy the Issuer that the Holder is a New Zealand Holder as having elected in an Election Notice to sell all Bonds held by it.
- 4.9 **Step-up Percentage to apply:** If a Successful Election Process has not been declared, or deemed to have been declared, in accordance with clause 4.4 then the Election Notice will be deemed to be revoked. If, in respect of a Reset Date, the Election Notice has been deemed to be revoked in accordance with this clause or if no Election Notice has been issued, then, with effect from the Reset Date, the Margin will be an amount which is determined in accordance with paragraph (c) of the definition of "Margin" in clause 2.1 and otherwise the terms and conditions applicable to the Bonds immediately prior to the Reset Date will continue to apply.
- 4.10 **Power of attorney:** Each Holder irrevocably appoints the Issuer and any director or person from time to time nominated by the Issuer (each an "**Appointed Person**") severally to be the attorney of the Holder and the agent of the Holder with power in the name and on behalf of the Holder to do all such acts and things including signing all documents or transfers as may in the opinion of the Appointed Person be necessary or desirable to be done in order to record or perfect the purchase of the Bonds by the Issuer in accordance with clause 4.5(a) or pursuant to the Resale Facility.

5. ISSUE AND TRANSFER

- 5.1 **Form of Bonds:** Bonds will be issued in denominations of \$1 and in minimum initial parcels of \$5,000 (and thereafter in multiples of \$1,000) by entry on the Register of the details specified in clause 7.1 of the Deed. Bonds shall be issued in an uncertificated book entry form.
- 5.2 **Effect of entries in Register:** Each entry in the Register in respect of a Bond constitutes:
- (a) an unconditional and irrevocable undertaking by the Issuer to the Holder to make all payments of principal and interest in respect of that Bond according to these Conditions; and
 - (b) an entitlement to the other benefits given to the Holder under these Conditions in respect of that Bond.
- 5.3 **Certificates:** At the request of a Holder, or otherwise as required by the FMC Act or any other applicable law, the Issuer shall procure the Registrar to issue to that Holder a certificate or notice of registration in relation to the Bonds held by that Holder, such certificate or notice to be in the form agreed between the Issuer and the Registrar, or, in respect of any Listed Bonds, a Statement complying with the Listing Rules (if applicable). A certificate, notice of registration or Statement issued in respect of a Bond will not constitute a document of title. Entitlement will be determined solely by entry in the Register and, in the case of the beneficial interest in Bonds lodged in NZClear, the records of NZClear.
- 5.4 **Transfers:** Bonds may be transferred in minimum aggregate Principal Amounts of \$1,000 or such lesser amount as the Issuer may from time to time permit subject to this clause 5.4 ("**Minimum Transfer Amount**"), provided that, following any such transfer, the transferor

and the transferee each holds Bonds with a minimum aggregate Principal Amount of \$5,000 or zero (\$0) ("**Minimum Holding**"). A registered bank under the Reserve Bank of New Zealand Act 1989 or a Primary Market Participant (as defined in the NZX Listing Rules), may transfer Bonds at any time with a Principal Amount less than the Minimum Transfer Amount.

5.5 **Form of transfer:**

- (a) Subject to these Conditions and the Deed, a Holder may transfer any Bond held by the Holder by:
 - (i) **Written instrument:** a written instrument of transfer in the usual or common form signed by the transferor and the transferee; or
 - (ii) **TCS BaNCS:** means of TCS BaNCS; or
 - (iii) **NZClear System:** means of the NZClear System; or
 - (iv) **Other method:** any other method of transfer of marketable securities which is not contrary to any law and which may be operated in accordance with the Listing Rules, and which is approved by the Issuer and the Registrar and delivered to the office of the Registrar.
- (b) Each instrument of transfer must be accompanied by:
 - (i) any other evidence (including legal opinions) that the Issuer or the Registrar reasonably requires to prove:
 - (A) the title of the transferor; or
 - (B) the transferor's right to transfer the Bonds; or
 - (C) the identity of the transferor and/or the transferee; and
 - (ii) if the form of the transfer is executed by some other person on behalf of the transferor or, in the case of the execution of the form of transfer on behalf of a corporation by its officers, the authority of that person to so execute that transfer.

5.6 **Registration process:**

- (a) Subject to clause 5.6(b), neither the Issuer nor the Registrar shall charge a fee to any Holder for:
 - (i) registering transfers of Bonds; or
 - (ii) splitting Statements in relation to Bonds; or
 - (iii) issuing Statements (where bound to do so) and transmission receipts in relation to Bonds; or
 - (iv) using holder or FINs in relation to Holders; or
 - (v) noting transfer forms in relation to Bonds.
- (b) The Issuer and the Registrar may:
 - (i) charge a fee where Statements are issued to replace a lost or destroyed Statement; and

- (ii) require the payment of any taxes and other governmental charges payable as a result of the registration of any holding of Bonds or the transfer of Bonds.
 - (c) Neither the Issuer nor the Registrar will refuse to register or fail to register or give effect to a transfer of Bonds except as permitted by the Deed and these Conditions, any applicable law or the Listing Rules.
 - (d) Subject to clause 5.7, a transfer of a Listed Bond will be effected by the Registrar within the time prescribed by the Listing Rules.
- 5.7 **Refusal to register transfers:** The Issuer may direct the Registrar to refuse to register any transfer of Bonds where these Conditions, the Deed, any Listing Rule or any applicable legislation permits or requires the Issuer to do so. The Registrar shall refuse to register any transfer where the Deed, these Conditions or the Listing Rules or any applicable law requires the Issuer or the Registrar to refuse to register the transfer.
- 5.8 **Notice of refusal to register:** Where registration of a transfer of Bonds is refused under clause 5.7, the Issuer must direct the Registrar to give written notice of the refusal and the precise reasons for the refusal to the party lodging the transfer, if any, within five Business Days after the date on which the transfer was lodged. The failure to give such a notice will not invalidate the decision not to register.
- 5.9 **Retention of transfers:** The Issuer must direct the Registrar to retain all instruments of transfer of Bonds which are registered, but any instrument of transfer of Bonds the registration of which was declined or refused (except on the ground of suspected fraud) is to be returned to the party lodging the transfer.
- 5.10 **Powers of attorney:** Any power of attorney granted by a Holder empowering the donee to deal with, or transfer Bonds, which is lodged, produced or exhibited to the Registrar will be deemed to continue and remain in full force and effect as between the Issuer, the Supervisor, the Registrar and the grantor of that power, and may be acted on, until express notice in writing that it has been revoked or notice of the death of the grantor has been received by the Registrar.
- 5.11 **Transmission by operation of law:** Any person becoming entitled to any Bond by operation of law (including the death or bankruptcy of any Holder) may, upon producing such evidence of entitlement as is acceptable to the Registrar, obtain registration as the Holder of such Bond or execute a transfer of such Bond. This provision includes any case where a person becomes entitled as a survivor of persons registered as joint Holder.
- 5.12 **Sale of less than Minimum Holding:** The Board may at any time give notice to any Holder holding less than a Minimum Holding of Bonds that if at the expiration of three months after the date the notice is given the Holder still holds Bonds which are less than a Minimum Holding, the Board may exercise the power of sale of those Bonds set out in this clause 5.12, if the Bonds are Listed, subject to and in accordance with the Listing Rules. If that power of sale becomes exercisable:
- (a) if the Bonds are Listed, the Board may arrange for the sale of those Bonds through the NZDX market or in some other manner approved by NZX;
 - (b) the Holder shall be deemed to have authorised the Issuer to act on the Holder's behalf and to execute all necessary documents for the purposes of that sale;
 - (c) the Issuer shall account to the Holder for the net proceeds of sale of the Bonds (after deduction of reasonable sale expenses), which shall be held on trust for the Holder by the Issuer and paid to the Holder on surrender of any Statement for the Bonds sold; and

- (d) the title of a purchaser of any Bonds sold pursuant to this clause 5.12 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

5.13 **Address, account details and tax residency of transferee:** A transferee of Bonds must designate to the Registrar an address, and a bank account to which payments under or in respect of the Bonds transferred to it are to be made and the address and account so designated will be the address and account of such Holder for all purposes of the Deed and these Conditions. The transferee shall also give written notice to the Registrar of its residency for taxation purposes and such other information as is required to be provided in accordance with clause 7.7 of the Deed.

5.14 **Reliance on documents:** The Issuer and the Registrar shall be entitled to accept and assume the authenticity and genuineness of any instrument of transfer or other document, and will not incur any liability for registering any instrument of transfer which is subsequently discovered to be a forgery or otherwise defective, unless the Issuer or the Registrar had actual notice of such forgery or defect at the time of registration of such instrument of transfer.

5.15 **Selling restrictions:**

- (a) Each Holder shall only offer for sale or sell any Bond in conformity with all applicable laws and regulations in any jurisdiction in which it is offered, sold or delivered.
- (b) No Offer Document or any advertisement or other offering material in respect of any Bond may be published, delivered or distributed in or from any country or jurisdiction except under circumstances which will result in compliance with all applicable laws and regulations.

5.16 **Indemnity:** By its purchase of Bonds, each Holder agrees to indemnify the Issuer in respect of any loss, cost, liability or expense sustained or incurred by the Issuer as a result of a breach by the Holder of the restrictions contained in clause 5.15.

6. PAYMENTS AND OTHER MATTERS

6.1 **New Zealand Dollars:** All payments to be made by the Issuer under the Deed and these Conditions will be made in New Zealand Dollars.

6.2 **Calculation of Interest Payments:** All calculations of payments will be rounded to four decimal places. For the purposes of making any payment in respect of a Holder's aggregate holding of Bonds, any fraction of a cent will be disregarded.

6.3 **No set-off:** The Holder has no right to set-off any amounts owing by the Holder to the Issuer against any amount owing by the Issuer.

6.4 **Time limit for claims:** A claim against the Issuer for payment according to these Conditions is void unless made within five years of the due date for payment.

6.5 **Manner of payment to Holders:** Monies payable by the Issuer or the Supervisor to a Holder may be paid in any manner the Issuer or Supervisor (as the case may be) decides, including by any method of direct credit determined by the Issuer or Supervisor (as the case may be) to the Holder or Holders shown on the Register or to such person or place directed by them.

6.6 **Unsuccessful transfers:** Subject to applicable law and the Listing Rules, where the Issuer or Supervisor:

- (a) decides that an amount is to be paid to a Holder by a method of direct credit and the Holder has not given a direction as to where amounts are to be paid by that method;
- (b) attempts to pay an amount to a Holder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful; or
- (c) has made reasonable efforts to locate a Holder but is unable to do so,

the amount is to be held by the Issuer on trust for the Holder as a non-interest bearing deposit until the Holder or any legal personal representative of the Holder claims the amount or the Issuer is otherwise entitled to deal with the money by applicable law.

6.7 **Payment to joint Holders:** A payment to any one of joint Holders will discharge the Issuer's liability in respect of the payment.

6.8 **Cessation of rights:** Upon Redemption and payment of all amounts due in respect of a Bond on the Redemption Date, all other rights conferred, or restrictions imposed, by that Bond will no longer have effect.

7. TREASURY STOCK

7.1 Notwithstanding anything in these Conditions to the contrary, Bonds purchased by the Issuer in accordance with these Conditions may be held as treasury stock subject to the following conditions:

- (a) while being held by the Issuer, the Bonds will not accrue any interest;
- (b) the Bonds will be capable of being cancelled at any time by the Issuer by notice in writing to the Supervisor and Registrar (in which case neither the Issuer nor the Supervisor will have any further liabilities or obligations in respect of that Bond or the relevant Holder);
- (c) the Issuer may sell the Bonds on any terms it considers appropriate (at which time they will no longer be considered to be treasury stock); and
- (d) Bonds purchased and held by the Issuer as treasury stock shall not entitle the Issuer to vote at any meeting of Holders and shall not be considered for the purpose of calculating quorum at a meeting of Holders.

SCHEDULE 3

MEETINGS OF HOLDERS

1. CONVENING MEETINGS

- 1.1 **Request for meeting:** The Issuer or the Supervisor at any time may, and the Issuer and the Supervisor upon a request in writing by Holders holding together not less than 5 per cent. of the aggregate Principal Amount of the Bonds on issue in that class must, convene a meeting of that class of Holders. Whenever the Issuer or the Supervisor convenes any such meeting it must give notice to the other and to the relevant class of Holders.
- 1.2 **Place for meetings:** Meetings will be held in Auckland, or such other place as the Supervisor approves.
- 1.3 **Nature of business:** Any request by Holders holding together not less than 5 per cent. of the aggregate Principal Amount of the Bonds on issue in that class to convene a meeting must state the nature of the business proposed to be dealt with at the meeting.

2. NOTICE TO HOLDERS

- 2.1 The Issuer must ensure that written notice of the time and place of a meeting is sent to the following at least 15 Business Days before the meeting:
- (a) every Holder entitled to receive notice of the meeting;
 - (b) the Supervisor; and
 - (c) every director and an Auditor of the Issuer.

3. NOTICE OF MEETING

- 3.1 The notice given under clause 2 must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Holder to form a reasoned judgment in relation to it;
 - (b) the text of any Extraordinary Resolution to be submitted to the meeting; and
 - (c) the right of a Holder to appoint a proxy.
- 3.2 If an Extraordinary Resolution is to be submitted to the meeting:
- (a) a draft of the proposed notice of the meeting must be given to the Supervisor at least 10 Business Days before the notice is given under clause 2 (or any lesser period approved by the Supervisor); and
 - (b) the notice of the meeting must be accompanied by a document containing the Supervisor's comments on the proposed Extraordinary Resolution (but only if the Supervisor has provided those comments in writing to the Issuer at least 5 Business Days before the notice is given under clause 2).
- 3.3 An irregularity in a notice of a meeting is waived if:
- (a) all Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Holders agree to the waiver; or

- (b) the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Holders.

3.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Holder does not invalidate the proceedings at that meeting.

3.5 If a meeting is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

4. CHAIRPERSON

4.1 A person (who may, but need not, be a Holder) nominated in writing by the Supervisor will be entitled to chair every such meeting, but if no such nomination is made, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the holding of such meeting, the Holders present must choose one of their number to chair the meeting.

5. QUORUM

5.1 No business may be transacted at a meeting of Holders if a quorum is not present.

5.2 A quorum for a meeting of Holders at which an Extraordinary Resolution is to be submitted is present if Holders or their proxies are present who hold Bonds with a Principal Amount of no less than 25% of the Principal Amount of Bonds held by those Holders who are entitled to vote on the business to be transacted at the meeting.

5.3 A quorum for any other business at a meeting of Holders is present if at least 2 Holders or their proxies are present.

6. LACK OF QUORUM AND ADJOURNMENT

6.1 Despite clause 5, if a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called under section 120(1)(b) of the FMC Act, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the day that is 10 Business Days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Holders or their proxies present are a quorum.

6.2 To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

7. ATTENDANCE AND VOTING AT MEETINGS

7.1 **Attendance at meetings:** Other than the Supervisor, the Issuer and their representatives (who may attend but may not vote (except in the case of the Supervisor where it is acting on behalf of a Holder)), no person will be entitled to attend and vote at any meeting of the Holders or to join with others in requesting the convening of any such meeting unless he or she is a person registered as Holder on the Register or is a representative of such person. In this clause, a representative of a Holder means:

- (a) in the case of a Holder being an individual, a person appointed by an instrument by way of proxy or by power of attorney (in either case, in a form satisfactory to the Supervisor);
- (b) in the case of a Holder being a corporation either:
 - (i) a person appointed by an instrument by way of proxy or by power of attorney; or
 - (ii) a person authorised pursuant to clause 10 of the First Schedule to the Companies Act or in the case of a corporation sole a person authorised pursuant to its constitution; or
- (c) a person upon whom the ownership of a Holder's Bond has devolved by reason of his being a legal representative or an assignee in bankruptcy or liquidator of the Holder, or such person's representative appointed or authorised under (i) or (ii) above.

7.2 **Voting at meetings:** At a meeting, the persons registered as Holders in the Register at the Proxy Closing Time will be exclusively entitled to vote in respect of Bonds recorded in their name, in person or by representative. For the purpose of establishing voting entitlements at a meeting, the Register will be closed as of 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.

7.3 **Holder's representations:** The Supervisor, or any of its officers or employees, may be appointed a representative of a Holder.

7.4 **Supervisor must attend meetings:** To be validly constituted, the Supervisor must be present at every meeting convened in accordance with this schedule.

8. PROXIES

8.1 **In writing:** The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney, or if the appointor is a corporation either under seal or signed on its behalf by an officer, attorney, director or other person who has actual authority to appoint a proxy on behalf of such corporation.

8.2 **Right to speak:** A person appointed to act as a proxy need not be a Holder and a proxy of a Holder has the right to speak at the meeting.

8.3 **Instrument of appointment:** The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified in such manner as the Supervisor approves must be deposited at such place as (or a facsimile copy of such proxy and power of attorney must be received at such facsimile number as) the Supervisor or the Issuer with the approval of the Supervisor may in the notice convening the meeting direct or (if no such place is appointed) at the registered office of the Issuer not later than the Proxy Closing Time. A proxy form shall be sent with each notice of meeting of Holders and:

- (a) shall, so far as the subject method and form of the resolutions reasonably result provide for 2-way voting on all resolutions, enabling the Holders to instruct the proxy as to the casting of the vote; and
- (b) shall not be sent with any name or office (e.g. chairperson or directors of the Issuer) filled in as proxy holders.

8.4 **Form of instrument of appointment:** An instrument of proxy may be in any usual common form or in such other form as the Supervisor approves and may make provision for directions to be given by the appointor to vote in favour of or against any proposed resolution.

8.5 **Validity of proxy:** A proxy will, unless it states otherwise, be valid for any adjournment of the meeting as well as for the meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution, although this provision does not apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.

8.6 **Appointment of chairperson:** An instrument of proxy in favour of:

(a) the chairperson of the Issuer; or

(b) the chairperson of the meeting, or "the Chairperson",

(however expressed) will be valid and effectual as though it were in favour of a named person and will in the case of paragraph (a) above constitute the person holding the office of the chairperson of the Issuer and in the case of paragraph (b) above the person who chairs the meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointor.

9. RIGHTS OF REPRESENTATIVES

9.1 A representative of a Holder will have the right to speak at the meeting and to demand or join in demanding a poll and will (except and to the extent to which the representative is specifically directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.

10. VOTING PROCEDURE AND POLLS

10.1 **Voting on resolutions:** A resolution put to the vote of a meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or the Supervisor or by one or more Holders holding or representing not less than five per cent. of the aggregate Principal Amount of the 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.

10.2 **Holders' entitlement to votes:** On a show of hands each person present at the meeting and entitled to vote (whether personally, by proxy or as a representative) will have one vote only. On a poll every Holder who is present in person, by proxy or by a representative will have one vote for each dollar of the Principal Amount of every Bond held by the Holder.

10.3 **Conduct of poll:** If a poll is required, it will be taken in such manner as the chairperson may direct and the result of such poll will be deemed to be the resolution of the meeting at which the poll was required.

10.4 **Casting vote:** In the 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 the chairperson may be entitled as a Holder or on behalf of Holders.

10.5 **Timing of poll:** A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. 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.

- 10.6 **Continuance of meeting following poll:** The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question on which the poll has been demanded.
- 10.7 **Voting on poll:** On a poll, votes may be given either personally or by representative, and a person entitled to more than one vote need not use all such votes or cast all such votes in the same way.
- 10.8 **Joint Holders:** In the case of joint Holders, the vote of the senior who tenders a vote, whether in person or by representative, will be accepted to the exclusion of the votes of the other joint Holders, and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
- 10.9 **Validity of votes cast:** A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form 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 other form of appointment or the authority under which the proxy was executed or the transfer of the Bonds in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Supervisor or the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 10.10 **Resolution binding on Holders:** A resolution passed at a meeting of the Holders duly convened and held in accordance with this deed will be binding upon all the Holders whether present or not at such meeting.

11. EXTRAORDINARY RESOLUTIONS

- 11.1 A meeting of the Holders, in addition to the powers expressed in this deed, but without prejudice to any powers conferred on the Supervisor by this deed, has the following powers exercisable by Extraordinary Resolution namely:
- (a) **Sanction proposal in respect of this deed or Bonds:** to sanction, either unconditionally or conditionally, any proposal by the Issuer for any modification, abrogation, novation, variation of, or arrangement in respect of, the rights of the Holders against it arising under this deed or the Bonds;
 - (b) **Assent to modification of the Conditions or this deed:** to assent to any proposal for modification of the Conditions or this deed which is proposed by the Issuer;
 - (c) **Authorise execution of documents:** to authorise any person or persons to concur in and execute all such documents and do all such acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution;
 - (d) **Discharge liability:** subject to section 113 of the FMC Act, to discharge or exonerate any person or persons from any liability in respect of any act or omission for which such person or persons may have become responsible under this deed or the Bonds;
 - (e) **Authorise, direct or sanction:** to give any authority, direction or sanction or approval which under the provisions of this deed or the Bonds is required to be given by Extraordinary Resolution;
 - (f) **Remove Supervisor:** to request the removal of the Supervisor and to approve the appointment of a new trustee;

- (g) **Appoint committee of Holders:** to appoint any persons (whether or not Holders) as a committee or committees to represent the interest of the Holders and to confer upon such committee or committees any powers or discretions which the Holders could themselves exercise by Extraordinary Resolution; and
- (h) **Direct or request Supervisor:** to direct or request the Supervisor to take such action or do such things as the Supervisor may lawfully do under this deed and to authorise the Supervisor to deduct its costs and expenses from any amount received by the Supervisor on account of Holders, to the extent such additional authority may be required.

An Extraordinary Resolution or ordinary resolution passed in accordance with this schedule will be binding upon all the Holders and each of the Holders and the Supervisor (subject to the provisions of the Supervisor's indemnity contained in this deed) will be bound to give effect to that resolution accordingly and the passing of any such Extraordinary Resolution or ordinary resolution will, as between the Holders and the Supervisor, be conclusive evidence that the circumstances justify the passing thereof.

12. MINUTES

- 12.1 Minutes of all resolutions and proceedings at every meeting of Holders must be made and duly entered in records to be from time to time maintained for that purpose at the expense of the Issuer by the Supervisor. Any such minutes signed by the chairperson of the meeting at which such resolutions were passed or proceedings transacted, or by the chairperson of the next succeeding meeting of the Holders, will be prima facie evidence of the matters recorded in them. Until the contrary is proved, every meeting whose proceedings have been so minuted and signed will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed and transacted. Copies of all minutes must be given by the Supervisor to the Issuer as soon as possible after each meeting.

SCHEDULE 4

**FORM OF DEED JOINING NEW GUARANTOR
(Clause 4.1)**

SUPPLEMENTAL DEED POLL made [] 20]

BY [] ("**Subsidiary**")

IN FAVOUR OF THE SUPERVISOR referred to below

INTRODUCTION

- A. The Subsidiary is a subsidiary of Genesis Energy Limited ("**Issuer**").
- B. The Issuer and certain of its other subsidiaries are parties to a Capital Bonds Trust Deed dated [•] 2017 ("**Trust Deed**") under or pursuant to which subsidiaries of the Issuer have given guarantees for the benefit of the Supervisor and the Holders (as defined therein).
- C. The directors of the Subsidiary have, at the request of the Issuer, resolved that it is in the Subsidiary's interests that the Subsidiary become a Guarantor under the Trust Deed.

COVENANTS

- 1. **Definitions:** To the extent to which the same are applicable, the definitions and provisions contained in clause 1 of the Trust Deed shall apply to, and be incorporated in, this deed.
- 2. **Guarantee:** The Subsidiary on an unsecured, subordinated basis, unconditionally and irrevocably guarantees, to the Holders and the Supervisor the due and punctual payment by the Issuer of the Guaranteed Moneys as and when the same shall become due and payable in accordance with this deed, and the due observance and punctual performance of, and compliance by the Issuer with, its obligations under this deed, to the Holders and the Supervisor, during the term of the Guarantee.
- 3. **Implied provisions:** Pursuant to Section 14 of the Property Law Act 2007 of New Zealand, it is hereby declared that there shall be deemed to be incorporated in this deed all the covenants, representations, warranties and other provisions of the Trust Deed in the same manner and to the same extent as if those covenants, representations, warranties and other provisions had been set out in full in this deed (with all necessary modifications) and made applicable to the Subsidiary as though it were a Guarantor and the Subsidiary accordingly covenants and agrees, jointly and severally, with each other Guarantor, to perform, observe and be bound by the said covenants, representations, warranties and other provisions.
- 4. **Governing law:** This deed shall be governed by, and construed in accordance with, the laws of New Zealand and the Subsidiary hereby submits to the non-exclusive jurisdiction of the New Zealand courts.

SIGNED AS A DEED POLL

[] **LIMITED** by:

Signature of director

Signature of director

Name of director

Name of director

SCHEDULE 5

FORM OF DEED OF RELEASE OF GUARANTOR (Clause 5.3)

DEED dated

PARTIES

GENESIS ENERGY LIMITED ("Issuer")

[] ("Guarantor")

IN FAVOUR OF THE TRUSTEE

INTRODUCTION

- A. The Issuer, the Supervisor, the Guarantor and certain other subsidiaries of the Issuer are parties to a Capital Bonds Trust Deed dated [•] 2017 ("**Trust Deed**") under or pursuant to which subsidiaries of the Issuer have given guarantees for the benefit of the Supervisor and the Holders (as defined therein).
- B. The Guarantor wishes to be released and discharged from all its obligations and liabilities as a Guarantor under the Trust Deed.

COVENANTS

1. To the extent to which the same are applicable, the definitions and provisions contained in clause 1 of the Trust Deed shall apply to, and be incorporated in, this deed.
2. The Issuer and the Guarantor each undertake and warrant for the benefit of the Supervisor that:
 - (a) the Guarantor will cease to be a Subsidiary upon the disposal of the shares in its capital by the Group and that two directors of the Issuer will certify in writing for the benefit of the Supervisor that, in their opinion, the disposal of shares is commercially desirable and that the consideration being obtained is satisfactory having regard to the terms and circumstances of the sale; or
 - (b) two directors of the Issuer have certified in writing for the benefit of the Supervisor that, in their opinion, the release of the Guarantor will not have a material adverse effect on the Bonds; or
 - (c) the Guarantor is to be liquidated or dissolved and all of its assets available for distribution will be distributed to another Guarantor; or
 - (d) the Supervisor has consented in writing to the release of that Guarantor.
3. The Guarantor is, by the execution of this deed, released and discharged from its Guarantee and other undertakings or liabilities under or arising out of the Trust Deed at any time whatever provided that this release shall not operate to release:
 - (a) the Guarantor from the liability for the payment of any indebtedness or any other obligation for which it is liable or obligated to the Supervisor or the Holders independently of the Guarantee;
 - (b) any other Guarantor from liability in respect of the Bond Moneys; or

(c) any other guarantee or any other security held in respect of the Bond Moneys.

4. This deed is governed by, and shall be construed in accordance with, the laws of New Zealand.

SIGNED AS A DEED

GENESIS ENERGY LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

[GUARANTOR] LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

CERTIFICATE

WE, the undersigned, being directors of the Issuer, hereby certify that to the best of our knowledge and belief having made due enquiry, each of the warranties by the Issuer and the Guarantor in clause 2 of the foregoing deed is true and correct.

DATED: []

Signature of director

Signature of director

Name of director

Name of director