



Supplemental Trust Deed (2022 Capital Bonds)

Mercury NZ Limited
(Issuer)

The New Zealand Guardian Trust Company
Limited
(Supervisor)



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SUPPLEMENTAL TRUST DEED (2022 CAPITAL BONDS)

Date: 2 May 2022

PARTIES

Mercury NZ Limited (*Issuer*)

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

INTRODUCTION

- A This deed is supplemental to a master trust deed dated 4 April 2003 between the Issuer and the Supervisor (*Master Trust Deed*).
- B By virtue of clause 3.2 of the Master Trust Deed, the Issuer may create and issue Bonds constituted by, and on terms and conditions set out in, a trust deed supplemental to the Master Trust Deed.
- C The Issuer intends to issue Bonds to be constituted and issued on the terms and conditions set out in this Supplemental Trust Deed.
- D The Supervisor has agreed to enter into this deed for the benefit of Holders of the Bonds on the terms and conditions of this deed and (as modified by this deed) the Master Trust Deed

IT IS AGREED:

1 INTERPRETATION

1.1 Master Trust Deed

The terms of the Master Trust Deed (including the definitions in clause 1.1, and the rules of construction in clause 1.2, of that deed) apply in this deed, and to the Bonds constituted by this deed, except to the extent modified by this deed. To that extent, or to the extent the provisions of this deed conflict with the provisions of the Master Trust Deed, this deed prevails over the Master Trust Deed.

1.2 Definitions

In this deed, unless the context otherwise requires:

Accrued Interest means, in relation to a Deferred Interest Payment, all accrued interest on that Deferred Interest Payment;

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);

Bonds means the Bonds issued or to be issued pursuant to this Supplemental Trust Deed;



Calculation Period means:

- (a) the period from (and including) the Issue Date to (but excluding) the First Reset Date; and
- (b) thereafter, the period from (and including) a Reset Date to (but excluding) the next Reset Date;

Commencement of Liquidation means the commencement of Liquidation or the removal of the Issuer from the register pursuant to section 317 of the Companies Act;

Credit Rating means, at any time, the long term issuer credit rating granted by the Rating Agency at that time to the Issuer;

Deferral Date means, in relation to an Interest Payment, the Interest Payment Date on which that Interest Payment was deferred in accordance with clause 6.2;

Deferred Interest Payment means a payment of interest which has been deferred in accordance with clause 6.2;

Election Notice means a notice given by the Issuer pursuant to clause 8.1;

Election Process means the process described in clause 8;

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; or
- (b) the Issuer fails to comply with clause 6.6; or
- (c) the Issuer fails to pay the amount payable on redemption of the Bonds under clause 7.7; or
- (d) the Issuer fails to pay the Repurchase Price for the Bonds in connection with an Election Process when required under clause 8; or
- (e) an Insolvency Event occurs in respect of the Issuer;

First Interest Payment Date means 13 August 2022;

First Reset Date means 13 May 2027;

FMCA means the Financial Markets Conduct Act 2013;

Independent Adviser means an adviser appointed pursuant to clause 1.3;

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

- (a) the Commencement of Liquidation; or



- (b) a security holder takes possession of all or substantially all of the Issuer's assets 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;

Interest Payment means an interest payment under clause 6.1 or, as the case may be, clause 6.8;

Interest Payment Date means 13 February, 13 May, 13 August and 13 November in each year commencing on the First Interest Payment Date;

Interest Period means, in relation to a Bond, the period from (and including) an Interest Payment Date (or, in the case of the first Interest Period, the Issue 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 means the rate (expressed as a percentage per annum):

- (a) during the first Calculation Period, determined by the Issuer in accordance with the Offer Document and announced by the Issuer as the Interest Rate on or about the Rate Set Date; and
- (b) during any subsequent Calculation Period, calculated according to the following formula:

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

Issue Date means the date on which the Bonds are issued (as recorded in the Register);

Issue Price means, in respect of each Bond, \$1.00;

Issuer Notice means a notice given by the Issuer in accordance with clause 7.4;

Liquidation means, in relation to the Issuer:

- (a) the process of liquidation provided for in Part XVI of the Companies Act; or
- (b) the process of voluntary administration provided for in Part XVA of the Companies Act;
- (c) any analogous procedure following which the Issuer will cease to validly exist, or be duly incorporated; or
- (d) the Issuer becoming subject to statutory management under the Corporations (Investigation and Management) Act 1989,

but excludes a reconstruction or amalgamation:

- (e) on terms approved by Extraordinary Resolution; or
- (f) under Part XIII of the Companies Act where the successor to the Issuer assumes the obligations of the Issuer under this deed and the Bonds;



Liquidator means any official (including a statutory manager) in whom management of the Issuer 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 NZX Debt Market, and Listing has a corresponding meaning;

Listing Rules means the NZX Listing Rules in force from time to time;

Mandatory Unpaid Interest Payment means a payment of interest the Issuer is obliged to make under clause 6.4(b);

Mandatory Unpaid Interest Payment Date means, in relation to a Deferred Interest Payment, the earlier of the Maturity Date and the fifth anniversary of the relevant Deferral Date;

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

- (a) during the first Calculation Period, the initial Margin as announced by the Issuer on the Rate Set Date;
- (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 occurred, 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 Margin (provided the Step-up Margin has not been added to the Margin since the last Successful Election Process);

Maturity Date means 13 May 2052;

Minimum Holding means a minimum aggregate Principal Amount of \$5,000;

Minimum Transfer Amount means a minimum aggregate Principal Amount of \$1,000 (or such lesser amount as the Issuer may from time to time permit);

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 means the date by which a duly completed Election Notice must be returned to the Issuer;

NZClear 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;

NZX means NZX Limited;

NZX Debt Market means the debt security market operated by NZX;

NZX Minimum Holding, in relation to the Bonds, has the same meaning as "Minimum Holding" in the Listing Rules;

Offer Document means the terms sheet relating to the issue of the Bonds dated on or about the date of this deed, and includes all supplements and amendments to that terms sheet;

Optional Unpaid Interest Payment means an Interest Payment the Issuer elects to pay pursuant to clause 6.4(a);

Principal Amount means, in relation to a Bond at any time, the amount (other than interest, fees and costs) payable on the redemption or repayment of that Bond as set out in the Register at that time;

Rate Set Date means 5 May 2022;

Rating Agency means S&P Global Ratings 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 have the same equity content classification from the Rating Agency as it had immediately prior to the change in criteria; or
- (b) the Issuer ceases to hold a Credit Rating;

Record Date means:

- (a) 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
- (b) in relation to any other payment, the date which is 10 calendar days before the date of the payment,

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 7, and Redeem has a corresponding meaning;



Redemption Date means, in relation to a Bond, the Maturity Date or such earlier date on which Redemption of that Bond is to occur in accordance with clause 7;

Registrar means:

- (a) Computershare Investor Services Limited, as registrar, calculation agent and paying agent for the Bonds; or
- (b) any successor registrar, calculation agent and paying agent for the Bonds appointed under the Registrar and Agency Agreement;

Registrar and Agency Agreement means the registrar and agency agreement dated 18 July 2017 under which the registrar, calculation agent and paying agent for the Bonds is appointed;

Repurchase Price means, in relation to a Bond and a Reset Date, an amount equal to the sum of:

- (a) the Issue Price;
- (b) any Unpaid Interest on that Bond; and
- (c) any Interest Payment scheduled to be paid on the applicable Reset Date;

Resale Facility means the facility for the resale of the Bonds established in accordance with clause 8.6;

Reset Date means:

- (a) the First Reset Date; and
- (b) either:
 - (i) if an Election Notice is given for a Reset Date and if the applicable Election Process is a Successful Election Process, the date so specified in any Election Notice; or
 - (ii) if 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;

Senior Creditors means persons to whom Senior Indebtedness is owed;

Senior Indebtedness means all indebtedness (present or future) of the Issuer:

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

Step-up Margin means 0.25% per annum or such other percentage as may be set by the Issuer as part of a Successful Election Process;



Successful Election Process means, in relation to an Election Process, the Issuer notifying Holders (or being deemed to have notified Holders) that it has agreed to purchase, or procure the purchase of, all Bonds which Holders have elected to sell as part of that Election Process either directly from the Holder or through a resale facility in accordance with clause 8.6;

Swap Rate (expressed as a percentage per annum) means, for a Calculation Period:

- (a) the mid market swap rate for an interest rate swap with a term equal to the Calculation Period, determined by the Issuer according to market convention at or around 11:00am New Zealand time on the Reset Date falling at the start of the relevant Calculation Period, with reference to Bloomberg page 'ICNZ4' (or any successor page) and expressed on a quarterly basis (rounded to 2 decimal places, if necessary, with 0.005 rounded up); and
- (b) if such rate does not appear on the relevant screen page at or about 11:00am New Zealand time on the Reset Date, the average of the mid-point of the bid and offered swap rates per annum (rounded to two decimal places, with 0.005 being rounded up) quoted by three registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Issuer) at or about 11.00am New Zealand time on the Reset Date falling at the start 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.

Supplemental Trust Deed means:

- (a) this deed; and
- (b) includes the terms of the Master Trust Deed as applied in accordance with clause 1.1 of this deed;

Tax Event means the receipt by the Issuer of an opinion from a reputable legal counsel, or other reputable tax advisor 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 Issue Date, the interest payable on all or any of the Bonds, including any Deferred Interest Payment, is not fully deductible under the 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; and

Unpaid Interest means, in relation to a Deferred Interest Payment, that Deferred Interest Payment and its Accrued Interest.

1.3 **Independent Adviser**

If an Independent Adviser is required for the purpose of clause 7.7 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 such approval not to be unreasonably withheld (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). 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 **CONDITIONS PRECEDENT**

2.1 **Documentary Conditions Precedent**

The Issuer is not entitled to issue any Bonds until the Supervisor has confirmed to the Issuer in writing that it has received the following in form and substance satisfactory to it:

- (a) a certificate from a director of the Issuer in respect of such matters as the Supervisor reasonably requires;
- (b) an original of this deed duly executed by the Issuer;
- (c) a legal opinion from the solicitors to the Issuer regarding the due execution and enforceability of this deed; and
- (d) confirmation from the solicitors to the Issuer that this deed and the Offer Document comply with the FMCA, the Financial Markets Conduct Regulations 2014 and the Listing Rules.

2.2 **Representations and Warranties**

In addition to the requirements set out in clause 2.1, the Issuer agrees not to issue any Bonds unless the representations and warranties in clause 8.1 of the Master Trust Deed are true and correct in all material respects by reference to the facts and circumstances existing as at the Issue Date.

2.3 **Issue notice**

Promptly after the Issue Date, the Issuer agrees to send to the Supervisor a copy of the notice it sends to the Registrar pursuant to the Registrar and Agency Agreement setting out the particulars of the Bonds.



3 **BOND TERMS**

3.1 **Maximum Principal Amount**

The aggregate Principal Amount of the Bonds which may be issued pursuant to this Supplemental Trust Deed is \$250,000,000.

3.2 **Principal Amount of Bond**

Each Bond is to be issued with a Principal Amount of \$1.00.

3.3 **Issue Date**

The Bonds shall be issued on the Issue Date in uncertificated book entry form.

3.4 **Enforcement of Holders' rights**

The Supervisor holds its rights and benefits under this deed and the Master Trust Deed in trust for, and for the benefit of, the Holders including (without limitation):

- (a) the right to enforce the Issuer's duty to repay, or to pay interest, under the terms of the Bonds; and
- (b) the right to enforce any other duties that the Issuer and any other person have under the Conditions of the Bonds, or the provisions of this deed or the Listing Rules or the FMCA in relation to the Bonds.

3.5 **Master Trust Deed**

- (a) The Bonds shall be a Retail Series for the purposes of the Master Trust Deed.
- (b) Clauses 9.1 – 9.3 and, without prejudice to clause 7.2, clause 11.2 of the Master Trust Deed shall not apply to the Bonds.
- (c) The definition of Event of Default in the Master Trust Deed shall not apply to the Bonds or the Bond Moneys and shall be replaced with the definition of Event of Default in clause 1.2.

3.6 **Certificates**

At the request of a Holder, or otherwise as required by the FMCA or any other applicable law, the Issuer shall procure the Registrar to issue to that Holder a Statement complying with the Listing Rules. A 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.

4 **SUBORDINATION AND STATUS OF BONDS**

4.1 **Status and subordination**

Each Bond is the direct, unsecured, subordinated obligation of the Issuer and ranks equally without any preference or priority with all other Bonds. In any distribution of assets by the Issuer in Liquidation (including by way of exercise of rights of set-off) the rights of the Supervisor and the Holders to the Bond Moneys are to be subordinated to all moneys payable by the Issuer to its Senior Creditors, so that in any such distribution no payment will be made on account of the Bond Moneys to the Supervisor or the Holders until the Senior Creditors have been paid in full.



4.2 **Priority**

The Supervisor acknowledges, and, by subscribing or purchasing a Bond each Holder will be deemed to agree, that:

- (a) 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 than that which it would otherwise have under section 313; and
- (b) nothing in sections 310, 310A to 310O (inclusive) or 313 of the Companies Act will prevent this deed from having effect in accordance with its terms.

4.3 **Subordinated contingent debt**

In the Liquidation neither the Supervisor nor any Holder is entitled to prove for the Bond Moneys except as a debt which is subject to, and contingent upon, prior payment of the Senior Creditors in full. The Supervisor and each Holder waives to the fullest extent permitted by law any right to prove in a Liquidation as a creditor ranking in point of priority equally with Senior Creditors.

4.4 **Other indebtedness permitted**

Nothing in this deed in any way restricts the right of the Issuer to incur indebtedness or issue obligations or securities ranking in priority to, or equally with, or subordinate to, the indebtedness and obligations of the Issuer in respect of any Bonds.

4.5 **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.

4.6 **Trust**

Any payment, whether voluntarily or in any other circumstances, received by the Supervisor or a Holder from or on account of the Issuer (including by way of credit, set-off or otherwise) or from the Liquidator or any receiver, administrator, manager or statutory manager of the Issuer in breach of this clause 4 is to be held by the Supervisor or the relevant Holder in trust for and to the order of the Senior Creditors. The trust hereby created will be for a term expiring on the earlier of:

- (a) the date on which all Senior Creditors have been paid in full;
- (b) the date on which the Liquidator determines the Issuer has no further assets with which to satisfy the claims of the creditors; or
- (c) the period determined in accordance with clause 4.13 of this deed.

4.7 **Privity**

For the purposes of the Contracts and Commercial Law Act 2017, this clause 4 is intended to confer a benefit upon the Senior Creditors and to be enforceable by the Senior Creditors directly but for the avoidance of doubt no consent of any Senior Creditor shall be required to any modification or amendment to all or any part of this deed.



4.8 **Enforcement**

- (a) No Holder may claim or prove in the Liquidation for any amount owing to him or her under any Bond 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) No Holder may proceed against the Issuer or the Supervisor for the enforcement or performance of any provision of this deed that is solely for the benefit of the Supervisor.

4.9 **Limited Enforcement Rights**

- (a) The Supervisor and, subject to clause 12.2(a) of the Master Trust Deed, the Holders may only take enforcement action to recover an amount payable in relation to the Bonds if the Issuer defaults in payment of an amount that is due to Holders under this deed, and such default is not remedied within 7 days. If the Supervisor or the Holders are entitled under this clause 4.9(a) to take enforcement action, the only action they may take is to:
 - (i) bring proceedings against the Issuer to recover any amounts due and unpaid, but only to the extent necessary to preserve the claim thereto in any Liquidation; and
 - (ii) apply to have a liquidator appointed to the Issuer.
- (b) Subject to clause 4.3 (Subordinated Contingent Debt), a Holder shall be entitled to prove in the Liquidation if Liquidation proceedings are commenced by another creditor, and the Principal Amount and amount of any accrued but unpaid interest on the Bonds shall, for those purposes be immediately due and payable.
- (c) Subject to clause 4.9(b), under no circumstances may a Holder seek to have any obligations of the Issuer under the Bonds accelerated.
- (d) Clauses (a) to (c) above shall not in any way restrict the ability of the Supervisor and the Holders to exercise their rights in relation to any other breach or potential breach of this deed.

4.10 **Set Off**

No Holder shall:

- (a) be entitled to set off against any amounts due in respect of the Bonds held by such Holder any amount owed by the Holder to the Issuer on any account whatsoever; or
- (b) be entitled to effect any reduction of the amount due to such Holder in respect of a Bond by merger of accounts or lien or the exercise of any other rights the effect of which is or may be to reduce the amount due in respect of that Bond in breach of this deed.

To the extent any set-off, merger, lien or other right is required by law to be exercised, that exercise shall be subject to clause 4.6.



4.11 **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 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) 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) secondly, in payment to the Issuer to be held by it upon trust to apply the same in or towards the discharge of the Senior Indebtedness according to the Senior Creditors' respective rights and interests;
- (c) thirdly, subject to the indebtedness of 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 it, of the aggregate Bond Moneys; and
- (d) fourthly, in payment of the surplus (if any) of such moneys to the Issuer, or to such other person as may otherwise be lawfully entitled to those moneys.

4.12 **Reliance on Liquidator**

Following the Commencement of Liquidation 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 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.

4.13 **Termination of trusts**

The trusts contained in this deed in favour of the Senior Creditors 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 the Issuer 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 the Issuer absolutely.

4.14 **Permitted payments and receipts**

Until the Commencement of Liquidation the Issuer is entitled to pay, and a Holder or the Supervisor or any other person on behalf of a Holder is entitled to receive payment of or on behalf of any Bond 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 any such amount will not constitute a breach of, or be subject to, clause 4.1 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.



4.15 **Permitted proceedings**

Nothing in this deed excludes, limits, defers or otherwise affects:

- (a) the right of the Supervisor to seek directions from a court in accordance with the FMCA 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) 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) 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.

4.16 **Interest payable following Commencement of Liquidation**

Nothing in this deed limits the application of section 311 of the Companies Act 1993, 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).

5 **AGREEMENT TO PAY**

5.1 **Indebtedness**

The Issuer:

- (a) acknowledges its indebtedness to the Supervisor in respect of the Bond Moneys; and
- (b) agrees to pay the Bond Moneys to (or to the order of) the Supervisor in New Zealand dollars when due and payable in accordance with this deed.

5.2 **Pro tanto satisfaction**

Each payment to Holders in accordance with this Supplemental Trust Deed of (or on account of) the Bond Moneys satisfies pro tanto the indebtedness the Issuer agrees to pay in clause 5.1.

6 **INTEREST PAYMENTS**

6.1 **Interest Payments**

Subject to clauses 6.2 and 6.8, interest shall accrue on each Bond during each Interest Period calculated in accordance with the following formula:

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

6.2 **Deferral of Interest Payments**

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. This clause 6.2 does not apply to an Interest



Payment scheduled to be made on the Redemption Date for a Bond or the interest component of the Repurchase Price payable on a Reset Date.

6.3 Accrual of interest on Deferred Interest Payments

If an Interest Payment has been deferred in accordance with clause 6.2, that Deferred Interest Payment shall itself accrue interest at a rate equal to the prevailing Interest Rate from (and including) the Deferral Date for that Interest Payment until (but excluding) the day on which that Deferred Interest Payment together with all Accrued Interest is paid in full. 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 that Unpaid Interest. This is 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 subject to the provisions of clause 4 (Subordination and Status of Bonds). Accrued Interest will be calculated on a daily basis and, in respect of Unpaid Interest, compound on each Interest Payment Date.

6.4 Payment of Unpaid Interest

If an Interest Payment has been deferred in accordance with clause 6.2, the Issuer:

- (a) may, in its absolute discretion, pay all or part of the Unpaid Interest on an Interest Payment Date; and
- (b) shall, if any Unpaid Interest has not been paid in full by the relevant Mandatory Unpaid Interest Payment Date, pay all Unpaid Interest on the relevant Mandatory Unpaid Interest Payment Date (including the Unpaid Interest that was first owing and any Unpaid Interest that has subsequently accrued up to the Mandatory Unpaid Interest Date),

in each case to those persons registered as Holders on the relevant Record Date.

6.5 No default

The deferral of an Interest Payment under clause 6.2 will not constitute a default by the Issuer for any purpose.

6.6 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, unless approved by Holders by way of an Extraordinary Resolution:

- (a) 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) acquire, redeem, or repay any of its shares or other securities ranking, in Liquidation, *pari passu* or after the Bonds; or
- (c) provide financial assistance for the acquisition of its shares or other securities ranking in Liquidation, *pari passu* or after the Bonds.

6.7 Interest Payment Dates

Interest Payments (other than Deferred Interest Payments) will be payable on:



- (a) each Interest Payment Date; and
- (b) the Redemption Date applicable to that Bond.

6.8 **Last Interest Payment**

The Interest Payment made on 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 relevant Redemption Date.

7 **REDEMPTION**

7.1 **Redemption at Maturity**

The Issuer shall Redeem all Bonds on the Maturity Date.

7.2 **Redemption on Default**

Upon the occurrence of an Event of Default, the Bonds will become immediately due and payable and the Issuer shall Redeem the Bonds on the next Business Day following the occurrence of the Event of Default.

7.3 **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 of the Bonds if at any time there are less than 100,000,000 Bonds on issue;
- (d) all or some Bonds at any time if a Tax Event has occurred; or
- (e) all or some Bonds at any time if 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 the Redemption.

7.4 **Issuer Notice**

To elect to Redeem under clause 7.3, the Issuer must give a notice to Holders which must:

- (a) in the case of a Redemption under clause 7.3(a), 7.3(b) or 7.3(c), be given no less than 10 Business Days before the relevant Redemption Date;
- (b) in the case of a Redemption under clause 7.3(d) or 7.3(e), 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

- (c) if less than all Bonds are being Redeemed, state the proportion of Bonds to be Redeemed for each Holder.

7.5 **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 make adjustments to ensure that following the Redemption each Holder holds a marketable parcel of Bonds.

7.6 **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.

7.7 **Payment on Redemption**

- (a) If Bonds are to be Redeemed in accordance with clause 7.1, 7.2, 7.3(a), 7.3(c) or 7.3(d), on the relevant Redemption Date the Issuer must pay to the Holder in respect of each Bond which is being 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 the Redemption Date.
- (b) If the Bonds are to be Redeemed in accordance with clause 7.3(e), on the relevant Redemption Date the Issuer must pay to the Holder in respect of each Bond which is being Redeemed the greater of:
 - (i) the amount calculated under clause 7.7(a) above; and
 - (ii) the market price of the Bonds, being the average price, weighted by volume, of all trades of Bonds through the NZX Debt Market over the 10 Business Days prior to the 15th day before the relevant Redemption Date (except where the Bonds have not traded on the NZX Debt Market for at least 5 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.
- (c) If Bonds are to be Redeemed in accordance with clause 7.3(b), the Issuer must pay to the Holder in respect of each Bond which is Redeemed the greater of:
 - (i) the amount calculated under clause 7.7(a) above; and
 - (ii) the market price of the Bonds, being the average price, weighted by volume, of all trades of Bonds through the NZX Debt Market over the 10 Business Days prior to the 15th day before the relevant Redemption Date (except where the Bonds have not traded on the NZX Debt Market for at least 5 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.

8 ELECTION PROCESS

8.1 Notification of Election Process

No earlier than six months and not later than 20 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 that it intends to undertake an Election Process. The applicable Election Notice (including any explanatory notes accompanying that notice) will include:

- (a) the Notification Date;
- (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.

8.2 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 (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 Margin).

8.3 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) the Bonds in respect of which the Holder accepts the New Conditions (which may include some or all of the Bonds held by that Holder as at the Record Date for the Election Process);
 - (ii) the Bonds which the Holder wishes to sell through the Election Process; and
 - (iii) such other information that the Issuer might require.
- (d) If:



- (i) 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) the Issuer does not receive a properly completed Election Notice from the Holder on or before the Notification Date;
- (iii) the Issuer receives an Election Notice, but implementation of the election made by the Holder would result in that Holder holding Bonds of less than the Minimum Holding; or
- (iv) 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 8.8, be deemed to have elected to retain such number of Bonds subject to the New Conditions in respect of which no election is given;
- (vi) in the case of (ii) above, the Holder will, subject to clause 8.8, 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 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, subject to clause 8.8 round the number of Bonds being retained down to the nearest integral multiple of 1,000.

8.4 **Successful Election Process**

- (a) Within five Business Days of the Notification Date, the Issuer may (at its discretion) notify the Holders and the Supervisor whether or not it has elected to purchase (or procure the purchase of) all Bonds which Holders have elected to sell as part of the relevant Election Process and, accordingly, whether or not a Successful Election Process has occurred in relation to that Election Process.
- (b) If no confirmation or declaration has been made by the time specified in clause 8.4(a), a Successful Election Process will be deemed to have occurred.

8.5 **Repurchase Price**

- (a) If a Successful Election Process is declared or is deemed to have been declared, the Issuer must on the Reset Date purchase (or procure the purchase of) any Bond that a Holder has elected to sell in connection with the Election Process for the Repurchase Price.
- (b) 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 Reset Date.



8.6 **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.

8.7 **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.

8.8 **Overseas Holders**

The Issuer will have an absolute discretion to treat any Holder that has not provided, 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.

8.9 **Step-up Margin to apply**

If in respect of a Reset Date a Successful Election Process has not occurred 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 and otherwise the terms and conditions applicable to the Bonds immediately prior to the Reset Date will continue to apply.

8.10 **Power of attorney**

Each Holder irrevocably appoints the Issuer and any director or person from time to time nominated by the Issuer 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 Issuer be necessary or desirable to be done in order to record or perfect the purchase of the Bonds by the Issuer in accordance with this clause 8.

9 **COVENANTS**

9.1 **Issuer Status**

The Issuer states that it is a limited liability company registered under the Companies Act.



9.2 **Additional Covenants**

In addition to the covenants set out in clauses 9.4 to 9.13 of the Master Trust Deed, the Issuer agrees with the Holders and with the Supervisor that while any Bond Moneys remain outstanding it will:

- (a) use reasonable endeavours to ensure that the Bonds are, upon their issue, quoted on the NZX Debt Market and that such quotation is maintained; and
- (b) comply with:
 - (i) the Companies Act;
 - (ii) (to the extent applicable to the Issuer) the State Owned Enterprises Act 1986 and any statement of corporate intent issued by the Issuer under it;
 - (iii) its constitution as is in force from time to time; and
 - (iv) any NZX listing rules that apply to the Bonds and/or the Issuer.

10 **PAYMENTS AND OTHER MATTERS**

10.1 **Payment to Holders**

Payment of the Principal Amount of, and interest on, a Bond (less any amount required under clause 4.5 of the Master Trust Deed to be deducted) will be made:

- (a) in New Zealand dollars;
- (b) in immediately available funds;
- (c) for value on the date of payment;
- (d) in any manner the Issuer decides, including by any method of direct credit determined by the Issuer to the Holder or to such person or place directed by it; and
- (e) other than as provided in clause 6.8, to the person whose name appears in the Register as the Holder of the Bond on the Record Date in respect of the relevant payment. If more than one person is so named in the Register, payment will be made to the first person so named.

10.2 **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.

10.3 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.

10.4 Transfers

Bonds may be transferred in minimum aggregate Principal Amounts of the Minimum Transfer Amount, provided that, following any such transfer, the transferor and the transferee each holds Bonds of the 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.

10.5 Form of transfer

- (a) Subject to the Conditions, a Holder may transfer any Bond held by the Holder by:
- (i) a written instrument of transfer in the usual or common form signed by the transferor and the transferee;
 - (ii) means of TCS BaNCS;
 - (iii) means of NZClear; or
 - (iv) 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.
- (b) Each instrument of transfer must be delivered to the Registrar accompanied by:
- (i) any 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.

10.6 Refusal to register transfers

The Issuer may direct the Registrar to refuse to register any transfer of Bonds where the Conditions, 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 Conditions, the Listing Rules or any applicable law requires the Issuer or the Registrar to refuse to register the transfer.

10.7 Notice of refusal to register

Where registration of a transfer of Bonds is refused under clause 10.6, 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.

10.8 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.

10.9 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.

10.10 Sale of less than the NZX Minimum Holding

The Issuer may at any time give notice to any Holder holding less than the NZX 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 the NZX Minimum Holding, the Issuer may exercise the power of sale of those Bonds set out in this clause 10.10, to and in accordance with the Listing Rules. If that power of sale becomes exercisable:

- (a) the Issuer may arrange for the sale of those Bonds through the NZX Debt Market ;
- (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 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 10.10 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

10.11 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.

10.12 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.

10.13 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.

10.14 Indemnity

By its purchase of Bonds, each Holder agrees to indemnify the Issuer and the Supervisor in respect of any loss, cost, liability or expense sustained or incurred by the Issuer or the Supervisor as a result of a breach by the Holder of the restrictions contained in clause 10.13.

11 TRUSTEE INDEMNITY

The indemnity given by the Issuer in clause 16.8 of the Master Trust Deed is only available in relation to the Supervisor's proper performance of the duties under sections 112(1) and 113 of the FMCA.

12 TREASURY STOCK

Notwithstanding anything in the Conditions to the contrary, Bonds purchased by the Issuer 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);
- (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.



13 **AMENDMENT OF MASTER TRUST DEED OR SUPPLEMENTAL TRUST DEED**

The Issuer only may amend or replace the provisions of this deed or the Master Trust Deed in accordance with:

- (a) clause 20 of the Master Trust Deed; or
- (b) section 108 of the FMCA.

14 **NOTICES**

Any notices to be given to Bondholders shall be given in accordance with clause 24 of the Master Trust Deed provided that:

- (a) notices posted to a Bondholder who has no registered address within New Zealand 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, then notices posted to such physical address shall be deemed to have been received by that Bondholder 24 hours after the time of posting; and
- (b) notices or other communications to be given to Bondholders may be given by electronic means to the email address provided for this purpose and last entered into the Register. Any emails sent pursuant to this provision shall be deemed delivered one hour after the time it is sent provided that no error message or out of office message was received to indicate the message was not received or the recipient is out of the office. If the recipient is out of the office the email will be deemed to be received by the recipient on the date the recipient is due to return to the office as indicated in the out of office response.

15 **GOVERNING LAW AND JURISDICTION**

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

16 **COUNTERPARTS**

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

17 **DELIVERY**

Without limiting any other mode of delivery, this deed will be delivered by each party on the earlier of:

- (a) physical delivery of an original of this deed, executed by each party, to the other party, or to the respective party's solicitors; or



- (b) transmission by each party of a scanned or facsimiled copy of an original of this deed, executed by each party, to the other party, or to the respective party's solicitors.



EXECUTED AS A DEED

The Issuer

SIGNED on behalf of
Mercury NZ Limited
by two Directors:



Director



Director

Supervisor

EXECUTED under the name and seal of
**The New Zealand Guardian Trust
Company Limited** by:

Authorised Signatory

Authorised Signatory

in the presence of:

Signature

Name

Address

Occupation



EXECUTED AS A DEED

The Issuer

SIGNED on behalf of
Mercury NZ Limited
by two Directors:

Director

Director

Supervisor

EXECUTED under the name and seal of
**The New Zealand Guardian Trust
Company Limited** by:

CALE BROWN
Authorised Signatory

HRVOJE KOPRIVCIC
Authorised Signatory

in the presence of:

Signature

Name

Address

Occupation

WITNESS TO BOTH SIGNATURES

Full Name: Debra Gail Morton
Residential Address: Auckland
Occupation: Corporate Trusts Administrator
Signature: _____

ACT 2699