

Supplemental Trust Deed (2023 Fixed Rate Bonds)

Mercury NZ Limited
(Issuer)

The New Zealand Guardian Trust Company
Limited
(Trustee)



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SUPPLEMENTAL TRUST DEED

Date: 6 June 2023

PARTIES

Mercury NZ Limited (*Issuer*)

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

INTRODUCTION

- A This deed is supplemental to a master trust deed dated 4 April 2003 (as most recently amended and restated on 21 May 2019) between the Issuer and the Trustee (*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 Trustee 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:

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

Interest Payment Date means:

- (a) each date that is an integral multiple of six (6) months preceding the Maturity Date, with the first Interest Payment Date being the first such date after the Issue Date; and
- (b) the Maturity 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 (which, in the case of the last Interest Period, is the Maturity Date);

Interest Rate means the rate (expressed as a percentage per annum) 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;

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

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;

Maturity Date means 19 June 2028;

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last day in that calendar month;

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;

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;

Rate Set Date means 9 June 2023;

Record Date means, in relation to any 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;

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;

Specified Principal Amount means an aggregate Principal Amount of \$5,000 or higher integral multiples of \$1,000; and

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.

2 **CONDITIONS PRECEDENT**

2.1 **Documentary Conditions Precedent**

The Issuer is not entitled to issue any Bonds until the Trustee 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 Trustee 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 Trustee 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 NZ\$150,000,000.

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 Trustee 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 **Retail Series**

The Bonds shall be a Retail Series for the purposes of the Master Trust Deed.

3.6 **Statements**

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 **GREEN FINANCING FRAMEWORK AND USE OF PROCEEDS**

For the avoidance of doubt:

- (a) failure by the Issuer or any other person to comply with any green financing framework, green bond principles or standards or similar (in relation to the Bonds or otherwise), any other matters set out in the Offer Document relating to the use of proceeds of the Bonds (together referred to as *green bond standards*), or the undertaking by the Issuer of any other projects (whether or not in line with any green bond standards) outside of any green financing framework, is not an Event of Default and does not have the result of requiring, or permitting Holders to require, any Bonds to be repaid; and
- (b) the application of any green label or similar in relation to the Bonds and any green bond standards do not affect the Issuer's obligations under the Master Trust Deed or this Supplemental Trust Deed, and any breach of those deeds (including in relation to non-compliance with any laws, directives and consents, whether environmental or otherwise) is to be determined without regard to any such label or green bond standards.

This means there is no legal obligation on the Issuer to comply with any green financing framework, green bond principles or standards or similar on an ongoing basis.

5 **AGREEMENT TO PAY**

5.1 **Indebtedness**

The Issuer:



- (a) acknowledges its indebtedness to the Trustee in respect of the Bond Moneys; and
- (b) agrees to pay the Bond Moneys to (or to the order of) the Trustee 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**

6.1 **Interest Rate**

Interest shall accrue on a daily basis on each Bond from (and including) the Issue Date to (but excluding) the Maturity Date at the Interest Rate.

6.2 **Interest payments**

- (a) Subject to paragraph (b), interest on each Bond shall be payable in arrear on each Interest Payment Date in respect of the Interest Period ending on (but excluding) that Interest Payment Date, calculated in accordance with the following formula:

$$\frac{\text{Interest Rate} \times \text{Principal Amount}}{2}$$

- (b) If interest is payable in respect of an Interest Period that is shorter or longer than other Interest Periods because it starts or ends on the Issue Date or Maturity Date or any other date that does not correspond with other Interest Payment Dates, interest shall be calculated on the basis of the number of days in the relevant Interest Period and a year of 365 days.

6.3 **Default interest**

If any amount payable in respect of a Bond is not paid on its due date then interest will accrue on a daily basis on the unpaid amount at the rate determined by the Registrar to be the aggregate of:

- (a) 2% per annum; and
- (b) the Interest Rate.

Subsequently, that interest will (after, as well as before, any judgment) compound monthly, until the unpaid amount is paid.

7 **REDEMPTION**

The Issuer shall redeem each outstanding Bond on the Maturity Date by paying to the relevant Bondholder the Principal Amount of the relevant Bond (together with accrued but unpaid interest in accordance with clause 6) on that date.



8 COVENANTS

8.1 Issuer Status

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

8.2 Additional Covenants

In addition to the covenants set out in clauses 9.1 to 9.17 of the Master Trust Deed, the Issuer agrees with the Holders and with the Trustee 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.

9 PAYMENTS AND OTHER MATTERS

9.1 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) 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.

9.2 Unsuccessful transfers

Subject to applicable law and the Listing Rules, where the Issuer or Trustee:

- (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.

9.3 **Transfers**

A Holder may transfer all or part of its holding of Bonds. However, no transfer of any partial holding of Bonds may be made if it would result in the transferor or the transferee holding or continuing to hold Bonds with an aggregate Principal Amount that is not a Specified Principal Amount.

9.4 **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 NZClear; or
 - (iii) 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.

9.5 **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.



9.6 Notice of refusal to register

Where registration of a transfer of Bonds is refused under clause 9.5, 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.

9.7 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.

9.8 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 Trustee, 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.

9.9 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.

9.10 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.

9.11 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.

9.12 Indemnity

By its purchase of Bonds, each Holder agrees to indemnify the Issuer and the Trustee in respect of any loss, cost, liability or expense sustained or incurred by the Issuer or the Trustee as a result of a breach by the Holder of the restrictions contained in clause 9.11.



10 **TRUSTEE INDEMNITY**

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

11 **TREASURY STOCK**

Notwithstanding anything in the Conditions to the contrary, Bonds purchased by the Issuer in accordance with clause 3.5 of the Master Trust Deed may be held as treasury stock, provided that such Bonds 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.

12 **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.

13 **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.

14 **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.

**15 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.

16 DELIVERY

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

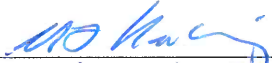
- (a) physical delivery of an original of this deed, executed by each party, to the other party, or to the respective party's solicitors; or
- (b) transmission by each party of a scanned or facsimiled copy of an original of this deed, executed by each party, to the other party, or to the respective party's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



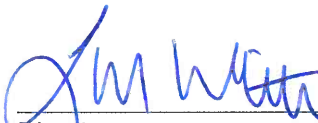
EXECUTED AS A DEED

The Issuer

SIGNED on behalf of
Mercury NZ Limited
by two Directors:



Director *Hannah Hamling*



Director *Lorraine Witten*

Trustee

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

Trustee

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

Cale Brown

Authorised Signatory

Hrvjoe Koprivic

Authorised Signatory

in the presence of:

Signature

ACT 3116

Sanet de Villiers

Name

Auckland

Address

Relationship Manager

Occupation