

Trust Deed

Updated as at 19 October 2016

Benefiting Consumers and their Communities

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**TAURANGA ENERGY CONSUMER TRUST
DEED OF TRUST**

DEED dated 21st day of December 1993

BETWEEN **TRUSTPOWER LIMITED** a duly incorporated company with its registered office at Tauranga (hereinafter called "the Company")

AND **SHIRLEY MARGARET CROWLEY**
IAN FREDERICK FOOTE
BARRY WALTER BRAME JENSEN
NOEL HAYWARD JOHNSON
NORMAN FREDERICK MAYO
EDWARD MCGREGOR MURRAY
NOEL FRANK POPE
LYN ARTHUR WAHREN
RUFUS GEORGE WALLINGFORD
(hereinafter together with their successors in office called "the Trustees")

WHEREAS

- A. The Tauranga Electric Power Board (the "Board") has formed the Company as a registered public company limited by shares in which the sole subscriber is the Board.
- B. Pursuant to the Act the Minister of Energy has approved the establishment plan prepared and submitted in respect of the Company which establishment plan provides for the allocation of shares in the Company to the Trustees.
- C. The Company wishes to establish the Tauranga Energy Consumer Trust to enable the Trustees to acquire the shares in the Company to be vested in the Trustees in accordance with the establishment plan.
- D. The Trustees will have an ongoing obligation to carry out reviews of their continuing ownership of the Securities involving consultation in accordance with the terms of this Deed.
- E. The benefits which the Trustees derive through their ownership of the assets of the Trust Fund will be made available directly or indirectly as the Trustees in their discretion decide to Consumers.

1. DEFINITIONS AND CONSTRUCTION

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

"**Act**" means the Energy Companies Act 1992;

"**Annual General Meeting**" means a meeting of Trustees specified as the annual general meeting in the notice calling the meeting;

“Balance Date” means 31 March or any other date adopted from time to time by the Company as the end of its Financial Year;

“Board” means the Tauranga Electric Power Board constituted by the Electric Power Boards Act 1925;

“Chairperson” means the Trustee elected as chairperson pursuant to rule 4 of schedule 1;

“Code of Conduct” means a code of conduct to regulate the behaviour and conduct of participants in relation to a Trustee election and which is adopted, amended and issued from time to time by Trustees to the Independent Returning Officer;

“Code of Practice” means the operating guidelines to promote best practice in energy trust administration adopted or to be adopted by the Trustees in respect of the Trust (as amended or replaced from time to time);

“Company” means Scarlett Limited (formerly called Trustpower Limited) (company number 604040) and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company, including (without limitation) Trustpower Limited (company number 565426) but excluding Tilt Renewables Limited (company number 1212113) and any subsidiary companies of Tilt Renewables Limited;

“Confidential Information” means information which is by express classification or by its nature reasonably intended to be confidential to the Trust and which has not been released into the public domain by reason of:

- (i) The proper discharge in good faith by a Trustee of duties and obligations created by the Trust;
- (ii) The proper discharge in good faith by a Trustee with the express authority or express consent of the Trust of duties and obligations created by the Trust;
- (iii) The order or direction of any lawful or regulatory authority; or
- (iv) A request for disclosure pursuant to the Guidelines.

“Consumer” means:

- (i) a person who is named in the records of the Company as being liable to pay the Company any amount for electrical energy supplied or to be supplied to premises situate in the District;
- (ii) the TECT Charitable Trust as constituted pursuant to a deed of trust dated 27 March 2002; or
- (iii) any other entity wholly owned and/or controlled by TECT and whose beneficiaries and objectives are substantially the same as TECT's;

“Consumer Consultative Procedure” means the procedure for consultation set out in schedule III;

“Deed” means this deed and includes the schedules and any amendments;

“Deputy Chairperson” means the Trustee elected as deputy chairperson pursuant to rule 4 of schedule 1;

“Directors” means the directors from time to time of the Company;

“District” means:

- (i) the territory over which the Board was authorised to supply electricity immediately prior to the Vesting Date pursuant to the Tauranga Electric Power Board Supply Licence granted to the Board under section 20 of the Electricity Act 1968; and
- (ii) the territory over which Tauranga Electricity Limited was authorised to supply electricity immediately prior to its merger with the Company in 1997 and includes, for the avoidance of doubt, that area comprising the Tauranga City peninsula north of the centreline of 17th Avenue, Tauranga.

“Dividends” means, in relation to the Company, any distributions paid in cash by the Company to the Trustees as holders under this Deed of Shares or Other Securities;

“Environment” shall have the meaning ascribed to that term in the Resource Management Act 1991;

“Financial Statements” means the financial statements of the Trust prepared in accordance with clause 10.2(a);

“Financial Year” means any year or other accounting period ending on a Balance Date;

“Guidelines” means those "Guidelines for Access to Trust Information by Consumers" adopted, amended or superceded from time to time by a resolution of Trustees relating to the rights of Consumers to, and procedures relating to the disclosure of, Trust information as referred to in the Code of Practice;

“Independent Returning Officer” means that person appointed to the office of Independent Returning Officer pursuant to clause 10.5 for the purposes of conducting and supervising any Trustee election held pursuant to clause 3.4 of Schedule 1;

“Local Authority” means a local authority within the meaning of the local Government Act 1974;

“Other Securities” means securities (other than the Shares), instruments (including convertible notes and voting debentures) or options convertible to shares or other securities in the Company;

“persons” includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authorities;

“Retirement Date” means the date the Secretary declares the names of the candidates elected under rules 3.4(e) or 3.4(k) of schedule I;

“Secretary” means the person appointed as secretary pursuant to rule 19 of schedule I;

“Securities” means Shares or other securities, instruments (including convertible notes and voting debentures) or options convertible to Shares or other securities in the Company;

“Shares” means shares in the capital of the Company held by the Trust as part of the Trust Fund;

“Special Resolution” means a resolution of the Trustees passed by a majority of not less than seventy five per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

“Termination Date” means the earlier of 1 January 2072 and the date upon which the Trustees resolve that the Trust be wound up in accordance with clause 14 provided however that if the perpetuity period restrictions cease to apply to this Trust or are amended to permit the Trust to continue beyond 1 January 2073, this definition shall be amended so that the Termination Date shall be the date beyond which the Trust may not continue;

“the Trust” means the trust established by this Deed;

“the Trustees” means the trustees for the time being of the Trust;

“Trust Fund” means all the funds of the Trust and includes all capital and income for the time being held by the Trustees of the Trust;

“Trustee Act” means the Trustee Act 1956;

“Vesting Date” means the date upon which the Governor-General by Order in Council under section 47 of the Act vests the undertaking of the Board in the Company and the Shares in the Trustees.

1.2 In this Deed, unless the context otherwise requires:

- (a) references to one gender include each other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed and references to schedules are references to schedules to this Deed;
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to;
- (f) words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act.

- 1.3 For the purposes of the Perpetuities Act 1964 the perpetuity period applicable to this Deed shall be the period from the date of execution hereof until the first anniversary of the Termination Date.

2. NAME OF THE TRUST

The Trust shall be known as the Tauranga Energy Consumer Trust or such other name as the Trustees may determine from time to time.

3. DECLARATION OF TRUST

The Company hereby declares and directs that the Trustees shall stand possessed of the sum of \$100 settled by the Company contemporaneously with the execution of this Deed and all other moneys or property of whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees to be held upon the trust hereby declared and any accumulations of income therefrom and all moneys, investments and property of whatever kind from time to time representing the same to be held upon the Trust and for the purposes and with the powers, authorities and discretions set out in this Deed.

4. PURPOSE OF THE TRUST

The purposes and objects for which the Trust is established are:

- 4.1 On Vesting Date, to receive Shares vested in the Trustees by order in council made in accordance with section 47 of the Act.
- 4.2 If the Trustees so elect to subscribe for, purchase or otherwise acquire Other Securities in the capital of the Company.
- 4.3 To retain and hold the Shares and Other Securities until such time as the Shares or Other Securities, as the case may be, are sold, transferred or disposed of.
- 4.4 In the event of any sale, transfer or other disposition of Shares or Other Securities to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with clause 6.1.
- 4.5 To receive Dividends and to distribute, pay, apply or appropriate the Dividends and other income of the Trust Fund which the Trustees do not resolve to accumulate to or for the benefit of the Consumers in the manner provided in clause 5 of this Deed.
- 4.6 Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in clause 6.2.

5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE

The Trustees shall until the Termination Date stand possessed of the income arising from the Trust Fund upon the following trusts and with and subject to the following powers:

- 5.1 The Trustees shall from the net annual income derived by the Trust Fund first pay all the fees, costs and disbursements of and incidental to administering the Trust

including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this clause 5.

- 5.2 The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the Financial Year in which the same are resorted to.
- 5.3 The Trustees shall distribute the balance of the current net annual income by paying applying or appropriating the same in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for the benefit of the Consumers and where such distributions comprise Dividends the Trustees may have regard to any report of Directors given pursuant to clause 5.4 **AND IT IS DECLARED** that distributions of income for the benefit of Consumers may be made in any one or more of the following ways and no such distribution shall be called into question by any Consumer:
- (a) By payment in cash to any one or more of the Consumers to the exclusion of other Consumers in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper;
 - (b) By the provision of goods or services or an entitlement to goods and services to any Consumer or Consumers and generally in such form and at such value as the Trustees shall determine including the giving of an entitlement by voucher or some other form of entitlement (which may be transferable or not transferable as the Trustees decide) to goods and services which the Trustees may have purchased or provided for out of the income of the Trust Fund;
 - (c) By carrying out or causing to be carried out works which in the opinion of the Trustees will benefit Consumers such as:
 - (i) Improvements to the safety of Consumers by removing road and overhead hazards caused by above ground electricity supply support systems in the District;
 - (ii) Avoiding, remedying or mitigating any adverse effects of energy related activities on the Environment;
 - (iii) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of Consumers in the District including the awarding of research scholarships or prizes and the funding of research and development projects;
 - (iv) Subsidising the installation of the means of supply of energy to Consumers which would otherwise be uneconomic;

- (d) By carrying out or causing to be carried out or funding in whole or in part (whether by way of Consumer distribution, loan, investment, the underwriting of project liabilities, the giving of financial support or otherwise) the carrying out of projects or other community initiatives which in the opinion of the Trustees will benefit Consumers.
- 5.4 The Trustees may request the Directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the classes of Consumer based on the contribution made by each class of Consumer to the earning of that Dividend and in such report the Directors may classify Consumers in any manner they see fit.
- 5.5 Any of the Consumers to whom or in respect of which income is paid, applied or appropriated by the Trustees pursuant to clause 5.3, shall, subject to clause 5.8, as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income.
- 5.6 The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Consumers.
- 5.7 Each Trustee who is also a Consumer shall notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer which may be distributed to Consumers in accordance with clause 5.3.
- 5.8 All payments made to Consumers or entitlements of Consumers to goods and services unclaimed for one year after having been sent (or attempted to be so sent) or notified to any Consumer may be invested or otherwise made use of by or being an entitlement to goods and services disposed of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments or money from entitlements with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund. Any amounts unclaimed on the earlier of the Termination Date or one year after that amount was sent (or attempted to be so sent) or notified to any Consumer shall thereupon be deemed to form part of the Trust Fund.
6. **TRUSTS OF CAPITAL**
- 6.1 The Shares and Other Securities or the proceeds of sale or other disposition of the Shares and Other Securities and investments representing the same (the corpus of the Trust Fund) shall be held by the Trustees upon trust to pay, apply or allocate the same, on or before the Termination Date for the benefit of the Consumers in such manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable **PROVIDED THAT** the Trustees may at any time or times prior to the Termination Date pay, apply or allocate the corpus of the Trust Fund or any part of parts thereof as the Trustees think fit for the benefit of the Consumers in any of the ways set out in clause 5.3 of this Deed as if the provisions of clause 5.3 and clause 9.3 with any necessary changes were reproduced in this clause 6.1.
- 6.2 From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Fund and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with clause 6.1 of this Deed, upon trust to pay, apply or appropriate the same to or for or

otherwise howsoever for the benefit of the Consumers in such manner and in such shares (including if permitted by law, by establishing a further trust for the benefit of Consumers to be on the same terms mutatis mutandis as this Trust) as the Trustees shall in their absolute and unfettered discretion consider fair and equitable provided however that if the Trustees have not so paid, applied or appropriated any or all of such Trust Fund and income on the day before the first anniversary of the Termination Date the amount so remaining shall be paid in equal shares to each Consumer as at the first anniversary of the Termination Date.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

The rules set forth in schedule I hereto (with such amendments, deletions and additions thereto as may lawfully be made) shall upon the execution of this Deed govern the appointment, retirement and proceedings of the Trustees and associated matters.

8. GENERAL POWERS

- 8.1 The Trustees may exercise the powers, authorities and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act (except where otherwise specified in this Deed). For the avoidance of doubt, no Trustee shall have the power, authority or discretion to participate in the management or operation of the Company (other than in the capacity as a Director appointed to the board of the Company and where the Trustee was nominated for that office pursuant to a Special Resolution of the Trustees) and in exercising the powers conferred by this clause and clause 9 the Trustees shall be restricted to exercising their rights as a shareholder subject always to the provisions of this Deed.
- 8.2 In the exercise of any power, authority or discretion under this Deed the Trustees shall have no obligation to deal with persons other than those who qualify as Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any respect for any inaccuracies in the records of the Company which affect the status of any person as being or not being a Consumer.

9. TRUSTEES' POWERS

- 9.1 Subject to the express terms of this Deed (and without limiting the generality of the foregoing) the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.
- 9.2 Without limiting the generality of the preceding paragraph and merely by way of example the Trustees shall have the powers set out in schedule II to this Deed which may be exercised either alone or jointly with any other person.
- 9.3 Notwithstanding clause 9.1, the Trustees shall not dispose (whether legally or beneficially) of any interest in the Shares or any other asset of the Trust Fund (and where more than one asset of the Trust Fund is disposed of in one or more

transactions which substantially represent a single disposition of assets those assets shall be regarded as a single asset) unless:

- (a) the disposal has been approved by a Special Resolution of the Trustees;
- (b) Where the disposition is of Securities and the number of Securities proposed to be disposed of:
 - (A) is equal to or greater than five (5) percent of the Base Level for Securities; or
 - (B) when aggregated with any previous dispositions of Securities which have not been the subject of a Consumer Consultative Procedure, would be equal to or greater than five (5) percent of the Base Level for Securities,

the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal Provided That the following Securities may be disposed of without restriction and the provisions of this clause 9.3(b) shall not apply to such dispositions:

- (i) any Excess Securities;
- (ii) any Securities so long as contemporaneously therewith:
 - (I) Securities are acquired which have voting rights which are at least equal in number to the voting rights attaching to the Securities being disposed of; or
 - (II) The Trust enters into an agreement or agreements to acquire Securities having voting rights which are at least equal in number to the voting rights attaching to the Securities being disposed of.
- (c) Where the disposition is of an asset other than Securities which exceeds (or when aggregated with the value of assets other than Securities previously disposed of which were not subject to a Consumer Consultative Procedure exceeds) in value five (5) percent of the value of the Trust Fund, the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal Provided That the provisions of this clause 9.3(c) shall not apply where, following the disposition, the Trust would still hold a Base Level for Securities or Securities and/or other assets which have voting rights which are at least equal in number to the voting rights attaching to a Base Level for Securities.
- (d) For the purposes of clauses 9.3(b) and (c), the expressions:
 - “Base Level for Securities” at any time means 87,466,000 Securities;
 - “Excess Securities” at any time means securities in the Company held by the Trust in excess of the Base Level for Securities; and
 - “dispose”, “disposed” and “disposition” shall not include the giving of a mortgage (legal or equitable), charge or other encumbrance.

9.4 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by section 13C of the Trustee Act 1956 but, subject always to clause 9.5, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

9.5 Notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund (including, but without limitation, the Securities) are not diversified.

10. DUTIES OF TRUSTEES

10.1 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.

10.2 The Trustees shall within four months after the end of each Financial Year:

- (a) prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;
- (b) submit those Financial Statements to an auditor for audit; and
- (c) make available to the public (which includes all Consumers) in accordance with clause 10.4 those audited Financial Statements and the auditor's report on those Financial Statements.

10.3 In addition to clause 10.2(a), the Financial Statements of the Trust shall show separately:

- (a) the total amount of any distribution of income or capital paid to Consumers by way of general distribution (if applicable) in that Financial Year;
- (b) the names of persons to whom distributions of income or capital have been approved or paid in that Financial Year other than those referred to in clause 10.3(a) together with the individual amounts approved or paid by way of a payment scheme; and
- (c) a statement confirming that the Trustees have complied with all of their obligations under the Code of Practice.

10.4 (a) The Trustees shall make the documents referred to in clause 10.2(c) available to the public (which includes all Consumers) by making copies of them available:

- (i) for inspection at every office of the Trust or at any other place specified in the notification under clause 10.4(b) (during ordinary office hours) free of charge; and
 - (ii) for purchase at a reasonable price.
 - (b) The Trustees shall notify the fact that copies of such documents are so available by advertisement in the news section of two separate editions of each newspaper that is widely read by Consumers.
- 10.5 (a) The Trustees shall in each Financial Year, hold a General Meeting of Consumers at which the Consumers:
- (i) (in respect of a general meeting of Consumers held in a year where no election of Trustees is required to be held) appoint an Independent Returning Officer to hold office from the conclusion of that meeting until the next general meeting of Consumers to be held in a non-election year;
 - (ii) appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual General Meeting of Consumers; and
 - (iii) if applicable, fix the amount of remuneration payable to Trustees pursuant to clause 12.1(b)(i).
- (b) (i) The Trustees may fill any casual vacancy in the office of Independent Returning Officer by appointing an Independent Returning Officer to hold office until the conclusion of the next general meeting of Consumers to be held in a year where no election of Trustees is required to be held (but, while the vacancy remains, the surviving or continuing Independent Returning Officer, if any, may continue to act as Independent Returning Officer).
- If no Independent Returning Officer is appointed in accordance with clause 10.5(a), or a casual vacancy in the office of Independent Returning Officer is not filled within one month of the vacancy occurring in accordance with this clause, the Secretary shall be the Independent Returning Officer who shall hold office until the conclusion of the next general meeting of Consumers to be held in a year where no election of Trustees is required to be held.
- (i) The Trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office until the conclusion of the next annual meeting of Consumers (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).
- (c) (i) The fees and expenses of the Independent Returning Officer must be fixed:
- (A) at the general meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the general meeting; or
 - (B) by the Trustees, if appointed by the Trustees.

- (ii) The fees and expenses of the auditor must be fixed:
 - (A) at the annual meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the annual meeting; or
 - (B) by the Trustees, if appointed by the Trustees.
- (d) (i) The Independent Returning Officer must be a person who, in the opinion of Trustees, is suitably qualified to act as an independent returning officer and who has no material conflict of interest with the Trust or its affairs. For the avoidance of doubt, the Independent Returning Officer cannot be a Trustee, a person who would be deemed to be "interested" pursuant to clause 14 of Schedule 1 if that person was in fact a Trustee, a candidate nominated for election pursuant to clause 3.4 of Schedule 1, a Director employee or agent of the Trust or of the Company, or a Consumer.
- (i) The auditor of the Trust:
 - (A) must be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Consumers may seek the advice of the Auditor-General; and
 - (B) must not be a Trustee, Director, employee or agent of the Trust or of the Company or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.
- (e) (i) The Independent Returning Officer shall be entrusted with the whole conduct of a Trustee election held pursuant to this Trust Deed. The Independent Returning Officer shall have power to and shall:
 - (A) appoint such scrutineers and other assistants and delegate to them such powers and duties as it shall see fit;
 - (B) provide for the due secrecy, fair conduct and professional nature of any Trustee election process which is to be undertaken in accordance with the relevant provisions of Schedule 1 (as amended from time to time) and the Code of Conduct;
 - (C) generally do all things necessary, expedient or advisable in its opinion for the proper conduct of any Trustee election;
 - (D) where circumstances arise which create doubt or uncertainty in any Trustee election process, seek, at the Trust's cost, independent advice in the form of a legal opinion on such matters and upon which it may rely in order to resolve or clarify such uncertainties;
 - (E) monitor statements which are brought to the attention of the Independent Returning Officer or which are made publicly by

incumbent Trustees and/or election candidates in relation to any Trustee election to ensure that such statements are factually correct and not misleading. The Independent Returning Officer shall be entitled to require that person making offending statements to retract or correct such statements and may, if thought appropriate in the circumstances, publicly correct any misstatements or inaccuracies of fact on that persons behalf if they fail to do so in an appropriate manner and within an appropriate period of time and may disqualify a candidate from a Trustee election or take such other action that he/she may think fit in his/her sole discretion in order to meet the purpose and objectives of this Deed and the Code of Conduct in relation to a Trustee election; and

- (F) be entitled to be indemnified against the Trust Fund and be reimbursed for any reasonable expenses incurred by it in the exercise of its duties and powers under this Trust Deed.
- (ii) In addition, sections 198, 200 and 202 to 207 of the Companies Act 1993 apply in relation to the auditor. These sections of the Companies Act 1993 apply as if references to a company were to the Trust, references to a director were to a Trustee, references to a board were to the Trustees, references to shareholders were to Consumers, references to a subsidiary were to an electricity company owned by the Trust and that company's subsidiaries, and all other necessary modifications were made. In this clause, "electricity company" has the meaning set out in section 3(1) of the Electricity Industry Reform Act 1998.
- 10.6
 - (a) The Trustees must give no less than 14 days' notice of the annual meeting of Consumers in the news section of two separate editions of each newspaper that is widely read by Consumers.
 - (a) Every Consumer shall have one vote.
 - (b) The quorum for the annual meeting is 20 Consumers.
 - (c) No business may be transacted at the annual meeting if a quorum is not present.
 - (d) Regulations if issued under section 172C of the Electricity Act 1992 shall govern proceedings at such annual meetings of Consumers but if no such Regulations have been issued, then such proceedings shall be determined by the Trustees.
- 10.7
 - (a) If no auditor is appointed in accordance with clause 10.5(a) or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring in accordance with clause 10.5(b), the Auditor-General shall be the auditor of the Trust.
 - (a) The Trustees shall, within five working days of clause 10.7(a) becoming applicable, give written notice to the Auditor-General of this fact.

- (b) If this clause 10.7 applies, the sections and parts of the Public Audit Act 2001 listed in section 19 of that Act shall apply to the Trust until an auditor is appointed at an annual meeting of Consumers, as if references in those sections to a public entity were references to the Trust and with any other necessary modifications.
- 10.8 The Trustees shall, from time to time, make a copy of this Deed available to Consumers in accordance with clause 11.
- 10.9 The Trustees shall comply with the provisions of the Code of Practice in effect from time to time.
- 10.10 The Trustees shall:
 - (a) keep confidential all Confidential Information (and its existence) which has been provided to or become available to either the Trust or Trustee(s);
 - (b) not disclose or otherwise publish Confidential Information, nor make any copies of, or record any extracts from, Confidential Information and must use their best endeavours to ensure that to the extent possible by law no other person does so; and
 - (c) not use Confidential Information other than for the purpose of the proper discharge in good faith of duties and obligations created by the Trust, with the exception of Confidential Information provided in confidence to a professional advisor of the Trust or to a Trustee for the purposes of the obtaining of advice as to the discharge in good faith of duties and obligations created by the Trust and with the further expectation of compliance with any order or determination made by any Court or lawful authority.

Trustees acknowledge that a breach of Trusteeship dealing with matters of confidentiality and Confidential Information may amount to a breach of trust of such a serious nature as to justify an expectation of resignation by the defaulting Trustee, failing which action by the Trust for removal from office may be proper.

11. INFORMATION TO CONSUMERS

- 11.1 Subject to clause 10.4, for the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or any office of the Company or at any other place in the District during normal business hours on any business day.
- 11.2 The Trustees shall give not less than three days' notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected by Consumers.

12. REMUNERATION AND EXPENSES OF TRUSTEES

- 12.1 (a) Any Trustee hereof who shall be employed in connection with the trusts hereof may be paid all such remuneration for their services as may be normal as if they had been employed in that behalf and had not been a Trustee hereof.

- (a) (i) The Trustees (other than a Trustee remunerated pursuant to clause 12.1(a) to the extent that such remuneration covers services to which this clause 12.1(b) applies) shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees.
- (i) No remuneration shall be paid to a Trustee pursuant to clause 12.1(b)(i) unless that remuneration has been authorised by a resolution of Consumers passed at a General Meeting of Consumers held pursuant to clause 10.5(a) provided that the total remuneration (including meeting allowances) payable to Trustees for the financial year ending 31 March 2004 shall be deemed to have been duly authorised by Consumers for the purposes of this clause. Each such resolution shall express Trustees' remuneration as either:
 - (A) a monetary sum per annum payable to all Trustees taken together; or
 - (B) a monetary sum per annum, plus meeting allowances, payable to any person who from time to time holds office as a Trustee or as the Chairperson or as the Deputy Chairperson.

In the event of an increase in the total number of Trustees holding office, the Trustees may, without the authorisation of a resolution of Consumers, increase the total remuneration by such amount as is necessary to enable the additional Trustee or Trustees to receive remuneration, including provision for meeting allowances, not exceeding the average amount then being paid to each of the other Trustees (excluding the Chairperson).

- (ii) No resolution which increases the amount fixed pursuant to a previous Consumer resolution shall be passed at a General Meeting of Consumers unless notice of the amount of increase has been given in the notice of meeting.
 - (iii) Trustees' remuneration paid pursuant to clause 12.1(a) may be approved by the Trustees without the need for Consumer approval.
- 12.2 The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this Deed.
- 12.3 The payments of remuneration and expenses to the Trustees pursuant to rule 12.1(a) , 12.1(b) or rule 12.2 shall be paid out of the Trust Fund or any other fund available for that purpose.

13. VARIATION TO TRUST DEED

- 13.1 The Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed other than clause 13.2 and the provisions set out in clause 13.2 which shall only be capable of being altered or amended in the manner set out in clause 13.2.

13.2 The Trustees shall have power on a unanimous resolution of all the Trustees after the Trustees have implemented a Consumer Consultative Procedure in respect of such proposal to alter or amend:

(a) the definition of "Consumers" or "District"; and

(b) clauses 4, 5, 6, 9.3 or 14.

13.3 Notwithstanding clauses 13.1 and 13.2, no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:

(a) review proposals and available options for the ownership of the Shares; or

(b) sell, transfer or dispose of the Shares in accordance with clause 9.3.

14. WINDING UP OF TRUST

14.1 The Trustees may at any time after first having implemented a Consumer Consultative Procedure resolve by unanimous resolution to wind up the Trust.

14.2 If the Trust holds less than 5 per cent of the total share capital of the Company and does not hold any debt security issued by the Company the Trustees shall implement a Consumer Consultative Procedure to determine whether to wind up the Trust.

14.3 If a resolution to wind up the Trust has not been passed by 1 January 2072, the Trustees shall as soon as practical thereafter pass the resolutions requiring the Trust to be wound up. If the resolutions have not been passed by 1 July 2072 the provisions of clause 14.4 shall apply as if the resolutions had been passed.

14.4 On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of Consumers in accordance with Clause 6.2.

15. LIABILITY

15.1 No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to that Trustee's own dishonesty or to the wilful commission or omission by that Trustee of an act where such commission or omission is known by the Trustee to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

15.2 Every Trustee shall be chargeable only for such moneys as shall actually have been received by that Trustee although that Trustee may have joined in any receipt for money received by any other Trustee. No Trustee shall be answerable for the acts or omissions of any other Trustee nor for any loss which may arise by reason of any trust funds being lawfully deposited in the hands of any banker, solicitor or agent or for the sufficiency, insufficiency or deficiency of any security upon which any trust money or any part thereof may be invested or for any loss in the execution of any trust unless the same shall happen through that Trustee's neglect or default.

16. INDEMNITY

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust for and in respect of any loss or liability which such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power under this Deed and also in respect of any expenses incurred by the Trustee in the management and administration of the Trust Fund unless such loss or liability is attributable to that Trustee's dishonesty or to the wilful commission of an act known by the Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission is known by such Trustee to be a breach of trust.

17. NOTICES

- 17.1 Any notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.
- 17.2 Any notice or document given pursuant to clause 17.1 shall be deemed to be duly given or made:
- (a) if delivered by hand, when so delivered;
 - (b) if sent by facsimile, when receipt is confirmed;
 - (c) if sent by post, on the third working day after posting.

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written.

Executed as a Deed

THE COMMON SEAL of TRUSTPOWER LIMITED was affixed in the presence of:

"A Carpenter"

"K Tempest"

Signature of Authorised Person

Signature of Authorised Person

Avon Leavett Carpenter

Keith Neville Tempest

Name of Authorised Person

Name of Authorised Person

Chairman

Secretary

Office Held

Office Held

SIGNED by
SHIRLEY MARGARET CROWLEY
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"S M Crowley"

Signature of **SHIRLEY MARGARET CROWLEY**

SIGNED by
IAN FREDERICK FOOTE
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"I F Foote"

Signature of **IAN FREDERICK FOOTE**

SIGNED by
BARRY WALTER BRAME JENSEN
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"B W B Jensen"

Signature of **BARRY WALTER BRAME JENSEN**

SIGNED by
NOEL HAYWARD JOHNSON
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"Noel H Johnson"

Signature of **NOEL HAYWARD JOHNSON**

SIGNED by
NORMAN FREDERICK MAYO
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"N F Mayo"

Signature of **NORMAN FREDERICK MAYO**

SIGNED by
EDWARD McGREGOR MURRAY
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"E Murray"

Signature of **EDWARD McGREGOR MURRAY**

SIGNED by
NOEL FRANK POPE
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"N F Pope"

Signature of **NOEL FRANK POPE**

SIGNED by
LYN ARTHUR WAHREN
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"L A Wahren"

Signature of **LYN ARTHUR WAHREN**

SIGNED by
RUFUS GEORGE WALLINGFORD
in the presence of:

"C Bogun"

Signature of Witness

C M Bogun

Name of Witness

Secretary

Occupation of Witness

Tauranga

Town of Residence

"R G Wallingford"

Signature of **RUFUS GEORGE WALLINGFORD**

SCHEDULE I

RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

1. NUMBER OF TRUSTEES

- 1.1 Until the first Annual General Meeting as provided herein the number of Trustees shall be not less than six (6) nor more than nine (9) and after that date the number of Trustees shall be six (6) **PROVIDED THAT** if at any time there are less than the minimum number of Trustees in office specified for that period the remaining Trustees shall be entitled to act until the number of Trustees is restored to the minimum number and no act or decision of the Trustees shall be called in to question on such account.
- 1.2 The Trustees who have executed this deed as first trustees shall hold office until the conclusion of the first Annual General Meeting on which date six (6) of the Trustees (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire. The Trustees shall determine who among them shall retire (and, in the case of disagreement, this shall be determined by the drawing of lots).
- 1.3 Prior to the first Annual General Meeting three (3) Trustees shall be elected to replace the six (6) Trustees retiring in accordance with rule 1.2 in the manner specified in rule 3.4, such appointment to take effect contemporaneously with the retirement required by rule 1.2. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.
- 1.4 At the conclusion of the third Annual General Meeting those first Trustees who did not retire pursuant to rule 1.2 (and any Trustee who may have been appointed to fill a casual vacancy of any of the first Trustees or a successor to any of the first Trustees) shall retire.
- 1.5 Prior to the third Annual General Meeting three (3) Trustees shall be elected to replace the three (3) Trustees retiring in accordance with rule 1.4 in the manner specified in rule 3.4, such appointment to take effect contemporaneously with the retirement required by rule 1.4. A retiring Trustee shall be eligible for nomination for election subject to the other provisions of this Deed.
- 1.6 From and including the fifth Annual General Meeting and at every second Annual General Meeting occurring thereafter, three (3) Trustees shall retire from office. The Trustees to retire at any Annual General Meeting shall firstly be any Trustee(s) (if any) appointed to fill any casual vacancy since the last Trustee election and secondly the required number of elected Trustees (to make the number of retiring Trustees three (3) in total) who have been longest in office **since their election**. If there are more elected Trustees due to retire than the required number of elected Trustees to retire as determined in accordance with the previous sentence, then the elected Trustees to retire shall be determined by lot. Such retiring Trustees shall retire at the conclusion of the relevant Annual General Meeting.

Where a casual vacancy is not filled pursuant to clause 1.7 of this Schedule and remains open at the next Annual General Meeting at which an election of Trustees is to take place, then (for the purposes of this clause and in order to determine the required number of elected Trustees to retire) such vacancy shall be deemed to be have been filled.

The new Trustees who have been elected in accordance with clause 3.4 of this Schedule, who may, subject to the other provisions of this Deed, include Trustees who have retired, shall be appointed at the conclusion of that Annual General Meeting.

1.7 Any casual vacancy in the number of Trustees:

(a) shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or

(b) may, in any other case,

be filled within 3 months of that vacancy occurring providing that the new appointee shall, subject to clause 1.6, hold office only for the residue of the term of office of the Trustee whose place is taken.

Any new appointee may be chosen at the discretion of the remaining Trustees having regard to the range and nature of skills of the appointee so that such skill set complements those of the remaining Trustees and which will add value to the good decision making by Trustees in their administration of the Trust.

2. **ELIGIBILITY**

2.1 Subject to rule 2.2, the following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:

(a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;

(b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;

(c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;

(d) a person to whom an order made under section 189 of the Companies Act 1955 applies;

- (e) a person who is mentally disordered within the meaning of the Mental Health Act 1969;
- (f) a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1989;
- (g) a person who is not ordinarily resident in the District;
- (h) a person who is an employee or a Director of the Company (other than a Trustee who has been appointed to the board of the Company as a Director following nomination for that office pursuant to a Special Resolution of the Trustees);
- (i) the Secretary or the Treasurer;
- (j) a person who is not, or who ceases to be, a Consumer.
- (k) a person who is, or becomes, a member of parliament in New Zealand;
- (l) a person who is, or becomes, a councillor or employee of any Local Authority whose territory includes any part of the District;
- (m) a person who is, or becomes, a member (whether elected or appointed) of a Community Board (as that term is defined in the Local Government Act 1974) whose territory includes any part of the District.

2.2 A person shall not be disqualified from appointment and may continue to hold that office:

- (a) in any case to which rule 2.1(b) applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
- (b) in any case to which rule 2.1(c) applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined;
- (c) in any case to which rule 2.1(h) applies, until the declaration of the result of the first election of Trustees pursuant to rule 3.4(e) or 3.4(k);
- (d) in any case to which rule 2.1(h) applies, after the declaration of the result of the first election of Trustees pursuant to rule 3.4(e) or 3.4(k), if the Trustee resigns the office or employment disqualifying that Trustee from holding office as Trustee, which resignation is to have effect within two weeks of appointment as a Trustee.

3. **TERM OF OFFICE**

3.1 A Trustee shall cease to hold office if:

- (a) the Trustee resigns by written notice to the Trustees;

- (b) the Trustee is ineligible for election or appointment as a Trustee pursuant to rule 2.1;
 - (c) the Trustee dies while holding office as a Trustee;
 - (d) the Trustee is not re-elected pursuant to rule 3.4, when the Trustee shall retire at an Annual General Meeting as specified in rule 3.4(n);
 - (e) the Trustee does not attend 3 consecutive monthly Trustee meetings of which notice has been properly given without the prior consent of the remaining Trustees.
- 3.2 The provisions of rule 2.2 shall apply, mutatis mutandis, to rule 3.1. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.
- 3.3 Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.
- 3.4 Other than the first Trustees as set out in rule 1.2 and any casual vacancy Trustee(s) appointed pursuant to rules 1.7 and 5(c), all Trustees shall be elected by the Consumers (determined in accordance with rule 3.4(o) and every reference to "Consumers" in rules 3.4(f), (g) and (i) shall be a reference to those Consumers as so determined) in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:
- (a) Not later than nine weeks before the proposed date of the election the Independent Returning Officer shall insert a notice in a newspaper or newspapers circulating in the District giving:
 - (i) advice of the proposed election;
 - (ii) the place or places at which nomination forms may be obtained;
 - (iii) where completed nominations may be lodged; and
 - (iv) notice that the nominator, candidate and seconder must be, at the time of making the nomination, Consumers;
 - (v) the day and time nominations close.
 - (b) Every nomination of a candidate shall be in writing. Nomination forms shall be in such form as the Independent Returning Officer decides, but shall include:
 - (i) the full name and address of the candidate;

- (ii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in rule 2.1. If the candidate would be disqualified from holding office because of rule 2.1(h), the candidate shall not be so disqualified if the statement is accompanied by a further statement that should that candidate be elected he or she shall immediately resign that office or employment which causes him or her to be disqualified under rule 2.1(h); and
- (iii) the signature of the nominator and seconder and the candidate all of whom must be Consumers.

The Independent Returning Officer shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of rule 2.1.

- (c) The nomination of a candidate shall be deemed to have never been made, and the candidate shall be ineligible for election, if the:
 - (i) nominator withdraws the nomination by notice received by the Independent Returning Officer before closure of nominations;
 - (ii) candidate withdraws by notice received by the Independent Returning Officer before a result is declared;
 - (iii) candidate dies before a result is declared;
 - (iv) candidate becomes disqualified by virtue of rule 2.1 before a result is declared.
- (d) Nominations shall close four weeks after the first notice calling for nominations was given pursuant to rule 3.4(a).
- (e) If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Independent Returning Officer shall declare the candidates duly elected and no election shall be held. If less nominations are received than there are vacancies, the Trustees shall forthwith fill the vacancy or vacancies in accordance with rule 1.7 and a retiring Trustee who has not been nominated shall be eligible to fill a vacancy.
- (f) Should nominations be received for more than the number of vacancies, the Independent Returning Officer shall conduct an election of Trustees pursuant to this clause 3.4.

The Independent Returning Officer may, acting upon an instruction of the Trustees, use any of the following voting methods:

- (i) the method of voting commonly known as booth voting;

- (ii) the method of voting commonly known as postal voting;
- (iii) any form of electronic voting;
- (iv) any method of voting involving a combination of more than one of the methods referred to in subparagraphs (i) to (iii) above; or
- (v) any other method of voting, howsoever described.

The Independent Returning Officer shall give, not less than three weeks prior to the date on and the time at which voting is to close (in this clause 3.4, "Voting Period"), to the Consumers, in such manner as the Independent Returning Officer shall deem fit, a postal and/or electronic ballot paper which shall contain:

- (vi) the names of all candidates validly nominated in alphabetical order of their surnames and appropriate provision for recording the Consumer's vote;
- (vii) if postal voting is to be used, a pre-paid envelope in which the ballot paper is to be placed and returned to the Independent Returning Officer; and
- (viii) a written explanation of the method for recording the Consumer's vote, the manner in which the ballot paper is to be returned, and the date and time at which the Voting Period is to close.

Biographical and other details of the candidates may, if the Trustees approve, be included in the information given to Consumers.

- (g) The following provisions shall apply with respect to votes:
 - (i) each Consumer shall be distributed one voting paper (which may be in electronic format) and each Consumer shall only be entitled to one vote;
 - (ii) in respect of joint Consumers the person whose name appears on the records of the Company first shall exercise the vote for that joint holding to the exclusion of the other joint holders;
 - (iii) Consumers may not vote for the appointment of more Trustees than there are vacancies;
 - (iv) Ballot papers (whether or not in electronic format) received by the Independent Returning Officer after the date and time stated in the notice to Consumers as the date and time at which the Voting Period is to close shall not be counted.
- (h) The Independent Returning Officer shall, after close of the Voting Period, count the number of valid votes cast for each candidate and ascertain the candidates elected. The Independent Returning Officer is permitted and may in its discretion commence the counting of votes and the processing of ballot papers received prior to the expiry of the Voting Period.

- (i) A vote is invalid and shall not be counted if:
 - (i) the Consumer votes for more candidates than there are Trustees to be elected; or
 - (ii) in the opinion of the Independent Returning Officer, the ballot paper does not clearly indicate the candidate or candidates for whom the Consumer intended to vote.
- (j) Where, because two (2) or more candidates have received the same number of valid votes, the Independent Returning Officer cannot determine which of them has been elected, the Independent Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Independent Returning Officer and such other person or persons (if any) as the Independent Returning Officer may decide.
- (k) Forthwith after ascertaining which candidates have been elected, the Independent Returning Officer shall declare the names of the candidates so elected, and shall publish those names in one or more principal newspapers circulating in the District. The candidates elected shall be appointed Trustees at the conclusion of the relevant Annual General Meeting as specified in rules 1.3, 1.5 and 1.6.
- (l) After declaring the result of the election the Independent Returning Officer shall decide when to destroy the voting papers and/ or to permanently delete any computer records or files relating to votes cast electronically.
- (m) The Independent Returning Officer and every person assisting the Independent Returning Officer shall faithfully and impartially perform their duties and shall not, directly or indirectly:
 - (i) before the declaration of the result of the election make known the state of the vote, or give or pretend to give any information by which the state of the vote might be known;
 - (ii) make known for which candidate or candidates any person has voted; or
 - (iii) give any person any information likely to defeat the secrecy of the election.
- (n) Notwithstanding any other provision in the Deed or these rules, the retiring Trustees shall remain in office until the conclusion of the Annual General Meeting at which they are to retire as specified in rules 1.3, 1.5 and 1.6. Forthwith upon the conclusion of the relevant Annual General Meeting the candidates declared elected pursuant to rule 3.4(e) or 3.4(k) shall assume office in place of the retiring Trustees.
- (o) The Consumers who shall be entitled to vote for the appointment of Trustees shall be those persons who are Consumers on the date

nominations for candidates close as specified in accordance with rule 3.4(a)(v).

4. CHAIRPERSON AND DEPUTY CHAIRPERSON

The Trustees shall elect a Chairperson and Deputy Chairperson, who shall also be Trustees, at the first meeting of Trustees after the Annual General Meeting in each year and at any other time when either position becomes vacant.

5. QUORUM

- (a) A quorum at meetings of the Trustees shall comprise four (4) Trustees.
- (b) Notwithstanding rule 1.1, no business may be transacted at a meeting of Trustees if a quorum is not present.
- (c) Notwithstanding rule 5(b), where the number of Trustees in office at any relevant time is less than the number of Trustees required to form a quorum, then the remaining Trustees may convene a meeting for the sole purpose of appointing additional Trustee(s) so that there are at all times at least the minimum number of Trustees in office required to form a quorum.
- (d) Any new Trustee(s) appointed pursuant to rule 5(c) shall hold office for the period from the date of their appointment until the next Annual General Meeting at which a Trustee election is held. Such new Trustee(s) shall retire at that next Annual General Meeting as if they had been appointed to fill a casual vacancy in terms of rule 1.6.
- (e) Any new Trustee appointed pursuant to rule 5(c) shall have all the powers and responsibilities of a Trustee as if elected to that office pursuant to rule 3.4 and no act or decision of the remaining Trustees pursuant to this rule 5 or of the new Trustee(s) pursuant to this Deed shall be called into question on such account.

6. VALIDITY OF PROCEEDINGS

- 6.1 All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

7. RESCISSION OR VARIATION OF RESOLUTIONS

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.

8. MEETINGS OF TRUSTEES

- 8.1 The Trustees shall hold an Annual General Meeting no later than by 30 November in each calendar year.
- 8.2 The Secretary shall give no less than thirty (30) days notice of the annual general meeting to the Trustees such notice to specify the date, time and place of the annual general meeting.
- 8.3 (a) The business to be transacted at the Annual General Meeting of Trustees shall be the receipt of the annual report (including a report on the performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements and the setting of the remuneration (if any) of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with rule 8.4.
- (a) At the conclusion of the Annual General Meeting of Trustees or at such other time as the Trustees shall decide, the annual meeting of Consumers shall be convened pursuant to clause 10.5 and the Code of Practice for the purposes (among other things if the Trustees so decide) of appointing an Independent Returning Officer for the next Trustee election (in the case of a general meeting of Consumers held in a non Trustee election year), fixing the Independent Returning Officer's fees and expenses, appointing an auditor for the Trust, fixing the auditor's fees and expenses and, if applicable, fixing the amount of remuneration payable to Trustees pursuant to clause 12.1(b)(i).
- 8.4 Notice in writing of any special business shall be given to the Secretary no less than twenty one (21) days prior to the annual general meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees no later than fourteen (14) days prior to the annual general meeting and shall also give to Consumers not less than fourteen (14) days prior written notice of the time, place, date and agenda of the annual general meeting by an advertisement placed in a newspaper or newspapers circulating in all the areas of the District.
- 8.5 Consumers shall be entitled to attend and speak at the annual general meeting but shall not be entitled to vote at such meetings.
- 8.6 The Trustees shall otherwise meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled from time to time to develop protocols and standing orders for the management of Trustee behaviour and for the orderly conduct of Trustee meetings, and any such protocols and / or standing orders so adopted shall bind Trustees in their administration of the Trust.
- 8.7 Other than a meeting of Trustees called pursuant to rule 5(c), any three (3) or more Trustees may at any time summon a meeting of Trustees.

9. NOTICE OF MEETINGS

Notice in writing of every meeting shall be sent by such method of delivery

(whether electronic or otherwise) as is determined by the Trustees from time to time to each Trustee by the Secretary or other person acting under the direction of the Trustees. In the case of a meeting summoned pursuant to rule 8.7, the Trustees, persons summoning it or the secretary or other person acting under the direction of the Trustees shall give at least seven (7) working days notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

The expression "working days" in this clause shall exclude weekends and public holidays and such notice period shall exclude the date of the notice and the date of the relevant meeting.

10. **ADJOURNMENT**

If a quorum is not present within thirty minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

11. **CONTENT OF NOTICE**

Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to rule 8.7 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

12. **COMMITTEES**

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

13. **VOTING**

- 13.1 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.
- 13.2 The Chairperson or Deputy Chairperson acting as the chairperson of a meeting of Trustees shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the case of Trustee deadlock when voting on any particular issue and where such casting vote is made for continuance of the status quo.

14. INTERESTED TRUSTEES

- 14.1 A Trustee who in any way, whether directly or indirectly, has a material interest in any contract or proposed contract or arrangement or dealing with the Trust (other than as a Consumer or as a member, officer, or employee of any firm, company or organisation that is a Consumer) shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting. A trustee who holds beneficially (directly or indirectly) less than 20,000 shares in the Company shall not be required to disclose that shareholding.
- 14.2 A Trustee required to disclose an interest by rule 14.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.
- 14.3 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and the Chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.

15. MINUTES

- 15.1 A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.
- 15.2 Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 15.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

16. RESOLUTIONS IN WRITING

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, (as the case may be).

17. MEETINGS BY TELEPHONE

17.1 Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") being not less than a quorum, together with the Secretary or a person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

- (a) All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;
- (b) Each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a secretary, must be able to hear each of the others taking part at the commencement of the meeting;
- (c) At the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
- (d) A participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid.

17.2 Minutes of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by the Secretary or person acting as a secretary.

18. EXECUTION OF DOCUMENTS

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.

19. SECRETARY AND TREASURER

19.1 The Trustees shall appoint from time to time a Secretary and a Treasurer who may be the same person.

19.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.

- 19.3 It shall be the duty of the Treasurer to keep usual and proper books of account and other financial records of the business to report to the Trustees from time to time on the finances of the Trust Fund to present annual statements of account for audit and for consideration by the Trustees and to prepare and file from time to time with the Inland Revenue Department all necessary tax accounts.

SCHEDULE II

TRUSTEES' SPECIFIC POWERS

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall have the power to:

- (a) Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property whether in New Zealand or overseas.
- (b) Sell all or any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.
- (c) Retain property forming part of the Trust Fund.
- (d) Borrow or raise moneys on such terms and subject to such conditions as the Trustees think fit, including giving such security as the Trustees think fit over all or any of the Trust Fund and its undertaking.
- (e) Lease or to take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) Lend moneys on such terms and subject to such conditions as the Trustees think fit
- (g) Maintain manage repair improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.
- (h) Employ and pay any person (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money.
- (i) Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank and to overdraw any such account with or without giving security and in addition to the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any Bank for any one or more of the following, namely, the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account at that Bank. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.

- (j) Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurable value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.
- (k) Enter into contracts of any nature whatsoever for the purpose of protecting maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.
- (l) Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.
- (m) Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any Shares forming part of the Trust Fund including to consider any recommendations made by the directors of the Company on any proposal relating to any reconstruction or amalgamation or merger of the Company or any Subsidiary or any modification of the rights of shareholders or any increase or reduction of capital or other dealing with the Shares and after giving due consideration to the recommendations of the directors to make a decision in respect of any such proposal as the Trustees may consider in their absolute discretion will be for the benefit of or in the interests of the Trust Fund.
- (n) To appoint Directors in the manner provided by the Articles of Association of the Company provided however that the Trustees be satisfied that any person to be so appointed will be a person who has business acumen, sufficient time to devote to the affairs of the Company and the expertise to enable the Company to operate as a successful business.
- (o) To determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.
- (p) To determine all questions and matters of doubt which may arise in the course of the trusteeship of this Trust.
- (q) Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purposes of the Trust.
- (r) Effect insurance for a Trustee in respect of:
 - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a trustee of the Trust;

- (ii) costs incurred by that Trustee in defending or settling any claim or proceedings relating to any such liability; and
- (iii) costs incurred by that Trustee in defending any criminal proceedings in which he or she is acquitted.

In this clause the expressions:

“Trustee” includes a former trustee; and

“Effect insurance” includes paying, whether directly or indirectly, the costs of such insurance.

**SCHEDULE III
CONSUMER CONSULTATIVE PROCEDURE**

In respect of any provision of this Deed which requires the Trustees to implement a Consumer Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to Consumers in accordance with clause 11 of the Deed;
- (c) In every notice given under paragraph (b) of this schedule, specify a period within which Consumers interested in the proposal may make submissions on the proposal to the Trustees;
- (d) Ensure that any Consumer who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this schedule is given a reasonable opportunity to be heard by the Trustees;
- (e) Ensure that every meeting at which submissions are heard are open to Consumers; and
- (f) Make all written submissions on the proposal available to Consumers.

The period specified pursuant to paragraph (c) above shall be not less than one month and no more than three months.

DATED

21st day of December

1993

TRUSTPOWER LIMITED

AND

**SHIRLEY MARGARET CROWLEY
IAN FREDERICK FOOTE
BARRY WALTER BRAME JENSEN
NOEL HAYWARD JOHNSON
NORMAN FREDERICK MAYO
EDWARD McGREGOR MURRAY
NOEL FRANK POPE
LYN ARTHUR WAHREN
RUFUS GEORGE WALLINGFORD**

TAURANGA ENERGY CONSUMER TRUST

[Conformed copy of Trust Deed – including all amendments as at 20 May 2014]

**RUDD WATTS & STONE
SOLICITORS
AUCKLAND
WELLINGTON AND NEW PLYMOUTH**

**HOLLAND BECKETT
SOLICITORS
TAURANGA**

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