

TRUST DEED

DATED 28 APRIL 1993

[As amended by resolutions dated 8 December 1993, 15 June 2001, 16 August 2002, 5 May 2004, 24 November 2004, 3 March 2014, 12 June 2018, and 12 June 2023]

MARLBOROUGH ELECTRIC POWER TRUST

[Conformed copy of trust deed – 12/06/2023]

**GASCOIGNE WICKS
SOLICITORS
BLenheim**

MARLBOROUGH ELECTRIC POWER TRUST

THIS DEED is made on the 28th day of April 1993

[Amended by resolutions dated 8 December 1993, 15 June 2001, 16 August 2002, 5 May 2004, 24 November 2004, 3 March 2014, 12 June 2018, and 12 June 2023]

BETWEEN **MARLBOROUGH ELECTRIC LIMITED** [now Marlborough Lines Limited] a duly incorporated company with its registered office at Blenheim (the "Company")

AND **JOHN WENTWORTH CUDDON, PETER JAMES KINDER, WENDELENA RODGERS, JOHN WALTER EGGERS, GEORGE JOHN MARK MACDONALD, PETER JAMES FORREST** (the "Trustees")

WHEREAS

- A. The Marlborough Electric Power Board (the "Board") formed a registered public company limited by shares, Marlborough Electric Limited [now Marlborough Lines Limited] in which the sole subscriber was the Board.
- B. The Company established the Marlborough Electric Power Trust to enable the Trustees to acquire the shares in the Company to be vested in the Trustees in accordance with the establishment plan.
- C. The object of the Trust is to hold the shares in the Company (and any other investments in the Trust Fund) on behalf of the Consumers, and to distribute to the Consumers in their capacity as owners, the benefits of ownership of the shares in the Company, and to carry out future ownership reviews involving public consultation in accordance with the terms of this Deed.
- D. The Trustees shall carry out periodic reviews of the Trust Deed in accordance with the terms of this Deed.

1. DEFINITIONS AND CONSTRUCTION

1.1 **Definitions:** In this Deed, unless the context otherwise requires:

- (a) **"Act"** means the Energy Companies Act 1992;
- (b) **"Balance Date"** means the 31st day of August or any other date adopted as the end of the financial year from time to time by the Trustees;
- (d) **"Board"** means the Marlborough Electric Power Board constituted by section 10 of the Electric Power Boards Act 1925;
- (e) **"Company"** means Marlborough Lines Limited and includes any successor company;
- (f) **"Consumer"** means persons or bodies corporate who at any appropriate date designated by the Trustees are named from the records of the Company as the persons whose premises have an installation control point ("ICP") to the Company's electricity distribution network within the district and who are either:
 - (i) end use customers who are liable to the Company (whether alone or jointly with any other person) for the payment for line function services in relation to electricity conveyed over the Company's electricity distribution network;
or
 - (ii) end use customers who are liable to an electricity supply business (whether alone or jointly or with any other person) which is liable to the Company for the payment for line function services in relation to electricity conveyed over the Company's distribution network;

and for the avoidance of doubt:

- (i) each ICP connection shall qualify a person as a Consumer so that such person shall (where appropriate) be entitled to benefits and vote as a Consumer in accordance with the number of such connections;

(ii) persons with joint liability shall be treated as one Consumer;

unless any such person or body corporate who qualifies as a Consumer in accordance with this definition advises the Company or the Trustees in writing that he, she or it does not wish to be a Consumer for the purposes of this Deed;

- (g) **"this Deed"** means this deed and includes the schedule and any amendments;
- (h) **"Distribution Plan"** means a plan for the distribution of the shares in the capital of the Company prepared by the Trustees in accordance with Clause 4;
- (i) **"District"** means the extent of the area over which the Board was authorised to supply electricity pursuant to the licence granted to the Board under section 20 of the Electricity Act 1968;
- (j) **"Dividend"** means, in relation to the Company, any distribution in money or moneys worth by the Company to the Trustees as holders of shares in the Company pursuant to this Deed;
- (k) **"Electors"** means at the first anniversary of the Termination Date, any person:
- (i) whose name appears on a roll of the electors of a Local Authority the whole or any part of whose district is situated within the District; and
 - (ii) whose electoral address is within the District; and
 - (iii) who is a Consumer;
- (l) **"Financial Year"** means any year or other accounting period ending on a Balance Date;
- (m) **"Local Authority"** means a territorial authority within the meaning of the Local Government Act 1974 and in the event that at any time a territorial authority does not exist then any such body whether incorporated or not which has assumed the responsibilities or obligations formerly undertaken by a territorial authority;

- (n) **"Public Consultative Procedure"** means the procedure for consultation set out in Schedule 2;
- (o) **"Shares"** means the shares of the Company;
- (p) **"the Trust"** means the electric power trust established by this Deed;
- (q) **"the Trustees"** means the trustees for the time being of the Trust;
- (r) **"Trust Fund"** means all the funds of the Trust described as "the Trust Fund" in Clause 6 and includes all capital and income for the time being held by the Trustees of the Trust;
- (s) **"Trusts Act"** means the Trusts Act 2019;
- (t) **"Vesting Date"** means [1 May 1993] 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 **Construction** 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 the Deed;
- (d) references to clauses are references to Clauses of the 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, regulation, 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.

2. **DECLARATION OF TRUST**

The Company hereby declares and directs and the Trustees declare and acknowledge as follows:

- 2.1 The trust established by this Deed as an electric power trust shall be known as the Marlborough Electric Power Trust. The name of the Trust may be changed from time to time by resolution of the Trustees.
- 2.2 The sum of one hundred dollars (\$100) paid by the Company contemporaneously with the execution of this Deed and all other monies or property paid to or acquired by the Trustees after the execution of this Deed shall be held upon the trusts hereby declared and any accumulations of income therefrom and all monies, investments and property of whatever kind from time to time representing the Trust Fund shall be held upon the trusts and for the purposes and with the powers, authorities and discretions appearing in this Deed.

3. **OBJECTS**

This Trust has been established to enable the Trustees:

- 3.1 On Vesting Date, to receive shares in the Company vested in the Trustees by Order in Council made in accordance with section 47 of the Act.
- 3.2 If the Trustees so elect to subscribe for, purchase or otherwise acquire additional shares in the capital of the Company.
- 3.3 To encourage and facilitate the Company in meeting its objective of being a successful business as required by section 36 of the Energy Companies Act 1992 and to require the business of the Company to be operated on a commercial, for profit, basis (as opposed to a non-commercial basis) with a view to earning an optimal return on its assets and, in their capacity as legal owners of the shares in the Company, to distribute to Consumers in their capacity as beneficial owners of the Trust Fund, the benefits of ownership of the shares in the Company, by means which are efficient and appropriate in the circumstances. For the

purposes of this clause, “optimal” means “best or most favourable, but not necessarily the maximum”.

- 3.4 To receive the Dividends and to distribute, pay, apply or appropriate the Dividends to or for the benefit of the Consumers in the manner provided in Clause 5 of this Deed.
- 3.5 To retain and hold such Shares until such time as, following an ownership review held in accordance with Clause 4, the Shares or a portion of them (if any) are sold, transferred or disposed of, or the Shares are sold, transferred or disposed of in accordance with clause 9.9.
- 3.6 In the event of any sale, transfer or other disposition of such Shares following an ownership review, to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with Clause 6.1.
- 3.7 Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in Clause 6.2.

4. **REVIEW**

- 4.1 No earlier than five years and no later than six years after the date of this Deed, and in any event on the receipt of written demand of at least 10% of Consumers, or otherwise by resolution of the Trustees at their discretion, the Trustees shall conduct a review of the available options for the future ownership of the Shares. To initiate such a review, the Trustees shall require the directors of the Company to prepare a report considering proposals and available options for the future ownership of the Shares. Such report shall contain the following detail:
 - (a) an analysis of the performance of the Company to the date of the report together with a discussion of the advantages and disadvantages of trust ownership;
 - (b) an analysis of the various ownership options considered including without limitation, a Share distribution to Consumers, a sale of Shares to the public, a sale of Shares to institutional investors and retention by the Trust;
 - (c) a comparison of the performance by the Company with the performance of other electricity network companies operating on a similar basis;

- (d) the conclusions of the directors as to the most appropriate form of ownership together with an indication whether the conclusions are unanimous and if the decision is not unanimous, a summary of the conclusions of the dissenting directors shall be included;
- (e) the matters contained in Clause 4.7 if a distribution of Shares is recommended;
- (f) a summary of the professional advice (if any) obtained in respect of the preparation of the report.

4.2 The Trustees shall comment on the report to the directors of the Company, and upon completion of their review of the report, the Trustees shall make the report available to the public in accordance with Clause 13 together with a summary of their comments.

4.3 The Trustees shall no later than 1 month after the date the report is received from the directors of the Company, implement the balance of the Public Consultative Procedure in respect of the report.

4.4 If the directors of the Company have failed to produce a report within 6 months of being requested to do so by the Trustees, the Trustees shall prepare the report required by Clause 4.1.

4.5 The Company shall be entitled to be paid out of the Trust Fund all reasonable costs incurred in connection with the ownership review carried out pursuant to this Clause 4.

4.6 Following completion of the Public Consultative Procedure and in any event not later than 6 months after the report required by Clause 4.1 is completed, the Trustees and the directors shall meet and, after taking due account of the views expressed by the public and the directors, the Trustees shall decide whether to:

- (a) retain the Shares in the Trust; or
- (b) dispose of a portion of the Shares and retain the remainder in the Trust; or
- (c) dispose of all of the Shares held by the Trust.

- 4.7 If the Shares are to be retained by the Trust, the Trustees shall notify the public in accordance with Clause 13.
- 4.8 If the Trustees decide that the Shares or any portion of them are to be distributed or sold, no such distribution or sale shall be effected unless the Trustees have held a postal vote of Consumers and a majority of Consumers who vote on the question approve the distribution or sale. The Trustees may in their discretion determine the method and procedure for carrying out the postal vote provided that:
- (a) the Trustees shall give written notice to all the Consumers of the postal vote and of the method or procedure adopted by the Trustees for carrying out the postal vote;
 - (b) a period of not less than 21 days shall be allowed between the date the Consumers are notified of the postal vote and the date by which the votes of Consumers will be disallowed if not received by the Trustees;
 - (c) each Consumer shall be entitled to one vote for each connection;
 - (d) the Trustees shall give notice of the vote to Consumers through the post directed to the address of each Consumer in the records of the Trust, or if there are no such records, then the records of the Company;
 - (e) the notice referred to in Clause 4.8(d) shall be deemed to have been duly received 2 days after the date of posting of the notice by the Trustees.
- 4.9 If the postal vote confirms that the Shares or any portion of them are to be distributed, the Trustees shall request the directors of the Company to prepare a distribution plan and if the directors fail to prepare a plan, the Trustees shall prepare the distribution plan. The distribution plan shall contain the following details:
- (a) the identity or classes of Consumers to whom the Shares are to be distributed and the number of Shares (whether the same or otherwise) to be distributed to each of those Consumers;
 - (b) the time and manner in which the Shares are to be distributed; and

- (c) whether the Shares are to be distributed to Consumers without consideration, to Consumers at a concessionary consideration, or to any persons for proper consideration.

The Trustees shall refer any plan prepared by the Trustees to the directors for their comments, and the Trustees shall refer any amendments proposed by the Trustees to any plan prepared by the directors, to the directors for their comments. In that regard, the Trustees shall consider any comments made by the directors, but shall not be bound to follow any such comments.

- 4.10 The distribution plan shall be notified to the public in accordance with Clause 13 and, following notification, the Trustees shall be obliged to comply with the requirements of and ensure that the distribution plan is implemented, unless the Trustees are unable to do so as a result of matters beyond the reasonable control of the Trustees.
- 4.11 If, following the initial or any subsequent review provided for in this clause 4, any or all of the Shares are retained by the Trustees, then on receipt of written demand of at least 10% of Consumers as contemplated under clause 4.1 above, or otherwise by resolution of the Trustees at their discretion, the Trustees shall thereafter procure that a review in accordance with this clause 4 is held.

5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE

The Trustees shall 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 the cost of administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties.
- 5.2 The Trustees shall, subject to Clause 5.3 and Clause 5.4, pay apply or appropriate the whole or substantially all of the current net annual income 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 or such one or more of them to the exclusion of others or other of them

in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper.

- 5.3 The Trustees shall in respect of any Dividend received be entitled to pay, apply or appropriate that income to Consumers in accordance with Clause 5.2 at any time during the Financial Year to which that Dividend relates or the following Financial Year, provided however that the Trustees may defer payment, application or appropriation of any sum or benefit to any Consumer until the Trustees are satisfied that all liability for taxation in respect thereof has been discharged.
- 5.4 Where any income derived from a Dividend is intended to be distributed to Consumers, the Trustees may request the directors of the Company to produce a report in respect of each such distribution based on the contribution made by each class of Consumer to the earning of that Dividend from which the funds for the intended distribution were derived and in such report the directors may classify Consumers in any manner they see fit and, in exercising their discretion in accordance with Clause 5.2, the Trustees shall have regard to those recommendations, but shall not be bound to follow them.
- 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 5.2, shall as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income and as from such date the Trustees shall have no further obligations with respect to the applications of 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 Subject to the foregoing, so far as any part or parts of the income derived by or credited to or to be derived by or credited to the Trust Fund in any Financial Year is not paid, applied or appropriated in accordance with Clause 5.2, the same shall be accumulated by investing the same so that all such accumulations shall be held by the Trustees upon the same trusts and with the powers herein declared in respect of the income from the Trust Fund and so that the Trustees may at any time or times resort thereto and pay, apply or appropriate the whole or any part thereof as if it were income of the Trust Fund in accordance with Clause 5.2.

- 5.8 Each Trustee in his or her capacity as 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 this Deed.
- 5.9 All payments made to Consumers unclaimed for one year after having been sent to any Consumer may be invested or otherwise made use of by the Trustees for the benefit of the Trust Fund and the Trustees shall be entitled to mingle the amounts of any unclaimed payments with other moneys forming part of the Trust Fund and to credit such amount together with any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund and thereafter such amounts may be distributed by the Trustees as income or capital as the Trustees may determine in accordance with the terms of this Deed.

6. TRUSTS OF CAPITAL

- 6.1 **Trusts prior to Termination Date:** The Shares or the proceeds of sale or other disposition of such shares (and any other investments comprising 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, or to the extent that the shares are sold in order to raise funds for the Company, for the benefit of the Company, in such manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable.
- 6.2 **Trusts from and after Termination Date:** From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Funds 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 Electors as at the first anniversary of the Termination Date.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

The Rules set forth in the Schedule hereto (with such amendments, deletions and additions thereto as may lawfully be made in manner therein appearing) 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 power, authorities, and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred on the Trustees generally by the Trusts Act (except where otherwise specified in this Deed). For the avoidance of doubt, the Trustees shall have no general power, authority or discretion to participate in the management or operation of the Company. In exercising the power conferred by this clause and clause 9, and all rights set out in the Constitution of the Company, the Companies Act 1993, and the Energy Companies Act 1992, 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 or Electors (as the case may be) as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer or Elector.

9. SPECIFIC POWERS

The Trustees shall have and may exercise either alone or together with any other person or persons the following powers, authorities and discretions:

- 9.1 **To Appoint Directors:** To appoint directors of the Company in the manner provided by the constitution of the Company. Prior to appointing any director, the Trustees shall advertise that prospective candidates as director are being sought and shall procure an independent evaluation of the prospective candidates by a professionally qualified consultant engaged by the Trustees. In exercising any right of appointment the Trustees shall have regard to the recommendations of the consultant so engaged, but shall not be bound by those recommendations. If the Trustees wish to reappoint a retiring director for a second term

(subject to the relevant procedures in the Company's constitution) the Trustees may in their discretion choose not to advertise that a candidate is being sought, and in that case an independent evaluation shall not be required. If the Trustees consider appointing any director for a third term and for any term thereafter, the Trustees must advertise for prospective candidates and obtain the independent evaluation and have regard to any resulting recommendation.

- 9.2 **To Appoint Secretary:** To appoint and pay any person, who is not a Trustee, as secretary of the Trust and to remove such person and appoint replacement secretaries as they think fit.
- 9.3 **To Employ:** To employ and pay any person, firm, company or corporation to do any act of whatever nature relating to the Trust including the receipt and payment of money without being liable for loss incurred thereby.
- 9.4 **To Appoint Custodian Trustee:** To exercise the powers conferred by section 67 of the Trusts Act to appoint any corporation to be a custodian trustee of the Trust Fund.
- 9.5 **To Invest:** To invest or reinvest, in any form of investment authorised by this Deed, all or any part of the Trust Fund, whether income or capital, not immediately required for the purposes of the Trust.
- 9.6 **Bank Accounts:** To open an account or accounts at any time or times in the name of the Trust at any Bank (and to overdraw any such account with or without giving any security) and in addition to the powers conferred by section 67 of the Trusts Act to make arrangements with any Bank for the Trustees or any two or more of the Trustees named in writing by all of the Trustees to operate upon any account from time to time opened or subsisting at that Bank.
- 9.7 **Capital Income and Blended Funds:** 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.

- 9.8 **Shareholders powers:** 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 in the Company forming part of the Trust Fund.
- 9.9 **Reorganisation, reconstruction, merger etc:** To consider any recommendations made by the directors on any proposal relating to any reconstruction or amalgamation or merger of the Company or any modification of the rights of shareholders or any reduction of capital or subject to Clause 9.10, other dealing with such 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 shall be for the benefit of or in the interests of the Trust Fund and to deal with the shares held by the Trustees in any manner necessary to give effect to that decision provided however that the Trustees shall not agree to any proposal which would result in the sale or other disposal of any shares held by the Trust unless the Trustees have complied with Clause 4.
- 9.10 **Increase in Capital:** To consider any recommendation made by the directors on any proposal to increase the capital of the Company and, after giving due consideration to the recommendations of the directors, the Trustees may agree to such a proposal if the Trustees agree that the Company requires additional equity capital and, if the Trustees do so agree, except where the interests of the Trust Fund require some other method of distribution, the Trustees and the directors shall endeavour to ensure that any new shares shall be offered to the following classes of persons in the following sequence:
- (a) First to the Trustees;
 - (b) Second to Consumers on the basis of an equal number of shares for each Consumer;
 - (c) Third to the extent that any shares are not taken up by the Consumers to whom they are offered under (b) above they shall be made available to all Consumers and allocated to all those who apply for them and to the extent that the number of shares applied for exceeds the number of shares available the shares shall be allocated equitably by reducing progressively the entitlement of Consumers who applied beginning with those who applied for the greatest number of shares until the number of shares available equals the number to be allocated to all Consumers;

- (d) Fourth, to the extent that any shares are not allocated to Consumers under (b) or (c) above, they shall be made available to all Electors and allocated to all those who apply for them and to the extent that the number of shares applied for exceeds the number of shares available the shares shall be allocated equitably by reducing progressively the entitlement of Electors who applied beginning with those who applied for the greatest number of shares until the number of shares available equals the number to be allocated to all Electors; and
- (e) Finally, any shares not allocated to Trustees or Consumers or Electors, shall be offered to the public on terms no more favourable than those offered to Trustees or Consumers or Electors;

provided that, as a result of any proposal to increase the capital of the Company, the Trust shall not hold less than 51% of the issued share capital of the Company.

9.11 **Determining Questions:** To determine all questions and matters of doubt which may arise in the course of the Trusteeship of this Trust.

9.12 **To Borrow:** To borrow monies on such terms and subject to such conditions as the Trustees think fit for the purposes contemplated by clauses 3.2 or 9.10.

10. **POWERS OF INVESTMENT**

10.1 The power to invest conferred on trustees by section 58 of the Trusts Act is hereby excluded.

10.2 Without limiting the powers under Clause 9.5, the Trustees may invest all or any of the Trust Fund held by them under this Deed, either alone or in common with any other person or persons, in all or any of the following investments:

- (a) shares of the Company;
- (b) the stock, funds or other securities of the New Zealand Government;
- (c) interest bearing deposit accounts with any Bank;

- (d) secured or unsecured advances from the Trust Fund to the Company, whether interest bearing or otherwise.

10.3 The Trustees may hold all or any part of the Trust Fund uninvested in accordance with Clause 10.2 for any period or periods for the purpose of:

- (a) accumulating sufficient funds for the purposes of investment; or
- (b) holding sufficient funds to meet payments as they fall due.

10.4 Notwithstanding the provisions of section 30 of the Trusts Act relating to duty to invest prudently, and the likelihood that the Trustees will from time to time include persons who have, or hold out as having, special knowledge or experience, or persons who act as a trustee in the course of a business or profession, the care and skill shall not be that required of such persons by section 30, but shall at all times be the care and skill that a prudent person of business would exercise in managing the affairs of others.

10.5 Notwithstanding anything in this deed, when exercising any power to invest trust property, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, merely because the investments of the Trust Fund are not diversified.

11. **ADVICE OF COUNSEL**

Without derogating from the generality of the foregoing powers, the Trustees are empowered to take and act upon the opinion of any barrister or solicitor of the High Court of New Zealand of not less than seven years' standing whether in relation to the interpretation of this Deed or any other document or any statute, or as to the administration of the Trust, without being liable in respect of any act done by them in accordance with such opinion, and to make any application to the Court the Trustees may think fit and all expenses of the opinion or the application shall be paid out of the Trust Fund.

12. **DUTIES OF TRUSTEES**

12.1 Notwithstanding the provisions of section 29 of the Trusts Act relating to general duty of care, and the likelihood that the Trustees will from time to time include persons who have,

or hold out as having, special knowledge or experience, or persons who act as a trustee in the course of a business or profession, the care and skill shall not be that required of such persons by section 29, but shall at all times be the care and skill that a prudent person of business would exercise in managing the affairs of others.

12.2 The Trustees shall:

- (a) subject to Clause 8, act as a diligent shareholder and in particular monitor the performance of the directors of the Company with respect to the Company's statement of corporate intent, and exercise the rights of shareholders for the benefit of the Trust Fund and with due regard to the objective of the Company to be a successful business
- (b) ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept;
- (c) within 4 months of the end of each financial year prepare financial statements in accordance with generally accepted accounting practice (within the meaning of Section 8 of the Financial Reporting Act 2013) in relation to the trust for that financial year and submit those financial statements to an auditor for audit;
- (d) immediately on completion of the audit make publicly available the audited financial statements and the auditor's report on the financial statements;
- (e) also notify the fact that copies of the documents (referred to in the preceding sub-clause) are so available (and where) by advertisement in the news section of 2 separate editions of newspapers circulating in the district;
- (f) in each financial year hold an annual meeting of Consumers at which the Consumers appoint an auditor who is qualified to be appointed as an auditor to hold office from the conclusion of that meeting until the next annual meeting of Consumers. The quorum for the annual meeting shall be 20 Consumers. No business may be

transacted at the annual meeting if a quorum is not present. In respect of the appointment of an auditor every Consumer shall have one vote;

- (g) give not less than 14 days notice of the annual meeting of Consumers to appoint an auditor in the news section of 2 separate editions of newspapers circulating in the district and at that meeting the Trustees shall report on the operation of the Trust and the Company during the preceding financial year and on the financial statements of the Trust and the Company for that financial year;
- (h) in respect of any statement of corporate intent delivered to the Trustees by the Company make comments thereon to the directors of the Company within one month from the date of delivery of such statement by the Company to the Trustees, and in making any comments the Trustees shall ensure that the statement of corporate intent is consistent with the obligation of the directors to operate the Company as a successful business and in particular to optimise the return on the assets of the Company;
- (i) make any completed statement of corporate intent available to the public in accordance with Clause 13;
- (j) at the meeting to be held in accordance with Clause 12.6, and while the Trustees are the majority shareholders of the Company, comment on the Company's compliance with its then current statement of corporate intent;
- (k) exercise where appropriate its right to require modifications to the statement of corporate intent in accordance with section 40(2) of the Act subject always to the requirements of section 40(3) of the Act;
- (l) make a copy of this Deed available to the public in accordance with Clause 13.

13. INFORMATION TO THE PUBLIC

13.1 For the purpose of complying with any requirement under this Deed to make any document or information available to the public, 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.

- 13.2 The Trustees shall give not less than 3 days' notice of the place at which and the times when such documents or information may be inspected by the public in a principal newspaper or newspapers circulating in the District.

14. **VARIATION TO TRUST DEED**

- 14.1 This Deed may be amended by resolution of the Trustees, subject to the following provisions:

- (a) With respect to any proposed amendment, the Trustees shall firstly provide a copy to the directors of the Company for their comments, and the Trustees shall consider the directors' comments.
- (b) No amendment to clauses 3.3, 4, 8.1 or 14.1 of this Deed or to any definition of terms used in any such clause shall be made without the written approval of the directors.
- (c) No amendment to clauses 3.3, 4, 8.1 or 14.1 or to any definition of terms used in any such clause shall be made which has not been subject to the Public Consultative Procedure.

- 14.2 Notwithstanding clause 14.1, 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 held by the Trustees in the Company in accordance with Clause 4; or
- (b) sell, transfer or dispose of the shares following an ownership review held in accordance with Clause 4.

14.3 Further to and without limiting the application of clause 14.1, no amendment to the following clauses or rules or schedules of this Deed shall be made, unless the proposed amendments have been subject to the Public Consultative Procedure: clauses 3, 6, 9, 10, 12, 14.2, this Clause 14.3, 15, Rule 2 in Schedule 1, and/or all of Schedule 2.

15. **WINDING UP OF TRUST**

15.1 If the Trust holds less than 5 per cent of the total share capital of the Company (which for these purposes shall include any shares held by Trust in any company with which the Company has merged) and no longer holds any debt security issued by the Company or a resolution to wind up the Trust has not been passed by 1 January 2117, the Trustees shall pass the resolutions requiring the trust to be wound up. If the resolutions have not been passed by 1 July 2117 or six months following the date upon which the Trust ceased to hold any debt securities and at least 5 per cent of the equity securities of the Company (whichever is the earlier), the provisions of Clause 15.2 shall apply as if the resolution had been passed.

15.2 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 or Electors in accordance with Clause 6.2.

16. **INTERESTED TRUSTEES**

16.1 The Trustees shall not be employed in the service of or hold any office in or become a director of the Company.

16.2 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.

16.3 A Trustee required to disclose an interest by Clause 16.2 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 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.

- 16.4 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 his or her ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interests of the Trustee concerned have not been fairly disclosed.

17. **LIABILITY AND INSURANCE**

- 17.1 No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss that is not attributable to his or her own dishonesty, wilful conduct or gross negligence. 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.
- 17.2 Every Trustee shall be chargeable only for such moneys as he or she shall actually have received although he or she may have joined in any receipt for money received by any other of them and shall not be answerable for the acts 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 or 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 his or her dishonesty, wilful conduct or gross negligence.
- 17.3 The Trustees may cause the Trust to effect insurance for the Trustees in respect of:
- (a) Liability, not being criminal liability, for any act or omission done or omitted in any Trustee's capacity as Trustee; or
 - (b) Costs incurred by any Trustee in defending or settling any claim or proceedings relating to any such liability under subclause 17.3(a); or

- (c) Costs incurred by any Trustee in defending any criminal proceedings associated with the Trustee's role as a Trustee, in which the Trustee is acquitted.

18. **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 he or she may sustain or incur by reason of the carrying out or omission of any function, duty or power under this Deed, and in respect of any expenses incurred in the management and administration of the Trust Fund, unless such loss or liability is attributable to dishonesty, wilful conduct or gross negligence.

MARLBOROUGH ELECTRIC POWER TRUST**SCHEDULE 1****RULES GOVERNING THE APPOINTMENT, RETIREMENT
AND PROCEEDINGS OF THE TRUSTEES****1. INTERPRETATION**

These Rules are those referred to in Clause 7 of the Deed and accordingly:

- 1.1 Terms in these Rules to which are ascribed special meanings in the Deed have the meanings so ascribed to them, unless otherwise provided or the context otherwise requires.
- 1.2 These Rules shall be construed subject to the provisions of the Deed, and in the case of conflict between the provisions of these Rules and those of the Deed the provisions of the Deed shall prevail.

PART 1 – RULES GOVERNING THE CONSTITUTION OF THE TRUSTEES**2. THE TRUSTEES**

- 2.1 The number of Trustees shall be six.
- 2.2 The first Trustees of the Trust shall be the persons signing the Deed as Trustees. On 1 April 2006 and thereafter on 1 April in every second year three Trustees shall resign in accordance with the provisions with Clause 2.4 of Rule 2.

TERM OF OFFICE

- 2.3 Subject to Clauses 2.4 and 2.10 of Rule 2 and Rule 7, Trustees shall hold office for a term of four years from 1 April following the notification of their election pursuant to Clause 2.8(h)

of Rule 2 (or from the actual date of the notification if notification takes place after 1 April) at the end of which time they shall retire. A retiring Trustee shall be eligible for re-election.

ROTATION OF TRUSTEES

- 2.4 On 1 April in every second year after 1 April 2006, the three Trustees who have been longest in office since their most recent election or re-election shall retire, but shall be eligible for re-election. Where more than three Trustees have been in office for the same length of time since their last election, and in the absence of agreement between those Trustees, the Trustees to retire shall be determined by lot.
- 2.5 Any Trustee appointed in accordance with 2.11 of Rule 2 shall hold office only until the next election following the appointment and shall then be eligible for re-election but shall not be taken into account in determining the Trustees who are to retire by rotation.

NOMINATIONS AND VOTING.

- 2.6 Nominations for election as a Trustee shall be invited from the public and must be made not later than 1 February in the year in which the election is to be held.
- 2.7 No later than 1 March in the year in which an election is to be held, the Trustees shall arrange for a postal or electronic vote of Consumers to elect the Trustees to replace the retiring Trustees and any Trustee appointed under Clause 2.11 of Rule 2.
- 2.8 The postal or electronic vote shall be held in accordance with the following provisions:
- (a) those eligible to vote shall be Consumers of the Company as at the date to be designated by the Trustees but which shall not be later than 1 March in the year the election is to be held;
 - (b) on the basis of the records of the Company (or any electricity retailing company) the Trustees shall compile a roll (with reference to the postal or electronic email address shown for each Consumer in those records) of those entitled to vote which shall be made available for public inspection in accordance with Clause 13 of the Trust Deed;

- (c) the Trustees shall appoint a suitable person as returning officer for such election who will be a suitable person from whom Trustees can take advice in relation to electronic voting as provided for in Rule 2.9;
- (d) if the number of candidates does not exceed the number of vacancies to be filled, the candidate or candidates shall be duly elected as Trustees and the public shall be notified in accordance with Clause 13;
- (e) as soon as practicable but no later than 1 March in the year in which the election is to be held, for each Consumer eligible to vote, the returning officer shall either:
 - (i) post to the postal address shown on the roll, one voting paper in respect of the election of Trustees, together with an envelope stamped and addressed to to the returning officer; or
 - (ii) email to the electronic email address shown on the roll, one voting paper in respect of the election of Trustees, and details of the postal address of the returning officer and the email address of the returning officer;
- (f) Consumers who are entitled to vote shall not be entitled to and shall not vote for a number of candidates that exceeds the number of Trustee vacancies but may vote for fewer than that number;
- (g) no voting paper shall be valid unless it is delivered to the returning officer by the date specified for the close of voting which shall not be less than two weeks after posting of the voting papers to the Consumers or notification of the use of internet voting for election purposes is given to Consumers;
- (h) the returning officer may open and otherwise process the voting papers in the manner set out in Sections 79 – 82 of the Electoral Act 2001;
- (i) when all the voting papers have been dealt with, the returning officer shall notify the public of the result in accordance with Clause 13. Where there is an equality of votes between candidates the returning officer shall determine by lot the candidate to be elected in the presence of the relevant candidates or their representatives;
- (j) each candidate shall be given an opportunity to provide information to Consumers about his or her qualifications and expertise to be elected as a Trustee and reasons for seeking election. Such details shall be no longer than 250 words in length and

shall (subject to the discretion of the returning officer to exclude any defamatory material or other content which is otherwise offensive or inappropriate on any grounds whatsoever) together with a photograph of the candidate, be sent to each Consumer with the voting papers.

- 2.9 The Trustees, following advice from the returning officer, may determine that votes may be cast by way of electronic voting and specify the procedure for electronic voting. Such determination must ensure that where votes may be cast by way of electronic voting:
- (a) the systems and procedures used to accept and process electronic votes do not permit any votes to be cast or counted that do not comply with Rules 2.8(a) and 2.8(f);
 - (b) printed voting papers must be readily available and be accepted for the purposes of the election where voting may be cast by way of electronic voting; and
 - (c) the returning officer must be required to continue to comply with the requirements set out in Rule 2.8 and any reference to “voting paper” in these Rules is read as a reference to both postal votes and electronic votes.
- 2.10 A person who wishes to be nominated for election as a Trustee shall be a Consumer as defined in Clause 1.1(f) of the Trust Deed, whose electoral address is within the District and is not otherwise disqualified from holding office as a Trustee by this Rule. The following persons shall not be eligible to 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;
 - (b) a person who has been convicted of a term of imprisonment of two years or more;
 - (c) a person who has been convicted of any offence punishable by imprisonment for a term of not less than two years and has been sentenced to imprisonment for that offence;
 - (d) a person to whom an order under Section 151 Companies Act 1993 applies;

- (e) a person who is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (f) a person who is not registered as a parliamentary elector for the purposes of the Electoral Act 1993 in any electoral district serviced by the Company;
- (g) a person who is holding office as a director of or is an employee of the Company;
- (h) a person whose parliamentary electoral address is not in the District.

2.11 Where by reason of any vacancy, the number of Trustees is reduced below six in number, the remaining Trustees shall appoint some other eligible person to be a Trustee until the next election. For any such appointment, the remaining Trustees shall consider any highest polling (unelected) candidate in the most recent postal ballot but they are not bound by that consideration to appoint such candidate.

3. REMUNERATION AND EXPENSES OF TRUSTEES

3.1 **Remuneration:** The Trustees shall be entitled in each Financial Year to such remuneration for their services as Trustees as may be reasonable having regard to their duties and responsibilities, and having regard to the recommendation of a remuneration committee consisting of an independent consultant and one Trustee.

3.2 **Expenses:** The Trustee shall be entitled to be indemnified by and reimbursed for any expenses incurred by them in the exercise of their powers and duties under this Deed.

3.3 **Payments to be made from Trust Funds:** The payments of remuneration and expenses to the Trustees pursuant to Rule 3.1 or Rule 3.2 shall be paid out of the Trust Fund provided however that pending receipt of any invoice by the Trust the directors of the Company may advance sums to the Trust which sums shall be repaid immediately upon receipt by the Trust of any income.

4. NO DELEGATION BY TRUSTEES

For the purposes of sections 67 and 70 of the Trusts Act, a Trustee may not delegate any trust, power, authority or discretion vested in him or her as trustee, in any of the circumstances set out in section 70(2) of the Trusts Act.

5. CHAIRPERSON

The Trustees shall elect a chairperson to chair the meetings of the Trustees and shall determine the period for which the chairperson shall hold office. If the chairperson is absent from a meeting, those Trustees present shall elect a chairperson from among their number to chair that meeting.

6. QUORUM AND RESOLUTIONS

6.1 A quorum at meetings of the Trustees shall comprise four Trustees. A Trustee may not leave a meeting without the express consent of the chairperson of the meeting and one Trustee leaving a meeting with consent shall not affect the quorum. If however more than one Trustee absents himself or herself the meeting shall be adjourned.

6.2 Resolutions of Trustees shall be passed if agreed by no fewer than four Trustees.

7. CESSATION OF TRUSTEESHIP

A Trustee shall cease to hold office if such Trustee:

7.1 by notice in writing to the secretary of the Trust or if there is no secretary to the then chairman, resigns his or her office;

7.2 refuses to act;

7.3 becomes of unsound mind or becomes a protected person under any statute for the time being in force;

7.4 becomes bankrupt or enters into a composition or assignment for the benefit of his or her creditors;

7.5 is absent without leave from three consecutive ordinary meetings of the Trustees;

7.6 is convicted of any indictable offence;

7.7 ceases to be a Consumer;

7.8 ceases to have an electoral address in the District.

8. RECORDING OF CHANGE OF TRUSTEES

Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be entered in the minute book of the Trust.

9. VALIDITY OF PROCEEDINGS

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.

10. RESCISSION OR VARIATION OF RESOLUTIONS

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any ordinary or special meeting.

PART II - RULES GOVERNING ADMINISTRATION

11. ORDINARY MEETINGS

The Trustees shall meet at such intervals as they deem appropriate to the conduct of the affairs of the Trust. The Trustees may from time to time adopt such standing orders as they consider necessary or desirable to govern the proceedings of the Trustees.

12. SPECIAL MEETINGS

Three Trustees may at any time summon a special meeting for any reason deemed by them to justify the same.

13. NOTICE OF MEETINGS

Notice in writing of every meeting whether ordinary or special shall be delivered or sent by post, facsimile or e-mail to each Trustee by the secretary (or other person acting under the direction of the Trustees) or (in the case of a special meeting) by or under the direction of the persons summoning it at least 7 days before the date of the next meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned. Delivery by mail or facsimile or e-mail must be to an address provided in writing by the relevant Trustee to the Trust.

14. CONTENT OF NOTICE

Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a special meeting shall state the matters to be discussed at that meeting. Notice of any general or special meeting may be abridged or waived if all the Trustees consent in writing to such abridgement or waiver.

15. 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.

16. COMMITTEES

The Trustees may from time to time appoint any one or more members of their body to be a committee for making any inquiry, for superintending 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 Trustee 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 so that a quorum at any meeting of the committee shall comprise a majority of its members for the time being.

17. **MINUTES**

17.1 A Minute Book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the Minute Book.

17.2 Any such minute if purporting to be signed by the chairperson of the meeting at which the proceedings were had or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.

17.3 Where minutes have been made in accordance with the provisions of this Rule of the proceedings at any meeting of Trustees 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 convened.

18. **RESOLUTIONS IN WRITING**

A resolution in writing signed by all the Trustees or 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 form, each signed by one or more of the Trustees or members of the committee, as the case may be.

19. **MEETINGS BY TELEPHONE**

For the purposes of these Rules the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") not less than a quorum together with the secretary or a person acting secretarially 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:

19.1 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;

- 19.2 Each of the participants taking part in the meeting by telephone, and the secretary or person acting secretarially, must be able to hear each of the others taking part at the commencement of the meeting;
- 19.3 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;
- 19.4 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;
- 19.5 A minute 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 and by the secretary or person acting secretarially.

20. **BANK ACCOUNTS**

Bank accounts in the name of the Trust shall be opened and kept with a bank or banks to be from time to time selected by the Trustees. 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.

21. **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 Trustees and countersigned by the secretary or by another Trustee or any other person approved by the Trustees for the purpose.

22. GENERAL POWERS

Subject to the provisions of the Deed and of the preceding Rules the Trustees shall have the power to do all acts and things which they may consider proper or advantageous for accomplishing the purposes and objects of the Trust.

PART III – RULES GOVERNING AMENDMENT TO RULES

23. AMENDMENTS

23.1 The Rules set forth in Part II of the Schedule being administrative provisions may be rescinded, amended or added to by the unanimous resolution of the Trustees.

23.2 No such resolution shall be effective unless notice thereof shall have been given in the notice convening the meeting and no such rescission, amendment or addition shall conflict with any of the provisions of the Deed or the Act.

MARLBOROUGH ELECTRIC POWER TRUST**SCHEDULE 2****PUBLIC CONSULTATIVE PROCEDURE**

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

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to the public in accordance with clause 13 of the Deed;
- (c) In every notice given under paragraph (b) of this Schedule, specify a period within which persons interested in the proposal may make submissions on the proposal to the Trustees;
- (d) Ensure that any person 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 is open to the public;
- (f) Make all written submissions on the proposal available to the public; and
- (g) Ensure that the final decision in relation to the proposal is made at a meeting of the Trustees which is open to the public.

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