

BAY ENERGY LIMITED (TO BE RENAMED TRUSTPOWER LIMITED)

Issuer

TRUSTEES EXECUTORS LIMITED

Supervisor

SERIES SUPPLEMENT - SERIES 4 BONDS

RUSSELL McVEAGH

DEED dated 14 September 2016

PARTIES

BAY ENERGY LIMITED (to be renamed **TRUSTPOWER LIMITED**) (company number 565426) ("Issuer")

TRUSTEES EXECUTORS LIMITED ("Supervisor")

INTRODUCTION

This deed is a Series Supplement entered into pursuant to clause 2.4 of the Master Trust Deed to provide for the constitution and issue of the Bonds described in this Series Supplement.

1. INTERPRETATION

1.1 Master Trust Deed

The terms of the Master Trust Deed (including the definitions, the rules of construction and the miscellaneous provisions of clauses 1.1 to 1.8 of the Master Trust Deed) shall apply in this Series Supplement and to the Bonds constituted by this Series Supplement except to the extent modified in this Series Supplement. To that extent, or in the event of any conflict between the provisions of this Series Supplement and those of the Master Trust Deed, the provisions of this Series Supplement shall prevail over those of the Master Trust Deed.

1.2 Additional or modified defined terms

In this Series Supplement, unless the context otherwise requires:

"Accounts" means the latest annual audited, or semi-annual unaudited, consolidated financial statements (including a Statement of Financial Position, income statement and statement of cash flows) of the Consolidated Group which have been prepared in accordance with NZ GAAP and where the context permits includes the Auditor's certificate.

"Bond" means a bond issued on the terms and conditions set out in this Series Supplement.

"Business Day" means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Auckland and Wellington (and this definition will apply in all respects to the Bonds notwithstanding the definition of "Business Day" in clause 1.1 of the Master Trust Deed).

"Face Value" means \$1.00.

"Interest Rate" means 6.75% per annum.

"Issue Date" means 26 October 2016, or such other date that the Issuer may determine.

"Master Trust Deed" means the master trust deed dated on or about 14 September 2016 and made between the Issuer and the Supervisor.

"Maturity Date" means 15 September 2019.

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

"**Opening Date**" means 26 September 2016, or such other date that the Issuer may determine.

"**Registrar**" means Computershare Investor Services Limited.

"**Series Supplement**" means this deed and, for the avoidance of doubt, includes the terms of the Master Trust Deed as applied in this deed in accordance with, and subject to, clause 1.1.

"**Statement of Financial Position**" means, in relation to the Consolidated Group or any person, a consolidated statement of financial position of the Consolidated Group or that person prepared as at any date in accordance with NZ GAAP.

"**Transaction Documents**" means this Series Supplement and the Master Trust Deed.

1.3 **Modification of other terms in Master Trust Deed**

The terms "**Holder**", "**Bonds**", "**Bond Moneys**" and "**Register**" have the meanings given them in the Master Trust Deed but, in this Series Supplement, refer only to the Bonds of this Series, to the Holders of those Bonds, and to the Register in relation to this Series.

2. **FORM OF BONDS**

2.1 **Issue of Bonds**

The Bonds issued pursuant to this Series Supplement constitute a Series, and shall be described as Series 4 Bonds.

2.2 **Status**

- (a) The Bonds are Term Subordinated Bonds.
- (b) The Bonds are not Convertible Bonds.

2.3 **Type**

The Bonds are Retail Bonds and this Series is a Retail Series.

2.4 **Interest Rate Basis**

The Bonds are Fixed Rate Bonds. Clause 9 of the Master Trust Deed (relating to the suspension of interest) does apply to this Series of Bonds.

2.5 **Selling restrictions**

- (a) Bonds may only be offered for sale or sold in conformity with all applicable laws and regulations in any jurisdiction in which they are offered, sold or delivered.
- (b) No offer, sale or delivery of the Bonds or distributions of any advertisements or other offering material in relation to any Bonds may be made in or from any jurisdiction except in circumstances that will result in compliance with all applicable laws and regulations and where compliance with all such applicable laws and regulations will not impose any obligations on the Issuer.

2.6 Minimum Principal Amount

- (a) The Minimum Principal Amount for subscription and holding of Bonds is \$5,000 and thereafter multiples of \$1,000.
- (b) The Minimum Number is 5,000.

2.7 Time for payments

Steps will be taken to process the mailing or direct credit of a payment by the Issuer to a Holder prior to 5.00pm on the relevant Interest Payment Date (or, if that date is not a Business Day, the next Business Day after that date) or other date on which payment is required to be made.

2.8 Other matters

The Bonds carry no right to participate in any offering of securities by the Issuer, and the Issuer reserves the right at all times to issue securities to any person in any manner.

3. TERMS AND CONDITIONS OF THE SERIES 4 BONDS

3.1 Term

The term of the Bonds is the period from the Issue Date for the Bonds until the Maturity Date.

3.2 Interest Rate

Interest will accrue on each Bond at the rate per annum equal to the Interest Rate.

3.3 Interest Payment Dates and calculation of interest

- (a) The Interest Payment Dates for the Bonds shall be 15 March, 15 June, 15 September and 15 December in each year up to the Maturity Date (commencing on the first such date to fall after the Issue Date) and the Maturity Date.
- (b) Interest payable on each Bond shall be paid in arrear and shall be paid in equal quarterly instalments on each Interest Payment Date (other than the first Interest Payment Date) with the amount of interest so payable in respect of each Bond being:

$$\frac{\text{Principal Amount} \times (\text{Interest Rate divided by } 100)}{4}$$

- (c) Any interest on a Bond payable other than on an Interest Payment Date shall be calculated on the basis of the number of days elapsed and a 365 day year in respect of the period from (and including) the immediately preceding Interest Payment Date to (but excluding) the date for payment of that interest.
- (d) Interest on a Bond will be paid to, or to the order of, the Holder of that Bond as at the Record Date in respect of the relevant payment of interest.

3.4 First Interest Payment Date

Any interest on a Bond payable on the first Interest Payment Date will be equal to the amount of interest payable on each Bond on each quarterly instalment date under

clause 3.3(b), as if that Bond has been issued on, and interest accrued on that Bond from, 15 September 2016.

3.5 Final Redemption

Unless previously repaid, prepaid, redeemed or purchased and cancelled, the Issuer will redeem all of the Bonds on the Maturity Date for an amount equal to the aggregate of:

- (a) the Principal Amount of each such Bond;
- (b) all accrued but unpaid interest in respect of each Bond; and
- (c) any other amount due and payable in respect of the Bonds.

Payment of such amount in respect of each Bond will be paid to, or to the order of, the person whose name appears in the Register as the relevant Holder on the Record Date in respect of the Interest Payment Date falling on the Maturity Date.

3.6 Early Redemption

- (a) The Bonds are issued with an Early Redemption Option meaning that the Issuer may redeem the Bonds on any early redemption date (as defined in clause 7.1(c) of the Master Trust Deed) for an amount in respect of each Bond equal to:

- (i) the greater of:
 - (aa) an amount equal to its Face Value; and
 - (bb) the average price, weighted by volume, of all trades of Bonds through the NZX over the 10 Business Days up to (but excluding) the fifteenth Business Day before the relevant early redemption date, net of accrued interest (if any),

and less all withholding tax and other withholdings or deductions required to be made (whether pursuant to clause 15 of the Master Trust Deed or otherwise).

Where the Bonds have not traded on the NZX for at least half of the 10 Business Days specified in clause 3.6(a)(i)(bb), the average price of the Bonds for that period (net of any accrued interest) will be determined by an Independent Adviser;

- (ii) all accrued but unpaid interest in respect of each Bond; and
 - (iii) any other amount due and payable in respect of the Bonds.
- (b) The Issuer will not elect any early redemption date that would result in a Record Date for the payment of interest (other than the record date for the Maturity Date) occurring during the pricing period for the purposes of clause 3.6(a)(i)(bb). Payment of an amount pursuant to this clause 3.6 in respect of each Bond will be paid to, or to the order of, the Holder of that Bond as at the Record Date in respect of the payment.

3.7 Default Interest

Any default interest due and payable by the Issuer pursuant to clause 7.6 of the Master Trust Deed shall be paid on the next occurring Interest Payment Date.

4. ISSUE

4.1 Conditions precedent to first issue of Bonds

The Issuer shall not be entitled to issue any Bonds constituted by this Series Supplement until such time as the Supervisor has confirmed to it in writing that it has received the following and found them satisfactory in form and substance:

- (a) a certificate from a director of the Issuer in substantially the form set out in Schedule 1;
- (b) a certificate of compliance with sections 104 to 106 of the FMC Act signed by the Issuer and the Supervisor;
- (c) evidence that a copy of the Master Trust Deed and this Series Supplement has been lodged with the Registrar (as defined in the FMC Act) in accordance with section 103(1)(a)(ii);
- (d) a legal opinion from Russell McVeagh to (and able to be relied upon by) the Supervisor regarding the enforceability of the Master Trust Deed and this Series Supplement;
- (e) an original of each of Transaction Document each duly executed by all relevant parties; and
- (f) a legal opinion from Buddle Findlay to (and able to be relied upon by) the Supervisor in relation to the Supervisor.

4.2 Conditions precedent on issuance

In addition to the requirements set out in clause 4.1, the Issuer shall not issue any Bonds unless the representations and warranties contained in clause 12.1 of the Master Trust Deed are true and correct in all material respects by reference to the facts and circumstances existing as at the Issue Date for the Bonds.

5. UNDERTAKINGS

5.1 Representations and warranties

The Issuer repeats the representations and warranties in clause 12.1 of the Master Trust Deed on the Issue Date and on each Interest Payment Date by reference to the facts and circumstances then existing.

5.2 Undertakings

The Issuer undertakes to the Supervisor that, for so long as any Bonds are outstanding:

(a) Financial information

it will furnish, or cause to be furnished or made available, to the Supervisor:

- (i) as soon as practicable (and in any event within 120 days) after the last day of each of its financial years, the Accounts of the

Consolidated Group, duly audited, and made up as at the last day of that financial year; and

- (ii) as soon as practicable (and in any event within 60 days) after the last day of the first half of each of its financial years, the unaudited Accounts of the Consolidated Group, made up as at the last day of that half year;

(b) **Auditor's report**

it will provide to the Supervisor, at the same time as the latest audited Accounts of the Consolidated Group are provided in accordance with clause 5.2(a)(i) of this Series Supplement, a separate report by the Auditor stating:

- (i) whether, in the course of performing its duty as Auditor, it has become aware of any matter which, in its opinion, is relevant to the exercise or performance of the powers or duties conferred or imposed on the Supervisor by the Master Trust Deed or this Series Supplement, by the FMC Act, FMC Regulations or by law or regulation, and if so giving particulars thereof;
- (ii) whether or not its audit has disclosed any matter, and if so giving particulars thereof, calling in its opinion for further investigation by the Supervisor in the interests of the Holders; and
- (iii) that it has performed an audit of the Register;

(c) **Accounting practice**

it will ensure that the Accounts furnished or made available to the Supervisor under clause 5.2(a) above:

- (i) are prepared in accordance with NZ GAAP consistently applied (except to the extent agreed by the Supervisor); and
- (ii) give a true and fair view in accordance with NZ GAAP of the financial position of the Issuer and the Consolidated Group and the results of the operations of the Issuer and the Consolidated Group as at the date, and for the period ending on the date, to which those Accounts are prepared.

5.3 **Approved issuer levy**

For the purposes of clause 15.3 of the Master Trust Deed the Issuer has elected to register this Series for Approved Issuer Levy as at the date of this Series Supplement.

6. **MISCELLANEOUS**

6.1 **Counterparts**

This Series Supplement may be signed in any number of counterparts, all of which together constitute one and the same instrument, and either of the parties may execute this Series Supplement by signing any such counterpart.

6.2 **Delivery**

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Series Supplement will be delivered by each of the parties (each a "**Delivering Party**") immediately on the earlier of:

- (a) physical delivery of an original of this Series Supplement, executed by the relevant Delivering Party, into the custody of the Supervisor or the Supervisor's solicitors; or
- (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this Series Supplement, executed by the relevant Delivering Party, to the Supervisor or the Supervisor's solicitors.

6.3 **Governing law**


This Series Supplement shall be governed by and construed in accordance with New Zealand law.

6.4 **Submission to jurisdiction**

The Issuer submits to the non-exclusive jurisdiction of the New Zealand courts for the purpose of any legal proceedings arising out of this Series Supplement.

EXECUTED AS A DEED


BAY ENERGY LIMITED by:



Signature of director

Richard Aitken

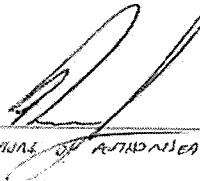
Name of director



Signature of director

Ian Knowles

Name of director


SIGNATURE OF AUTHORIZED SIGNATORY

Robert P Russell

NAME OF AUTHORIZED SIGNATORY



Signature of authorised signatory

Stuart McLaren

Name of authorised signatory

TRUSTEES EXECUTORS LIMITED by:

and witnessed by:



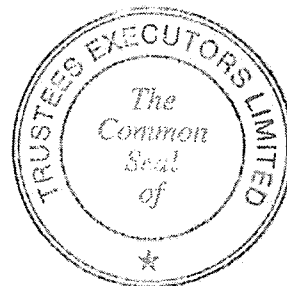
Signature of witness

Sean Roberts

Name of witness Client Services Manager
Wellington

Occupation

City/town of residence



CTS2016-112 (14)

SCHEDULE 1 TO THE SERIES SUPPLEMENT: FORM OF DIRECTOR'S CERTIFICATE

TO: Trustees Executors Limited (the "Supervisor")

AND: Russell McVeagh

I, [•], a director of Bay Energy Limited ("Company") certify as follows:

1. BOARD RESOLUTIONS

- 1.1 The board of directors of the Company ("Board") has passed all necessary resolutions to:
- (a) approve the transactions ("Transactions") contemplated by the documents listed in the schedule ("Documents"), and the Documents themselves;
 - (b) authorise signing of the Documents by or on behalf of the Company in the manner in which they have actually been signed; and
 - (c) authorise the persons specified in paragraph 12 to give any notices and other communications, and take any other action required, under or in connection with the Documents on behalf of the Company.
- 1.2 The resolutions were duly passed at a meeting of the Board which was properly convened and in respect of which all quorum requirements were duly observed.
- 1.3 The resolutions remain in full force and effect.

2. DIRECTORS' SELF INTERESTED TRANSACTIONS

- 2.1 To the best of my knowledge and belief and after making due enquiry of each other director (as that term is defined in section 126 of the Companies Act 1993 (the "Act")) of the Company, none of the directors (as so defined) of the Company has an interest (as that term is defined in section 139 of the Act) in the Transactions.
- 2.2 In approving the Documents and the Transactions, the Board, after taking into account all relevant factors, is of the view that the Company is receiving or will receive fair value under them.

3. CORPORATE BENEFIT

- 3.1 In approving the Documents and the Transactions, the Board, after taking into account all relevant factors, is of the view that the Company's entry into and performance of the Documents and the Transactions is in the best interests of the Company.

4. SHAREHOLDER RESOLUTIONS

- 4.1 It has been determined that the Transactions do not constitute a Major Transaction for the purposes of section 129 of the Act.

5. DUE EXECUTION

- 5.1 Each of the Documents has been properly signed and delivered by the Company.
- 5.2 The Company is entering into the Documents solely for its own benefit and not as trustee or nominee or agent of any third party.

6. SOLVENCY

- 6.1 I am not aware of any liquidation proceedings which have been commenced against the Company by any person, or which are intended or anticipated by the Company.
- 6.2 Having taken into account all relevant factors the Board is of the view that the value of the consideration or benefit received, or to be received, by the Company under the Transactions is not less than the value of the consideration provided, or to be provided, by the Company.
- 6.3 The Company:
- (a) is able to pay its due debts;
 - (b) is not engaged or about to engage in business for which its financial resources are unreasonably small;
 - (c) will be able to perform its obligations under the Documents and the Transactions when required to do so;
 - (d) will not become unable to pay its due debts as a result of the Documents and the Transactions; and
 - (e) has, by entering into the Documents and the Transactions, no intention to prejudice a creditor (within the meaning of subpart 6 of Part 6 of the Property Law Act 2007).

7. PROPER PURPOSE

- 7.1 The directors have acted for a proper purpose in approving the Transactions and the Documents.

8 ENTRY INTO DOCUMENTS

- 8.1 I am not aware that the Company's entry into the Documents will cause any existing borrowing, guarantee or similar limit binding on the Company to be exceeded.

9 FINANCIAL ASSISTANCE

- 8.1 The Transactions do not include or involve any provision by the Company (directly or indirectly) of financial assistance in connection with the acquisition of a share issued or to be issued by the Company.

10. CONSTITUTION

- 10.1 The copy of the constitution of the Company held on its records as maintained at the office of the Registrar of Companies at Auckland as at the date of this certificate is complete and includes all alterations to date.

11. AUTHORISATIONS

- 11.1 All consents and other authorisations required by the Company in connection with the entry into, execution and performance of the Documents and the Transactions have been obtained on an unconditional and unqualified basis and remain in full force and effect.

12. AUTHORISED SIGNATORIES

- 12.1 The following are the true signatures of the persons who have been authorised (any two together) to give any notices and other communications, and to take any other action required, under or in connection with the Documents on behalf of the Company.

Name	Position	Signature

Date:

Signed by:

SCHEDULE

1. A master trust deed dated on or about the date of this certificate between Bay Energy Limited as issuer and Trustees Executors Limited as supervisor.
2. A series supplement dated on or about the date of this certificate between Bay Energy Limited as issuer and Trustees Executors Limited as supervisor.
3. Any other agreement, notice or document required under or in connection with the documents referred to above.