

**TRUST DEED**

for

**CROWN FORESTRY RENTAL TRUST**

**April**

**1990**

Amended and restated Trust Deed incorporating the variations to the Trust Deed made by orders of the High Court on 16 August 2011 and 26 September 2018.

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**THIS TRUST DEED** is made the 30th day of April 1990

**BY HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Finance of New Zealand and the Minister for State Owned Enterprises of New Zealand (“the Crown”)

**WHEREAS**

- A The Crown wishes to dispose of certain Crown Forestry Assets, comprising, inter alia, tree crops, chattels and fixtures.
- B A number of Maori have asserted claims to areas of land upon which Crown Forestry Assets are located. Certain applications to the Waitangi Tribunal under the Treaty of Waitangi Act 1975 (as amended by the Crown Forest Assets Act 1989) have been filed by certain of those claimants and it is anticipated that further applications will be made.
- C The Crown and Maori representatives have by an agreement dated 20 July 1989 agreed that the Crown proceed with its disposal programme, subject, inter alia, to the establishment of a trust to:
- (a) receive the Rental Proceeds from the Crown Forest Land upon which Crown Forestry Assets are located;
  - and
  - (b) make the interest, earned from investment of those Rental Proceeds, available to assist Maori in the preparation, presentation and negotiation of claims before the Waitangi Tribunal which involve, or could involve, certain Crown Forest Land.
- D Section 34 of the Crown Forest Assets Act 1989 provides for the establishment of a forestry rental Trust.

**NOW THIS DEED WITNESSES AND IT IS DECLARED** as follows:

**1. INTERPRETATION**

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

“Assets” or “Assets of the Trust Fund” means the cash or any of the investments forming for the time being a constituent part of the Trust Fund, the income from it and the proceeds of collection or realisation;

*[“Bank” means a registered bank under section 69 of the Reserve Bank Act 1989];*

“Beneficiaries” means:

- (a) the Crown;
- (b) the Claimants; and
- (c) any other person who has registered a claim under the Treaty of Waitangi Act 1975 to Crown Forest Land;

“Claimant” means a person who the Trustees recognise and accept as meeting the criteria laid down by the Trustees in accordance with Clause 10;

“Confirmed Beneficiaries” means those Beneficiaries who attain a vested interest in the Trust by virtue of Clause 11;

“Crown Appointor” means the person referred to in Clause 6.1;

“Crown Forestry Assets” has the meaning ascribed by Section 2 of the Crown Forest Assets Act 1989;

“Crown Forest Land” has the meaning ascribed by Section 2 of the Crown Forest Assets Act 1989;

“Crown Trustees” means the persons who are appointed as Crown Trustees under Clause 6.1 and their respective successors in office;

“Licence” means a Crown forestry licence granted under Section 14 of the Crown Forest Assets Act 1989;

“Licensed Land” means Crown Forest Land that is subject to a Licence;

“Maori” means Maori as defined in the Treaty of Waitangi Act 1975; “Maori Appointor” means the person referred to in Clause 6.2;

“Maori Trustees” means the persons who are appointed as the Maori Trustees under Clause 6.2 and their respective successors in office;

“Person” includes a company or other body corporate and also includes an unincorporated body of persons; but every Trustee and every secretary of the Trust shall be a natural person;

“Rental Proceeds” means the rental or licence fees payable pursuant to each Licence. Rental Proceeds:

- (a) do not include stumpage or other payment for forest assets nor any payment of a capital nature; but
- (b) include payments, whether lump sum or periodic, on account of rental or licence fees; “Trust” means the Trust established under this Deed;

“Trustees” means the Trustees appointed under Clause 6; “Trust Fund” means the Assets of the Trust.

1.2 The Index to and headings in this Deed are used for convenience only, do not affect or qualify the substance of this Deed and are to be ignored in construing this Deed.

1.3 In this Deed, unless there is inconsistency in the subject or context:

- (a) words importing any gender include the others, the plural includes the singular and vice versa, references to bodies corporate include all other persons and vice versa; all references to Clauses and Recitals are to clauses and recitals of this Deed, as modified from time to time in accordance with this Deed;
- (b) references to an Act of Parliament or any Regulations made pursuant to an Act of Parliament include that Act or regulations as amended or re-enacted from time to time and any Act, or regulations intended to replace any of them, whether or not passed by the same Parliament and whether or not incorporating or adopting any Act, rules or regulations passed by another Parliament.

## **2. THE TRUST**

2.1 A trust is hereby established under this Deed, to be a forestry rental trust referred to in Section 34 of the Crown Forest Assets Act 1989, to be known as the

**“CROWN FORESTRY RENTAL TRUST”**. The Trust is established to:

- (a) receive the Rental Proceeds from Licences; and
- (b) make the interest, earned from investment of those Rental Proceeds, available to assist Maori in the preparation, presentation and negotiation of claims before the Waitangi Tribunal which involve, or could involve, Licensed Land.

2.2 Upon the execution of each Licence the Crown shall then hold the interest of the Crown in all Rental Proceeds, payable to the Crown under that Licence, on behalf of the Trustees. The Crown shall pay the Rental Proceeds to the Trustees, after deduction of Goods and Services Tax or any other tax payable on the Rental Proceeds by the Crown as licensor, within 10 working days after the Crown receives them.

2.3 The Trust is not an instrument of the Crown, nor of the Government of New Zealand. The Crown shall not be liable to contribute any sum towards the payment or satisfaction of any debts or liabilities of the Trust, other than any sum payable to the Trust by the Crown under Clause 2.2.

2.4 The Crown shall give written notice to the Trustees from time to time specifying:

- (a) the identity of the licensees of each Licence;
- (b) the amounts and terms of payment of Rental Proceeds due under each Licence;
- (c) the Review Date and General Review Date (both as defined in each Licence) applicable to each Licence;
- (d) any notice given or action taken by the Crown or the licensee which is relevant to the amount or due payment of Rental Proceeds under each Licence;
- (e) in respect of each Licence, any changes to any of the matters referred to in this Clause 2.4.

### **3. THE TRUST FUNDS**

3.1 The Trust Fund shall consist of the Assets of the Trust and shall include:

- (a) all payments made to the Trustees pursuant to Clause 2.2;
- (b) the proceeds of sale or exchange of any Assets of the Trust Fund;
- (c) any other payments received by the Trustees for the purposes of the Trust or for the benefit of the Beneficiaries;
- (d) all additions or accretions (if any) which arise by way of dividend, interest, premium, or distribution or other financial benefit, or which are otherwise and are for the time being retained; and
- (e) all additions, gains or accretions (if any) to the Trust Fund whether realised or unrealised which arise by way of revaluation.

3.2 The Trustees will hold the amounts paid under Clause 2.2 and any other property becoming part of the Trust Fund or the Trust on trust for the Beneficiaries in accordance with the terms and conditions of this Deed. All investments made with the Assets of the Trust Fund shall be held by the Trustees as the exclusive property of the Trust and investments shall be held exclusively for the benefit of the Beneficiaries.

#### **4. PERIOD OF TRUST**

4.1 The Trust created by this Deed will continue unless earlier terminated until the expiration of eighty years from the date of this Deed less one day (the period so specified being the perpetuity period for the purpose of Section 6 of the Perpetuities Act 1964).

#### **5. NUMBER OF TRUSTEES**

5.1 The number of Trustees shall be six except:

- (a) when there is any casual vacancy; and
- (b) when an alternate is appointed under Clause 6.9.

5.2 Three of the Trustees shall be appointed by the Crown under Clause 6.1.

5.3 Three of the Trustees shall be appointed by Maori under Clause 6.2.

5.4 If at any time the number of Trustees falls below six, then pending any new appointment, the continuing Trustees are empowered to validly act in all matters,

notwithstanding the provisions of Clause 5.1.

## **6. APPOINTMENT AND REMOVAL OF TRUSTEES**

6.1 The power of appointment of the Trustees to be appointed under Clause 5.2 shall be exercised by the Minister of Finance, (the “Crown Appointor”) subject however to Clause 6.6. Trustees appointed under this Clause 6.1 shall be Crown Trustees.

6.2 The power of appointment of Trustees to be appointed under Clause 5.3 shall be exercised by the New Zealand Maori Council and the Federation of Maori Authorities Incorporated (the “Maori Appointor”) subject however to Clause 6.6. Trustees appointed under this Clause 6.2 shall be Maori Trustees.

6.3 The Crown Appointor shall have power:

6.3.1 To remove any Crown Trustee at any time and from time to time;

6.3.2 To replace any Crown Trustee removed under 6.3.1; and

6.3.3 To appoint a new Crown Trustee at any time,

**PROVIDED THAT**, except as provided in Clause 5.1, the number of Crown Trustees shall at all times be no more nor less than three.

6.4 The Maori Appointor shall have power:

6.4.1 To remove any Maori Trustee at any time and from time to time;

6.4.2 To replace any Maori Trustee removed under 6.4.1;

6.4.3 To appoint a new Maori Trustee at any time,

**PROVIDED THAT**, except as provided in Clause 5.1, the number of Maori Trustees shall at all times be no more nor less than three.

6.5 Any Trustee may retire as Trustee of the Trust upon giving not less than three months notice in writing to the relevant Appointor of the desire so to do.

6.6 Notwithstanding the provisions of Clauses 6.1 and 6.2:

6.6.1 if the Crown Appointor named ceases to exist by office or expresses a desire to be released then a new Crown Appointor shall be appointed by the Attorney General;

- 6.6.2 if the Maori Appointor named ceases to exist by office or expresses a desire to be released then that Maori Appointor shall be appointed by:
- (a) the existing Maori Appointor before it ceases to exist or is released; or
  - (b) if no appointment is made under Clause 6.6.2(a), the remaining persons constituting the Maori Appointor, if there are more than one.
- 6.7 Every new Trustee appointed shall execute upon appointment a deed in the form which the relevant Appointors and continuing Trustees may reasonably require. Under that deed the new Trustee shall undertake to be bound by all the covenants on the part of the Trustees under this Deed from the date of appointment. The retiring Trustee shall be absolved and released from all the covenants under this Deed from the date upon which the retiring Trustee's notice of resignation expires, or the date of that Trustee's removal under Clause 6.3.1 or 6.4.1, or that Trustee's death, whichever is the earlier, except in respect of any antecedent breach. The new Trustee may exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Trustee in all respects as fully as though the new Trustee had been originally named as a party to this Deed but shall not be liable for any acts or omissions of the Trustees prior to the new Trustee becoming bound by the terms of this Deed.
- 6.8 Where any Trustee has a conflict of interest in respect of claims for payments to Claimants, that Trustee shall declare its conflict of interest as soon as it arises, by notifying the relevant Crown Appointor or Maori Appointor of that conflict of interest. A Trustee may not act on any matter in which that Trustee has a conflict of interest.
- 6.9 If any Trustee has a conflict of interest in respect of claims for payments to Claimants, or if any Trustee is unable or unwilling to act in any matter or for a temporary period, the relevant Crown Appointor or Maori Appointor shall appoint an alternate Trustee for that Trustee. The alternate Trustee shall have all the powers and duties of a Trustee, subject to any limitations specified in the appointment and notwithstanding that there may already be six Trustees. A Trustee and an alternate for that Trustee may not act simultaneously on the same matter but may act at the same time on different matters.

- 6.10 Whenever a power of appointment, removal or replacement under this Clause 6 is exercised then the person exercising that power shall give notice of the appointment, removal or replacement to every other Trustee, Appointor or person authorised under Clause 6.6 to make appointments.
- 6.11 The Trustees shall have no power to delegate pursuant to Section 31 of the Trustee Act 1956.

## **7. POWERS AND DUTIES OF TRUSTEES**

- 7.1 The Trustees shall:
- (a) keep proper accounts of or relating to the Trust;
  - (b) keep proper accounts of all money received and expended by or on behalf of the Trust; and
  - (c) prepare a report annually, including annual financial statements, on the accounts and activities of the Trust and deliver that report to the Crown Appointor and the Maori Appointor.
- 7.2 The records of the Trust shall include (without limitation):
- (a) records of Rental Proceeds received in respect of each Licence so that the Rental Proceeds in respect of any area of Licensed Land can be determined;
  - (b) records of payments made to each Beneficiary or group of Beneficiaries; and
  - (c) records of all investments of the Trust Fund and all income from those investments.
- 7.3 The Trustees shall appoint an auditor, who shall be a member of the New Zealand Society of Accountants Inc, to audit the accounts and financial statements of the Trust.
- 7.4 The Trustees may appoint any person as a secretary with remuneration if and as the Trustees shall think fit, to assist in the work of the Trustees, and may from time to time remove the secretary and appoint a replacement.
- 7.5 The Trustees may at any time, pursuant to Section 50 of the Trustee Act

1956, appoint any corporation to be custodian trustee of the Trust.

- 7.6 The Trustees may appoint a chairperson of the Trustees, but that chairperson shall not have a casting vote in respect of any decision made by the Trustees on any matter relating to the Trust Fund.
- 7.7 Where the Trustees are not unanimous on any matter relating to the Trust Fund the decision of a majority of the Trustees comprising at least two Crown Trustees and two Maori Trustees shall be binding on all Trustees, failing which there can be no valid decision of the Trustees.
- 7.8 The Trustees may invest or re-invest any portion of the Trust Fund not immediately required for the purposes of the Trust, whether income or capital, in any form of investment authorised by this Deed.
- 7.9 The Trustees shall not be liable for and shall be indemnified by and out of the Trust Fund in respect of any loss or liability which may be sustained or incurred by reason of the exercise of any of the powers of investment under this Deed. The Trustees shall be entitled to be indemnified by, and reimbursed out of, the Trust Fund for expenses incurred by the Trustees in exercising their functions under this Deed, in accordance with the Fees and Travelling Allowances Act 1951 as if the Trust were a Statutory Board for the purposes of that Act. The Trustees shall be paid, out of the Trust Fund, such remuneration by way of fees, salary, wages, or allowances, as the Minister of Finance determines from time to time.
- 7.10 The duties imposed on a trustee by Section 13B and 13C inclusive of the Trustee Act 1956 or any statutory re-enactment, amendment or replacement shall not apply to the Trustees.
- 7.11 The Trustees may at their discretion exercise the following powers, authorities and discretions, namely:
- 7.11.1 **Investments:**
- (a) Subject to clause 7.11.1(b), to invest the Trust Funds and the income and any money held by the Trustees under this Deed, either alone or in common with any other person or persons, in:
    - (i) any Fixed-income Securities; or

- (ii) interest bearing deposit accounts with any Bank, for terms of up to twelve months, but not longer.
- (b) Each investment must have a long-term credit rating from an Approved Rating Agency that is not lower than three Credit Rating Grades under the New Zealand Government sovereign foreign currency credit rating from an Approved Rating Agency.
- (c) To avoid doubt, the Trustees may realise or otherwise acquire or retain any investment made pursuant to this clause.
- (d) In this clause:

**Approved Rating Agency** means a rating agency nominated or approved under section 86 of the Non-bank Deposit Takers Act 2013;

**Credit Rating Grade** means a credit rating grade adopted by an Approved Rating Agency, including any sub-divisions or notches within any main or primary credit rating grade;

**Fixed-income Securities** means any investment in the form of a security bearing interest if:

- (i) the interest is payable at a fixed rate or in the form of fixed periodic payments; and
- (ii) the Trustees have no reason to believe that the interest payable in respect of the period to which the apportionment relates will not be paid reasonably promptly after the interest or dividend falls due; and
- (iii) the principal investment is repaid at maturity.

#### 7.11.2 **Bank Accounts: -**

- (a) To open an account at any time in the name of the Trust at any Bank;
- (b) in addition to the powers conferred by Section 81 of the Trustee Act 1956, to make arrangements with any Bank for the Trustees, or any two or more Trustees named in writing by the Trustees, to operate

upon any account from time to time opened or subsisting at that Bank.

- 7.11.3 **Agents:** - To employ and pay an agent (excluding any Trustee), whether a solicitor, accountant, bank, trustee corporation, stockbroker, or other person, to transact any business to do any act required to be transacted or done in the execution of the Trust or the administration of the Trust property, including the receipt and payment of money, and the keeping and audit of Trust accounts. The Trustees shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.
- 7.11.4 **Act on Advice:** - To act on the opinion or advice of or information obtained from any financial adviser, lawyer, surveyor, broker, auctioneer, or other expert or professional but so that the Trustees shall not be responsible for any loss depreciation or damage occasioned by acting or not acting in accordance with any opinion, advice or information.
- 7.11.5 **Determine Questions:** - To determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund.
- 7.11.6 **To Hold Trust Fund on Deposit or Uninvested:** - To hold all or any part of the Trust Fund or income in an account with any Bank or uninvested for any period or periods, without any liability for loss, for the purpose of:
- (a) accumulating sufficient of the Trust Fund until it can be invested; or
  - (b) holding sufficient of the Trust Fund to meet anticipated payments as they fall due.

## 8. LIABILITY OF TRUSTEES

- 8.1 Subject to the terms of this Deed, every discretion or power conferred on the Trustees shall be an absolute and uncontrolled discretion or power. No Trustee shall be held liable for any loss or damage occurring as a result of the Trustees concurring or refusing or failing to concur with any other persons in an exercise of any discretion or power.

8.2 It is declared that no Trustee acting or purporting to act in the execution of the Trust shall be liable for any loss not attributable to:

- (a) that Trustee's own dishonesty; or
- (b) to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust.

## **9. APPLICATION OF RECEIPTS**

9.1 Rental Proceeds received by the Trustees shall be capital of the Trust.

9.2 Interest earned from investment of the Trust Fund shall be accumulated by the Trustees to be applied at the Trustees' sole discretion:

9.2.1 to pay the expenses of the Trustees and of the Trust, including the remuneration of the Trustees and all taxes and other levies on income or assets of the Trust; then

9.2.2 subject to Clause 10, to assist any Claimant in the preparation, presentation and negotiation of claims before the Waitangi Tribunal which involve, or could involve, Licensed Land.

9.3 The Trustees need not distribute in any one year the whole or any part of the income for that year but may at their discretion retain the whole or any part of the income.

9.4 Any surplus income may be distributed in a later year, or accumulated from year to year. Any surplus income remaining upon winding up the Trust shall be paid to the Crown, free from the Trust.

9.5 The Trustees shall not distribute any part of the capital, except in accordance with Clause 11 or on the determination of the Trust in accordance with Clause 4. For the purposes of this Deed Section 41 of the Trustee Act 1956 shall not apply.

## **10. PAYMENTS TO CLAIMANTS**

10.1 The Trustees shall decide:

- (a) the criteria for those persons applying for distributions of income under Clause 9.2.2 to qualify as Claimants;

- (b) the basis for allocating funds to Claimants; and
  - (c) the machinery for ensuring confidentiality of information supplied to the Trustees by Claimants and persons seeking the status of Claimants.
- 10.2 The Trustees may from time to time vary the decisions made pursuant to Clause 10.1 and any variation shall take effect from a be specified by the Trustees.
- 10.3 Before deciding or varying the criteria under Clause 10.1(a) the Trustees:
  - (a) must consult with the New Zealand Maori Council, the Federation of Maori Authorities Incorporated and the Crown; and
  - (b) may consult with any other persons or groups which they consider appropriate.
- 10.4 Payments to Claimants shall be made to the individual, group or body, which the Trustees in their sole discretion consider represent the Claimants.
- 10.5 Notwithstanding Clauses 10.1 to 10.4, the Trustees may, in their sole discretion, decline any application for allocation of funds pursuant to this Clause 10.
- 10.6 The Trustees shall only make payments for expenditure or activities, and in amounts, which the Trustees have approved before the expenditure is incurred or the activity undertaken. In giving approval, the Trustees may specify maximum or interim amounts where the scope or cost of any activity is uncertain at the time of the approval.
- 10.7 Payments may only be made in accordance with the decisions of the Trustees:
  - (a) to Claimants, upon delivery to the Trustee of satisfactory evidence and detail of any expenditure to be reimbursed and of any activity for which the Trustees have agreed to pay; and
  - (b) to others, to meet costs incurred by or for the benefit of Claimants, upon delivery to the Trustees of satisfactory evidence of those costs and the authority for incurring them.

## 11. ALLOCATION AND DISTRIBUTION OF TRUST FUNDS

- 11.1 If the Waitangi Tribunal recommends under Section 8HB(1)(a) of the Treaty of Waitangi Act 1975 that any particular Licensed Land be returned to Maori ownership, then:
- (a) the person or persons to whom ownership of that Licensed Land is to be returned shall from the date of that recommendation be Confirmed Beneficiaries of the Trust;
  - (b) those Confirmed Beneficiaries shall be entitled to receive from the capital of the Trust the amount of the Rental Proceeds received by the Trustees in respect of that Licensed Land since the commencement of the Licence;
  - (c) those Confirmed Beneficiaries shall be entitled to receive the Rental Proceeds in respect of that Licensed Land directly from the licensee for the remaining term of the Licence.
- 11.2 If the Waitangi Tribunal recommends under Section 8HB(1)(b) or (c) that any particular Licensed Land be not liable to return to Maori ownership, then:
- (a) the Crown shall from the date of that recommendation be a Confirmed Beneficiary of the Trust;
  - (b) the Crown shall be entitled to receive from the capital of the Trust the amount of the Rental Proceeds received by the Trustees in respect of that Licensed Land since the commencement of the Licence;
  - (c) the Crown shall be released from the obligation under Clause 2.2 to hold any Rental Proceeds in respect of that Licensed Land for the Trustees. The Crown shall be fully entitled to the benefit of those Rental Proceeds in its own right.
- 11.3 For the purposes of Clauses 11.1 and 11.2, where the Waitangi Tribunal makes a recommendation in respect of only part of the Licensed Land to which a particular Licence relates, the Rental Proceeds per hectare in respect of the Licensed Land affected by the recommendation shall be the average of the Rental Proceeds per hectare for Licensed Land under that Licence.

- 11.4 If any Confirmed Beneficiary becomes entitled to payment from the capital of the Trust, the Trustees shall forthwith determine the amount to be paid to that Confirmed Beneficiary, and, to the extent that the Trustees do not have liquid funds available, the Trustees shall sell and realise sufficient of the investments forming for the time being a constituent part of the Trust Fund to meet that payment. So far as reasonably practicable, the payment shall be made within 60 days after the amount due is determined.
- 11.5 For the purposes of Clause 11.4 and to establish payment and receipt:
- (a) Any entitlement of the Crown shall be paid to the Crown bank account;
  - (b) Any entitlement of a Confirmed Beneficiary being a single person shall be paid to that person;
  - (c) Any entitlement of a body or group not being a person shall be paid to the representative recognised by the Trustees under Clause 10.4.
- 11.6 Each distribution shall be made only against delivery to the Trustees of the form of receipt and discharge as may be properly required by the Trustees.

## **12. PROCEDURE ON WINDING UP**

- 12.1 The Trustees may retain out of any Assets of the Trust in its hands full provision for, and may pay out, all expenses and liabilities incurred or anticipated by the Trustees in connection with the Trust or arising out of the liquidation of the Trust, including the fees of any agents, solicitors, bankers, accountants or other persons whom the Trustees employ in connection with the winding up of the Trust. The Trustees shall be entitled, out of the Assets so retained, to be indemnified and saved harmless against any of those expenses and liabilities.
- 12.2 The Trustees shall, upon completion of any realisation of the Trust and after any retentions pursuant to Clause 12.1, distribute the net proceeds, together with all other cash forming part of the Trust Fund:
- (a) in respect of any capital to be distributed pursuant to Clauses 11.1 or 11.2, to the Confirmed Beneficiaries or legal representatives of the Confirmed Beneficiaries; and
  - (b) in respect of any other money, to the Crown.

### **13. ADVANCES BY THE CROWN**

- 13.1 The Crown shall pay to the Trustees by way of interest free loan the sum of \$3 million no later than 1 July 1990.
- 13.2 The Crown shall advance up to a further \$2 million to the Trustees by way of interest-free loan. That advance:
- (a) will not be made before the Trustees have reported to the Crown on the operation of the Trust to 31 December 1990;
  - (b) will not be made unless the Trustees have recommended to the Crown that it should be made in the light of the operation of the Trust and the application of the interest earned from investment of the Rental Proceeds;
  - (c) will not be made earlier than the date recommended for it by the Trustees.
- 13.3 Each loan shall be repaid from the interest earned from investment of the Rental Proceeds, after meeting the expenditure referred to in Clause 9.2.1. Repayments shall be in amounts and at times to be agreed between the Crown and the Trustees. The first repayments shall not be due earlier than one year after the total of interest received by the Trustees from investment of the Trust Fund reaches \$5 million.
- 13.4 The Trustees will be free to apply each loan as if it were interest earned from investment of the Trust Fund.

### **14. SEVERANCE**

- 14.1 If a provision of this Deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal if it were read down and it is capable of being read down, it shall be read down accordingly.
- 14.2 If, notwithstanding Clause 14.1, a provision of this Deed is still void or voidable or unenforceable or illegal:
- 14.2.1 if the provision would not be void or voidable or unenforceable or illegal if a word or those words (as the case may be) were omitted, that word or those words are hereby severed; and

14.2.2 in any other case, the whole provision is hereby severed;

and the remainder of this Deed has full force and effect.

**IN WITNESS WHEREOF** these presents have been executed the day and year first hereinbefore written.

**SIGNED** for and on behalf of

**HER MAJESTY THE QUEEN** by

David Francis Caygill,

Minister of Finance and

[signed in original]

Richard William Prebble,

Minister for State Owned Enterprises

in the presence of:

Witness to the signature of David Francis Caygill

[signed in original]

Witness to the signature of Richard William Prebble

[signed in original]