

WAITOMO ENERGY SERVICES CUSTOMER TRUST

THIS DEED is made on the 25th day of March 1993.

BETWEEN Waitomo Electric Power Board (“the Board”) a body corporate duly constituted under the Electric Power Boards Act 1925.

AND

Russell Albert Aldridge	- of Te Kuiti, retired
Raymond James Bone	- of Mangakino, retired
Ivan Claude Haines	- of Hamilton, Company Director
John McKenzie Miller	- of Otorohanga, pharmacist
Robyn Andra Neeley	- of Te Anga, farmer
Carleon James Vellenoweth	- of Otorohanga, General Manager

(hereinafter called “the Trustees”)

WHEREAS

- A. The Board has incorporated Waitomo Energy Services Limited (“the Company”), a public company, in which the sole subscriber is the Board.
- B. Pursuant to section 27 of the Energy Companies Act 1992, the Minister of Energy has approved an establishment plan prepared by the Board under the Energy Companies Act 1992 which plan provides for the allocation of shares in and debentures issued by the Company to the Trustees upon trust subject to and in accordance with the provisions contained in this deed.
- C. The Board wishes to establish the Waitomo Energy Services Customer Trust (“the Trust”) to enable the Trustees to acquire the shares in and a debenture issued by the Company in accordance with Section 48(3) of the Act.
- D. The Trust is intended to provide a means of holding Shares in and a debenture issued by the Company for the benefit of Customers of the Company and subject to and in accordance with their wishes to transfer the Shares or the proceeds of the sale thereof to such Customers.

1. DEFINITIONS AND CONSTRUCTION

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

“**Act**” means the Energy Companies Act 1992.

“**Balance Date**” means the 31st day of March or any other date adopted as at the end of the Financial Year from time to time by the company.

“**Bank**” means the ANZ Banking Group (New Zealand) Limited, Bank of New Zealand, National Australia Bank (NZ) Limited, The National Bank of New Zealand Limited, Westpac Banking Corporation, any member of Trust Bank Group or any other bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989.

“Board” means the Waitomo Electric Power Board constituted by section 9 of the Electric Power Boards Act 1925.

“Company” means or includes Waitomo Energy Services Limited and any successor company.

“Customer” means any person, who at any appropriate date designated from time to time by the Trustees:

Is named in the records of the Company as a person who owns or uses an electrical installation within the District which is connected to the Company’s distribution network and who is liable (whether alone or jointly with any other person) in terms of and under contract to the Company for the payment of any amount to the Company for the supply by the Company of electricity or line services to that person.

unless any such person who qualified as a customer in accordance with this definition advises the Company or the Trustees irrevocably in writing that he, she or it does not wish to be a customer for the purposes of this deed.

“Debenture” means any debt security payable by the Company to the Trustees.

“this Deed” means this deed as amended from time to time and includes the schedules thereto.

“District” means the area over which the Board was authorised as at 31 March 1993 to supply electricity pursuant to the license granted to the Board under Section 20 of the Electricity Act 1968. Refer NZ Gazette Notice 6 May 1976 No. 49 page 1018 and any amendments thereto.

“Dividend Income” means dividends received by the Trustees and where the context requires or permits includes any funds available for distribution by the Trust pursuant to Clause 5 hereof.

“Dividends” means any dividends paid in cash by the Company on Shares.

“Electricity Supply Business” has the meaning set out in the Electricity Industry Reform Act 1998.

“Interest” means any distribution paid in cash by the Company to the Trustees as holders of any Debenture issued by the Company.

“Financial Year” means any year or other accounting period ending on a Balance Sheet.

“Line Function Services” means:

- (a) the provision and maintenance of electric lines and substations for the conveyance of electricity, and
- (b) the operation of such lines, including the control of voltage and assumption of responsibility for losses of electricity.

“Local Authorities” means those territorial authorities within the meaning of the Local Government Act 1974, who district or part thereof at any appropriate date designated from time to time by the Trustees, is within the District.

“Poll” means a poll of Customer conducted by the Trustees in accordance with the second schedule to this Deed in which Customers vote on matters relating to the Trust and, where the context requires, means the result of the votes cast pursuant to such a Poll of Customers.

“Major Customer” means a Customer who at any relevant time has purchased more than 0.1 GWh of electricity from the Company during the preceding twelve months.

“Major Transaction” means:

- (a) acquisition, or an agreement to acquire (whether contingent or not), by the Company of assets of a value equal to or greater than 50% of the book value of the gross assets of the Company immediately prior to such acquisition or agreement to acquire;
- (b) the disposition, or an agreement to dispose, (whether contingent or not), by the Company:
 - (i) of the whole, or of at least 25% of the book value of the assets of the Company immediately prior to such disposition or agreement to dispose;
 - (ii) of any facility for the generation or electricity owned by the Company; or
 - (iii) the whole of or at least 50% of the book value of the distribution network of the Company immediately prior to such disposition or agreement to dispose;

For the purpose of this definition the value of any assets to be acquired or disposed of by the Company will be the value expressed in the agreement or arrangement relating to the acquisition or disposition and the value of the gross assets of the Company will be their value in the last balance sheet of the Company that has been approved by the directors.

“Rights Issue” means an offer made by the Company to subscribe for shares in or other securities issued or to be issued by the Company but does not include a bonus issue of shares.

“Shares” means shares in the capital of the Company or any other company including King Country Energy Limited or its subsidiaries in which this Trust holds shares.

“Termination Date” means the earlier of 1 January 2072 and the date upon which the trust is wound up in accordance with clause 16.

“Trust” means the Waitomo Energy Services Customer Trust established by this Deed.

“Trustees” means the trustees for the time being of the Trust and **“Trustee”** means any person who is one of the Trustees.

“Trust Fund” means all the assets of the Trust and includes all capital and income and benefits, rights or entitlement thereunder for the time being held by the Trustees for the Trust.

“Trust Income Period” means the 6 monthly periods expiring on the 20th January and 20th July each year and commencing on the expiry of the prior 6 month Trust Income Period.

“**Trustee Act**” means the Trustee Act 1956.

“**Unanimous Resolution**” means a resolution of the Trustees in respect of which every Trustee, entitled to vote, has voted in support of it.

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

1.2 Construction. In this Deed, unless the context otherwise requires:

“**person**” includes any body corporate and any association of persons.

References to one gender include each other gender;

References to the singular include the plural and vice versa;

The headings and the index do not affect the construction of the Deed;

References to Clauses are references to clauses of the Deed and references to Schedules are references to the Schedules to this Deed;

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;

Words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act;

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

2. DECLARATION OF TRUST

2.1 The trustees declare and acknowledge that Shares and any Debenture when issued to the Trustees pursuant to Section 48 of the Act and all other assets comprising the Trust Fund at any time held by the Trustees will be held by them upon trust subject to and in accordance with this Deed.

2.2 The name of the Trust is Waitomo Energy Services Customer Trust.

3. PURPOSES

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

- 3.1 To receive Shares and Debentures in accordance with an Order in Council made pursuant to Section 47 of the Act.
- 3.2 To acquire or distribute to Customers or any of them any additional Shares in the capital of the Company allotted to the Trust by the Company.
- 3.3 To sell or distribute Shares pursuant to a distribution plan under Clause 4 to or for the benefit of Customers or any of them and until their sale or distribution to hold them for the benefit of Customers or any of them in their capacity as beneficiaries under the Trust and in their capacity as purchasers of goods and services provided to them by the Company.
- 3.4 To consider and advise the Customers on any proposal received by the Trustees for the purchase of some or all of the Shares held by the Trust.
- 3.5 To receive and apply all income of the Trust in the manner provided in Clause 5.
- 3.6 Following the Termination date to apply and appropriate the existing Trust Fund in the manner provided in Clause 6.3.
- 3.7 To encourage and facilitate the Company in meeting its objective of being a successful business.
- 3.8 To seek and act upon the opinion or directions of Customers given pursuant to a Poll conducted under Clause 4 or Clause 11 and to vote against any Major Transaction unless Customers have by a Poll approved such transaction by the Company.
- 3.9 To promote and encourage an efficient and reliable electricity distribution system available throughout the District.
- 3.10 To hold and apply all the Trust Fund for the benefit of Customers or any of them in accordance with and subject to this Deed.
- 3.11 To acquire and hold shares in the Company or any other companies carrying on the business of electricity lines or electricity supply on behalf of its customers and to distribute to the customers the benefits of ownership of any such shares in terms of this Deed.
- 3.12 To comply in all respects with the provisions of the Electricity Industry Reform Act 1998.

4. DISTRIBUTION OF SHARES

- 4.1 The Trustees may not sell, charge or otherwise dispose of or deal with any Shares unless the proposed sale charge or disposal has been approved by a Poll conducted pursuant to Clauses 4.3 and 4.5 and (subject to clause 4.13) a Poll pursuant to clause 4.9 subject to paragraph 4.15.
- 4.2 A Poll conducted pursuant to clause 4.3 may include among the proposals on which Customers vote the additional proposal of a distribution of all or any of the Shares to any customer nominated by the Trustees or that in lieu of the distribution of Shares that they be sold and the

proceeds of sale be distributed to Customers, Local Authorities or any particular Customer nominated by the Trustees.

- 4.3** The Trustees shall during September of 1996 and every 6 years thereafter, and may at any other time, conduct a Poll in accordance with clause 4.5 to determine whether Customers voting on the Poll wish Shares to continue to be held by Trust or be transferred to Customers or to be transferred to Local Authorities or in accordance with any additional proposal of the Trustees pursuant to clause 4.2.
- 4.4** At least one month prior to the conducting of the Poll the Trustees shall prepare and publish a report containing:
- (a) an analysis of the performance of the Trust to the date of the report together with a discussion of the advantages and disadvantages of continued Trust ownership of the Shares.
 - (b) a discussion of the advantages and disadvantages of a transfer of the Shares to Customers or to Local Authorities or a sale of the Shares and a transfer of the proceeds to Customers or to Local Authorities, and
 - (c) any comments by the directors of the Company as to the most appropriate form of ownership of the Shares.
- 4.5** A poll conducted pursuant to clause 4.3 shall require Customers voting to separately vote:
- (a) on the question of whether the Shares held by the Trust should continue to be held by the Trust; and
 - (b) if Shares are to be sold or distributed by the Trust whether the Shares (or the proceeds of their sale) should be distributed to Customers, or to Local Authorities or to any particular customer nominated by the Trustees pursuant to clause 4.2.
- 4.6** If the majority of votes cast on a Poll under clause 4.5 (a) favour the continuation of the Trust holding Shares that result shall bind the Trustees until a further Poll on that issue is held as provided by clauses 4.1 and 4.3 and the result of votes cast pursuant to clause 4.5 (b) shall be of no consequence. If the majority of votes cast on a Poll pursuant to clause 4.5(a) do not support the continued holding of Shares by the Trust the Trustees shall (subject to clause 4.13) prepare a draft Distribution Plan in accordance with clause 4.7 in respect of the proposal under clause 4.5 (b) receiving the most votes.
- 4.7** The draft Distribution Plan referred to in clause 4.6 shall include, when relevant:
- (a) whether under the plan the Shares are to be transferred or be sold and the proceeds be distributed and to whom;

- (b) the method of distribution of the Shares or the proceeds of the sale of the Shares, the method of allocation of the Shares or the proceeds of their sale as between Customers and/or the Local Authorities and the date as at which Customers will be designated by the Trustees for establishing the Customers entitled to participate in any distribution;
 - (c) The number of Shares to which the plan applies; and
 - (d) such other information as may be reasonably necessary to assist Customers in ascertaining the nature of the proposals in the plan.
- 4.8** The Trustees, once they have prepared a draft Distribution Plan shall seek the comments of Customers on the proposals contained in the plan and may adopt such procedure as they think appropriate for obtaining those comments, but shall allow Customers at least one calendar month from the date of the first publication of the plan within which they may submit to the Trustees their comments on the plan.
- 4.9** After receiving and considering the comments of Customers on the plan the Trustees may make such amendments to the plan as they believe appropriate but not inconsistent with the substance of the proposal receiving the most votes cast under clause 4.5 (b) and shall then conduct a Poll of Customers on the proposals contained in the plan so amended.
- 4.10** Where the proposal in the plan is approved by the majority of Customers voting on the Poll held pursuant to clause 4.9 the Trustees shall deal with the Shares in accordance with the plan.
- 4.11** Where the proposal in a plan is not approved by the Poll held under clause 4.9 the Trustees shall continue to hold the Shares referred to in the plan in the same manner and upon the same terms existing prior to the date of the Poll or if that is not possible as near as is practical to such terms and conditions.
- 4.12** If part only of the proposals in the plan are approved by the Poll the Trustees shall deal with the Shares with all necessary adjustments and modifications that may be necessary, in accordance with such of the proposals in the plan that have been so approved.
- 4.13** The trustees may by a unanimous resolution dispense with clauses 4.6 to 4.9 where a Poll conducted pursuant to clause 4.5 (b) supports a proposal by a simple majority (and a simple majority of votes cast on the Poll under clause 4.5 (a) do not support the continued holding of shares by the Trust) in which case the Shares may be distributed or sold in accordance with the voting on the Poll.
- 4.14** If the Trustees receive an offer to subscribe for shares in the Company (excluding shares allotted pursuant to section 48 of the Act) or receive or become entitled to a Rights Issue the Trustees may allocate or transfer the offer or entitlement to customers in such manner and such proportions as the Trustees in their discretion think fit.
- 4.15** Where the sale or distribution of shares is necessary to give effect to a proposal under Clause 9.8 or to a proposal designated to comply with the Electricity Industry Reform Act 1998, then, notwithstanding any of the previous sub clauses of Clause 4, the proposals shall be put into a

single poll carried out under the rules contained in the second schedule of this deed and, if the proposal is approved by such a poll, the trustees shall have full authority to carry out whatever is necessary to implement the proposal.

5. TRUSTS OF INCOME UNTIL TERMINATION 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 Remuneration and Expenses:** The Trustees shall from the net annual income first pay the cost of administering the Trust including remuneration and allowances payable to Trustees as provided by this Deed and expenses incurred in pursuance of their duties.
- 5.2 Accumulation:** The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising from the Financial Year in which the same are resorted to.
- 5.3 Discretion as to Income:** The Trustees may, subject to Clause 5.4 and Clause 5.5 pay, apply or appropriate the whole or substantially all of the current net annual income derived by or credited to the Trust Fund in any Financial Year to or for or otherwise howsoever for the benefit of the Customers 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. However, this discretion shall not include any distribution for charitable or political purposes.
- 5.4 Retention of Dividends:** The Trustees shall in respect of any Dividend received be entitled to pay apply or appropriate that Dividend to Customers in accordance with Clause 5.3 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 Customers until the Trustees are satisfied that all liability for taxation in respect thereof has been discharged.
- 5.5 Directors Report:** The Trustees may request the Directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the Customers or classes of Customer based on the contribution made by each class of Customer to the earning of that Dividend and in such report the Directors may classify Customers in any manner they see fit and in exercising their discretion in accordance with clause 5.3 the Trustees may have regard to those recommendations but shall not be bound by such recommendations. The general intention of the Trust is that the amount of dividend income to be distributed or rebated to each customer within the District reflects his or her contribution to the income of the Company.

- 5.6 Vesting:** Any of the Customers to whom any income is paid, applied or appropriated by the Trustees pursuant to the provisions of Clause 5.2, shall as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income as from such date the Trustees shall have no further obligations with respect to the application of such income.
- 5.7 Not to Affect Corpus:** 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 Customers.
- 5.8 Trustees not Disqualified:** Each Trustee in its capacity as a Customer shall, notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Customer which may be distributed to Customers in accordance with Clause 5.3.
- 5.9 Unclaimed Payments:** All payments made to Customers unclaimed for one year after having been sent to any Customer may be invested or otherwise made use of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund.

6. TRUSTS OF TRUST FUND

- 6.1** Subject to the distribution or sale of Shares pursuant to Clause 4 Shares shall be held by the Trustees upon trust for the benefit of Customers, including inter alia to distribute Dividend Income to Customers, to exercise the rights and powers of the Trustees as shareholders in the Company for the benefit of customers in respect of their interest as contingent beneficial owners of the Shares and in respect of their interests as consumers of goods and services provided by the Company and to distribute the Shares or the proceeds of the sale thereof to customers as provided in this Deed.
- 6.2** All or any of the Trust Fund, other than Shares, may be applied by the Trustees as income under Clauses 5.2 and 5.3 as if it were Dividend Income provided that the Trustees shall endeavour to ensure that the Trust will have income or revenue sufficient to meet its costs and outgoings so as to enable the whole of Dividend Income to be distributed pursuant to Clauses 5.2 and 5.3.
- 6.3** From and after the Termination Date the Trustees shall stand possessed of all the Trust Fund included Shares, that has not been paid or distributed upon trust to pay or distribute the same to or for the benefit of the Customers pursuant to a plan prepared by the Trustees and approved by Customers by a Poll mutatis mutandis in accordance with the provisions of Clauses 4.6 to 4.12.
- 6.4** A plan prepared pursuant to Clause 6.3 may be prepared and a Poll conducted at any time before or after the Termination Date.
- 6.5** If the plan prepared by the Trustees pursuant to Clause 6.3 is not approved by a Poll or if for any other reason the Trustees have not paid, or distributed all of the Trust Fund on the day before the

first anniversary of the Termination Date the amount then remaining shall be paid or distributed in equal shares to customers as at the first anniversary of the Termination Date.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

7.1 The Rules, set forth in the First Schedule hereto (which 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.

7.2 A person who is a director or employee of the Company shall not be eligible to be elected or appointed as a Trustee.

8. GENERAL POWERS

The Trustees may exercise the powers, authorities, and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act (except where otherwise specified in this Deed).

9. SPECIFIC POWERS

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

9.1 To Appoint Directors: When exercising their right to appoint, or vote on the appointment of directors of the Company, provided that the Trustees shall not appoint or vote on the appointment of a Trustee to the position of director of the Company.

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 appointment replacement secretaries as they think fit.

9.3 To Employ: To employ and pay any person including any professional person who is for the time being one of the Trustees hereof or any firm or partnership of which such Trustee is a member to act or to do any act or render any services including professional services of whatever nature and the taking of advice relating to the Trust including the receipt and payment of money without being liable for loss incurred thereby.

9.4 To Appointment Custodian Trustee: To exercise the powers conferred by section 50 of the Trustee Act to appoint any corporation to be a custodian trustee of the Trust Fund.

9.5 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 81 of the Trustee 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.

- 9.6 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.
- 9.7 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, provided that all Shares held by the Trustees shall be voted in concert whether the Shares are held jointly or severally.
- 9.8 Reorganisation, reconstruction, merger etc:** To consider any recommendations made by the directors of the Company on any proposal relating to any reconstructions or amalgamation or merger of the Company or any modification of the rights of shareholders or any reduction of capital or subject to Clause 9.09, any 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 Customers or any of them provided however that the Trustees shall vote against any proposal which would result in the disposal or sale of any Shares or a dilution of that proportion of the issued voting shares in the Company unless that proposal has first been approved by Customers pursuant to a Poll.
- 9.9 Increase in Capital:** To consider any recommendation made by the directors of the Company on any proposal to increase the authorised capital of the Company and after giving due consideration to the recommendations of the directors to agree to such a proposal if the Company requires additional equity capital **PROVIDED HOWEVER** that if any proposed increase in capital would have the possible effect of reducing the percentage of shares held by the Trust in the Company to 50 per cent or less the proposal and any resolution of the Company to effect the increase shall not be approved or supported by the Trustees unless the proposed increase of capital has first been approved by a Poll.
- 9.10 Major Transactions:** The Trustees may not approve a Major Transaction without complying with the requirements of Clause 13.13.
- 9.11 Determining Questions:** To determine all questions and matters of doubt which may arise in the course of the trusteeship of this Trust.

10. POWERS OF INVESTMENT

- 10.1** The power to invest conferred by trustees by section 13A(1) of the Trustee Act is hereby excluded.
- 10.2** The Trustees may invest all or any of the Trust Fund in all or any of the following investments:
- (a) shares in or other equity securities or debt securities of the Company or other companies carrying on an electricity lines business or electricity supply business.

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

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 13C of the Trustee Act and the likelihood that the Trustees will from time to time include persons whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others, it is hereby declared that the care, diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by the said section 13C but subject to Clause 18 shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

10.5 Subject to Clause 18 notwithstanding anything in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

11. POLLS ON OTHER MATTERS

11.1 The Trustees may pursuant to a Poll at any time seek the approval of customers as to the exercise of the Trustees powers and duties under this Deed including the power to sell all or any of the Shares and to retain the proceeds of the sale thereof and if the majority of votes cast support the proposal the Trustees may act in accordance with the approval so given which shall be binding on all Beneficiaries (contingent or otherwise). The Trustees may also seek the approval pursuant to a Poll to the distribution of some of the Shares held by the Trust but in that case clauses 4.1 to 4.12 shall mutatis mutandis apply. A Poll conducted pursuant to this clause may be conducted concurrently with any other Poll.

11.2 Upon at least 5% of the Customers so requesting in writing the Trustees will pursuant to clause 4.3 or 11.1 conduct a Poll of the matters referred to in that requisition (including but not restricted to the sale or disposal of any Shares) provided that the Trustees may require such requisitionists to first pay to the Trustees the estimated cost of conducting the Poll including obtaining any professional advice.

11.3 Following a Poll conducted under Clauses 11.1 or 11.2 the Trustees may where appropriate prepare a plan and conduct a further Poll mutatis mutandis in accordance with Clauses 4.6 to 4.12.

12. ADVICE OF COUNSEL

- 12.1** Without derogating from the generality of the Clauses 8, 9 or 11, the Trustees may obtain and act upon the opinion of any barrister 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, as to the administration of the trusts declared and authorised by this Deed or by any other document without being liable to any person who may claim to be in any way beneficially interested in respect of any act done in accordance with such opinion provided that nothing in this clause shall prohibit the Trustees from applying to the Court should the Trustees think fit.

13. DUTIES OF TRUSTEES

The Trustees shall:

- 13.1** subject to this Deed, act as a diligent shareholder and in particular monitor the performance of the directors of the Company and exercise the rights of shareholders for the benefit of the Trust Fund or Customers.
- 13.2** ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.
- 13.3** after the end of each Financial Year cause to be prepared financial statements including a balance sheet and income and expenditure account and notes to those documents giving a true and fair view of the financial affairs of the Trust for that Financial Year. The financial statements shall detail;
- the profit made by the Company in the financial year
 - any dividends or interest received from the Company
 - any other income
 - expenses incurred in running the Trust
 - Trustee remunerations
 - the amount distributed to the Customers
 - the formula applied in making distributions to the Customers.
- 13.4** appoint from time to time on such terms as they think fit as auditor of the Trust a person (not being the auditor of the Company) who is either:-
- (a) a member of the Institute of Accountants of New Zealand
 - (b) a member, fellow, or associate of an Association of Accountants constituted in some part of the Commonwealth outside New Zealand and for the time being approved for the purpose of the audit of the company accounts under section 165(4) of the Companies Act 1955.
- 13.5** ensure that the financial statements are audited

- 13.6** immediately upon completion of the audit of the financial statements insert advertisements in a principal newspaper or newspapers circulating in the District, notice that the statements are available for public inspection at an address specified in the notice during normal office hours.
- 13.7** make the financial statements available to the Customers in accordance with Clause 14.
- 13.8** 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.
- 13.9** make any completed statement of corporate intent available to the public in accordance with Clause 14.
- 13.10** within two months of the end of each Financial Year prepare a statement for inclusion in the annual report of the Company while the Trustees are the majority shareholders of the Company commenting on the company's compliance with its then current statement of corporate intent.
- 13.11** exercise where appropriate its right to require modifications to the statement of corporate intent in accordance with section 40(2) of the Act subject to the requirements of section 40(8) of the Act.
- 13.12** make a copy of this Deed available to the public in accordance with Clause 14.
- 13.13** the Trustees may not vote on a resolution of the Company in respect of a Major Transaction without first obtaining the directions of customers as to voting pursuant to a Poll and shall then vote in accordance with such directions. If the Trustees are unable to conduct a Poll prior to the meeting to vote on the Major Transaction they shall vote against the resolution.

14. INFORMATION TO THE CUSTOMERS

- 14.1** For the purpose of complying with any requirement under this Deed to make any document or information available to Customers, 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.
- 14.2** 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.
- 14.3** Where the Trustees are required to publish a report, plan or other document it will be sufficient to public in a newspaper or newspapers circulating in the District a notice indicating the general nature of the report, plan or other document and that a copy of it may be obtained from a stated address within the District.

15. VARIATION TO TRUST DEED

15.1 Subject to Clause 15.2 this Deed may be altered or amended only by an Unanimous Resolution of the Trustees (including amending the name of the Trust) provided no amendment may be made until the Trustees have:

- (a) first published in accordance with Clause 14.3 a notice of the proposed amendment;
- (b) made available to Customers for at least one month after the publication under (a) as provided in Clause 14.1 particulars of the proposed amendment, the reasons for the proposed amendment and its likely effect, and
- (c) given Customers a reasonable opportunity to comment on the proposed amendment.

15.2 Notwithstanding Clause 15.1 no alternation or amendment may be made to this Deed which has the effect of limiting or restricting the obligations and powers of the Trustees under this Deed to:-

- (a) conduct Polls pursuant to Clauses 4.2 to 4.9, 4.13, 11.1 and 11.2 as to the future ownership of Shares or
- (b) implementing the result of such Poll in accordance with clauses 4.10, 4.12, 4.13 and 11.3.

16. WINDING UP OF THE TRUST

16.1 If the Trust holds less than 5 per cent of the total issues share capital of the Company and no longer holds any debt security issued by the Company or a resolution to wind up the Trust has not been passed by January 2072, the Trustees shall be resolution wind up the Trust.

16.2 On 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 Customers (who may be designated by the Trustees at any date before or after the commencement of winding up) in accordance with Clause 6.3, or, as the case may be, Clause 6.5.

17. INTERESTED TRUSTEES

17.1 A Trustee may not be a director of the Company.

17.2 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 Customer or as a member, officer, or employee of any firm, company or organisation that is a Customer) 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.

17.3 A Trustee required to disclose an interest by Clause 17.2 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.

17.4 If any question shall raise 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.

18. LIABILITY

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

18.2 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 neglect or default.

19. INDEMNITY

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

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

SIGNED by Ivan Claude Haines as a Trustee)
in the presence of:) Ivan C Haines

Witness: Terence Edward Alfred Rogers
Occupation: Company Chairman
Address: 3/109 Remuera Road, Auckland

SIGNED by John McKenzie Miller as a Trustee)
in the presence of:)

John McKenzie Miller

Witness: Terence Edward Alfred Rogers
Occupation: Company Chairman
Address: 3/109 Remuera Road, Auckland

SIGNED by Raymond James Bone as a Trustee)
in the presence of:)

Raymond James Bone

Witness: Terence Edward Alfred Rogers
Occupation: Company Chairman
Address: 3/109 Remuera Road, Auckland

SIGNED by Russell Albert Aldridge as a Trustee)
in the presence of:)

Russell Albert Aldridge

Witness: Terence Edward Alfred Rogers
Occupation: Company Chairman
Address: 3/109 Remuera Road, Auckland

SIGNED by Robyn Andra Neeley as a Trustee)
in the presence of:)

Robyn Andra Neeley

Witness: Terence Edward Alfred Rogers
Occupation: Company Chairman
Address: 3/109 Remuera Road, Auckland

SIGNED by Carleon James Vellenoweth as a)
Trustee in the presence of:)

Carleon James Vellenoweth

Witness: Terence Edward Alfred Rogers
Occupation: Company Chairman
Address: 3/109 Remuera Road, Auckland

THE COMMON SEAL of the **WAITOMO**)
ELECTRIC POWER BOARD was hereunto)
affixed in the presence of)

The Common Seal

Chairman: RA Kidd
General Manager: JB Anderson

FIRST SCHEDULE

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 – CONSTITUTION OF THE TRUSTEES

2. APPOINTMENT OF TRUSTEES

2.1 There shall be 6 Trustees as follows:

- (a) Three Trustees to be elected by Customers (“A Trustees”),
- (b) The A Trustees shall appoint one additional Trustee (“Appointed Trustee”),
- (c) Two Trustees to be elected by Major Customers (“B Trustees”).

2.2 The First Trustees shall be the persons signing this Deed as Trustees. Messrs Aldridge, Bone and Miller are deemed to be A Trustees, Mrs Neeley is deemed to be an Appointed Trustee and Messrs Haines and Vellenoweth are deemed to be B Trustees.

2.3 The first A Trustees and the Appointed Trustee shall retire from office on 30th September 1993.

2.4 Customers shall hold a postal election prior to the 30th day of September 1993 and every three years after that date in order to elect three A Trustees. The A Trustees so elected shall hold office for a term of three years commencing on the 1st day of October following the date of their election.

2.5 The provisions of the Local Elections and Polls Act 1976 relating to the notice of election, the nomination of candidates, and the conduct of an election by postal vote shall apply to all elections held pursuant to clause 2.4.

2.6 The A Trustees elected pursuant to rule 2.4 shall appoint an Appointed Trustee on the basis of his or her commercial expertise. The Appointed Trustee shall hold office for a term from the date of his or her appointment until the expiry of the term of appointment of the A Trustees.

- 2.7 No later than 31 March 1995 and thereafter every 3 years a meeting shall be held of Major Customers who shall elect two B Trustees to take office for a term of 3 years commencing on the following 1 April.
- 2.8 The first B Trustees shall hold office until 31 March 1995 and thereafter shall hold office for a term of 3 years commencing on the 1st day of April following their election.
- 2.9 Where by reason of vacancy, the number of Trustees is reduced below six;
- (a) If the vacancy is one of the A Trustees the remaining A Trustees shall appoint some other eligible person to be an A Trustee for the balance of the term of office of the departing Trustee.
 - (b) If the vacancy is one of the B Trustees a special meeting of Major Customers shall be called to elect a replacement for the balance of the term of office of the departing Trustee.
 - (c) If the vacancy is an Appointed Trustee the A Trustees shall appoint a replacement Appointed Trustee for the balance of the term of office of the departing Trustee.

3. REMUNERATION AND EXPENSES OF TRUSTEES

3.1 Remuneration:

- (a) The Trustees will be entitled in each financial year to such remuneration, allowances and expenses as may be reasonable having regard to their duties and responsibilities.
- (b) In addition to the honorarium referred to in rule 3.1, the Trustees shall each be entitled to a meeting fee of \$500 per day for participating at a meeting to consider any proposal submitted to them for the sale of the Shares held by the Trust.

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

3.3 The Trustees shall not meet to consider any proposal referred to in Rule 3.1 unless the person submitting the proposal has given a written undertaking to meet the reasonable expenses, incurred by the Trustees in considering the proposal, including the meeting fees referred to in Rule 3.1.

3.4 The Trustees may increase the fees referred to in 3.1 from 1 April in each successive financial year as is appropriate having regard to their duties and responsibilities and in line with the fees paid to the Trustees of other customer and community trusts of like size or business in the Electricity industry.

3.5 **Payments to be made from Trust Funds:** The payments of remuneration and expenses to the Trustees pursuant to Rules .1 and .2 shall be paid out of the Trust Fund.

4. DELEGATION BY TRUSTEES

Any Trustee may, in any of the circumstances permitted by section 31 of the Trustee Act, exercise the powers under that section of delegating to any person, who has been approved by the other Trustees, during any period for which that Trustee may be absent from New Zealand or incapable of performing his or her duties as a Trustee, all or any trusts powers authorities and discretions vested in him or her as a Trustee of the Trust.

5. CHAIRPERSON

The Trustees may elect a chairperson at their meetings and determine the period for which the chairperson is to hold office. The chairperson (or in the absence of the chairperson, a Trustee elected by the meeting) shall take the chair at all meetings of the Trustees and shall have a deliberative vote but not a casting vote.

6. QUORUM

A quorum at meetings of the Trustees shall comprise of four trustees if the number of trustees holding office is six. In all other cases the quorum shall be the number of Trustees then holding office.

7. CESSATION OF TRUSTEESHIP

A Trustee shall cease to hold office if such Trustee:

- 7.1 has served for the term prescribed herein as a Trustee provided however that at each election the Trustee may seek re-election for a further term.
- 7.2 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.
- 7.3 refuses to act.
- 7.4 becomes of unsound mind or becomes a protected person under any statute for the time being in force.
- 7.5 becomes bankrupt or enters into a composition or assignment for the benefit of his or her creditors.
- 7.6 is absent without leave from three consecutive ordinary meetings of the Trustees.
- 7.7 is convicted of any indictable offence.
- 7.8 is employed by the Company.

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 – ADMINISTRATIVE PROVISIONS

11. ORDINARY MEETINGS

The Trustees shall meet at such intervals as they deem appropriate to the conduct of the affairs of the Trust.

12. SPECIAL MEETINGS

Three Trustees may at any time summon a special meeting for any reason deemed by the 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 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 meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meetings adjourned.

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 who are for the time being in New Zealand consent in writing to such abridgement or waiver.

15. ADJOURNMENT

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.

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 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. MAJORITY DECISIONS

All acts and decisions of the Trustees shall be decided by a majority of votes cast at a validly constituted meeting.

19. SIGNED RESOLUTIONS

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 such committee as the case may be duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee, as the case may be.

20. 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 of these Rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

- 20.1** All the participants for the time being entitled to received notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purpose of such meeting. Notice of such meeting may be given by telephone;
- 20.2** 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;
- 20.3** 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;
- 20.4** 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 formal 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;
- 20.5** 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.

21. 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 by the case may be in such manner as the Trustees from time to time determine.

22. 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 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.

23. 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 consider proper or advantageous for accomplishing the purposes and objects of the Trust.

PART III – AMENDMENT TO RULES

24. AMENDMENTS

- 24.1** The Rules set forth in Part II of the schedule being administrative provisions may be rescinded, amended or added to by an ordinary resolution of the Trustees.
- 24.2** No such resolutions 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.

SECOND SCHEDULE

RULES GOVERNING THE CONDUCT OF POLLS

Where the Trustees cause a Poll to be held or are required to conduct a Poll the following rules shall apply:

- (1) Each Customer shall be sent by post to the Customer's last postal address known to the Trustees a form of polling paper which will record the proposals in respect of which the Poll is being conducted and which provides a means for the Customer to readily indicate whether he or she wishes to vote in favour or against the proposal and if more than one proposal to which clause 4.1 of the Deed applies, the proposal favoured.
- (2) The polling paper may provide for more than one proposal and may provide two or more choices for each proposal and the voting provisions shall make provision for voting separately on each such choice.
- (3) A summary of the proposals contained in a Poll and the reasons for them shall at the time the voting papers are posted or delivered to Customers be provided to each Customer entitled to vote together with an address to which the votes of the Customer may be delivered or posted.
- (4) Each Customer shall have one vote only in respect of each proposal on which Customers are entitled to cast a vote.
- (5) The closing date for receiving votes cast on a Poll shall be at least two weeks after the date of the posting of the polling papers to Customers.
- (6) Any Customer may vote pursuant to a Power of Attorney. A scrutineer may demand evidence of such authority subsequent to the closing of the Poll.
- (7) Where the Customer is a body corporate or an association of persons the Customer shall appoint a natural person to exercise the Customers vote on its behalf.
- (8) Any failure to comply with the requirements of these rules shall not invalidate a Poll unless the Trustees resolve that such failure could have had a material effect on the result of the Poll in which case a new Poll shall be held.
- (9) In addition to the summary referred to in rule (3) above there shall be included with a notice of Poll a statement of the date of the closing of the Poll, the address to which votes must be sent and a statement that a vote may be completed pursuant to a Power of Attorney.
- (10) A Poll in which the majority of Customers who are entitled to vote and do vote shall be carried by that majority notwithstanding the majority of Customers entitled to vote may not have voted in favour of the proposal provided that for the purpose of a Poll conducted pursuant to Clause 4.5 (b) of the Deed in respect of the sale charge or disposal of any Shares the proposal for which most votes are cash shall be carried for the purposes of that Poll.

- (11) The Trustees shall make any such additional provisions as to the conduct of Polls or any particular Poll as they believe expedient or necessary.
- (12) The rules in this schedule may be amended at any time by a resolution of the Trustees.