

Subordinated Unsecured Notes Deed Poll

PARTIES

Heartland Bank Limited

Heartland Bank

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DEED POLL dated

11 April 2023 made by

PARTIES

Heartland Bank Limited

("Heartland Bank")

INTRODUCTION

- A. Heartland Bank proposes to issue subordinated unsecured notes.
- B. The subordinated unsecured notes will be issued in registered form by inscription in the Register.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this deed terms have the meaning given to them in the Terms (which are set out in Schedule 1), unless otherwise defined herein or the context otherwise requires.
- 1.2 **Interpretation:** Clauses 10 and 13.1 of the Terms apply to this deed as if each was fully set out in this deed and as if a reference to the Terms were a reference to this deed.

2. NOTES

- 2.1 **Creation of the Notes:** The obligations of Heartland Bank in respect of the Notes are constituted by, and specified in, this deed.
- 2.2 **Undertaking to pay:** Heartland Bank undertakes with each Holder to:
 - (a) pay, in respect of each Note held by the Holder, the Face Value, interest and any other money payable in respect of each Note in each case in accordance with the Terms; and
 - (b) otherwise to comply with the Terms.
- 2.3 **Amendment:** Any amendment to the Terms or this deed as permitted by the Terms and this deed may be made by the execution of a deed by Heartland Bank.
- 2.4 **Appointment of Registrar:** Heartland Bank agrees to appoint a Registrar and procure that the Registrar establishes and maintains during its term of appointment a principal Register in New Zealand or any other place as Heartland Bank and the Registrar may agree.

3. RIGHTS AND OBLIGATIONS OF THE HOLDERS

- 3.1 **Benefit and entitlement:** This deed is executed as a deed poll. For the purposes of part 2, subpart 1 of the Contract and Commercial Law Act 2017, each Holder has the benefit of, and is entitled to enforce, this deed even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed.

3.2 **Holders bound:** Each Holder and any person claiming through or under a Holder is bound by this deed. The Notes are issued subject to and on the basis that each Holder is deemed to have notice of, and be bound by, all the provisions of this deed and the Terms.

3.3 **Meeting Provisions:** The Meeting Provisions relating to a meeting of Holders are set out in Schedule 2.

4. GOVERNING LAW AND JURISDICTION

4.1 **Governing law:** This deed is governed by and will be construed in accordance with the laws of New Zealand.

4.2 **Jurisdiction:** Heartland Bank agrees, and each Holder is taken to have irrevocably agreed, that the courts of New Zealand are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this deed and accordingly Heartland Bank submits, and each Holder is taken to submit, to the non-exclusive jurisdiction of the courts of New Zealand. Heartland Bank waives, and each Holder is taken to have waived, any objection to the courts of New Zealand on the grounds that they are an inconvenient or inappropriate forum.

4.3 **Severability:** If any provision of this deed shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. If any part of this deed is held by a court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this deed.

EXECUTED AS A DEED

HEARTLAND BANK LIMITED

By:



Signature of director

Bruce Robertson Irvine

Name of director



Signature of director

Jeffrey Kenneth Greenslade

Name of director

SCHEDULE 1

Terms

1. NOTES

1.1 **Notes:** The notes are fully paid unsecured subordinated debt securities ("**Notes**") issued by Heartland Bank. The Notes are issued in registered form by entry in the Register and rank equally among themselves.

1.2 **Face Value:** The denomination and face value of each Note ("**Face Value**") is NZ\$1.00.

1.3 No other rights:

- (a) Except as set out in these Terms, Notes do not confer on Holders any right to subscribe for new securities in Heartland Bank, participate in any bonus issues of securities by Heartland Bank or to otherwise participate in the profits or property of Heartland Bank.
- (b) Each of the following is expressly permitted and authorised by these Terms and does not affect, or constitute a modification or variation of, the rights or privileges attaching to the Notes then on issue:
 - (i) the issue by Heartland Bank or any other member of the Heartland Bank Group of securities of any kind, or the conversion of existing securities into securities of any kind, ranking prior or senior to, equally with, or subordinate or junior to, or having different rights from, the Notes; and
 - (ii) the redemption, buy-back or return or distribution of capital by Heartland Bank or any other member of the Heartland Bank Group in respect of any share capital of Heartland Bank or the Heartland Bank Group.

1.4 **No guarantee:** The Notes are not guaranteed or insured by any government, government agency or compensation scheme in New Zealand or any other jurisdiction or by any other person.

1.5 **Quotation of NZX Debt Market:** Heartland Bank must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure, at its own expense, quotation of the Notes on the NZX Debt Market.

1.6 Solvency condition:

- (a) Prior to the Maturity Date or Liquidation, the obligation of Heartland Bank to make payments of the Face Value or interest in respect of the Notes is conditional on:
 - (i) Heartland Bank being Solvent at the time the payment is due; and
 - (ii) Heartland Bank being able to make such payment and remain Solvent immediately after such payment is made.
- (b) Any amount not paid due to clause 1.6(a) does not cause an Event of Default and remains as a debt owing by Heartland Bank to the relevant Holders which is

payable on the first Business Day on which clause 1.6(a) is satisfied. Interest which is subject to this clause earns interest in accordance with clause 3.5.

- 1.7 **Privacy:** By its purchase of Notes, each Holder is taken to have irrevocably acknowledged and agreed that Heartland Bank may collect, use or share any information about the Holder in accordance with Heartland Bank's Privacy Statement (as such may be amended or substituted from time to time).

2. TITLE AND TRANSFER

- 2.1 **Title:** Title to a Note is acquired or passes when details of the acquisition or transfer are entered in the Register.

- 2.2 **Register conclusive as to ownership:** Entries in the Register in relation to a Note constitute conclusive evidence that the person so entered is the absolute owner of the Note subject to:

- (a) correction for fraud or error; and
- (b) the other provisions of these Terms and applicable law.

- 2.3 **Non-recognition of interests:** Except as required by law and as provided in this clause 2.3, Heartland Bank must treat the person whose name is entered in the Register as the Holder in respect of a Note as the absolute owner of that Note.

No notice of any trust, encumbrance or other interest in, or claim to, any Note will be entered in the Register. Neither Heartland Bank nor the Registrar need take notice of any trust, encumbrance or other interest in, or claim to, any Note, except as ordered by a court of competent jurisdiction or required by law, and no trust, encumbrance or other interest in, or claim to, any Note will in any way affect any provision of these Terms.

This clause 2.3 applies whether or not a payment has been made when scheduled on a Note and despite any notice of ownership, trust or interest in the Note.

- 2.4 **Joint Holders:** Where two or more persons are entered in the Register as the joint Holders of a Note, they are taken to hold the Note as joint tenants with rights of survivorship, but the Registrar is not bound to register more than three persons as joint Holders of a Note.

- 2.5 **Form of Notes:** No certificates, notices of registration or statements of holding in relation to the Notes will be issued to Holders unless Heartland Bank is required to provide certificates, notices of registration or statements of holding by any applicable law or the NZX Listing Rules. Any such certificate, notice or statement will be in the form agreed between Heartland Bank and the Registrar and will contain all information required by applicable law and the NZX Listing Rules. A certificate, notice of registration or statement of holding in respect of a Note will not constitute a document of title. Entitlement will be determined solely by entry in the Register.

- 2.6 **Dealings in whole:** At all times, the Notes may be held or transferred only in whole Notes.

- 2.7 **Transfer:**

- (a) A Holder may transfer a Note:

- (i) while the Note is quoted on the NZX Debt Market, in accordance with the settlement system operated by NZX; or
- (ii) at any other time, by any proper or sufficient instrument of transfer of marketable securities under applicable law.

No transfer of any part of a Holder's holding may be effected if such transfer would not result in the transferor or the transferee holding or continuing to hold Notes of at least the Minimum Holding or no Notes.

- (b) The Registrar must register a transfer of a Note to or by a person who is entitled to make or receive the transfer as a consequence of:
 - (i) death, bankruptcy, liquidation or winding-up of a Holder; or
 - (ii) a vesting order by a court or other body with power to make the order on receiving the evidence that the Registrar or Heartland Bank requires.

2.8 Independent obligations: Each entry in the Register constitutes a separate and independent acknowledgement to the relevant Holder of the indebtedness of Heartland Bank to the relevant Holder. The Holder to whom those obligations are owed is entitled to enforce them without having to join any other Holder or any predecessor in title of a Holder.

2.9 Selling restrictions:

- (a) Heartland Bank has not and will not take any action which would permit a public offering of the Notes, or possession or distribution of any offering material, in any country or jurisdiction where action for that purpose is required (other than New Zealand).
- (b) By its purchase of the Notes, each Holder is taken to have agreed that:
 - (i) Notes 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; and
 - (ii) any information memorandum, disclosure document, circular, advertisement or other offering material in respect of the Notes (including the LDD) may only be published, delivered or distributed in or from any country or jurisdiction under circumstances which will result in compliance with all applicable laws, regulations and listing rules of any applicable stock exchange.
- (c) By its purchase of Notes, each Holder agrees to indemnify Heartland Bank, the Arranger, each Joint Lead Manager and their respective directors, officers, employees and agents in respect of any loss, cost, liability or expense sustained or incurred by Heartland Bank, the Arranger, the Joint Lead Managers or their respective directors, officers, employees or agents as a result of the breach by that Holder of the restrictions contained in this clause 2.9.

3. INTEREST PAYMENTS

3.1 **Interest:** Each Note bears interest on its Face Value from (and including) the Issue Date to (but excluding) the Maturity Date or any earlier Redemption Date (as applicable), at the Interest Rate.

3.2 **Interest Rate determination:**

(a) The rate (expressed as a percentage per annum) to be used for calculating interest in accordance with clause 3.3(a) for each Interest Payment Date during the Fixed Rate Period, is the higher of:

- (i) the Minimum Interest Rate; and
- (ii) the rate calculated according to the following formula:

$$\text{Interest Rate} = (\text{Swap Rate} + \text{Issue Margin})$$

(b) The rate (expressed as a percentage per annum) to be used for calculating interest in accordance with clause 3.3(b) for each Interest Payment Date during the Floating Rate Period, is the rate calculated according to the following formula:

$$\text{Interest Rate} = (\text{Base Rate} + \text{Issue Margin}),$$

provided that, if the rate determined in accordance with this clause 3.2(b) is less than 0% per annum, the Interest Rate will be deemed to be 0% per annum.

(c) If a BKBM Disruption Event occurs, Heartland Bank:

- (i) will use as the Base Rate for the purpose of clause 3.2(b) such Alternative Reference Rate as it may determine in accordance with these Terms;
- (ii) will make such adjustments to these Terms as it determines are reasonably necessary to calculate interest in accordance with such Alternative Reference Rate;
- (iii) in making the determinations under paragraphs (i) and (ii) above:
 - (aa) will act in good faith and in a commercially reasonable manner;
 - (bb) may consult with such sources of market practice as it considers appropriate;
 - (cc) will have regard to the applicable eligibility criteria for Tier 2 Capital; and
 - (dd) may otherwise make such determination in its discretion; and

will, at least 5 Business Days prior to the first Base Rate Determination Date for which an Alternative Reference Rate will be used, notify Holders, the Register and the RBNZ of its decision to use the Alternative Reference Rate.

3.3 **Interest payments:** The amount of interest payable in respect of each Note on an Interest Payment Date is calculated according to the following formulae:

(a) For each Interest Payment Date during the Fixed Rate Period:

$$\text{Amount of interest} = \frac{\text{Face Value} \times \text{Interest Rate}}{4}$$

(b) For each Interest Payment Date during the Floating Rate Period:

$$\text{Amount of interest} = \frac{\text{Face Value} \times \text{Interest Rate} \times N}{365}$$

where:

"N" means, in respect of an Interest Payment Date, the number of days from (and including) the preceding Interest Payment Date (or the Issue Date in the case of the first Interest Payment Date) to (but excluding) the relevant Interest Payment Date.

If for any reason interest is required to be paid on a date that is not an Interest Payment Date, the interest payable on each Note on that date shall be calculated in accordance with the formula set out in clause 3.3(b) as if the date were an Interest Payment Date and regardless of whether the date falls within the Fixed Rate Period or the Floating Rate Period.

3.4 **Notification of Interest Rate, interest and other amounts:**

(a) Heartland Bank must notify the Registrar and Holders of the Interest Rate, amount of the interest payment and Interest Payment Date for each Interest Payment Date.

(b) Heartland Bank must give notice under this clause:

- (i) in respect of each Interest Payment Date during the Fixed Rate Period, on or about the Rate Set Date; and
- (ii) in respect of each Interest Payment Date during the Floating Rate Period, on or about the relevant Base Rate Determination Date.

3.5 **Accrual of Interest:** Notwithstanding clauses 3.1 and 3.6:

(a) If any Face Value that is due and payable is not paid in full on the Maturity Date for any reason, then the unpaid portion of such Face Value earns interest at the Interest Rate, which accrues daily at the Interest Rate until paid. Such accrued interest is payable on the date on which the full Face Value is paid.

(b) If any interest that is due and payable is not paid for any reason, then the unpaid portion of such interest payment earns interest at the Interest Rate, which accrues daily at the Interest Rate until paid. Such accrued interest is payable on the date on which the relevant unpaid interest amount is paid.

3.6 **Interest Payment Dates:** Subject to this clause 3 and clause 1.6, interest in respect of a Note will be payable in arrear on the following dates (each an "Interest Payment Date"):

(a) each date that is the numerically corresponding date to the Issue Date and which falls at quarterly intervals from the Issue Date until (but excluding) the date on

which a Redemption of that Note occurs in accordance with these Terms (each a **"Scheduled Interest Payment Date"**); and

- (b) each date on which a Redemption of that Note occurs in accordance with these Terms.

If an Interest Payment Date during the Floating Rate Period is not a Business Day, the Interest Payment Date will be the next Business Day unless that day falls in the next calendar month, in which case it will be the preceding Business Day, and, in either case, the amount of interest paid will be adjusted to reflect the actual payment date.

3.7 **Record Dates:** An interest payment is only payable on an Interest Payment Date to those persons registered as Holders on the Record Date for that interest payment.

3.8 **Deductions:**

- (a) Heartland Bank may deduct or withhold the amount of any applicable Taxes that are required by law, as modified by the practice of any relevant taxing authority, to be deducted or withheld from any interest payment or any other amount payable in accordance with these Terms. Deductions or withholdings on account of Tax will be made at the maximum rates from time to time applicable by law unless a Holder provides evidence satisfactory to the Registrar that a lesser rate is applicable.
- (b) Where New Zealand's non-resident withholding tax regime applies to a payment made to Holders:
 - (i) Subject to sub-paragraphs (ii) and (iii) below, New Zealand non-resident withholding tax will be deducted from interest payments (or payments deemed by law to be interest) made to such Holders in accordance with these Terms.
 - (ii) Heartland Bank intends to register the Notes for the purposes of the AIL Regime. Subject to sub-paragraph (iv) below, and provided that the Notes satisfy the requirements of section 86IB of the Stamp and Cheque Duties Act 1971 and any other requirements for the lawful application of a zero rate in accordance with the AIL regime, Heartland Bank will apply the zero rate under the AIL regime. Heartland Bank will make the relevant interest payments (or payments deemed by law to be interest) without any deduction on account of non-resident withholding tax or Approved Issuer Levy.
 - (iii) Subject to sub-paragraph (iv) below, where Heartland Bank is not able to apply the zero rate under the AIL regime in accordance with sub-paragraph (ii) above, but is able to lawfully pay Approved Issuer Levy, Heartland Bank will pay the Approved Issuer Levy in respect of any interest payments (or payments deemed by law to be interest) payable to such Holders. Heartland Bank will pay the Approved Issuer Levy to the appropriate taxing authority and will deduct the amount payable from any interest payments (or payments deemed by law to be interest) payable to that Holder in lieu of deducting New Zealand non-resident withholding tax at the rate otherwise applicable from that payment.
 - (iv) Sub-paragraphs (ii) and (iii) above will not apply where such a Holder:

- (aa) requests in writing that non-resident withholding tax be deducted from any interest (or deemed interest) instead of the AIL Regime being applied; or
 - (bb) derives interest jointly with one or more persons, where, in either case, one or more of whom are resident in New Zealand.
- (c) Where New Zealand's resident withholding tax regime applies to a payment made to Holders, New Zealand resident withholding tax will be deducted from interest payments (or payments deemed to be interest) made to such Holders in accordance with these Terms unless evidence of RWT-Exempt Status is produced to the Registrar no later than five Business Days before the Record Date prior to the relevant payment date.
- (d) Heartland Bank shall pay the full amount required to be deducted to the relevant taxing authority within the time allowed for such payment without incurring any penalty under applicable law and shall, if required by any Holder, deliver to that Holder a copy of any relevant documentation evidencing such payment.
- (e) A Holder must, no later than two Business Days prior to the first Record Date, notify the Registrar of its country of residence for tax purposes and, if the Holder is not tax resident in New Zealand, whether the Holder is engaged in business in New Zealand through a Fixed Establishment in New Zealand and whether they hold the Notes in connection with that Fixed Establishment. A Holder must notify the Registrar prior to any subsequent Record Date of any change in circumstances from those previously notified, or provide any other information requested, that could affect the payment or withholding obligations of Heartland Bank.
- (f) Heartland Bank is not required to, and will not, make any additional payment by way of gross-up or otherwise with respect to the deduction or withholding from any payment made in respect of the Notes under this clause 3.8.
- (g) By accepting payment of any interest payment or any other amount payable in accordance with these Terms, the Holder indemnifies Heartland Bank for all purposes in respect of any liability or loss Heartland Bank may incur for not deducting any amount from such payment on account of New Zealand non-resident withholding tax, New Zealand resident withholding tax or Approved Issuer Levy (including liability on account of Taxes or any interest or penalties in relation thereto).
- (h) If, in relation to any Note, Heartland Bank becomes liable to make any payment of or on account of Tax payable by the Holder, Heartland Bank is indemnified by the Holder in relation to such Tax liability, together with any interest or penalties imposed in relation thereto. Any monies paid by Heartland Bank in relation to any such liability may be recovered from the Holder as a debt due to Heartland Bank and may be withheld from further payments to that Holder. Nothing in this clause prejudices or affects any other right or remedy of Heartland Bank.

4. REDEMPTION AND EARLY REDEMPTION BY HEARTLAND BANK

- 4.1 Redemption on the Maturity Date:** Each Note will be Redeemed on the Maturity Date for its Face Value unless previously Redeemed.

4.2 **Early Redemption by Heartland Bank:** Heartland Bank may, subject to clauses 1.6 and 4.4, elect to Redeem:

- (a) all (but not some) of the Notes following the occurrence of a Tax Event or a Regulatory Event; or
- (b) all or some of the Notes on an Optional Redemption Date,

by giving an irrevocable notice to Holders (an "**Early Redemption Notice**").

4.3 **Contents of Early Redemption Notice:** An Early Redemption Notice must specify:

- (a) (if applicable) the details of any Tax Event or Regulatory Event to which the Early Redemption Notice relates;
- (b) the date on which Redemption is to occur (the "**Early Redemption Date**"), which must fall no earlier than 15 Business Days after the date on which the Early Redemption Notice is given and:
 - (i) in the case of a Tax Event or Regulatory Event, must be a Scheduled Interest Payment Date; and
 - (ii) in the case of an Optional Redemption Date, must be an Optional Redemption Date; and
- (c) if less than all Outstanding Notes are subject to Redemption, which Notes are subject to Redemption.

4.4 **RBNZ approval required to Redeem:** Heartland Bank may only elect to Redeem Notes under clause 4.2 if:

- (a) Heartland Bank has provided any information and supporting documentation required by the RBNZ's prudential regulatory requirements to the RBNZ;
- (b) either:
 - (i) prior to, or concurrent with, the Redemption, Heartland Bank replaces the Notes the subject of the Redemption with a paid-up capital instrument:
 - (aa) of the same, or better, quality and contributing at least the same regulatory capital amount (for the purposes of the RBNZ's capital adequacy requirements applying to Heartland Bank at the time); and
 - (bb) the terms and conditions of which are sustainable for the income capacity of the Heartland Bank Group; or
 - (ii) if Heartland Bank does not intend to replace the Notes the subject of the Redemption, Heartland Bank has demonstrated to the RBNZ's satisfaction that, after the Redemption, the Heartland Bank Group's:
 - (aa) capital ratios would be sufficiently above their respective minimums; and

- (bb) prudential capital buffer ratio would be sufficiently above its buffer trigger ratio; and
- (c) the RBNZ has given its prior written approval to the Redemption.

Approval from the RBNZ is at the RBNZ's discretion and may or may not be given and the Holders should not expect that the RBNZ's approval will be given to any Redemption under clause 4.2.

- 4.5 **Partial Redemptions:** Where Heartland Bank does not elect to Redeem all Outstanding Notes under clause 4.2(b), Heartland Bank must endeavour to treat Holders on an approximately proportionate basis, although it may discriminate to take account of the effect on holdings which would be below the Minimum Holding and any other reasonable considerations.
- 4.6 **Redemption:** Notes will be Redeemed by payment on the Redemption Date to the Holder of the Face Value together with any accrued but unpaid interest as at the Redemption Date.
- 4.7 **Effect of Redemption on Holders:** On the Redemption Date the only right Holders will have in respect of Notes will be to obtain the Face Value together with any accrued but unpaid interest as at the Redemption Date payable in accordance with these Terms and upon such payment, all other rights conferred, or restrictions imposed, by the Notes will no longer have effect.
- 4.8 **No early Redemption by Holder:** A Holder cannot require Heartland Bank to Redeem a Note prior to the Maturity Date (but without prejudice to the Holder's rights under clause 5.3(b)).

5. EVENTS OF DEFAULT

- 5.1 **Events of Default:** An "Event of Default" occurs:
 - (a) if Heartland Bank fails to pay any amount due in respect of the Notes and such default continues for a period of 15 Business Days, provided that no Event of Default shall arise on account of any non-payment due to clause 1.6 or clause 4.4; or
 - (b) on the Commencement of Liquidation.
- 5.2 **Notification:** If an Event of Default occurs and is continuing, Heartland Bank will, promptly after becoming aware of it, notify the Registrar and Holders of the occurrence of the Event of Default.
- 5.3 **Remedies for an Event of Default:** If an Event of Default occurs and is continuing:
 - (a) under clause 5.1(a), any Holder may institute proceedings:
 - (i) to recover the amount Heartland Bank has failed to pay, subject to clause 1.6;
 - (ii) for specific performance of any other obligation in respect of the Notes; or
 - (iii) for a Liquidation; or

- (b) under clause 5.1(b), in addition to the rights set out under paragraph (a):
 - (i) the Face Value of each Note plus accrued but unpaid interest will immediately become due and payable; and
 - (ii) any Holder may, subject to clause 6.1, prove in the Liquidation in respect of the Face Value plus any accrued but unpaid interest up to (but excluding) the Commencement of Liquidation.

A Holder has no right to accelerate payment or exercise any other remedy (including any right to sue for damages) as a consequence of any Event of Default other than as set out in this clause 5.3.

6. GENERAL RIGHTS IN RESPECT OF NOTES

6.1 Ranking in a Liquidation:

- (a) In a Liquidation, a Note confers upon the Holder, the right to payment in cash of the Face Value plus accrued but unpaid interest on a subordinated basis in accordance with paragraph (b), but no further or other claim on Heartland Bank in the Liquidation.
- (b) Holders will rank for payment of the Face Value plus accrued but unpaid interest in a Liquidation of Heartland Bank:
 - (i) ahead of Junior Ranking Securities;
 - (ii) equally among themselves and with all Equal Ranking Securities; and
 - (iii) junior to the claims of all Senior Ranking Creditors,
 with respect to priority of payment in a Liquidation in that:
 - (iv) all claims of Senior Ranking Creditors will be paid in full before the claims of the Holders are paid; and
 - (v) until the Senior Ranking Creditors have been paid in full, the Holders must not claim in the Liquidation in competition with the Senior Ranking Creditors so as to diminish any distribution or payment which, but for that claim, the Senior Ranking Creditors would have been entitled to receive.

6.2 No charge: Nothing in clause 6.1 or clause 6.3 shall be taken to:

- (a) create a charge or security interest on or over any right of the Holder; or
- (b) require the consent of any Senior Ranking Creditor to any amendment of these Terms made in accordance with clause 10.

6.3 Agreements of Holders as to subordination: Each Holder irrevocably agrees:

- (a) that clause 6.1 is an agreement by the Holder to accept a lower priority in respect of a debt for the purposes of section 313(3) of the Companies Act and that nothing

in sections 310 or 313 of the Companies Act will prevent these Terms from having effect according to their terms;

- (b) not to exercise any voting or other rights as a creditor in the Liquidation in any jurisdiction:
 - (i) until after all Senior Ranking Creditors have been paid in full; or
 - (ii) otherwise in a manner inconsistent with the subordination contemplated by clause 6.1;
- (c) that it must pay or deliver to the liquidator of Heartland Bank any amount or asset, whether voluntary or in any other circumstances, received by the Holder from or on account of Heartland Bank (including by way of credit, set-off or otherwise) or from any liquidator (or any provisional or other liquidator, receiver, manager or statutory manager of Heartland Bank) in breach of its entitlement under clause 6.1; and
- (d) that the subordination effected by clause 6.1 is not affected by any act or omission of Heartland Bank or a Senior Ranking Creditor which might otherwise affect it at law or in equity.

6.4 **No set-off:**

To the maximum extent permitted by applicable law:

- (a) except as provided at clause 3.8(h), Heartland Bank has no right to set-off any amounts owing by it to a Holder in respect of the Notes against any other claims owed by that Holder to it; and
- (b) no Holder has any right of set off in respect of any amounts or any right to merge accounts or to exercise of any other rights the effect of which is, or may be, to reduce the amount payable by Heartland Bank in respect of the Notes to the Holder.

6.5 Shortfall on Liquidation: If, upon a return of capital on a Liquidation, there are insufficient funds to pay in full the Face Value plus accrued but unpaid interest and the amounts payable in respect of any other Equal Ranking Securities, Holders and the holders of any such Equal Ranking Securities will be paid on a pro-rata basis.

7. **VOTING**

7.1 Meetings: Meetings of Holders may be held in accordance with the Meeting Provisions. A meeting may consider any matter affecting the interests of Holders, including any amendment to these Terms proposed by Heartland Bank in accordance with clause 10. Resolutions passed in accordance with the Meeting Provisions will be binding on all Holders.

7.2 No voting: Notes do not confer on Holders a right to vote at any meeting of shareholders of Heartland Bank.

8. NOTICES

8.1 **Notices to Holders:** All notices, certificates, consents, approvals, waivers and other communications in connection with a Note to the Holders must be in writing and may be:

- (a) sent by prepaid post (airmail if appropriate) or left at the address of the relevant Holder (as shown in the Register at the close of business on the day which is three Business Days before the date of the relevant notice or communication);
- (b) sent to an email address (if any) or other number or address of the relevant Holder used for the purpose of sending or receiving communications by electronic means (as shown in the Register at the close of business on the day which is three Business Days before the date of the relevant notice or communication);
- (c) given by an advertisement published in The New Zealand Herald or any other newspaper nationally circulated in New Zealand; or
- (d) so long as the Notes are quoted on the NZX Debt Market, given by making an announcement on NZX.

8.2 **Non-receipt of notices by Holders:** The non-receipt of a notice by a Holder or an accidental omission by Heartland Bank or any other party to give notice to a Holder will not invalidate the giving of that notice either in respect of that Holder or generally.

8.3 **Notices to Heartland Bank:** All notices or other communications by a Holder to Heartland Bank in respect of these Terms must be:

- (a) in legible writing or typing and in English;
- (b) addressed as shown below:

Heartland Bank Limited
Attention: Head of Corporate Finance/Group Head of Communications
35 Teed Street
Newmarket
Auckland 1023

Email address: heartland.bank@heartland.co.nz

or to such other address or email address as Heartland Bank notifies to Holders as its address or email address (as the case may be) for notices or other communications in respect of these Terms from time to time (a "**Heartland Bank Details Notice**");

- (c) signed or, in the case of email, emailed by the person making the communication or by a person duly authorised by that person; and
- (d) delivered or posted by prepaid post to the address, or sent by email to the email address, in accordance with paragraph (b).

8.4 **When effective:** Communications take effect from the time they are received or taken to be received (whichever happens first) unless a later time is specified in them.

8.5 **Receipt:** Unless a later time is specified in it, a notice or other communication will be taken to be received:

- (a) if sent by email, when actually received in its entirety in legible form, unless that day is not a Business Day, or is after 5.00pm (New Zealand time) on a Business Day, in which case that communication will be regarded as received at 9.00am (New Zealand time) on the next Business Day;
- (b) if sent by post, on the third Business Day after posting if posted to an address in New Zealand and on the seventh Business Day after posting if posted to an address outside of New Zealand;
- (c) if published by an announcement on NZX, when the announcement is made on NZX; and
- (d) if published in a newspaper, on the first date that publication has been made in the chosen newspaper.

9. PAYMENTS

9.1 **General:** All payments in respect of Notes must be made:

- (a) in NZ dollars; and
- (b) free of any set-off, deduction or counter claim except as required by law or pursuant to these Terms.

9.2 **Payments to Holders on the Record Date:** Interest and Face Value amounts are only payable on an Interest Payment Date or Redemption Date (as applicable) to those persons registered as Holders on the Record Date for that interest payment or Redemption. Nothing in these Terms allows a payment to a Holder in a form other than cash.

9.3 **Manner of payment to Holders:** Monies payable by Heartland Bank to a Holder may be paid by crediting a New Zealand dollar bank account maintained in New Zealand with a financial institution (excluding credit card accounts) and nominated in writing by the Holder to the Registrar by close of business on the relevant Record Date or in any other manner Heartland Bank decides.

9.4 **Unsuccessful attempts to pay:**

- (a) If the Holder has not notified the Registrar of a bank account for the purposes of payment under clause 9.3 or the transfer of any amount does not complete for any reason (other than an error made by or on behalf of Heartland Bank), Heartland Bank will be treated as having paid the amount ("**unclaimed money**") on the date on which it would otherwise have made the payment.
- (b) Heartland Bank will send a notice to the registered address of the Holder advising of the unsuccessful payment and the unclaimed money will be held on deposit in a non-interest bearing bank account maintained by Heartland Bank or the Registrar until the Holder nominates a New Zealand dollar bank account maintained in New Zealand with a financial institution (excluding credit card accounts) for crediting

with the unclaimed money (or nominates a new bank account as the case may be) or the unclaimed money is forfeited under clause 9.5.

- (c) No additional amount is payable in respect of any such delay in payment.

9.5 Time limit on claims:

- (a) A claim against Heartland Bank for a payment under, or in respect of, a Note is void unless made within four years from the date on which payment first became due.
- (b) If unclaimed money is not claimed within four years after its due date, it is taken to be forfeited to Heartland Bank for Heartland Bank's benefit and shall no longer be treated as unclaimed money.

9.6 Determination and calculation final:

- (a) Heartland Bank's determinations and calculations under these Terms are, in the absence of wilful default, bad faith or manifest error, final and binding on the Registrar and each Holder.
- (b) Heartland Bank may amend its calculation or determination of any date, rate or amount (or make appropriate alternative arrangements by way of adjustment).

9.7 Payment to joint Holders: A payment to any one of the joint Holders will discharge Heartland Bank's liability in respect of that payment irrespective of any notice to the contrary that may be provided to Heartland Bank by any such Holder.

9.8 Payment on Business Days: If any payment:

- (a) is due on a day which is not a Business Day, then the due date for payment will be the next Business Day; or
- (b) is to be made to an account on a Business Day on which banks are not open for business in the place the account is located, payment will be made on the next day on which banks are open for business in that place.

No additional interest is payable in respect of that delay in payment.

9.9 Payments subject to law: All payments are subject to applicable law.

9.10 FATCA:

- (a) Heartland Bank may withhold or make deductions from payments due to a Holder in respect of the Notes where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of Notes may be subject to FATCA or has breached its FATCA obligations, and may deal with such payment in accordance with the obligations of Heartland Bank under FATCA. If any withholding or deduction arises under or in connection with FATCA as contemplated by this paragraph (a), Heartland Bank will not be required to pay any further amounts on account of such withholding or deduction to a Holder or otherwise reimburse or compensate, or make any

payment to, a Holder or a beneficial owner of Notes for or in respect of any such withholding or deduction.

- (b) A Holder will, within ten Business Days of request by Heartland Bank, supply to Heartland Bank such forms, documentation and other information relating to its status under FATCA or any other matter as Heartland Bank reasonably requests for the purposes of Heartland Bank's compliance with FATCA.

9.11 Calculations and rounding of payments: Unless otherwise specified in these Terms:

- (a) subject to paragraph (b), all calculations under these Terms will be rounded to six decimal places;
- (b) the Interest Rate and Issue Margin will be rounded to two decimal places; and
- (c) for the purposes of making payment to a Holder in respect of the Holder's aggregate holding of Notes, any fraction of a cent will be disregarded.

10. AMENDMENT OF THESE TERMS

10.1 Amendment without consent: Subject to complying with all applicable laws, clause 10.3 and any consent or approval required under the NZX Listing Rules, Heartland Bank may amend these Terms or the Deed Poll without the authority, assent or approval of Holders where the amendment is in the reasonable opinion of Heartland Bank:

- (a) is made to correct a manifest error, cure an ambiguity or correct or supplement any defective provision of these Terms or any provision of the Deed Poll;
- (b) is of a formal, minor or technical nature;
- (c) is necessary or expedient to comply with any law, the provisions of any statute, the requirements of any statutory authority, the NZX Listing Rules or the listing or quotation requirements of any securities exchange on which Heartland Bank may propose to seek a listing or quotation of the Notes;
- (d) is necessary or expedient for the purpose of enabling the Notes to be quoted or for the Notes to remain quoted on a securities exchange or to be lodged in a clearing system or to remain lodged in a clearing system or to be offered for sale or for subscription under the laws for the time being in force in any place;
- (e) is made in accordance with clause 3.2(c); or
- (f) will not materially adversely affect the rights of Holders as a whole.

10.2 Amendment with consent: Without limiting clause 10.1, but subject to clause 10.3 and any consent or approval required under the NZX Listing Rules, Heartland Bank may amend these Terms or the Deed Poll if the amendment has been approved by a Special Resolution.

10.3 RBNZ notification: No amendment to these Terms or the Deed Poll is permitted unless Heartland Bank has given the RBNZ at least five Business Days' prior notice, accompanied by any information and supporting documentation required by the RBNZ's prudential regulatory requirements.

- 10.4 **Meanings:** In this clause 10, "amend" includes modify, cancel, alter or add to, and "amendment" has a corresponding meaning.

11. GOVERNING LAW AND JURISDICTION

- 11.1 **Governing law:** The Notes and these Terms are governed by and shall be construed in accordance with the laws of New Zealand.
- 11.2 **Jurisdiction:** Heartland Bank has irrevocably agreed, and each Holder is taken to have irrevocably agreed, that the courts of New Zealand are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Notes and accordingly Heartland Bank has submitted, and each Holder is taken to have submitted, to the non-exclusive jurisdiction of the courts of New Zealand. Heartland Bank waives, and each Holder is taken to have waived, any objection to the courts of New Zealand on the grounds that they are an inconvenient or inappropriate forum.
- 11.3 **Service of process:** Heartland Bank agrees that process in connection with any suit, action or proceedings arising out of or in connection with the Notes ("**Proceedings**") in New Zealand may be served at the principal office of Heartland Bank, which, as at the Issue Date is located at 35 Teed Street, Newmarket, Auckland 1023, New Zealand. Nothing in these Terms affects the right to serve process in any other manner permitted by law.

12. CONTRACT AND COMMERCIAL LAW ACT 2017

- 12.1 **Contract and Commercial Law Act 2017:**
- (a) Clause 2.9(c) is intended to confer a benefit on, and may be enforced by, the Arranger, the Joint Lead Managers and their and Heartland Bank's respective directors, officers, employees and agents; and
 - (b) clause 6 is intended to confer a benefit on, and may be enforced by, the Senior Ranking Creditors,
- pursuant to part 2, subpart 1 of the Contract and Commercial Law Act 2017.

13. INTERPRETATION AND DEFINITIONS

- 13.1 **Interpretation:**
- (a) A reference to:
 - (i) these Terms is a reference to these Terms as supplemented, modified or altered in accordance with these Terms;
 - (ii) an agreement, instrument or document includes any variation, supplement, replacement or novation of that agreement, instrument or document;
 - (iii) a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;

- (iv) any thing is a reference to the whole and each part of it;
 - (v) one gender includes every other gender;
 - (vi) a document includes all schedules or annexes to it; and
 - (vii) a clause, paragraph or sub-paragraph is to a clause, paragraph or sub-paragraph of these Terms.
- (b) The words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
 - (c) Headings are inserted for convenience and do not affect the interpretation of these Terms.
 - (d) Another grammatical form of a defined word or expression has a corresponding meaning.
 - (e) Anything which may be done at any time may also be done from time to time.
 - (f) Any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally.
 - (g) Any provisions which refer to the requirements of the RBNZ or any other prudential regulatory requirements will apply to Heartland Bank only if Heartland Bank is an entity, or the holding company of an entity, subject to regulation and supervision by the RBNZ at the relevant time.
 - (h) Any provisions which require the RBNZ's consent or approval will apply only if the RBNZ requires that such consent or approval be given at the relevant time.
 - (i) Any provisions in these Terms requiring the prior consent or approval of the RBNZ for a particular course of action to be taken by Heartland Bank do not imply that the RBNZ has given its consent or approval to the particular action as of the Issue Date.
 - (j) A reference to any term defined by the RBNZ (including, without limitation, "Tier 1 Capital" and "Tier 2 Capital") shall, if that term is replaced or superseded in any of the RBNZ's applicable prudential regulatory requirements, be taken to be a reference to the replacement or equivalent term.
 - (k) Any provisions which require NZX's consent, approval or a waiver from NZX will apply only if NZX requires such consent or approval or is permitted to grant such waiver at the relevant time. Any such provisions do not imply that NZX has given its consent or approval or a waiver for a particular action as at the Issue Date.
 - (l) Unless the context otherwise requires, the singular includes the plural and vice versa.

- (m) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (n) A reference to "law" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure.
- (o) Unless otherwise specified in these Terms, if an event under these Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day.
- (p) A reference to NZ dollars, NZ\$, or NZ cents is a reference to the lawful currency of New Zealand.
- (q) A reference to a term defined by the NZX Listing Rules shall, if that term is replaced in those rules, be taken to be a reference to the replacement term.
- (r) Calculations, elections and determinations made by Heartland Bank under these Terms are binding on Holders in the absence of fraud or manifest error.
- (s) So long as the Notes are quoted on the NZX Debt Market in accordance with the settlement system operated by NZX, the Terms are to be interpreted in a manner consistent with the NZX Listing Rules except to the extent that an interpretation consistent with those rules would affect the eligibility of the Notes as Tier 2 Capital.
- (t) Where Heartland Bank is required to give or serve a notice by a certain date under these Terms, Heartland Bank is required to despatch the notice by that date (including at Heartland Bank's discretion, by posting or lodging notices with a mail house) and delivery or receipt (or deemed delivery) is permitted to occur after that date.
- (u) Where a Holder is required to give or deliver a notice to Heartland Bank by a certain date under these Terms, the notice must be received by Heartland Bank by that date.

13.2 Definitions:

"3 Month Bank Bill Rate" means, in respect of interest payable on an Interest Payment Date:

- (a) the FRA rate administered by the New Zealand Financial Benchmark Facility ("NZFBF") (or any person that takes over the administration of that rate) for bank bills having a term of, or of about, 3 months as displayed at or about 10.45am (New Zealand time) or such later time as Heartland Bank may determine on the Base Rate Determination Date on Bloomberg BKBM page 'GDCO 2805' (or any successor page); or
- (b) if that rate is not displayed by 10.45am (New Zealand time) or such later time as Heartland Bank may determine on that date (other than on account of a BKBM Disruption Event), the equivalent rate provided by the NZFBF (or any person that takes over the administration of that rate) at or around that time on that date,

in each case expressed as a percentage per annum and rounded, if necessary, to the nearest 4 decimal places with 0.00005% being rounded up.

"AIL Regime" means the approved issuer levy regime set out in Part 6B of the Stamp and Cheque Duties Act 1971.

"Alternative Reference Rate" means, in respect of interest payable on an Interest Payment Date, the rate determined by Heartland Bank at or about 10.45am (New Zealand time) or such other time as is customary for determining the rate on the Base Rate Determination Date as a rate that is generally accepted in the market for bank securities denominated in NZ dollars with an interest period of, or of about, 3 months, or if Heartland Bank is not able, after making reasonable efforts, to ascertain such rate, or there is no such rate:

- (a) a reference rate that is, in Heartland Bank's opinion, appropriate to bank securities denominated in NZ dollars with an interest period of, or of about, 3 months; or
- (b) such other reference rate as Heartland Bank considers appropriate having regard to available comparable indices,

in each case expressed as a percentage per annum and rounded, if necessary, to the nearest 4 decimal places with 0.00005% being rounded up.

"Approved Issuer Levy" means the levy referred to in section 86J of the Stamp and Cheque Duties Act 1971.

"Arranger" means Westpac Banking Corporation (ABN 33 007 457 141) (acting through its New Zealand branch).

"Base Rate" means, in respect of interest payable on an Interest Payment Date:

- (a) the 3 Month Bank Bill Rate; or
- (b) if a BKBM Disruption Event occurs, the Alternative Reference Rate.

"Base Rate Determination Date" means, in relation to an Interest Payment Date during the Floating Rate Period, the previous Interest Payment Date.

"BKBM Disruption Event" means a determination by Heartland Bank that the rate referred to in paragraph (a) of the definition of 3 Month Bank Bill Rate has become unavailable.

"Bookbuild" means the process conducted after the closing of the offer of the Notes where certain investors lodge bids for Notes and, on the basis of those bids, Heartland Bank, in consultation with the Joint Lead Managers, determines the Issue Margin and allocates the Notes.

"BPS Act" means the Banking (Prudential Supervision) Act 1989.

"Business Day" means:

- (a) for the purposes of giving notices, a day which is a business day within the meaning of the NZX Listing Rules; or
- (b) for all other purposes, a day that is not a Saturday or Sunday and on which banks are open for general business in Wellington and Auckland, New Zealand.

"Commencement of Liquidation" means the commencement of Liquidation of Heartland Bank.

"Companies Act" means the Companies Act 1993.

"Deed Poll" means the deed poll relating to the Notes made by Heartland Bank on or about the date of the LDD.

"Early Redemption Date" has the meaning given in clause 4.3(b).

"Early Redemption Notice" has the meaning given in clause 4.2.

"Equal Ranking Securities" means all securities which qualify as Tier 2 Capital or which rank or are expressed to rank equally with such securities in a Liquidation, present and future.

"Event of Default" has the meaning given in clause 5.1.

"Face Value" means the face value and denomination of the Notes as specified in clause 1.2.

"FATCA" means:

- (a) sections 1471 through 1474 of the United States Internal Revenue Code of 1986 or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an inter-governmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"First Optional Redemption Date" means the Scheduled Interest Payment Date falling five years after the Issue Date.

"Fixed Establishment" has the meaning given to that term in the Tax Act.

"Fixed Rate Period" means the period from the Issue Date to (and including) the First Optional Redemption Date.

"Floating Rate Period" means the period from (but excluding) the First Optional Redemption Date to (and including) the Maturity Date.

"Heartland Bank" means Heartland Bank Limited.

"Heartland Bank Details Notice" has the meaning given in clause 8.3.

"Heartland Bank Group" means "banking group" as defined in Heartland Bank's conditions of registration (as amended from time to time).

"Holder" means a person whose name is registered in the Register as the holder of a Note.

"Interest Payment Date" has the meaning given in clause 3.6 whether or not an interest payment is, or is able to be, paid on that date.

"Interest Rate" means:

- (a) in respect of an Interest Payment Date during the Fixed Rate Period, the rate determined in accordance with clause 3.2(a); and
- (b) in respect of an Interest Payment Date during the Floating Rate Period, the rate determined in accordance with clause 3.2(b).

"Issue Date" means the date on which Notes are issued.

"Issue Margin" means the rate (expressed as a percentage per annum) determined under the Bookbuild.

"Joint Lead Managers" means Bank of New Zealand, Craigs Investment Partners Limited, Forsyth Barr Limited and Westpac Banking Corporation (ABN 33 007 457 141) (acting through its New Zealand branch).

"Junior Ranking Securities" means:

- (a) all securities which qualify as Tier 1 Capital or which rank or are expressed to rank equally with such securities in a Liquidation, present and future; and
- (b) all securities (including ordinary and preference shares) which rank or are expressed to rank after the Notes and Equal Ranking Securities in a Liquidation, present and future.

"LDD" means the limited disclosure document for the offer of the Notes.

"Liquidation" means liquidation of Heartland Bank under:

- (a) section 241(5) or section 317 of the Companies Act; or
- (b) under any other legislation under which Heartland Bank will irrevocably cease to be duly incorporated or to validly exist in New Zealand.

"Maturity Date" means the Scheduled Interest Payment Date falling 10 years after the Issue Date.

"Meeting Provisions" means the provisions for the convening of meetings of, and passing of resolutions by, Holders set out in Schedule 2 of the Deed Poll.

"Minimum Holding" means Notes with an aggregate Face Value of \$5,000 and thereafter multiples of \$1,000.

"Minimum Interest Rate" means the rate (expressed as a percentage per annum) announced by Heartland Bank via NZX on or about the Opening Date.

"Note" has the meaning given in clause 1.1.

"NZX" means NZX Limited and includes any person or authority which may in the future assume and perform the functions of NZX Limited.

"NZX Debt Market" means the debt market operated from time to time by NZX.

"NZX Listing Rules" means the listing rules of NZX, as amended, varied or waived (whether in respect of Heartland Bank or generally) from time to time.

"Opening Date" means the date specified as such in the LDD.

"Optional Redemption Date" means the First Optional Redemption Date and each Scheduled Interest Payment Date thereafter.

"Outstanding Notes" has the meaning given in the Meeting Provisions.

"Proceedings" has the meaning given in clause 11.3.

"Rate Set Date" means the date specified as such in the LDD.

"RBNZ" means the Reserve Bank of New Zealand or any successor body responsible for prudential regulation of Heartland Bank in New Zealand.

"Record Date" means:

- (a) in the case of a payment of interest, the close of business on the date which is ten calendar days before the relevant Interest Payment Date; or
- (b) in the case of payment of any other amount, the close of business on such other date as is determined by Heartland Bank in its absolute discretion and notified to NZX,

or in either case such other date as may be required by NZX. If a Record Date is a day which is not a Business Day, then the Record Date will be the immediately preceding Business Day. For the purposes of determining the Record Date for an Interest Payment Date, the Business Day convention in clause 9.8 shall be disregarded.

"Redeem" means, in relation to a Note, redeem it in accordance with clause 4, and **"Redeemed"** and **"Redemption"** have corresponding meanings.

"Redemption Date":

- (a) in relation to a Redemption prior to the Maturity Date, the Early Redemption Date; and
- (b) in relation to a Redemption on the Maturity Date, the Maturity Date.

"Register" means a register of Holders of Notes established and maintained by or on behalf of Heartland Bank.

"Registrar" means, initially, Link Market Services Limited and thereafter such other person or persons resident in New Zealand as Heartland Bank may from time to time appoint to maintain the Register.

"Regulatory Event" means a determination by Heartland Bank that:

- (a) all, some or a proportion of all or some Notes are not or will not be treated as Tier 2 Capital of the Heartland Bank Group under RBNZ's prudential regulatory requirements (as amended from time to time); or
- (b) there has been, or there will be, any amendment to, clarification of, change in or to, change in the interpretation, application or administration of, or imposition of:
 - (i) any law, regulation or directive in New Zealand;
 - (ii) any official administrative pronouncement or action or judicial decision interpreting or applying any law, regulation or directive in New Zealand; or
 - (iii) any order, direction, standard, requirement (including any prudential regulatory requirement), guideline or statement of the RBNZ (whether or not having the force of law),

in each case that applies, or is to apply, after the Issue Date and, as a result, Heartland Bank is or will be adversely affected in relation to its regulatory capital treatment of the Notes, including:

- (A) additional requirements would be imposed on the eligibility of the Notes as Tier 2 Capital; or
- (B) there would be a negative impact on the eligibility of the Notes as Tier 2 Capital,

in each case, other than as a result of an event that Heartland Bank could reasonably have anticipated as at the Issue Date or as a result of an event which is minor.

"RWT-Exempt Status" has the meaning given to that term in the Tax Act.

"Scheduled Interest Payment Date" has the meaning given in clause 3.6(a).

"Senior Ranking Creditors" means all present and future creditors of Heartland Bank, including depositors, whose claims are:

- (a) entitled to be admitted in the Liquidation; and
- (b) not expressed to rank equally with, or subordinate to, the claims of a Holder or a holder of an Equal Ranking Security.

"Solvent" means satisfying the solvency test contained in section 4 of the Companies Act.

"Special Resolution" means either (i) a resolution passed at a meeting of Holders, properly convened and held in accordance with the Meeting Provisions, by at least 75% of the votes validly cast by Holders in person or by proxy on a poll or (ii) a resolution signed by Holders in accordance with clause 16 of the Meeting Provisions.

"Swap Rate" means:

- (a) the mid-market rate for an interest rate swap with a term of 5 years commencing on the Issue Date, as determined by the Arranger in consultation with Heartland Bank, according to market convention, with reference to Bloomberg page 'ICNZ4' (or any successor page) on the Rate Set Date; or
- (b) if a rate is unable to be determined in accordance with paragraph (a) above, or if Heartland Bank forms a view, on reasonable grounds, that the rate so determined is not an accurate reflection of market rates, the average of the mean bid and offered swap rates quoted by each of 3 leading banks (or such 1 or more of them as are quoting) selected by Heartland Bank on the Rate Set Date for an interest rate swap with a term of 5 years commencing on the Issue Date,

in each case expressed as a percentage per annum, adjusted for quarterly payments and rounded, if necessary, to the nearest 2 decimal places with 0.005% being rounded up.

"Tax" means any present or future tax, levy, impost, duty or charge of any nature that is imposed by any government or taxing authority, and **"Taxes"** has a corresponding meaning.

"Tax Act" means the Income Tax Act 2007.

"Tax Event" means a determination by Heartland Bank that:

- (a) there has been, or there will be, a change in New Zealand law, regulation, ruling or directive (including by way of the imposition of, or any change to, any New Zealand law, ruling or directive) that applies, or is to apply, after the Issue Date;
- (b) there has been, or there will be, a change in the application, interpretation or administration of any New Zealand law, regulation, ruling or directive by any authority (including the New Zealand Inland Revenue) that applies, or is to apply, after the Issue Date; or
- (c) Heartland Bank is or will be required to comply with any change in New Zealand law, regulation, ruling or directive or changed application, interpretation or administration that applies, or is to apply, after the Issue Date,

which directly or indirectly affects the taxation treatment in relation to the Notes, provided such event is not minor and which Heartland Bank could not reasonably have anticipated as at the Issue Date.

"Terms" means these terms and conditions of the Notes as set out in Schedule 1 of the Deed Poll.

"Tier 1 Capital" means the tier 1 capital of Heartland Bank as defined by the RBNZ from time to time.

"Tier 2 Capital" means the tier 2 capital of Heartland Bank as defined by the RBNZ from time to time.

"unclaimed money" has the meaning given in clause 9.4(a).

SCHEDULE 2

Meetings of Holders

1. DEFINITIONS

1.1 In these provisions:

"Appointed Time" means the day and time at which any meeting of Holders or the taking of a poll of Holders (not at a meeting of Holders) is due to be held.

"Outstanding Notes" means all Notes other than those that are Redeemed.

"Proxy Closing Time" means 48 hours before the Appointed Time of the relevant meeting of Holders or taking of a poll of Holders.

"regulation" means a clause of this Schedule.

"Representative" means:

- (a) in the case of an individual Holder, a person appointed by an instrument of proxy or by power of attorney or, in the event of the death of a Holder, the personal representative of that Holder; or
- (b) in the case of a Holder which is a corporation or corporation sole either:
 - (i) a person appointed by an instrument of proxy or by power of attorney; or
 - (ii) a person authorised by the directors of the corporation, or, in the case of a corporation sole, a person authorised pursuant to its constitution.

2. CONVENING

2.1 Meeting required by law

Heartland Bank shall, whenever required to do so pursuant to the Companies Act, the Financial Markets Conduct Act 2013, the NZX Listing Rules or any other applicable law, convene a meeting of the Holders.

2.2 By Holders

Heartland Bank shall, at the request in writing signed by Holders holding not less than 5% of the aggregate Face Value of the Outstanding Notes, convene a meeting of the Holders. The request must state the nature of the business proposed to be dealt with at the meeting concerned.

2.3 By Heartland Bank

Heartland Bank may at any time of its own volition convene a meeting of the Holders.

2.4 **Place of meeting**

Each meeting will be held in Auckland or at such other place or in such manner (including, but not limited to, use of video conferencing technology) as designated by Heartland Bank.

2.5 **Regulations**

Meetings of Holders shall be convened and held in accordance with the provisions of this Schedule or such supplemental rules or procedures for meetings, and/or variations to the rules and procedures applying to such meeting set out in this Schedule, as Heartland Bank may specify from time to time.

3. **NOTICE OF MEETINGS**

3.1 **Persons to be notified**

Notice of every meeting shall be given in the manner provided in clause 8 of the Terms to:

- (a) every Holder entered in the Register as at the close of business three Business Days prior to the date of the notice;
- (b) every personal representative or assignee in bankruptcy of any such Holder who, to the actual knowledge of Heartland Bank, is deceased or insolvent as the case may be; and
- (c) the Registrar.

3.2 **Time for notification**

Subject to regulations 3.4 and 4.5, at least 14 days' notice of every meeting will be given. The notice will be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.

3.3 **Contents of notice**

The notice will specify the place and Appointed Time of the meeting and the general nature of the business to be transacted. It will not be necessary to specify in the notice the terms of the resolutions to be proposed, except in the case of a resolution proposed to be passed as a Special Resolution in which case the text of the proposed resolution must be set out.

3.4 **Short or informal notice**

Notwithstanding any other provision of this regulation 3, a meeting may be called by shorter notice than that specified in regulation 3.2, or without any formal notice, and without compliance with regulation 3.3, and shall be deemed to have been duly called if it is so agreed by all Holders before, at or after that meeting.

3.5 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any person entitled to receive notice will not invalidate the proceedings at any meeting.

4. QUORUM

4.1 Quorum required

No business will be transacted at any meeting unless the requisite quorum is present at the commencement of business.

4.2 Quorum for Special Resolution

Subject to regulation 4.4, the quorum for passing a Special Resolution will be two or more Holders (present in person or by Representative) holding or representing at least 25% in Face Value of the Outstanding Notes. If there is only one Holder of the Outstanding Notes, that Holder (present in person or by Representative) will constitute the quorum for passing a Special Resolution.

4.3 Quorum for other business

Subject to regulation 4.4, the quorum for the transaction of any business other than the passing of a Special Resolution will be the Holder(s) present in person or by Representative holding or representing at least 10% in Face Value of the Outstanding Notes.

4.4 Quorum not present

If, within 15 minutes (or any longer time not exceeding 30 minutes as the chairperson of the meeting may decide) after the Appointed Time, a quorum is not present the meeting, if convened at the request of Holders, will be dissolved. In any other case it will be adjourned to a day and time (not being less than 7 days later but no more than 42 days later) and to a place as may be appointed by the chairperson of the meeting. At such adjourned meeting all the Holders present in person or by Representative will be a quorum for the transaction of business including the passing of Special Resolutions.

4.5 Notice of adjourned meeting

Notwithstanding regulation 3.1, notice of any such adjourned meeting of Holders shall be given to the same persons as those who were given notice of the original meeting and otherwise will be given in the same manner as for an original meeting (except that only three clear days' notice will be required) and such notice will state that the Holders present in person or by Representative at the adjourned meeting will form a quorum whatever the Face Value of the Outstanding Notes held by them.

4.6 Means of participation

To avoid doubt, a Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum if the form of that audio, audio and visual or electronic communication has been approved by the chairperson of the meeting.

5. CHAIRPERSON

At a meeting of Holders a person nominated by Heartland Bank shall preside as chairperson of the meeting. If no such person is nominated or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders or Representatives present shall appoint a person to be chairperson of the meeting. A

chairperson need not be a Holder. The chairperson of an adjourned meeting need not be the same person as was chairperson of the original meeting.

6. RIGHT TO ATTEND AND SPEAK

Any:

- (a) director, officer or solicitor, auditor or accountant of Heartland Bank;
- (b) person appropriately authorised by Heartland Bank;
- (c) Holder; or
- (d) the Registrar,

may attend any meeting and all such persons will have the right to speak at the meeting.

7. ADJOURNMENT

7.1 Chairperson may adjourn

The chairperson of the meeting may, with the consent of the meeting at which a quorum is present, and will, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

7.2 Business at adjourned meeting

No business will be transacted at any adjourned meeting except business which might have been lawfully transacted at the meeting from which the adjournment took place.

8. ONLY PERSONS ON REGISTER RECOGNISED BY HEARTLAND BANK

The persons named as Holders in the Register at the Proxy Closing Time will be recognised and treated as the legal owners of the Notes whether those persons are or are not in fact the beneficial owners of those Notes.

9. AUTHORITY TO VOTE

9.1 Voting

An individual Holder may vote personally or by his Representative and a Holder which is a corporation may vote by its Representative. A Holder may appoint more than one Representative, each such Representative being authorised to act on behalf of the Holder in respect of a specified Face Value of Notes.

9.2 Entitlement

The persons named in the Register as Holders at the Proxy Closing Time, or the Representative(s) or the personal representatives or assignees in bankruptcy of any such

Holder will be exclusively entitled to vote in person or by Representative in respect of the Notes recorded as owned by them.

10. PROXIES

10.1 In writing

The instrument appointing a proxy must be in writing signed by the appointer or his attorney or, if the appointer is a corporation, either by an authorised officer or attorney or by any director, general manager, investment manager or other person who appears to have authority to appoint a proxy on behalf of the corporation.

10.2 Proxy need not be Holder

A person appointed to act as a proxy need not be a Holder. A holder of a proxy will have the right to speak at the meeting.

10.3 Deposit of proxy

The instrument appointing a proxy, and, if applicable, the power of attorney or other authority under which it is signed or a copy of such power or authority certified by a solicitor or in any other manner approved by Heartland Bank (and a certificate of non-revocation of such power of attorney or authority), must be deposited at the place appointed by Heartland Bank in the notice convening the meeting (or, if no such place is appointed, then at the registered office of Heartland Bank) not later than the Proxy Closing Time. An instrument of proxy which is not so deposited will not be treated as valid unless Heartland Bank, in its absolute discretion, elects to accept any instrument of proxy notwithstanding that that instrument, or any power of attorney or other authority, is received or produced at a place other than that specified above or out of time.

10.4 Form of proxy

An instrument of proxy may be in any usual or common form or in any other form approved by Heartland Bank and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.

10.5 Proxy valid for meeting

An instrument of proxy, whether in a usual or common form or not, will, unless the contrary is stated thereon, not need to be witnessed and will be valid for the meeting to which it relates and for any adjournment of that meeting. Notwithstanding any provisions contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution notwithstanding any provision to the contrary in the instrument, but this provision will not be construed to apply to the appointment of an attorney or Representative otherwise than by an instrument of proxy. If the Holder gives the proxy discretion in any such instrument of proxy or does not make an election in respect of a resolution, the Holder will be deemed to be directing the proxy to vote in favour of the relevant resolution(s).

10.6 Proxy in favour of chairperson

An instrument of proxy in favour of:

- (a) the chairperson or chief executive officer of Heartland Bank; or
- (b) the chairperson of the meeting,

(however expressed) will be valid and effectual as though it were in favour of a named person and will, in the case of paragraph (a) above, constitute the person holding the office of the chairperson or chief executive officer of Heartland Bank or, in the case of paragraph (b) above, the person who chairs the meeting for which the proxy is used (whether on adjournment or not) the lawful proxy of the appointer.

11. HOLDER MAY APPOINT ATTORNEY

Any Holder may by power of attorney appoint an attorney (who need not be a Holder) to vote and act on his behalf at any meeting. An attorney will be entitled to produce evidence of his appointment at any time before the Appointed Time. An attorney who is so empowered may exercise the Holder's right to appoint a proxy.

12. CORPORATE REPRESENTATIVES

12.1 Authority

A Representative of a Holder which is a corporation or a corporation sole will, until his authority is revoked, be entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual Holder and will be entitled to produce evidence of his authority to act at any time before the Appointed Time of, or at, the meeting or adjourned meeting or for the taking of a poll at which the Representative proposes to vote.

12.2 Right to act

A Representative will have the right to demand or join in demanding a poll and will (except and to the extent to which the Representative is specially directed to vote for or against any proposal) have power generally to act at the meeting for the Holder concerned.

13. VOTING PROCEDURE AND POLLS

13.1 Show of hands

A resolution (other than a Special Resolution) put to the vote of a meeting will be decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by:

- (a) the chairperson of the meeting; or
- (b) Heartland Bank or any representative of Heartland Bank; or
- (c) one or more Holders holding or representing not less than 5% in aggregate Face Value of the Outstanding Notes.

A declaration by the chairperson of the meeting that a resolution has been carried by the requisite majority or lost will be conclusive evidence of that fact unless a poll is demanded.

13.2 **Number of votes**

- (a) On a show of hands each person present at the meeting and entitled to vote (whether personally or as a Representative) will have one vote only. On a poll every Holder who is present in person or by a Representative will have one vote for every \$1 of Face Value of the Outstanding Notes of which that person is the Holder as at the date of the meeting.
- (b) On a poll votes may be given either personally or by Representative and a person entitled to more than one vote need not use all their votes or cast all the votes they use in the same way.
- (c) Neither Heartland Bank nor any of Heartland Bank's subsidiaries shall be entitled to vote in relation to any Notes held by them and the Face Value of any Outstanding Notes held by them shall be disregarded for the purposes of determining the thresholds for convening meetings, quorums, demanding polls or passing resolutions under this Schedule.

13.3 **Poll**

If a poll is demanded or the resolution relates to a Special Resolution, a poll will be taken in the manner directed by the chairperson of the meeting and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded or required (in the case of a Special Resolution).

13.4 **Chairperson has no casting vote**

The chairperson of any meeting will not have a casting vote in addition to the votes (if any) to which the chairperson may be entitled as a Holder or on behalf of Holders.

13.5 **Election of chairperson**

A poll demanded on the election of a chairperson of the meeting or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken either immediately or at a time within 30 days from the date of the meeting and in a place appointed by the chairperson. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not taken immediately.

13.6 **No disturbance**

The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question in relation to which the poll has been demanded.

13.7 **Joint Holders**

In the case of joint Holders the vote of the most senior who tenders a vote whether in person or by Representative will be accepted to the exclusion of the vote of the other joint Holders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.

13.8 **Disqualification**

A vote given in accordance with the terms of an instrument of proxy or power of attorney or other authority will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or authority or the transfer of the Notes in respect of which the vote is given, provided that no written notice of such death, insanity, liquidation, revocation or transfer is received by Heartland Bank at its registered office before the commencement of the meeting or adjourned meeting at which the proxy, attorney or authority is used.

13.9 **Special Resolution**

A Special Resolution put to the vote of a meeting will be decided on a poll.

13.10 **Resolutions that are not Special Resolutions**

Unless it is a Special Resolution, a resolution will be passed at a meeting of the Holders duly convened and held in accordance with the provisions herein contained at which a majority of the persons voting thereat upon a show of hands or if a poll is duly demanded then a majority of the votes given on such a poll voted in favour of the resolution.

14. **SPECIAL RESOLUTIONS**

14.1 **Powers**

A meeting of Holders will, in addition to all other powers which by the Terms are specified as exercisable by Special Resolution, have the following powers exercisable by Special Resolution namely power to:

- (a) sanction either unconditionally or upon any conditions the release of Heartland Bank from the payment of all or any part of the monies payable pursuant to this deed or the Notes;
- (b) sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement relating to the rights of the Holders against Heartland Bank or its assets however those rights arise;
- (c) assent to any amendment to the Deed Poll or the Terms proposed or agreed to by Heartland Bank and to authorise Heartland Bank to execute any supplemental deed or other document or instrument embodying any such amendment;
- (d) give any sanction, assent, release or waiver of any breach or default by Heartland Bank under any of the provisions of the Deed Poll or the Terms;
- (e) sanction any scheme for the reconstruction of Heartland Bank or for the amalgamation of Heartland Bank with any other corporation where such sanction is required by law; and
- (f) authorise or direct Heartland Bank to execute any supplementary deed or other document or instrument embodying such sanction, authority or approval, assent, release, waiver, direction or request.

However, pursuant to clause 10.3 of the Terms, no amendment (including any modification, cancellation, alteration or addition) to the Deed Poll or the Terms (whether made by Special Resolution or otherwise) may be made or entered into unless Heartland Bank has given the RBNZ at least five Business Days' prior notice, accompanied by any information and supporting documentation required by the RBNZ's prudential regulatory requirements.

14.2 Binding on Holders

A Special Resolution passed by Holders in accordance with this Schedule will be binding upon all the Holders whether or not they were present or entitled to be present at the relevant meeting, or signed the relevant resolution pursuant to regulation 16, as the case may be, and all Holders will be bound to give effect to that resolution. The passing of any such resolution will, as between Heartland Bank and the Holders, be conclusive evidence that the circumstances justify the passing thereof. f

15. MINUTES TO BE KEPT

Minutes of all resolutions and proceedings at every meeting will be made by Heartland Bank or, if Heartland Bank is not present at the meeting, by a person appointed by the chairperson of the meeting. Any such minutes, if signed or apparently signed by the chairperson of the meeting at which a resolution was passed or proceedings had or by the chairperson of the next meeting of Holders, will be prima facie evidence of the matters recorded in those minutes. Until the contrary is proved every meeting in respect of which minutes have been made will be deemed to have been properly held and convened and all resolutions passed or proceedings had at that meeting to have been properly passed and had.

16. RESOLUTIONS IN WRITING

16.1 Special Resolution

Anything that may be done by Holders by a resolution or Special Resolution passed at a meeting of Holders may be done by a resolution in writing signed by:

- (a) in relation to a resolution other than a Special Resolution, Holders holding or representing (in aggregate) not less than 50% in Face Value of Outstanding Note; and
- (b) in relation to a Special Resolution, Holders holding or representing (in aggregate) not less than 75% in Face Value of Outstanding Notes.

16.2 Counterparts

Any such resolution may consist of several documents in similar form, each signed by one or more Holders. The resolution is passed when the last Holder signs the counterpart resolution (as evidenced by the appearance of the signature itself).

16.3 Accidental omission

The accidental omission to give a copy of the resolution to, or the non-receipt of the resolution by, any Holder will not invalidate a resolution in writing made in accordance with regulation 16.1.

16.4 **Execution**

Any such resolution may be signed by a Holder, or an agent or attorney of the Holder duly authorised in writing, or if the Holder is a company, by a director, or by an attorney so authorised by the company.