

Dated [Date]/[Month] 2024

Trust Deed

constituting

USD 50,000,000 in total nominal amount of Subordinated Secured Floating
Rate Social Notes Due [●] [●] 2028 (ISIN NO [●])

between

BAYPORT MANAGEMENT LTD

Issuer

Nordic Trustee & Agency AB (publ)

Trustee

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This Trust Deed is made on [●] 2024

Between:

- (1) **BAYPORT MANAGEMENT LTD** (the “**Issuer**”), a public listed company registered by continuation in Mauritius with company. no. 54787 GBC, having registered address at c/o Bellerive Corporate Management Services (Mauritius) Ltd, 3rd Floor, Ebene Skies, Rue de L’Institut, Ebene, Mauritius.
- (2) **NORDIC TRUSTEE & AGENCY AB (publ)** of Norrlandsgatan 16, SE-111 43 Stockholm, Sweden as trustee for the Holders (the “**Trustee**”, which expression, where the context so admits, includes any other trustee for the time being of this Trust Deed).

Whereas:

- (A) By a resolution of the board of directors of the Issuer passed on [●], the Issuer has resolved to issue USD50,000,000 in total nominal amount (the “**Total Nominal Amount**”) of subordinated secured floating rate social Notes due [●] [●] 2028 (ISIN NO[●]) (the “**Notes**”) to be constituted by this Trust Deed.
- (B) The Trustee has agreed to act as trustee of this Trust Deed for the benefit of the Holders on the following terms and conditions.
- (C) The Notes will be issued in accordance with the relevant securities legislation and the Notes will be issued on the Issue Date into and cleared in the system operated by Euronext Securities Oslo (“**ES-OSL**”), also known as Verdipapirsentralen ASA, the Norwegian Central Securities Depository and Clearinghouse. The Notes will be in uncertified and dematerialised registered form.

This deed witnesses and it is declared as follows:

1. Interpretation

1.1 Definitions

In this Trust Deed the following expressions have the following meanings:

“**Account Operator**” means Nordic Trustee Services AS

“**Agency Agreement**” means the account operator agreement dated on or about the date hereof and made between the Issuer, and the Account Operator in its capacity, amongst others, as Paying Agent, as amended from time to time, and includes any other agreements appointing successor Paying Agents or amending any such agreements;

“**Appointee**” has the meaning given to it in Clause 9.12 (*Appointees*);

“**Authorised Signatory**” means in relation to any body corporate, a person who is duly empowered to bind such body corporate in relation to the relevant document(s) and, if necessary under the law of the country of incorporation of such body corporate to ensure that such person is duly authorised, whose authority is evidenced by a resolution or an approval and authorisation of the Directors of such body corporate who (i) is a Director of the Issuer or (ii) has been notified by the Issuer in writing to the Trustee as being duly authorised to sign documents and to do other acts and things on behalf of the Issuer for the purposes of this Trust Deed;

“**Business Day**” has the meaning given in the Conditions;

“**Common Terms Agreement**” has the meaning given in the Conditions;

“**Conditions**” means, the terms and conditions of the Notes and which are set out in Schedule 1 (*Terms and Conditions of the Notes*) as modified from time to time in accordance with this Trust Deed. Any reference to a particularly numbered clause in the Conditions shall be construed accordingly;

“**CSD Register**” means the register in which the Notes are registered, maintained by the CSD, in accordance with the CSD Regulations;

“**Default**” means an event or circumstance which could with any one or more of the giving of notice, lapse of time, issue of a certificate or fulfilment of any other requirement provided for in clause 13 (*Events of Default*) of the Common Terms Agreement become an Event of Default in accordance with clause 18 (*Events of Default*) of the Conditions;

“**Finance Party**” has the meaning given in the Common Terms Agreement;

“**Liability**” means any loss, damage, costs, charge, claim, demand, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation, in respect of taxes, duties, levies, imposts and other charges) and including any value added tax or similar tax charged or chargeable in respect thereof and legal fees and expenses on full indemnity basis;

“**Outstanding**” means, in relation to the Notes, all Notes issued except (a) those which have been redeemed in accordance with the Conditions and this Trust Deed, (b) those in respect of which the date for redemption in accordance with the Conditions has occurred and the redemption moneys (including all interest accrued on such Notes to the date for such redemption and any interest payable under the Conditions and this Trust Deed after such date) have been duly paid to the Paying Agent as provided in Clause 2 (*Amount of the Notes and Covenant to Pay*) and remain available for payment in accordance with the Conditions and (c) those which have become void under clause 28 (*Prescription*) of the Conditions, provided that for the purposes of (1) ascertaining the right to attend and vote at any meeting of the Holders or in respect of any Written Procedure, (2) the determination of how many and which Notes are outstanding for the purposes of clause 18.1 (*Events of Default*), clause 20 (*Decisions by Holders*), clause 21 (*Holdings Meeting*), clause 22 (*Written Procedure*) and clause 23 (*Amendments and Waivers*) of the Conditions, (3) the exercise of any discretion, power or authority (whether contained in this Trust Deed or vested by operation of law) which the Trustee is required, expressly or impliedly, to exercise in or by reference to the interests of the Holders and (4) the determination (where relevant) by the Trustee as to whether a Default or any other event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the Holders, those Notes (if any) which are for the time being beneficially held by or on behalf of the Issuer or any of its Subsidiaries and not cancelled shall be deemed not to remain outstanding;

“**Phase 1 Shared Transaction Security**” has the meaning given in the Intercreditor Agreement;

“**Phase 1 Super Senior and Senior Secured Creditor Only Transaction Security**” has the meaning given in the Intercreditor Agreement;

“**Phase 2 Shared Transaction Security**” has the meaning given in the Intercreditor Agreement;

“**Phase 2 Super Senior and Senior Secured Creditor Only Transaction Security**” has the meaning given in the Intercreditor Agreement;

“**Shared Secured Obligations**” has the meaning given in the Intercreditor Agreement;

“**Shared Secured Parties**” has the meaning given in the Intercreditor Agreement;

“**Super Senior and Senior Secured Creditor Only Secured Parties**” has the meaning given in the Intercreditor Agreement; and

“**Trustee Fee Letter**” has the meaning given in the Conditions.

Terms defined in the Conditions have the same meanings where used in this Trust Deed unless separately defined herein.

1.2 Construction of Certain References

- (a) References to:
- (i) costs, charges, remuneration or expenses include any value added, turnover or similar tax charged in respect thereof;
 - (ii) all references in this Trust Deed to “dollars” and “USD” shall be construed as references to the lawful currency for the time being of the United States of America;
 - (iii) principal and/or interest in respect of the Notes or to any moneys payable by the Issuer under this Trust Deed shall be deemed to include a reference to any additional amounts which may be payable under clause 2 (*The Amount of the Notes and Undertaking to make Payments*) of the Conditions;
 - (iv) any action, remedy or method of proceeding for the enforcement of the rights of creditors shall be deemed to include, in respect of any jurisdiction other than England, references to such action, remedy or method of proceeding for the enforcement of the rights of creditors available or appropriate in such jurisdictions as shall most nearly approximate to such action, remedy or method of proceeding described or referred to in this Trust Deed;
 - (v) a treaty, statute, statutory provision, directive of the Council of the European Union (whether issued jointly with any other person or under any other name) or other legislation includes:
 - (A) any order, regulation, instrument or other subordinate legislation made under it; and
 - (B) except where the contrary is stated or the context otherwise requires, any amendment, extension, consolidation, re-enactment or replacement of it, for the time being in force;
 - (vi) a meeting in this Trust Deed are to a Holders’ Meeting or by way of a Written Procedure and include, unless the context otherwise requires, any adjournment;
 - (vii) any document, agreement or deed shall be deemed to refer to such document, agreement or deed as it may be amended, supplemented or novated from time to time;
 - (viii) a trust corporation denotes a corporation entitled by rules made under the Public Trustee Act 1906 to act as a custodian, trustee or entitled pursuant to any other legislation applicable to a trustee in any jurisdiction other than England to act as trustee and carry on trust business under the laws of the country of its incorporation; and
 - (ix) words denoting the masculine gender shall include the feminine gender also, words denoting individuals shall include companies, corporations and partnerships and words importing the singular number only shall include the plural and in each case vice versa.

- (b) Unless the context otherwise requires words or expressions used in this Trust Deed shall bear the same meaning as in the Companies Act 2006 of England and Wales.
- (c) The Notes, this Trust Deed (including the Conditions) and the rights and obligations of the parties created by the Notes and this Trust Deed and of the Holders are subject to the terms and conditions of the Intercreditor Agreement and the Issuer, the Trustee and the Holders will benefit from the rights and be bound by the obligations set out in the Intercreditor Agreement. To the extent that any term of the Intercreditor Agreement is inconsistent with the Notes and this Trust Deed (including the Conditions), the terms of the Intercreditor Agreement will prevail. The parties agree that the benefit of this paragraph (c) may be relied upon and be enforced by the Security Agent and the Priority Creditors acting through agents or trustees where applicable and as such the Contracts (Rights of Third Parties) Act 1999 applies to this paragraph (c).
- (d) Except as expressly provided otherwise herein, where under this Trust Deed the Trustee is entitled or required to exercise any of its powers, trust, authorities, duties and discretions pursuant to this Trust Deed, the Conditions or the other Subordinated Notes Finance Documents, such exercise will be subject to the provisions of the Intercreditor Agreement to the extent that such provisions are applicable.

1.3 Headings

Headings shall be ignored in construing this Trust Deed.

1.4 Schedules

The Schedules are an integral part of this Trust Deed.

1.5 Statutes

Any reference in this Trust Deed to a statute or statutory provision shall, unless the contrary is indicated, be construed as a reference to such statute or statutory provision as the same shall have been or may be amended or re-enacted.

1.6 Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Trust Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Trust Deed except and to the extent (if any) that this Trust Deed expressly provides for such Act to apply to any of its terms.

2. Amount of the Notes and Covenant to Pay

2.1 Amount of the Notes

The aggregate principal amount of the Notes is limited to USD 50,000,000. The Notes are constituted by this Trust Deed.

2.2 Covenant to Pay

- (a) **Principal:** The Issuer shall on any date when any Notes become due to be redeemed, unconditionally pay or procure to be paid to or to the order of the Trustee and/or the Paying Agent in U.S. Dollars in same day immediately available, freely transferable and cleared funds the principal amount of the Notes becoming due for redemption on that date in each case in accordance with the Conditions and this Trust Deed.
- (b) **Interest:** The Issuer shall (subject to the Conditions), until such payment (both before and after judgment), unconditionally so pay to or to the order of the Trustee and/or the

Paying Agent interest on the principal amount of the Notes outstanding as set out in the Conditions.

Provided that (1) payment of any sum due in respect of the Notes made to the Paying Agent as provided in the Agency Agreement shall, satisfy such obligation except to the extent that there is a failure in the subsequent payment thereof in accordance with the Conditions to the Holders and (2) a payment made after the due date or pursuant to clause 18 (*Events of Default*) of the Conditions shall be deemed to have been made when the full amount due has been received by the Paying Agent or the Trustee. The Trustee hereby declares that it will hold the benefit of this covenant and its proceeds on trust for itself and the Holders. The rights, powers and discretions of the Trustee conferred on it by this Trust Deed shall be subject to, and exercisable in accordance with (to the extent applicable) the terms of the Intercreditor Agreement

2.3 Payments in respect of the Notes.

- (a) Payments by the Issuer shall be made to such accounts as specified by the Trustee and/or the Paying Agent in advance of each Payment Date in accordance with the Agency Agreement or when other payments are due and payable pursuant to the Conditions in accordance with the Agency Agreement.
- (b) Notwithstanding anything to the contrary in the Conditions, the Notes shall be subject to, and any payment made in relation thereto shall be made in accordance with, the rules and procedures of the CSD and the Agency Agreement.
- (c) All amounts payable under the Conditions shall be payable in dollars. If, however, the denomination differs from the currency of the bank account connected to the Holder's account in the CSD, any cash settlement may be exchanged and credited to this bank account.
- (d) Any specific payment instructions, including foreign exchange bank account details, to be connected to the Holder's account in the CSD must be provided by the relevant Holder to the Paying Agent (either directly or through its Account Operator in the CSD) within five (5) Business Days prior to a Payment Date. Depending on any currency exchange settlement agreements between each Holder's bank and the Paying Agent, and opening hours of the receiving bank, cash settlement may be delayed, and payment shall be deemed to have been made once the cash settlement has taken place, provided, however, that no default interest or other penalty shall accrue for the account of the Issuer for such delay.
- (e) Payment constituting good discharge of the Issuer's payment obligations to the Holders under the Conditions will be deemed to have been made to each Holder once the amount due has been credited to the bank holding the bank account nominated by the Holder in connection with its Securities Account in the CSD. If the paying bank and the receiving bank are the same, payment shall be deemed to have been made once the amount has been credited to the bank account nominated by the Holder in question.
- (f) If a Payment Date or a date for other payments to the Holders pursuant to the Conditions falls on a day which is not a CSD Business Day, the payment shall be made on the first following possible day which is a CSD Business Day, unless any provision to the contrary has been set out for such payment in the Conditions.
- (g) If, due to any obstacle for the CSD, the Issuer cannot make a payment or repayment, such payment or repayment may be postponed until the obstacle has been removed. Interest shall accrue in accordance with clause 10.4 (*Interest*) of the Conditions during such postponement.
- (h) If payment or repayment is made in accordance with this clause and/or clause 9 (*Payments in respect of the Notes*) of the Conditions, the Issuer and the CSD shall be

deemed to have fulfilled their obligation to pay, irrespective of whether such payment was made to a Person not entitled to receive such amount, unless the Issuer or the CSD (as applicable) was aware of that the payment was being made to a Person not entitled to receive such amount.

2.4 Enforcement

- (a) Subject to the terms of the Intercreditor Agreement, this Trust Deed and the Conditions, the Trustee may at any time, at its discretion and without notice, institute such proceedings and/or other steps as it thinks fit against or in relation to the Issuer to enforce its and the Holders rights under the Trust Deed, the Conditions and the Intercreditor Agreement, but it shall not be bound to do unless, subject always to clause 18 (*Events of Default*) of the Conditions.
 - (i) it has been instructed to do so in writing by the requisite percentage of Holders as set out in the Conditions; and
 - (ii) it has been indemnified and/ or secured and/ or prefunded to its satisfaction against all Liabilities to which it may render itself liable or which it may incur by so doing.
- (b) No Holder shall be entitled to make a request of the Security Agent or proceed directly against the Issuer or a Subsidiary to enforce the provisions of this Trust Deed or any other Subordinated Notes Finance Document or initiate, support or procure the winding-up, dissolution, liquidation, company reorganisation or bankruptcy (or its equivalent in any other jurisdiction) of the Issuer or in relation to any of the liabilities of the Issuer under the Subordinated Notes Finance Documents, unless the Trustee, having become bound so to proceed in accordance with paragraph (a) above, fails to do so within a reasonable time and such failure is continuing or a Holder is otherwise permitted in accordance with clause 27 (*No Direct Actions by Holders*) of the Conditions.
- (c) If the Trustee requests the Security Agent to make any claim in respect of, or lodges any proof in a winding-up or insolvency in respect of the Issuer, or institutes any proceedings to enforce any obligation under this Trust Deed or in respect of the Notes, proof therein that, as regards any specified Note, default has been made in paying any amount in respect of principal or interest due to the relevant Holder shall (unless the contrary is proved) be sufficient evidence that default has been made as regards all other Notes in respect of which a corresponding payment is then due. For the purposes of this provision, a payment shall be a "corresponding" payment notwithstanding that it is due in respect of a Note of a different denomination from that in respect of the above specified Note.
- (d) The Trustee shall not be deemed to be responsible for the consequences having acted in good faith upon any such instruction as set out in Clause 2.4(a) (*Enforcement*) herein.

3. Security

3.1 Security Interest

Subject to the terms of the Intercreditor Agreement, the obligations of the Issuer under the Notes and the Subordinated Notes Finance Documents shall be secured in favour of the Security Agent (for itself and the other Shared Secured Parties) by the Phase 1 Shared Transactions Security and the Phase 2 Shared Transaction Security pursuant to the terms of the applicable Transaction Security Documents set out in Parts 2 and 4 respectively of Schedule 2 (Transaction Security Documents) to the Common Terms Agreement.

3.2 Appointment of Security Agent

By subscribing for, or otherwise acquiring Notes, each Holder acknowledges and agrees to the appointment of and the rights, powers, duties and exclusion and limitations of liability of the Security Agent pursuant to the terms of the Intercreditor Agreement.

3.3 Release of Security

- (a) Subject to paragraph (b) below, the Security Agent shall be entitled to retain the Shared Transaction Security (for the benefit of itself and the other Shared Secured Parties (as applicable) until the date on which the Shared Secured Obligations have been unconditionally performed or paid and discharged in full in accordance with the Debt Documents.
- (b) The Security Agent may only release the Transaction Security prior to the relevant discharge date in accordance with the Debt Documents and to enable the Obligors to comply with their obligations under the Debt Documents.

3.4 Enforcement of Transaction Security

- (a) The Transaction Security shall become enforceable in accordance with the terms of the Conditions and the Security Documents and shall be enforced solely through the Security Agent in accordance with the terms of the Intercreditor Agreement.
- (b) The Security Agent's receipt for any moneys paid to it shall discharge the person paying them and such person shall not be responsible for their application.
- (c) The proceeds of enforcement received by the Security Agent shall be applied by it in accordance with the terms of the Intercreditor Agreement.

4. Form of the Notes

- 4.1** The Issuer constitutes the Notes by this Trust Deed with effect from and including the Issue Date. The aggregate Total Nominal Amount of the Notes on Issuance will be USD [●].
- 4.2** The Notes shall be issued in uncertificated, dematerialised and registered form in accordance with the relevant securities legislation and the requirements of the CSD under the CSD Regulations and held in the Norwegian VPS System for dematerialised securities maintained by the CSD pursuant to the CSD Regulations. No global or definitive instruments will be issued in respect thereof.
- 4.3** The Notes are freely transferable but the Holders may be subject to purchase or transfer restrictions with regard to the Notes, as applicable from time to time under local laws to which a Holder may be subject (due to, amongst other things, its nationality, residency, registered address or place(s) of business).
- 4.4** The Notes will be registered in accordance with the relevant securities legislation and the requirements of the CSD under the CSD Regulations and title to the Notes shall pass by a book-entry of the Notes, into (i) a Securities Account held by an owner of the Notes who is directly registered with the CSD, or (ii) a Securities Account maintained by a nominee in whose Securities Account registered with the CSD the owners' Notes will be held.
- 4.5** So long as any Note remains outstanding, the Issuer covenants with the Trustee (acting for itself and on behalf of the Noteholders) that it will comply with, perform and observe the terms of this Trust Deed, the Notes, the Conditions, and the other Finance Documents to which it is a party. The Conditions shall be binding on the Issuer and the Noteholders. The Trustee shall be entitled to enforce the obligations of the Issuer under the Notes as if the same were set out and contained in this Trust Deed constituting the same, which shall be read and construed as one

document with the Notes. The Trustee will hold the benefit of this covenant upon trust for itself and the Noteholders.

5. Stamp Duties and Taxes

5.1 Stamp Duties

The Issuer shall pay any stamp, duty and other public fees accruing in connection with the Note Issue but not in respect of trading in the secondary market (except to the extent required by applicable law), and within five Business Days of demand, indemnify the Trustee and each other Finance Party against any cost, loss or liability that any such Finance Party incurs in relation to all stamp duty, registration and other similar taxes payable in respect of any Subordinated Notes Finance Document.

5.2 Withholding Tax

The Issuer shall deduct at source any applicable withholding tax payable pursuant to law and shall be liable to gross-up any payments of Interest under this Trust Deed and the Conditions in accordance with the clause 11 (*Tax Gross-up and Indemnities*) of the Common Terms Agreement.

6. Application of Moneys Received by the Trustee

All monies received by the Trustee in respect of the Notes or amounts payable in respect of the Notes under this Trust Deed will, notwithstanding any appropriation of all or part of them by the Issuer, be held by the Trustee on trust and shall, subject to the provisions of the Intercreditor Agreement, be applied in accordance with clause 19 (*Distribution of Proceeds*) of the Conditions subject to the provisions of the Intercreditor Agreement.

7. Covenants

So long as any Note is outstanding, the Issuer covenants with the Trustee that it shall:

7.1 Compliance

Observe and comply with the covenants contained in the Conditions and the Trustee Fee Letter and all provisions of this Trust Deed which are expressed to be binding upon it. The Trustee will hold the benefit of this covenant upon trust for itself and the Holders according to its and their respective interests.

7.2 Notice of Events of Default

Notify the Trustee in writing promptly upon it becoming aware of the occurrence of any Default (unless it is aware that a notification has already been provided by another Obligor (as defined by the Common Terms Agreement)).

7.3 Compliance Certificate

So far as permitted by law, deliver to the Trustee a Compliance Certificate (as defined in the Common Terms Agreement) in accordance with clause 10.2 (*Provisions and contents of Compliance Certificate*) of the Common Terms Agreement.

7.4 Notices to Holders

Send to the Trustee at least five days in advance of the proposed publication date the form of each notice to be given to Holders in accordance with the Conditions and once given, a copy of each such notice, such notice to be in a form approved by the Trustee.

7.5 Further Acts

So far as permitted by law, at all times execute all such further documents and do all such further acts and things as may be necessary at any time or times in the opinion of the Trustee to give effect to the terms and conditions of this Trust Deed.

7.6 Access to information

Ensure that:

- (a) the latest version of the Conditions (including any document amending these Conditions) shall be available on the website of the Issuer currently located at <https://www.bayportfinance.com/recapitalisation-transaction-usd-nordic-bond-terms/>; and
- (b) it shall provide to the Trustee the latest versions of the Subordinated Notes Finance Documents from time to time so as to enable the Trustee to make them available to the Holders at the office of the Trustee during normal business hours.

8. Remuneration and Indemnification of the Trustee

8.1 Remuneration

The Issuer shall pay to the Trustee remuneration for its services as trustee as from the date of this Trust Deed, in accordance with the Trustee Fee Letter.

8.2 Prior Notification of Costs, Charges and Expenses

The Trustee shall wherever practicable give prior notice to the Issuer of any costs, charges and expenses properly to be incurred and of payments to be made by the Trustee in the lawful exercise of its functions under this Trust Deed so as to afford the Issuer the reasonable opportunity of meeting such costs, charges and expenses itself or of itself putting the Trustee in funds to make payment of such costs, charges and expenses. However, failure by the Trustee to give any such prior notice shall not prejudice its rights to reimbursement of such costs, charges and expenses by the Issuer under this Clause 8 (*Remuneration and Indemnification of the Trustee*).

8.3 Indemnity

Without prejudice to the right of indemnity by law given to trustees, the Issuer shall indemnify the Trustee in accordance with clause 24.1.4 (*Appointment and Replacement of the Trustee*) of the Conditions. The Contracts (Rights of Third Parties) Act 1999 applies to this Clause 8.3 (*Indemnity*).

9. Provisions Supplemental to the Trustee Act 1925 and the Trustee Act 2000

By way of supplement to the Trustee Act 1925 and the Trustee Act 2000, it is expressly declared as follows.

9.1 Advice

The Trustee may in relation to this Trust Deed or any other Subordinated Notes Finance Documents act on (or not act on) the opinion or advice of, or a certificate or information obtained from, any expert, auditor, lawyer, banker, valuer, surveyor, broker, auctioneer or any other professional entity whether or not addressed to the Trustee or otherwise and whether or not the liability of such expert is limited by a monetary cap or otherwise and shall not be responsible to anyone for any loss occasioned by so acting (or not acting). Any such opinion, advice or information may be sent or obtained by letter or email and the Trustee shall not be

liable to anyone for acting (or not acting) in good faith on any opinion, advice or information purporting to be conveyed by such means even if it contains some error or is not authentic. All costs properly incurred by the Trustee relating to obtaining advice, opinion or information in relation to this Trust Deed shall be reimbursed by the Issuer as fees incurred by the Trustee.

9.2 Legal Opinions

The Trustee shall have no responsibility to Holders or any other person if it fails to request, require or receive any legal opinion or any search, report, certificate, advice, valuation, investigation or information relating to the Notes or for checking or commenting upon the content of any such legal opinion, search, report, certificate, advice, valuation, investigation or information relating to the Notes and shall not be responsible for any Liability incurred thereby.

9.3 Trustee to Assume Performance

The Trustee need not notify anyone of the execution of this Trust Deed or do anything to find out if a Default or Event of Default has occurred. Until it has actual knowledge or express notice to the contrary, the Trustee may assume that no such Default or Event of Default has occurred and that the Issuer is performing and observing all its obligations, covenants and provisions under this Trust Deed and the Notes and that no event has occurred as a consequence of which any of the Notes may have become repayable.

9.4 Resolutions of Holders

The Trustee shall not be responsible or liable to any person by reason of having acted in good faith upon any decision by Holders on a matter relating to this Trust Deed and/or the Notes by way of Holders' Meeting or Written Procedure or any other resolution purporting to have been passed at a meeting of Holders in respect of which minutes have been made and signed or any direction of the Holders even if it is later found that there was a defect in the constitution of the meeting or the passing of the resolution or that the resolution was not valid or binding on the Holders.

9.5 Certificate Signed by Authorised Signatories

If the Trustee, in the exercise of its functions, requires to be satisfied or to have information as to any fact or the expediency of any act, it may call for, rely on and accept as sufficient evidence of that fact or the expediency of that act a certificate signed by any Authorised Signatory of the Issuer or any other person duly authorised on their behalf as to that fact or to the effect that, in their opinion, that act is expedient and the Trustee need not call for further evidence and shall not be responsible for failing to do so or for any Liability that may be occasioned by it or any other person acting on such a certificate.

9.6 Reliance on Certification of Clearing System

The Trustee may call for and shall be at liberty to accept and place full reliance on as sufficient evidence thereof and shall not be liable to the Issuer or any Holder by reason only of either having accepted as valid or not having rejected an original certificate or letter of confirmation purporting to be signed on behalf of the CSD or any other relevant clearing system and subsequently found to be forged or not authentic and any such certificate or other document may comprise any form of statement or print out of electronic records including information from the CSD Register provided by the CSD in accordance with its usual procedures and in which the holder of a particular nominal amount of the Notes is clearly identified together with the amount of such holding.

9.7 Holders as a Class

Whenever in this Trust Deed the Trustee is required to have regard to the interests of the Holders in connection with any exercise of its powers, trusts, authorities or discretions under this Trust

Deed (including, without limitation, any modification, waiver, authorisation or determination), it shall have regard to the interests of the Holders as a class and in particular, but without prejudice to the generality of the foregoing, shall not be obliged to have regard to the consequences of such exercise for any individual Holder (whatever their number), including resulting from his or its being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political sub-division thereof. The Trustee shall not be entitled to require, nor shall any Holder be entitled to claim, from the Issuer, the Trustee or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual Holders except to the extent provided in clause 2 (*The Amount of the Notes and Undertaking to make Payments*) of the Conditions which, for the avoidance of doubt, shall only be an obligation of the Issuer and shall not in any circumstances be an obligation of the Trustee. For the purpose of determining whether or not any such exercise is materially prejudicial to the interests of the Holders, the Trustee shall be entitled to consider all such matters, information or documentation delivered in respect thereof (whether addressed to the Trustee or otherwise) as the Trustee deems appropriate (subject to the provisions of Clause 10 (*Trustee Liable for Negligence*)).

9.8 Trustee not Responsible for Investigations

The Trustee shall not be responsible for investigating any matter which is the subject of any recital, statement, representation, warranty or covenant of any person contained in this Trust Deed, the Notes, or any other agreement or document relating to the transactions herein or therein contemplated or for the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence thereof. Without limitation to the generality of the foregoing, each Holder shall be responsible for making its own independent appraisal of and investigation into the financial condition, creditworthiness, condition, affairs, status and nature of the Issuer and the Trustee shall not at any time have any responsibility for the same and no Holder shall rely on the Trustee in respect thereof. In addition, the Trustee shall not be responsible for the effect of the exercise of any of its powers, duties and discretions hereunder.

9.9 No Obligation to Monitor

The Trustee shall be under no obligation to monitor or supervise the functions of any other person under this Trust Deed, the Notes or any other agreement or document relating to the transactions herein or therein contemplated and shall be entitled, in the absence of actual knowledge of a breach of obligation, to assume that each such person is properly performing and complying with its obligations.

9.10 Deposit of Documents

The Trustee may appoint as custodian, on any terms, any bank or entity whose business includes the safe custody of documents or any lawyer or firm of lawyers believed by it to be of good repute and may deposit this Trust Deed and any other Subordinated Notes Finance Documents with such custodian and pay all sums due in respect thereof. The Trustee is not obliged to appoint a custodian of securities payable to bearer. The Trustee shall not be responsible for or required to insure against any Liability incurred in connection with any such deposit by reason of the misconduct, omission or default on the part of any person appointed by it hereunder or be bound to supervise the proceedings or acts of such person.

9.11 Discretion

Subject to Clause 10 (*Trustee Liable for Negligence*) and the terms of the Intercreditor Agreement the Trustee shall have absolute and uncontrolled discretion as to the exercise or non-exercise of the trusts, powers, authorities and discretions vested in it by this Trust Deed (the exercise or non-exercise of which as between the Trustee and the Holders shall be conclusive and binding on the Holders) or by operation of law and shall not be responsible for any Liability which may result from their exercise or non-exercise and in particular the Trustee shall not be

bound to act at the request or direction of the Holders or otherwise under any provision of this Trust Deed or to take as such request or direction or otherwise any other action under any provision of this Trust Deed unless it shall first be indemnified to its satisfaction against all Liabilities against all Liabilities to which it may render itself liable or which it may incur by so doing.

9.12 Appointees

- (a) Whenever it considers it expedient in the interests of the Holders, the Trustee may, in the conduct of its trust business, instead of acting personally, employ and pay an agent selected by it, whether or not a lawyer or other professional person, to transact or conduct, or concur in transacting or conducting, any business and to do or concur in doing all acts required to be done in connection with this Trust Deed (including the receipt and payment of money).
- (b) If the Trustee exercises due care in selecting any attorney manager custodian, agent, delegate, co-trustee or nominee appointed under this Trust Deed (an “**Appointee**”) it shall not have any obligation to supervise the proceedings or acts of any such Appointee or be responsible for any Liability incurred by reason of the Appointee’s misconduct or default or the misconduct or default of any substitute appointed by the Appointee.

9.13 Delegation

Whenever it considers it expedient in the interests of the Holders, the Trustee may delegate to any person on any terms (including power to sub-delegate) all or any of its functions/powers, trusts, authorities and discretions vested in the Trustee hereby and any such delegation may be by power of attorney or in such other manner as the Trustee may think fit and subject to such regulation as the Trustee may think fit. The Trustee shall exercise due care in its appointment of any delegate on the terms of this Clause 9.13 (*Delegation*).

9.14 Nominees

In relation to any asset held by it under this Trust Deed, the Trustee may appoint any person to act as its nominee on any terms in relation to such assets of the trusts constituted by this Trust Deed as the Trustee may determine. The Trustee shall not be responsible for any Liability incurred by reason of the misconduct, omission or default on the part of any person appointed by it hereunder or be bound to supervise the proceedings or acts of such person.

9.15 Forged Entry on the CSD Register

The Trustee shall not be liable to any person by reason of having accepted as valid or not having rejected any entry on the CSD Register purporting to be such and later found to be forged or not authentic and can assume for all purposes in relation hereto that any entry on the CSD Register is correct.

9.16 Confidentiality

Unless ordered to do so by a court of competent jurisdiction or duly authorised governmental authority the Trustee shall not be required to disclose to any Holder any confidential financial or other information made available to the Trustee by the Issuer in connection with this Trust Deed and no Holder shall be entitled to take any action to obtain from the Trustee any such information. Notwithstanding the foregoing, the Trustee may disclose to any and all persons, without limitation of any kind, any and all information relating to the tax treatment and tax structure of the Issuer obtained in connection with the services rendered hereunder and all materials of any kind (including opinions and tax analyses) relation to such tax treatment and tax structure. However, any such disclosure of the tax treatment, tax structure and other tax-related materials shall not be made for the purpose of offering to sell any securities issued by the Issuer or soliciting an offer to purchase any such securities.

9.17 Determinations Conclusive

Except as specifically provided in this Trust Deed, as between itself and the Holders, the Trustee may determine all questions and doubts arising in relation to any of the provisions of this Trust Deed or any other Subordinated Notes Finance Document. Such determinations, whether made upon such a question actually raised or implied in the acts or proceedings of the Trustee, shall be conclusive and shall bind the Trustee and the Holders.

9.18 Currency Conversion

Where it is necessary or desirable for any purpose in connection with this Trust Deed to convert any sum from one currency to another, it shall (unless otherwise provided hereby or required by law) be converted at such rate or rates, in accordance with such method and as at such date as may reasonably be specified by the Trustee in its sole discretion but having regard to current rates of exchange, if available. Any rate, method and date so specified shall be binding on the Issuer and the Holders.

9.19 Events of Default

The Trustee may determine whether or not a Default or Event of Default is, in its opinion, capable of remedy and/or materially prejudicial to the interests of the Holders. Any such determination shall be conclusive and binding on the Issuer and the Holders.

9.20 Proceeds of Notes

The Trustee shall not be responsible for the receipt or application by the Issuer of the proceeds of the issue of the Notes.

9.21 Notes Held by the Issuer, Etc.

In the absence of written notice to the contrary, the Trustee may assume without enquiry that no Notes are for the time being held by or on behalf of the Issuer or its Subsidiaries.

9.22 Reliance

The Trustee may rely on any notice, certificate or other communication reasonably believed by it to be genuine and to have been sent or signed by the proper parties and shall not be liable for so doing.

9.23 Indemnity

Notwithstanding anything else herein contained, the Trustee may refrain from taking any action or exercising any right, power, authority or discretion vested in it under this Trust Deed or any other agreement relating to the transactions herein or therein contemplated (whether at the request or direction of the Issuer or the Holders) unless and until it has been indemnified and/or secured and/or prefunded to its satisfaction against any and all Liabilities which might be brought, made or conferred against or suffered, incurred or sustained by it as a result of it taking any action or exercising any right, power, authority or discretion.

9.24 Action Contrary to any Law

Notwithstanding anything else herein contained, the Trustee may refrain from doing anything (a) that would or might in its opinion be contrary to any law of any jurisdiction or any directive or regulation of any agency of any state or which would or might otherwise render it liable to any person or cause it to act in a manner which might prejudice its interests and may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation or (b) which, in its opinion, it would not have the power to do in any jurisdiction by virtue of any applicable law in that jurisdiction or if it is determined by any court or other competent authority in any jurisdiction that it does not have such power.

9.25 Determination of “Material”

If the Trustee is for whatever reason required to make any determination of “material adverse effect” or like matter pursuant to the terms of the Notes or this Trust Deed, it may, in its absolute discretion, seek directions from the Holders by means of instigating a Written Procedure or seek advice (at the expense of the Issuer) from an expert, both in accordance with this Trust Deed, and the Trustee shall not be liable for any unavoidable delay involved in so doing.

9.26 Professional Charges

Any trustee being a banker, lawyer, broker or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by him or his partner or firm on matters arising in connection with the trusts of this Trust Deed and also his properly incurred charges in addition to disbursements for all other work and business done and all time spent by him or his partner or firm on matters arising in connection with this Trust Deed, including matters which might or should have been attended to in person by a trustee not being a banker, lawyer, broker or other professional person.

9.27 Expenditure by the Trustee

Nothing contained in this Trust Deed shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of any right, power, authority or discretion hereunder, including in relation to any deduction from any enforcement proceeds in connection with any insolvency proceedings following an Event of Default, if it has grounds to believe that the repayment of such funds or adequate indemnity against, or security for or prefunding for, such risk or liability is not reasonably assured to it.

9.28 Consent of the Trustee

Any consent given by the Trustee for the purposes of this Trust Deed may be given without the consent of the Holders if, in the opinion of the Trustee, it is not materially prejudicial to the interests of the Holders to do so and may be given on such terms and subject to such conditions (if any) as the Trustee may require and may be given retrospectively.

9.29 Actions of Trustee

The permissive rights of the Trustee to take actions permitted by this Trust Deed shall not be construed as an obligation or duty to do so.

9.30 Consequential Loss

In no circumstances will the Trustee be liable to the Issuer, any Subsidiary of the Issuer or any other person for any special, indirect, punitive or consequential damage or loss of any kind whatsoever (including, without limitation, loss of business, goodwill, opportunity or profit of any kind), even if advised of the possibility of such loss or damage and regardless of the form of action.

9.31 Rating Agency Reports

The Trustee shall be entitled to request and rely upon any information, rating confirmation or report provided by any Rating Agency whether addressed to the Trustee or any other person.

9.32 Liability for Officers/Employees

Notwithstanding anything to the contrary herein, none of the Trustee, any Appointee or nominee shall be liable for loss relating from any error of judgment made in good faith by any of its respective officers or employees assigned by the Trustee, such Appointee or nominee to

administer corporate trust matters unless such loss results directly from the gross negligence, wilful default or fraud of the Trustee, such Appointee or nominee or such offices or employees.

9.33 Trustee Act 2000

Any exercise by the Trustee of any rights or powers under this Trust Deed that are the same as or similar to any rights or powers conferred on a trustee by the Trustee Act 2000 shall be construed solely as the exercise of the relevant rights or powers under this Trust Deed and not as the exercise of the same or any similar rights or powers under the Trustee Act 2000. The disapplication of certain parts or Sections of the Trustee Act 2000 as provided herein shall constitute an exclusion of the relevant parts of the Trustee Act 2000 for the purposes of that Act.

10. Trustee Liable For Negligence

Section 1 of the Trustee Act 2000 shall not apply to any function of the Trustee, in relation to the trusts constituted by this Trust Deed. Nothing in this Trust Deed shall in any case in which the Trustee fails to show the degree of care and diligence required of it as trustee, having regard to the provisions of this Trust Deed conferring on it any trusts, powers, authorities or discretions exempt the Trustee from or indemnify it from or against any liability which would otherwise attach to it in respect of any negligence, wilful default or fraud of which it may be guilty in relation to its duties under this Trust Deed.

11. Trustee Not Precluded from Entering into Contracts

The Trustee and any other person, whether or not acting for itself, may acquire, hold or dispose of any Note or other security (or any interest therein) of the Issuer or any other person, may enter into or be interested in any contract or transaction with any such person and may act on, or as depositary or agent for, any committee or body of holders of any securities of any such person in each case with the same rights as it would have had if the Trustee were not acting as Trustee and need not account for any profit.

12. Amendment, Waiver, Authorisation and Determination

Subject to the terms of the Intercreditor Agreement, the Issuer and the Trustee (acting on behalf of the Holders) may agree to make any amendment, waiver, authorisation and determination in respect of a Subordinated Notes Finance Document in accordance with the provisions of clause 23 (*Amendments and Waivers*) of the Conditions.

13. Appointment, Retirement and Removal of the Trustee

13.1 Appointment

The Issuer has the power of appointing new trustees but may not do so unless previously approved by the Holders in accordance with clause 24.4.3 (*Appointment and Replacement of the Trustee*) of the Conditions or otherwise in accordance with clause 24.4.4 (*Appointment and Replacement of the Trustee*) of the Conditions. Any appointment of a new Trustee shall be notified by the Issuer to the Holders as soon as practicable.

13.2 Retirement and Replacement

Any Trustee may retire at any time on giving at least two months' written notice to the Issuer without giving any reason. The retirement of any Trustee shall not become effective unless there remains a trustee hereof in office after such retirement or a Successor Trustee has been approved, in accordance with Clause 24.4.6 (*Appointment and Replacement of the Trustee*) of

the Conditions. The Holders may by way of Holders' Meeting remove any Trustee, in accordance with Clause 24.4.3 (*Appointment and Replacement of the Trustee*) of the Conditions. If no appointment of such a new trustee has become effective within 90 calendar days of the date of such notice or removal by way of Holders' Meeting, the Trustee shall be entitled to appoint a Successor Trustee.

13.3 Co-Trustees

With the consent of the Issuer, the Trustee may, despite Clause 13.1 (*Appointment*) appoint anyone to act as an additional Trustee jointly with the Trustee:

- (a) if the Trustee considers the appointment to be in the interests of the Holders;
- (b) to conform with a legal requirement, restriction or condition in a jurisdiction in which a particular act is to be performed; or
- (c) to obtain a judgment or to enforce a judgment or any provision of this Trust Deed in any jurisdiction.

Subject to the provisions of this Trust Deed, the Trustee may confer on any person so appointed such functions as it thinks fit. The Trustee may by written notice to the Issuer and that person remove that person. At the Trustee's request, the Issuer shall forthwith do all things as may be required to perfect such appointment or removal and each of them irrevocably appoints the Trustee as its attorney in its name and on its behalf to do so.

13.4 Competence of a Majority of Trustees

If there are more than two Trustees the majority of them shall be competent to perform the Trustee's functions vested in the Trustee by this Trust Deed.

13.5 Attorneys

The Issuer hereby irrevocably appoints the Trustee to be its attorney in its name and on its behalf to execute an instrument of appointment in accordance with Clause 13.3 (*Co-Trustees*). Such person appointed by the Trustee under such instrument of appointment shall (subject always to the provisions of this Trust Deed and the other Subordinated Notes Finance Documents) have such trusts, powers, authorities and discretions (not exceeding those conferred on the Trustee by this Trust Deed and the other Subordinated Notes Finance Documents) and such duties and obligations as shall be conferred on such person or imposed by the instrument of appointment. The Trustee shall have power in like manner to remove any such person. Such proper remuneration as the Trustee may pay to any such person, together with any attributable Liabilities incurred by it in performing its function as such separate trustee or co-trustee, shall for the purposes of this Trust Deed be treated as Liabilities incurred by the Trustee.

13.6 Powers Additional

The powers conferred by this Trust Deed upon the Trustee shall be in addition to any powers which may from time to time be vested in it by general law.

13.7 Merger

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee under this Trust Deed, provided such corporation shall be otherwise qualified and eligible under this Clause, without the execution or filing of any paper or any further act on the part of any of the parties to this Trust Deed and on the date when the merger, conversion or consolidation becomes

effective all references in this Trust Deed to the Trustee shall be deemed to be references to such successor corporation.

13.8 Issuer to Appoint New Trustee

Subject to the other sub-Clauses in this Clause 13, the Issuer may appoint a new trustee if the United Kingdom ceases to be the jurisdiction in which the Trustee is resident and acting through for taxation purposes.

14. Entitlement to treat Holder as Absolute Owner

14.1 The Issuer and the Trustee may (to the greatest extent permitted by applicable law) deem and treat the person registered as a Holder in the system operated by the CSD as the absolute owner of such Note for all purposes (whether or not such Note shall be overdue and notwithstanding any notice of ownership thereof or of trust or other interest with regard thereto, any notice of loss or theft thereof or any writing therein) and the Issuer, and the Trustee shall not be affected by any notice to the contrary.

14.2 All payments of principal, interest and other sums due under the Notes made in accordance with the Conditions and the rules and procedures applied and/or issued by CSD from time to time will constitute good discharge for the liability of the Issuer in respect of the Notes.

15. Currency Indemnity

15.1 Currency of Account and Payment

U.S. Dollars (the “**Contractual Currency**”) is the sole currency of account and payment for all sums payable by the Issuer under or in connection with this Trust Deed and the Notes, including damages.

15.2 Extent of Discharge

An amount received or recovered in a currency other than the Contractual Currency (whether as a result of, or on the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer or otherwise), by the Trustee or any Holder in respect of any sum expressed to be due to it from the Issuer will only discharge the Issuer to the extent of the Contractual Currency amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

15.3 Indemnity

Clause 12 (*Currency Indemnity*) of the Common Terms Agreement applies to this Trust Deed *mutatis mutandis* and as if set out in full.

15.4 Indemnity Separate

The indemnities in this Clause 15 (*Currency Indemnity*) and in Clause 8.2 (*Indemnity*) constitute separate and independent obligations from the other obligations in this Trust Deed, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Trustee and/or any Holder and shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Trust Deed and the Notes or any other judgment or order.

16. Communications

- (a) Clause 19 (*Addresses and Notices*) (other than paragraph (a) of clause 19.2 (*Addresses and Notices*)) of the Common Terms Agreement applies to this Trust Deed *mutatis mutandis* and as if set out in full.
- (b) Any communication shall be made:
- (i) in the case of the Issuer, to it at:
- Tracy Westman, c/o Bellerive Corporate Management Services (Mauritius)
Ltd, 3rd Floor, Ebene Skies, Rue de L’Institut, Ebene, Mauritius
- Email: tracyw@bayportfinance.com
- Attention: Tracy Westman
- (ii) and in the case of the Trustee, to it at:
- Nordic Trustee & Agency AB (publ), Norrlandsgatan 16, SE-111 43
Stockholm, Sweden
- Email: sweden@nordictrustee.com
- Attention: Anna Litewka

17. Governing Law and Jurisdiction

- (a) This Trust Deed and the Notes, and any non-contractual obligations arising out of or in connection therewith, shall be governed by and construed in accordance with English law.
- (b) The Issuer has in this Trust Deed agreed for the benefit of the Trustee and the Holders that the English courts shall have exclusive jurisdiction in relation to any disputes arising out of or in connection with the Trust Deed and the Notes (including claims for set-off and counterclaims), including, without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by this Trust Deed and the Notes; and (ii) any non-contractual obligation arising out of or in connection with this Trust Deed (a “**Dispute**”) and the Notes and accordingly submits to the exclusive jurisdiction of the English courts. For such purposes each of the Issuer and the Trustee (i) irrevocably submits to the jurisdiction of the English courts, (ii) waives any objection to the exercise of such jurisdiction; and (iii) designates a person in England to accept service of any process on its behalf.
- (c) Clause 29 (*Enforcement*) (other than paragraph (a) of clause 29.1 (*Jurisdiction*)) of the Common Terms Agreement applies to this Trust Deed *mutatis mutandis* and as if set out in full.

18. Appointment of Process Agent

- (a) The Issuer shall at all times maintain an agent for service of process and any other documents in proceedings in England in connection with these Terms and Conditions. Any writ, judgement or other notice of legal process shall be sufficiently served on the Issuer if delivered to such agent at its address for the time being. The Issuer undertakes with the Trustee not to revoke the authority of the above agent without prior written consent of the Trustee.

- (b) If, for any reason, the Trustee requests the Issuer, to do so, the Issuer shall promptly appoint another agent with an address in England and shall advise the Trustee of such new appointment. If, following such a request of the Issuer fails to appoint another agent, the Trustee shall be entitled to appoint such an agent on behalf of the Issuer. The Trustee shall notify the Issuer of the identity of such appointee as soon as reasonably practicable after the relevant date of appointment.
- (c) The Issuer agrees that failure by a process agent (however appointed) to notify the Issuer of the process will not invalidate the proceedings concerned.

19. Severability

Clause 17 (*Severability*) of the Common Terms Agreement applies to this Trust Deed *mutatis mutandis* and as if set out in full.

20. Counterparts

Clause 26 (*Counterparts*) of the Common Terms Agreement applies to this Trust Deed *mutatis mutandis* and as if set out in full.

Schedule 1 Terms and Conditions of the Notes

[Insert Terms and Conditions of the Notes]

Signature Page of the Trust Deed

In Witness Whereof this Trust Deed has been executed as a deed on the date stated at the beginning.

BAYPORT MANAGEMENT LTD

as *Issuer*

}

.....
By:

as *Witness to the Issuer*

}

.....
By:
Address:
Occupation:

NORDIC TRUSTEE & AGENCY AB (publ)

as *Trustee*

}

.....
By: