
Agreement in relation to Waitaki Hydro Scheme

Meridian Energy Limited

Waka Kotahi New Zealand Transport Agency

Date:

PARTIES

Meridian Energy Limited ("Meridian")

Waka Kotahi New Zealand Transport Agency ("Waka Kotahi")

BACKGROUND

- A Meridian is a mixed ownership model company, that is dual listed on the New Zealand Stock Exchange and the Australian Securities Exchange and generates electricity, exclusively from renewable sources.
- B Meridian is the owner and operator of the Waitaki Hydro Scheme in the Waitaki basin from Lake Pūkaki to the Waitaki Dam, including six power stations and a system of dams, canals and associated infrastructure ("**Waitaki Hydro Scheme**").
- C Meridian holds a suite of water and discharge permits for the operation of the Waitaki Hydro Scheme at the date of this Agreement ("**Existing Consents**").
- D The Existing Consents are due to expire on 30 April 2025 ("**Expiry Date**").
- E Meridian intends to obtain new resource consents on providing for the same or substantially similar Operational envelope as the Existing Consents prior to the Expiry Date ("**Replacement Consents**").
- F Waka Kotahi is the statutory body charged with operating the state highway network under the Land Transport Management Act 2003.
- G Waka Kotahi interest in the Replacement Consents is the effects arising on the civil integrity of the State Highway system from the operation of the Waitaki Hydro Scheme authorised by the Replacement Consents, and in particular the potential effect of the operation of Lake Pūkaki by Meridian on State Highway 8 and State Highway 80.
- H The parties have previously reached agreement on the same matters:
- (a) prior to the granting of the Existing Consents an agreement was entered into between ECNZ (which then owned and operated the Waitaki Hydro Scheme) and various stakeholders including NZTA (which was then called Transit New Zealand ("**Transit**")) dated 26 November 1990 and referred to as the 1990 Head Agreement;
 - (b) a specific agreement entitled "Agreement in relation to water rights" also dated 26 November 1990 was made between ECNZ and Transit;



- (c) Meridian and Waka Kotahi subsequently entered into an agreement dated April 2008 that recorded ongoing commitment in respect to effects arising from the Waitaki Hydro Scheme;
 - (d) Meridian and Waka Kotahi agreement in relation to water rights following the sale and purchase of Tekapo A and B assets to Genesis Energy Limited dated 25 May 2011.
- I For completeness and ease of reference at Appendix 1 we attach the former agreement made by the parties dated 25 May 2011 ("**Former Agreement**").
- J The parties have agreed to enter into arrangements similar to the former agreement for the Replacement Consents. In doing so the parties have identified the appropriate management, including obligations and undertakings, of the interface between the State Highway network and the Waitaki Hydro Scheme. The parties have resolved to include these obligations and undertakings within this agreement.
- K This purpose of this agreement ("**Agreement**") is to:
 - (a) replace all previous agreements;
 - (b) ensure any effects arising from the reconsenting of the Waitaki Hydro Scheme and Replacement Consents are addressed as between the parties;
 - (c) cover all obligations of the parties in relation to the management of the interface between the State Highway network and Waitaki Hydro Scheme and to record those arrangements; and
 - (d) set out the relationship between the parties during the period in which Replacement Consents are sought and obtained.
- L Accordingly, the parties enter into this agreement to record their ongoing commitment to the spirit and principles of the Former Agreement.

THE PARTIES AGREE as follows:

1 **INTERPRETATION**

Construction

- 1.1 Terms used in this agreement shall have the following meanings, unless the context otherwise requires:
 - (a) words importing any gender will include all other genders;
 - (b) words importing the singular number include the plural and vice versa;



- (c) financial payments will be made in the lawful currency of New Zealand;
- (d) clause headings are inserted for reference only and shall not affect the interpretation of this deed;
- (e) anything required by this agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day;
- (f) a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;
- (g) references to clauses are references to clauses in this Agreement and references to parties are references to the parties to this Agreement;
- (h) a person will include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust, the Crown or any agency of the Crown in each case whether or not having separate legal personality;
- (i) a reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time;
- (j) except where otherwise expressed in this Agreement, where approvals or consents are required in this Agreement they will not be unreasonably or arbitrarily withheld or delayed;
- (k) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations and expressions defined or explained in any statute shall bear those meanings in this Agreement;
- (l) that if any party objects or acts contrary to the Purpose and Intent as set out in Clause 2 and/or the Obligations as set out in Clauses 5 and 6 of this Agreement, the other party may request it to withdraw such objections and/or cease such action;
- (m) where obligations bind more than one person those obligations shall bind those persons jointly and severally;
- (n) where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (o) in the construction of this Agreement, unless the context requires otherwise:
 - i. including: mentioning anything after "include", "includes" or "including" does not limit what else might be included;



- ii. parties: a reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns;
- (p) except where otherwise expressed in this Agreement, nothing contained in this Agreement will be deemed or construed to constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture;
- (q) a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- (r) the benefits and burdens shall be binding upon the parties and their respective successors and personal representatives and any permitted assignees or transferees and references to the parties shall be construed accordingly;

Defined terms

Application means any application or other action taken to obtain or renew, or replace, or vary the terms of, any Consent, Consent Changes and/or Replacement Consents;

Consent means, in relation to any activity, any designation, rule, approval, consent, licence, permit or other authorisation for or relating to that activity and includes any Replacement Consent;

Consent Changes means a variation to the Existing Consents, Replacement Consents and/or an Application for resource consent for any activities and works provided the effects are of the same or similar character, intensity and scale as those reasonably existing;

Existing Consents has the meaning given in Background C;

Expiry date has the meaning given in Background D;

ECNZ has the meaning given in Background H;

Former Agreement has the meaning given in Background I;

Force Majeure means any event or circumstance beyond the control of the party claiming the benefit of the Force Majeure clause in this agreement, which that party is unable to prevent or overcome by the exercise of reasonable care and at a reasonable cost, and includes, but is not limited to, any:

- (1) act of God, fire, earthquake, storm, flood, or landslide;
- (2) strike, lockout, work stoppage or other labour hindrance;
- (3) explosion, public mains electrical supply failure, or nuclear accident;

- (4) sabotage, riot, civil disturbance, insurrection, epidemic, pandemic, national emergency (whether in fact or law), act of terrorism or act of war (whether declared or not);
- (5) requirement or restriction of, or failure to act by, any government semi-governmental or judicial entity; and
- (6) unavoidable accident, or inability to obtain or delay in obtaining adequate labour, contractors, equipment, materials, transport or supplies;

but does not include a lack of funds for any reason..

Operational envelope means the parameters the Waitaki Hydro Scheme is authorised to be operated within as set in any relevant Consent

Remedial Works has the meaning set out in clause 5.1(b);

Replacement Consents means the replacement and renewal of the Existing Consents required to authorise the Waitaki Hydro Scheme together with any ancillary consents to authorise such activities and/or any other existing or permitted authorisations and that may be amended, varied or changed from time to time;

RMA means the Resource Management Act 1991 and/or any amendment to that statute and/or any statute substituting for it;

Transit has the meaning given in Background H;

Waitaki Hydro Scheme has the meaning given in Background B.

2. PURPOSE AND INTENT

2.1 The purpose and intent of this Agreement is to:

- (a) establish a mechanism to recognise, manage and mitigate any effects arising on the civil integrity of all those parts of the State Highway system arising from the operation of the Waitaki Hydro Scheme authorised by the Replacement Consents;
- (b) agree any mitigation associated with Replacement Consents and/or Consent Changes and the Waitaki Hydro Scheme;
- (c) provide a framework to provide for an ongoing constructive and collaborative working relationship between the parties;
- (d) ensure that Meridian operates the Waitaki Hydro Scheme within the same Operational envelope as at the date of this Agreement; and
- (e) confirm that Waka Kotahi support the Application, Replacement Consents and Consent Changes relating to the Waitaki Hydro Scheme.

2.2 Specifically, the parties recognise that the ongoing operation, upgrade and maintenance of the Waitaki Hydro Scheme may adversely affect the State Highway system, including the civil integrity of State Highway 8 and State Highway 80 that adjoin Lake Pūkaki.

3. TERM

- 3.1 The term of this Agreement is from the date of this Agreement until the Replacement Consents expire. For completeness and notwithstanding the terms of this Agreement Meridian retains the absolute right to terminate this Agreement by written notice if for whatever reason after the date of this Agreement the Replacement Consents are not granted.

4. CONSIDERATION

- 4.1 The parties enter into this Agreement in consideration of the other also entering into this Agreement.

5. MERIDIAN'S OBLIGATIONS

- 5.1 Subject to clause 3 and to Waka Kotahi complying with its obligations under clause 6 Meridian will provide the following mitigation due to the potential effects of the Waitaki Hydro Scheme and the operation of Lake Pūkaki on the civil integrity of all those parts of the State Highway system, including State Highway 8 and State Highway 80:

(a) Bi-annual inspections

The parties will jointly undertake an inspection in respect of such effects at least twice annually in autumn and spring, so as to obtain data and make observations at low and high lake levels, and otherwise as the parties determine appropriate. Each party may request that an inspection be held and propose a date and time for such an inspection. Inspections shall occur on dates and at times agreed by the parties from time to time.

(b) Programme of remedial works

As soon as reasonably practical following each of the bi-annual inspections under clause 5.1(a) above, the parties shall commence discussions in good faith to endeavour to agree:

- (i) The works necessary to avoid, remedy or mitigate where reasonably practical the actual or likely effects of the operation of Lake Pūkaki by Meridian for the purposes of the Waitaki Hydro Scheme on the civil integrity of State Highway 8 and State Highway 80 to the extent caused or contributed to by Meridian ("**the Remedial Works**")
- (ii) A timetable for the Remedial Works.



(c) Agreement of third parties

If Meridian determines that there is any person whose agreement to Meridian undertaking the Remedial Works is required, then Meridian will use all reasonable endeavours to obtain that agreement.

(d) Consents

Meridian will be responsible for obtaining any Consents necessary for the Remedial Works. Waka Kotahi agrees to Meridian making Applications for any such Consents. Waka Kotahi authorises Meridian to notify and person considering or determining any Applications for such Consents that Waka Kotahi has agreed to Meridian applying for the Consent and undertaking the work which the Consent is applied for.

(e) Meridian will undertake the Remedial Works

- (i) If Meridian obtains, upon terms and conditions satisfactory to Meridian, any third party agreements in accordance with clause 5.1(c), and any Consents in accordance with clause 5.1(d) (with no appeals or objections being validly lodged or made, or any such appeals or objections being resolved to the reasonable satisfaction of Meridian), then Meridian will, at its cost, undertake the Remedial Works in accordance with this clause 5.1(b);
- (ii) Meridian will use all reasonable endeavours to complete the Remedial Works in accordance with the timetable agreed by the parties under clause 5.1(b)(ii);
- (iii) Meridian will only undertake the Remedial Works under Clause 5.1(b) if Waka Kotahi agrees to any necessary interruption, limitation or suspension of access over and along all or part of the State Highway 8 or State Highway 80 as reasonably required;
- (iv) Meridian will not call upon Waka Kotahi to contribute towards the costs of the Remedial Works.

(f) Meridian will provide information

Meridian will inform Waka Kotahi of any long-term strategy of Meridian likely to affect the civil integrity of all those parts of the State Highway system, including State Highway 8 and State Highway 80. Meridian will formally advise Waka Kotahi of the confidentiality of any such strategy, and Waka Kotahi will not disclose the information contained within the strategy except as agreed by Meridian.

6. WAKA KOTAHI OBLIGATIONS

- 6.1 Waka Kotahi agrees that it will not make submission about the Replacement Consents and/or Consent Changes otherwise than on terms that support the Replacement Consents and/or



Consent Changes subject to the same being on similar terms or for an activity having no material greater adverse effects authorised on the date of this Agreement;

6.2 Waka Kotahi will support, and not in any way oppose, any Application by Meridian for the Replacement Consents, Consent Changes or for an activity having no materially greater adverse effects than the activities authorised by the Existing Consents. For the avoidance of doubt, Meridian may request, and Waka Kotahi will:

- (a) Provide written approval to under section 95E of the Resource Management Act 1991 (and/or any succeeding legislation), to the Replacement Consents and/or Consent Changes for a term of 35 years, in such form as is reasonably required by Meridian;
- (b) Notify in writing any regulating body that its concerns or interests in relation to the Replacement Consents, Consent Changes and/or the ongoing operation of the Waitaki Hydro Scheme have been resolved by agreement.

7. ACKNOWLEDGEMENT

7.1 This Agreement is in full and final satisfaction of all claims or rights Waka Kotahi and any person claiming through Waka Kotahi would or might otherwise have had in respect of the Replacement consents, Consent Changes and the ongoing operation of the Waitaki Hydro Scheme until 35 years from the date of the commencement of the Replacement consents or to the duration granted, whatever is the lesser. Except as otherwise provided for in this Agreement, Meridian has no obligation or responsibility to provide mitigation or compensation in respect of the effects of the Replacement consent and/or the ongoing operation of the Waitaki Hydro Scheme that affect, or are likely to affect, Waka Kotahi or any person claiming through Waka Kotahi.

8. VALUES

8.1 The Values Concept reflects the desire of the parties to adhere to an over-arching principle which will govern and guide the contractual relationships between them and which will recognise and comprise the following objectives and principles:

- (i) the establishment of a relationship based on mutual trust;
- (ii) the shared intention to achieve (by constructively and harmoniously working together) the parties' respective objectives;
- (iii) openness, promptness, consistency and fairness in all dealings and communications between the parties and their agents and representatives;
- (iv) good faith dealings between the parties and constructive mutual steps both to avoid differences and to identify solutions; and
- (v) open, prompt and fair notification and resolution between the parties of any differences or disputes which may arise.

- 8.2 The parties must in their day-to-day interaction and in performing their obligations under this Agreement conduct themselves in a manner consistent with the Values Concept.
- 8.3 Despite clause 8.1, nothing in this Agreement will be deemed to establish a legal relationship of partnership or joint venture between the parties.
- 8.4 Where, in terms of this Agreement the parties or their representatives or consultants are required to work together and supply each other with information or assistance (whether or not within a specified timeframe), they will do so having regard to the Values Concept.
- 8.5 For the avoidance of any doubt, the requirements of this clause 8 will not:
- 8.5.1 impinge on or otherwise fetter in any way whatsoever the exercise by a party of any of the rights and remedies it may have under or in relation to or in connection with this Agreement; and
- 8.5.2 require any party to disclose information or act in any manner which could prejudice its own commercial position or interests.
- 8.6 Each party will ensure that its representatives and consultants are made aware of the parties' respective rights and obligations under this clause 8 and that such representatives and consultants have regard to and abide by, in performing their obligations in respect of this Agreement, the objectives and principles recognised by and comprising the Value Concept.

9. APPOINTMENT OF LEAD RELATIONSHIP MANAGERS

- 9.1 Each party will:
- (a) appoint, and maintain during the Term, a suitably qualified and experienced person to lead the relationship between the parties (each a Lead Relationship Manager); and
- (b) discuss with the other party about any proposed replacement of its Lead Relationship Manager.

Scope of role

- 9.2 Each Lead Relationship Manager will:
- (a) serve as the primary point of contact with the other party; and
- (b) have overall responsibility for managing and co-ordinating the performance of his or her appointing party's obligations under this Agreement.
- 9.3 Each party's Lead Relationship Manager, as at the date of this Agreement, is set out in Appendix 2.



10. MEETINGS

- 10.1 The parties will meet to discuss the matters provided for in this agreement. Unless otherwise agreed in writing such meetings will occur at least once annually, and otherwise as they determine appropriate. Either party may request that a meeting be held and propose a date and time and place for such a meeting. Meetings shall occur on dates and at times and places agreed by the parties from time to time.
- 10.2 The parties shall cause written minutes of the matters discussed at their meetings and the matters agreed at the meetings, to be kept and provided to each party. At the beginning of each meeting the minutes from the last meeting shall be considered, corrected if necessary, and approved.

11. PUBLIC STATEMENTS

- 11.1 No party will make any public announcement or statement purporting to represent the joint position of the parties, the other party's position, or any decision of the parties, in respect of any matter provided for in this agreement, unless that announcement or statement is approved by the other party. Each party shall procure that its officers, employee and agents do not make any announcement or statement that would be in breach of this clause if made by that party.

12. NOTICE

- 12.1 Any notice or communication to be given under this Agreement must be in writing addressed to the recipient at the mailing address and/or email address from time to time notified by that party in writing to the other party. Until a change is so notified, the address and/or email address of each party are those set out below at Appendix 2.

13. ESCALATION PROCESS

- 13.1 If a dispute arises between the parties in connection with this Agreement, both parties agree to seek to resolve the dispute through this Agreement in accordance with 13.2 below and not to take any alternative action that circumvents the dispute process set out in 13.2.
- 13.2 The party raising the matter in dispute shall notify the other of the matter in dispute and:
- (a) first, the parties shall attempt to resolve that dispute through good faith negotiation, with a view to a quick resolution of such dispute or difference;
 - (b) if the dispute is not resolved within 10 working days of the date on which the matter in dispute has been notified to all parties, the parties shall escalate the matter to the Senior Manager for Waka Kotahi being the National Manager Maintenance and Operations and the Senior Manager for Meridian being the General Manager Generation;



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- (c) if the dispute is not resolved within 10 working days of the date on which the matter in dispute has been referred to the relevant personnel in 13.2(b) above, any party can refer any legal issues relating to the dispute to the parties' chief executives;
- (d) if the dispute is not resolved within 10 working days of the date on which the matter in dispute has been referred to the chief executives, then either party can refer the dispute to mediation. The mediator will be appointed by agreement between the parties, or failing agreement within 5 working days of the dispute being referred to mediation, by the President for the time being of the New Zealand Chapter of Lawyers Engaged in Alternative Dispute Resolution (LEADR). The mediation will be governed by the then standard LEADR terms, provided, however, that nothing in this clause shall preclude any party from seeking immediate relief through the courts if that party, acting reasonably and in good faith, is of the opinion that such relief is required.

13.3 In the event that the dispute is not resolved through the steps set out in Section 13.2 above, either party may seek relief as it deems appropriate.

14. CONFIDENTIALITY

14.1 Each party shall keep all information provided to them by any other party to this Agreement confidential, any disclosure on a confidential basis to financial and legal advisors, consultants, employees or officers who have a "need to know" and, on the expiry of the Term, no party shall use or disclose any such information in any future dealings or otherwise and, if requested by the other party, each party shall return all information provided. This obligation is subject to the parties' legal obligations, including but not limited to under the Official Information Act 1982.

15. COUNTERPARTS

15.1 This Agreement may be executed in one or more counterpart copies which, read together, shall constitute one and the same instrument. Any facsimile or scanned and emailed copy of this Agreement may be relied on by the other party as though it were an original copy.

16. SEVERABILITY

16.1 If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable:

- (a) such determination shall not impair the enforceability of the remaining parts of this Agreement; and
- (b) the parties agree to amend this Agreement to the minimum extent required to render that part enforceable or to otherwise achieve the intent of this Agreement.

17. NO WAIVER

17.1 A failure, delay or indulgence by either party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

18. WARRANTY AS TO AUTHORITY

18.1 Each party warrants to the other party that it has all necessary authorities, consents, licences, permits and permissions to lawfully undertake its obligations under this agreement and to give effect to the provisions of this agreement.

19. PRIVACY

19.1 This Agreement shall not, and is not intended to, confer any benefit on, or create any obligation enforceable by, any person not a party to this agreement.

20. ENTIRE AGREEMENT

20.1 This Agreement is the entire agreement between the parties on the matters herein provided for; it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to such matters.

21. FORCE MAJEURE

21.1 No party shall be liable for any failure or delay in performing its obligations under this agreement where such failure or delay is due to any cause beyond that party's reasonable control (an Event of Force Majeure) provided that any party relying on this provision to excuse any such failure or delay shall use reasonable endeavours to avoid or mitigate the effects of any Event of Force Majeure.

22. FURTHER ASSURANCES

22.1 Each party agrees to execute and deliver any documents and to do all things as may reasonably be required by the other to obtain the full benefit of this Agreement according to its true intent.

23. MERIDIAN MAY TRANSFER ITS INTERESTS

23.1 Meridian may, after first informing Waka Kotahi, assign or novate its rights and obligations under this Agreement, to any person who owns or operates, or will own or operate the Waitaki Hydro Scheme, or to any person with capacity to perform Meridian's obligations in this Agreement. On any such assignment or novation any future liability of Meridian shall cease and determine.



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24. COSTS

24.1 Except as otherwise provided in this Agreement, each party will meet its own costs relating to the negotiation, preparation, completion and performance of this Agreement.

EXECUTION

Meridian Energy Limited

by:



Name: **Neal Barclay**
Title: **Chief Executive
Meridian Energy Ltd**

in the presence of:

Name:
Occupation:
Address:

Waka Kotahi New Zealand Transport

Agency by:



Name: Peter Connors
Title: Manager System Management -
Central South Island

in the presence of:



Name: Richard Shaw
Occupation: Team Leader – Environmental
Planning
Address: Christchurch

APPENDIX 1: FORMER AGREEMENT

Agreement in relation to water rights

Meridian Energy Limited

New Zealand Transport Agency

Date: 25 May 2011

PARTIES

Meridian Energy Limited (*Meridian*)

New Zealand Transport Agency (*NZTA*)

BACKGROUND

- A Pursuant to an agreement for sale and purchase entered into by Meridian and Genesis Energy, as anticipated under the Electricity Industry Act 2010, Meridian has sold the power generating stations known as "Tekapo A" and "Tekapo B" and related assets to Genesis Energy (the *Tekapo Stations*). Meridian has also transferred to Genesis Energy certain resource consents to operate the Tekapo Stations which were formerly held by Meridian (the *Tekapo Consents*).
- B Meridian continues to own and operate a hydro electricity generation scheme in the upper Waitaki basin including six power stations and a system of dams and canals (the *Waitaki Stations*). Meridian holds a package of water rights and consents for the operation of the Waitaki Stations (the *Waitaki Consents*).
- C NZTA is the Crown Entity responsible for state highways. In respect of the Waitaki Stations, NZTA's interest is in the potential effect of the operation of Lake Pukaki by Meridian for the purposes of the Waitaki Stations on the civil integrity of those parts of State Highway 8 and State Highway 80 that adjoin the lake.
- D Immediately prior to the granting of the Waitaki Consents and the Tekapo Consents (together which were previously known as the *Waitaki Power Scheme Consents*), Electricity Corporation of New Zealand Limited (*ECNZ*) (which then owned and operated the Waitaki Stations and the Tekapo Stations) and various stakeholders (including NZTA (which was then called Transit New Zealand)) entered into an agreement entitled "Agreement to Electricity Corporation's water rights" dated 26 November 1990 recording agreed consent conditions (the *1990 Head Agreement*).
- E At the same time, ECNZ and NZTA entered into a related agreement entitled "Agreement in relation to water rights" dated 26 November 1990 recording agreed matters not incorporated into the Waitaki Power Scheme Consents (the *Stakeholder Agreement*).
- F Meridian and NZTA are parties to an agreement in relation to water rights dated April 2008 which replaced the Stakeholder Agreement and recorded their ongoing commitment in respect of those parts of State Highway 8 and State Highway 80 that adjoin Lake Pukaki (the *Former Agreement*).



- G The Former Agreement is to be replaced by this agreement, and by a separate agreement between Genesis Energy and NZTA.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

1990 Head Agreement has the meaning set out in paragraph D of the Background;

Application means any application or other action taken to obtain or renew, or vary the terms of, any Consent;

Business Day means any day other than a Saturday, Sunday, statutory holiday observed in Canterbury, or day in the period commencing on 24 December in one year and ending on 5 January the following year;

Consent means, in relation to any activity, any designation, rule, approval, consent, licence, permit or other authorisation for or relating to that activity;

ECNZ has the meaning set out in paragraph D of the Background;

Former Agreement has the meaning set out in paragraph F of the Background;

Genesis Energy means Genesis Power Limited (trading as Genesis Energy);

Remedial Works has the meaning set out in clause 2.3(a); and

Stakeholder Agreement has the meaning set out in paragraph E of the Background;

Tekapo Consents has the meaning set out in paragraph A of the Background;

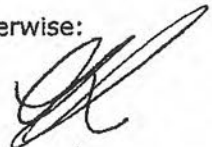
Tekapo Stations has the meaning set out in paragraph A of the Background;

Waitaki Consents has the meaning set out in paragraph B of the Background; and

Waitaki Stations has the meaning set out in paragraph B of the Background.

1.2 Construction

In the construction of this agreement, unless the context requires otherwise:



Business Days: anything required by this agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day;

documents: a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;

negative obligations: a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

parties: a reference to a party to this agreement or any other document includes that party's personal representatives/successors and permitted assigns;

person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

related terms: where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

singular, plural and gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

statutes and regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations; and

writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

2 LAKE PUKAKI

2.1 Acknowledgement

The parties acknowledge that the operation of Lake Pukaki by Meridian for the purposes of the Waitaki Stations may affect the civil integrity of those parts of State Highway 8 and State Highway 80 that adjoin the lake.

2.2 Bi-annual inspections

The parties will jointly undertake an inspection in respect of such effects at least twice annually in autumn and spring, so as to obtain data and make observations at low and high lake levels, and otherwise as the parties determine appropriate. Either party may request that an inspection be held and propose a date and time for such an inspection. Inspections shall occur on dates and at times agreed by the parties from time to time.

2.3 Programme of remedial works

As soon as reasonably practical following each of the bi-annual inspections under clause 2.2, the parties shall commence discussions in good faith to endeavour to agree:

- (a) the works necessary to avoid, remedy or mitigate where reasonably practical the actual or likely effects of the operation of Lake Pukaki by Meridian for the purposes of the Waitaki Stations on the civil integrity of those parts of State Highway 8 and State Highway 80 that adjoin the lake, to the extent caused or contributed to by Meridian (the *Remedial Works*); and
- (b) a timetable for the Remedial Works.

2.4 Agreement of third parties

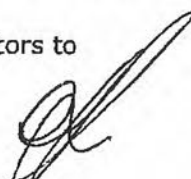
If Meridian determines that there is any person whose agreement to Meridian undertaking the Remedial Works is required, then Meridian will use all reasonable endeavours to obtain that agreement.

2.5 Consents

Meridian will be responsible for obtaining any Consents necessary for the Remedial Works. NZTA agrees to Meridian making Applications for any such Consents. NZTA authorises Meridian to notify any person considering or determining any Applications for such Consents that NZTA has agreed to Meridian applying for the Consent and undertaking the work which the Consent is applied for.

2.6 Meridian will undertake the Remedial Works

- (a) If Meridian obtains, upon terms and conditions satisfactory to Meridian, any third party agreements in accordance with clause 2.4, and any Consents in accordance with clause 2.5 (with no appeals or objections being validly lodged or made, or any such appeals or objections being resolved to the reasonable satisfaction of Meridian), then Meridian will, at its cost, undertake the Remedial Works in accordance with this clause 2.6.
- (b) Meridian will use all reasonable endeavours to complete the Remedial Works in accordance with the timetable agreed by the parties under clause 2.3(b).
- (c) Meridian may interrupt, limit, restrict or suspend access over and along all or part of State Highway 8 or State Highway 80 at any time, and for such periods, as Meridian reasonably requires to undertake the Remedial Works.
- (d) Meridian may use its nominated employees, agents or contractors to undertake the Remedial Works.



- (e) Meridian will not call upon NZTA to contribute towards the costs of the Remedial Works.

2.7 Meridian will provide information

Meridian will inform NZTA of any long-term strategy of Meridian likely to affect the civil integrity of those parts of State Highway 8 and State Highway 80 that adjoin Lake Pukaki. Meridian will formally advise NZTA of the confidentiality of any such strategy, and NZTA will not disclose the information contained within the strategy except as agreed by Meridian.

3 ADMINISTRATION OF THE RELATIONSHIP

3.1 Meetings

- (a) The parties will meet to discuss the matters provided for in this agreement at least once annually and otherwise as they determine appropriate. Either party may request that a meeting be held and propose a date and time and place for such a meeting. Meetings shall occur on dates and at times and places agreed by the parties from time to time.
- (b) The parties shall cause written minutes of the matters discussed at their meetings, and the matters agreed at the meetings, to be kept and provided to each party. At the beginning of each meeting the minutes from the last meeting shall be considered, corrected if necessary, and approved.

3.2 Public statements

No party will make any public announcement or statement purporting to represent the joint position of the parties, the other party's position, or any decision of the parties, in respect of any matter provided for in this agreement, unless that announcement or statement is approved by the other party. Each party shall procure that its officers, employees and agents do not make any announcement or statement that would be in breach of this clause if made by that party.

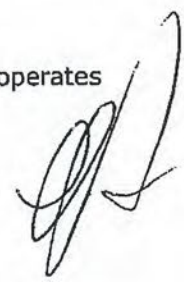
3.3 Support

NZTA will support, and not in any way oppose, any Application by Meridian for a Consent on similar terms to the Waitaki Consents or for an activity having no materially greater adverse effects than the activities authorised by the Waitaki Consents.

4 MISCELLANEOUS

4.1 Term

This agreement will continue in effect for so long as Meridian owns and operates the Waitaki Stations under the Waitaki Consents.



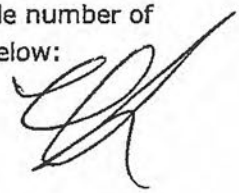
4.2 Dispute resolution

Any dispute arising out of or in connection with this agreement shall be resolved in accordance with the following provisions.

- (a) The parties shall endeavour to resolve the dispute by discussion.
- (b) If the parties are unable to resolve the dispute by discussion then either party may at any time refer the dispute to mediation. Mediation shall be initiated by either party giving written notice to the other party identifying the dispute which it requires be referred to mediation and nominating a mediator. If the parties are unable to agree upon and appoint a mediator within 10 Business Days after the other party receives that written notice then either party or both parties may ask the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a mediator. The mediation shall be terminated on any of the following events occurring:
 - (i) the signing of a settlement agreement by the parties;
 - (ii) notice to the parties from the mediator to the effect that the mediator believes further efforts at mediation are no longer justified;
 - (iii) notice by either party to the mediator and the other party to the effect that the party believes further efforts at mediation are no longer justified; or
 - (iv) the expiry of 20 Business Days from the mediator's appointment or such greater length of time agreed by the parties from time to time.
- (c) If any mediation is terminated by the occurrence of any of the events in clauses (b)(ii) to (b)(iv) the dispute may be referred to arbitration by either party or both parties, to be resolved by arbitration by a single arbitrator in accordance with the Arbitration Act 1996.
- (d) No reference to mediation or arbitration shall affect either party's rights or obligations under this agreement pending the outcome of that mediation or arbitration.

4.3 Notices

- (a) Any notice or other communication to be given under this agreement must be in writing and addressed to the recipient at the address or facsimile number from time to time notified by that party in writing to the other party. Until a change is so notified, the address and facsimile number of each party are those set out under the name of that party below:



Meridian Energy Limited

25 Sir William Pickering Drive
Christchurch

Facsimile: 64 3 357 9821

Attention: The General Counsel; and
Manager – Natural Resources

New Zealand Transport Agency

Christchurch Regional Office
Education House
Level 7, 123 Victoria Street
PO Box 1479
Christchurch

Facsimile: 64 3 365 6576

Attention: Peter Connors – Regional Network Operations Manager

- (b) Delivery may be effected by hand or by facsimile. A notice or other communication will be deemed to have been received:
- (i) in the case of hand delivery, at the time of actual delivery to the recipient's address; and
 - (ii) in the case of delivery by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- (c) If a notice or other communication is received or deemed to have been received after 5 pm on a Business Day in the place to which it is sent, or on a day which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

4.4 Warranty as to authority

Each party warrants to the other party that it has all necessary authorities, consents, licences, permits and permissions to lawfully undertake its obligations under this agreement and to give effect to the provisions of this agreement.



4.5 Force majeure

No party shall be liable for any failure or delay in performing its obligations under this agreement where such failure or delay is due to any cause beyond that party's reasonable control (an *Event of Force Majeure*) provided that any party relying on this provision to excuse any such failure or delay shall use reasonable endeavours to avoid or mitigate the effects of any Event of Force Majeure.

4.6 Entire agreement

- (a) Subject to paragraph (b), this agreement is the entire agreement between the parties on the matters herein provided for; it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the parties relating to such matters.
- (b) The parties' rights and obligations under the 1990 Head Agreement as amended from time to time (as between themselves) shall continue in effect to the extent that such rights and obligations are not inconsistent with the provisions of this agreement.
- (c) For the avoidance of doubt, the parties' rights and obligations under any agreement to which they are both parties shall continue in effect to the extent that such rights and obligations do not relate to the effects or likely effects of the operation of Lake Pukaki by Meridian for the purposes of the Waitaki Stations on the civil integrity of those parts of State Highway 8 and State Highway 80 that adjoin the lake and are not otherwise inconsistent with the provisions of this agreement.
- (d) The Former Agreement shall terminate with effect from the date of this agreement.

4.7 Contracts (Privity) Act

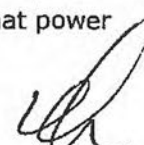
This agreement shall not, and is not intended to, confer any benefit on, or create any obligation enforceable by, any person not a party to this agreement.

4.8 No assignment

Meridian may transfer the rights and obligations in this agreement to any subsequent operator of the Waitaki Stations. No party shall otherwise transfer, assign, or create any encumbrance over, any rights or obligations in this agreement without first obtaining the written consent of the other party, which shall not be unreasonably or arbitrarily withheld or delayed.

4.9 No waiver

A failure, delay or indulgence by either party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.



4.10 Severability

If any part of this agreement is held by any 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 agreement.

4.11 Costs

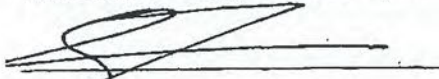
Except as otherwise provided in this agreement, each party will meet its own costs relating to the negotiation, preparation, completion and performance of this agreement.

4.12 Manner of execution

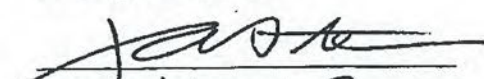
This agreement may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties. The transmission by facsimile by each party of a signed counterpart copy of this agreement to the other party shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original for the purposes of this agreement.

EXECUTION


Meridian Energy Limited by:


Name: TIM LUSK
Title: CEO

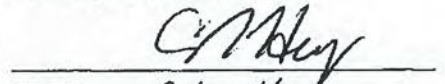
in the presence of:


Name: JASON STEIN
Occupation: SOLICITOR
Address: WELLINGTON

New Zealand Transport Agency by:


Name: COLIN KENNEDY
Title: STAFF MANAGEMENT MANAGER

in the presence of:


Name: Colin Healy
Occupation: Area Manager
Address: NZTA
123 Victoria St
Christchurch.

APPENDIX 2: LEAD RELATIONSHIP MANAGERS

Party	Name & Position	Contact details
Waka Kotahi	Andrew Crofts Senior Network Manager	P: [REDACTED] E: [REDACTED] A: Level 1, BNZ Centre 120 Hereford Street PO Box 1479 Christchurch 8011 New Zealand
Meridian	Tim Mills Civil Engineering Team Leader	P: [REDACTED] E: [REDACTED] A: Corner Market Place & Mackenzie Drive Private Bag 950 Twizel 7944 New Zealand

