

**TRANSPower WORKS AGREEMENT**

**Transpower New Zealand Limited**

**Far North Solar Farm Limited**

**NZGIF CX Investments Limited**

**Ohau C Solar Farm (The Point)**

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## TRANSPower WORKS AGREEMENT

### PARTIES

**Transpower New Zealand Limited**, company number 372941 (**Transpower**)

**Far North Solar Farm Limited**, company number 7844136 (**Customer**)

**NZGIF CX Investments Limited**, company number 9271230 (**NZGIF**).

### BACKGROUND

- A Transpower owns and operates New Zealand's electricity transmission system – the National Grid.
- B Transpower wishes to provide, and the Customer wishes to pay for, the Works on the terms and conditions of this Agreement.
- C NZGIF will perform its obligations as set out in Schedule 5.

**THE PARTIES AGREE** as follows:

#### 1 SCOPE OF AGREEMENT

##### 1.1 Scope

Transpower must carry out the Works and the Customer must pay Transpower for the Works on the terms and conditions set out in this Agreement. The Special Terms (refer Schedule 5) apply to modify the terms and conditions of, and the parties' respective obligations under, this Agreement.

##### 1.2 Agreement Conditional

This Agreement is conditional upon execution of the agreement by the Customer by 30 August 2024. If the Agreement is not executed by this date this Agreement shall lapse.

#### 2 TRANSPower OBLIGATIONS

##### 2.1 Works

Transpower must:

- (a) use reasonable endeavours to provide the Works within the Budget and meet the Project Timeframe;
- (b) provide the Works and carry out testing and commissioning of the Works in accordance with the Configuration and Good Engineering Practice;
- (c) report to the Customer in accordance with the requirements of Schedule 4; and
- (d) exercise its rights and perform its obligations set out in this Agreement acting reasonably, in good faith, and in accordance with Law and Good Engineering Practice, and not knowingly do anything or omit to do anything that would cause the Customer to breach any Law.

## 2.2 **Conditions**

Transpower must use reasonable endeavours to ensure the Conditions are achieved by the Condition Dates, to the extent of Transpower's influence and control over the achievement of each Condition.

## 2.3 **Property, resource management and other obligations**

Transpower must perform its obligations (if any) set out in Schedules 5 and 6.

# 3 **CUSTOMER OBLIGATIONS**

## 3.1 **Access**

When reasonably requested by Transpower for the provision of the Works (where possible, by prior written notice), the Customer must:

- (a) make its personnel and systems available to Transpower;
- (b) provide safe and unobstructed access to any Customer Premises, provided Transpower complies with any applicable security and workplace health and safety rules and procedures notified to Transpower; and
- (c) obtain any consents, licences and approvals necessary for that access and notify Transpower of any conditions that apply to them (which must be reasonable).

## 3.2 **Compliance**

The Customer must:

- (a) exercise its rights and perform its obligations under this Agreement acting reasonably, in good faith, and in accordance with Law, and not knowingly do anything or omit to do anything that would cause Transpower to breach any Law;
- (b) comply with clause 7 of Schedule 6 (Access and Occupation Schedule) to the Default Transmission Agreement Template (with such changes as are necessary to give effect to the intention of this Agreement) if it intends to construct any structures or equipment (including upgrading or improving existing structures or equipment) in support of the Works on or in Transpower Premises; and
- (c) report to Transpower in accordance with the requirements of Schedule 4.

## 3.3 **Conditions**

The Customer must use reasonable endeavours to ensure the Conditions are achieved by the Condition Dates, to the extent of the Customer's influence and control over the achievement of each Condition.

## 3.4 **Property, resource management and other obligations**

The Customer must perform its obligations (if any) set out in Schedules 5 and 6.

## **4 WORKS**

### **4.1 Property of Transpower**

Unless specified otherwise in Schedule 8, all Works will be the property of Transpower and nothing in this Agreement confers upon the Customer any title, right or interest in any part of the Works. Clauses 4.2 and 4.3 of the Agreement do not apply to any part of the Works that is not owned by Transpower.

### **4.2 Works part of Grid after commissioning**

Any component of the Works connected to the Grid after commissioning will be part of the Grid, and Transpower must maintain and operate the component as part of the Grid in accordance with, and to the standard required by, the Transmission Agreement and Code.

### **4.3 Replacement Works**

- (a) If a Major Component fails before 80% of its Asset Life has elapsed such that the Major Component cannot reasonably be repaired, Transpower must replace the Major Component at its cost.
- (b) Subject to clause 4.3(a), if any component of Works connected to the Grid fails such that the component cannot reasonably be repaired, Transpower may replace it at its discretion and cost. When Transpower makes a decision under this clause 4.3 (including as to the standard of any replacement) it must act reasonably. It will be reasonable for Transpower to decide not to replace the component if Transpower's costs of doing so are not fully recovered or able to be fully recovered through Transmission Charges, charges under Investment Contracts (including this Agreement), insurance or otherwise.
- (c) For the avoidance of doubt:
  - (i) the Charge will be payable by the Customer in accordance with this Agreement regardless of whether or not Transpower chooses to replace a failed component of the Works under clause 4.3(b); and
  - (ii) this clause 4.3 does not affect any obligation Transpower may have under Law or the Relevant Transmission Agreement to maintain (including repair) or replace the Works.

## **5 INVOICING AND PAYMENT**

### **5.1 Default Transmission Agreement Template applies**

Subject to clause 5.2, Transpower must invoice the Customer for, and the Customer must pay Transpower, the TWA Charges in accordance with Schedule 7 and clauses 10 and 11 of the Default Transmission Agreement Template (with such changes as are necessary to give effect to the intention of this Agreement).

### **5.2 Due date**

"Due Date" in clauses 10 and 11 of the Default Transmission Agreement Template (as incorporated by clause 5.1 of this Agreement) means the 20<sup>th</sup> day of the month after the month of the invoice, or the next Business Day if that day is not a Business Day.

**5.3 TWA Charges in addition to Transmission Charges**

For the avoidance of doubt, the TWA Charges are in addition to any Transmission Charges payable by the Customer for the Works.

**6 VARIATION**

**6.1 Mutually agreed variations**

This Agreement may only be varied by written agreement between the parties, except where specified otherwise in this Agreement.

**6.2 Regulatory change**

If a regulatory change that was not reasonably foreseeable at the Commencement Date significantly increases the burden of this Agreement for a party, there is no other method in this Agreement for responding to the regulatory change, and the parties cannot agree on a variation to this Agreement that will mitigate the increased burden, the affected party may refer the matter to dispute resolution under clause 21 of the Default Transmission Agreement Template as incorporated by clause **Error! Reference source not found.** of this Agreement.

**6.3 Project Timeframe**

Transpower has followed its approved internal processes to determine the Project Timeframe and will follow those processes for any update of the Project Timeframe. The Customer acknowledges that the Project Timeframe is indicative only. The Project Timeframe may be updated by Transpower in accordance with paragraph 2 of Schedule 4.

**6.4 Budget**

Transpower has followed its approved internal processes to determine the Budget and will follow those processes for any update of the Budget. The Customer acknowledges that the Budget is indicative only. The Budget may be updated by Transpower in accordance with paragraph 3 of Schedule 4.

**7 TERM AND TERMINATION**

**7.1 Term**

This Agreement commences on the Commencement Date and ends on the Expiry Date unless terminated earlier in accordance with this Agreement. Neither party has any right to terminate this Agreement except as set out in this Agreement.

**7.2 Termination by either party**

Either party may terminate this Agreement by giving at least 5 Business Days' notice to the other party:

- (a) if that other party commits a material breach of this Agreement that is incapable of being remedied, or that is capable of being remedied but is not remedied within 10 Business Days of receipt of a notice requiring the breach to be remedied;
- (b) if the other party enters into liquidation, except for the purposes of a solvent reconstruction or amalgamation on terms previously approved in writing by the first party;

- (c) if the other party enters into any compromise, arrangement or assignment with, or for the benefit of, its creditors, whether approved by a Court or not (except as previously approved in writing by the first party);
- (d) if a statutory manager is appointed under the Corporations (Investigation and Management) Act 1989 to the other party or a receiver, manager or administrator is appointed to the whole or a material part of the other party's property;
- (e) if the other party does not satisfy the solvency test in section 4(1) of the Companies Act 1993;
- (f) if the other party is not a company and is the subject of an event reasonably analogous to an event described in clauses 7.2(b) to (f);
- (g) if it becomes illegal for either party to perform any provision of this Agreement to an extent that is material, provided that:
  - (i) the parties agree there is no practical basis on which this Agreement might be varied to remove the illegality; and
  - (ii) the illegality is not the result of a failure by the terminating party to meet its obligations under this Agreement.

This clause 7.2(g) applies despite clause 24.4 (Severability) of the Default Transmission Agreement Template (as incorporated by clause **Error! Reference source not found.**);

- (h) if either party is subject to an event of Force Majeure that materially affects its performance of this Agreement and continues for more than 60 Business Days, provided that if the affected party is the terminating party that party complies with clause 13.3 (Avoidance and Mitigation of Effect of Force Majeure) of the Default Transmission Agreement Template (as incorporated by clause **Error! Reference source not found.**); or
- (i) any Transmission Agreement or other Investment Contract between the parties is terminated for cause by the terminating party.

### 7.3 **Non-payment**

A failure by the Customer to pay the Charge or any other amount payable by the Customer under this Agreement when due is a remediable material breach of this Agreement by the Customer to which clause 7.2(a) applies.

### 7.4 **Termination by Customer**

The Customer may terminate this Agreement:

- (a) by giving at least 5 business Days' notice to Transpower at any time after the Commissioning Date; or
- (b) in accordance with paragraph 1.1(c) or 0 of Schedule 4.

### 7.5 **Termination by Beneficiary**

A Beneficiary may terminate this Agreement in accordance with clause 10.2.

### 7.6 **Termination by agreement**

The parties may agree to terminate this Agreement.

## 7.7 Consequences of expiry and termination

When this Agreement expires or is terminated:

- (a) subject to clause 7.8, this Agreement will be of no further force or effect and both parties will be released from their obligations under this Agreement;
- (b) the expiry or termination will not affect the rights or obligations of the parties that accrued up to or on the date of expiry or termination, including the Customer's obligation to pay accrued TWA Charges; and
- (c) if this Agreement is terminated before the Commissioning Date, the Customer must allow Transpower to remove its plant and equipment (including any part of the Works) from the Customer Premises and clause 3.1 will apply to Transpower's access to the Customer Premises for that purpose.

## 7.8 Survival of provisions

The following provisions will survive the expiry or termination of this Agreement: clauses 2.1(d), 3.2(a), 4, **Error! Reference source not found.**, 6, 7.7, 7.8, 9, 11 and 12.

# 8 HEALTH AND SAFETY

## 8.1 Mutual obligations

Each party must:

- (a) ensure, so far as is reasonably practicable, the health and safety of workers while they are carrying out work in connection with the Works;
- (b) ensure, so far as is reasonably practicable, the health and safety of other persons is not put at risk from work carried out in connection with the Works;
- (c) comply, and ensure its personnel comply, with all of the other party's workplace health and safety rules and procedures provided in advance to the first party when its personnel are at the other party's premises (Transpower Premises or Customer Premises, as the case may be); and
- (d) notify the other party immediately of any notifiable event (as defined in section 25 of the Health and Safety at Work Act 2015) relating to the Works and co-operate fully in any investigation into the notifiable event by the other party.

## 8.2 Concurrent obligations

Where both parties have a duty under a health and safety Law in relation to the Works, each party must, so far as is reasonably practicable:

- (a) ensure the health and safety of workers and other persons to the extent of its influence and control; and
- (b) to that end, consult, co-operate with and coordinate activities with the other party.

# 9 CONSUMER GUARANTEES ACT

The parties agree that the Works are being supplied and acquired in trade and that none of the provisions of the Consumer Guarantees Act 1993 apply to the Works.

## **10 CONDITIONS**

### **10.1 Conditions**

This Agreement is conditional on each Condition being satisfied by its Condition Date or waived.

### **10.2 Consequence of non-satisfaction of a condition**

If a Condition is not satisfied by its Condition Date or waived, the Beneficiary may terminate this Agreement immediately on notice to the other party if the Condition has still not been satisfied at the date of the notice.

### **10.3 Waiver of Conditions**

A Condition may only be waived by the Beneficiary.

## **11 OTHER AGREEMENTS**

### **11.1 Entire agreement and reasonableness**

- (a) Subject to clause 11.2, this Agreement constitutes the entire agreement between the parties and supersedes and ends all earlier negotiations, understandings whether oral or written between the parties relating to the subject matter of this Agreement; and
- (b) The parties agree that the terms and conditions of this Agreement are reasonable.

### **11.2 Related Agreements**

Despite clause 11.1(a), the following Related Agreements between the parties survive the commencement of this Agreement:

- (a) Ohau C Solar Farm (The Point) Services Agreement signed 13 April 2023
- (b) Ohau C Solar Farm (The Point) Statement of Works 1 signed 13 April 2023
- (c) Ohau C Solar Farm (The Point) Statement of Works 2 signed 11 October 2023

All unpaid amounts that are payable or become payable under those Related Agreements are to be included in the Charge instead of being paid under the Related Agreements. The processes in this Agreement for invoicing, payment and disputes around invoicing or payment will apply to those amounts instead of the processes in the Related Agreements.

## **12 DEFINITIONS AND CONSTRUCTION**

### **12.1 Default Transmission Agreement Template**

Clauses 13 (Force Majeure), 20 (Liability), 21 (Dispute Resolution), 22 (Confidentiality), 23 (Assignment), 24 (General Legal Terms) and 25 (Notices) of the Default Transmission Agreement Template will apply as if set out fully in this Agreement with such changes as are necessary to give effect to the intention of this Agreement. Despite the incorporation of clause 25 of the Default Transmission Agreement Template:

- (a) the parties' addresses for notices under this Agreement are as set out in Schedule 1; and
- (b) notices under this Agreement may also be given by email, and if given by email will be deemed to have been received when sent unless the sender receives an automatically generated email receipt error message (in which case the notice will be deemed not to have been received).

## 12.2 Defined terms

In this Agreement, unless the context requires otherwise:

**Acceptable Credit Rating** has the meaning given to that term in clause 1 of Schedule 7 to the Default Transmission Agreement Template.

**Agreement** means this Transpower Works Agreement and includes the Schedules to it.

**Asset Life** means, for a Major Component, the asset life set out in Schedule 1, which commences on the Commissioning Date.

**Beneficiary** means, for a Condition, the beneficiary of the Condition set out in Schedule 3.

**Budget** means the indicative budget set out in Schedule 2.

**Business Day** has the meaning given to that term in clause 5 of the Default Transmission Agreement Template.

**Charge** has the meaning given to that term in paragraph 1.2 of Schedule 7.

**Code** means the Electricity Industry Participation Code 2010.

**Commencement Date** means the date this Agreement was executed by both parties

**Commissioning Date** means the date on which Transpower issues the Customer with a certificate confirming that the Works have passed all tests and are ready for normal operation.

**Condition** means a condition set out in Schedule 3.

**Condition Date** means, for a Condition, the date for satisfaction of the Condition set out in Schedule 3.

**Condition Fulfilment Date** means the date by which all Conditions have either been fulfilled or waived.

**Configuration** means the configuration for the Works set out in Schedule 1.

**Consent** means any resource consents, designations or outline for plans for works under the Resource Management Act 1991 (or replacement legislation) or associated regulations including the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (NESETA), any plan change required to amend the location of, or remove, the Electricity National Grid Corridor, and amend or remove associated plan provisions, affected party approvals and stakeholder consultation and any other consents or approvals under any other Law or from any relevant authority including Heritage New Zealand Pouhere Taonga and Department of Conservation.

**Customer Owned Plant** means the Works described in Schedule 8.

**Customer Premises** means any building, site or other place that is owned, occupied or otherwise under the control of the Customer or a Related Party of the Customer.

**Default Transmission Agreement Template** has the same meaning given to that term in the Code being (as at the date of this Agreement) the document set out in Schedule 12.6 of the Code. Where the Relevant Transmission Agreement is different to the Default Transmission Agreement Template, a reference to a provision of the Default Transmission Agreement Template is deemed to mean the equivalent provision of the Relevant Transmission Agreement.

**Early Termination Charge** has the meaning given to that term in paragraph 1.2 of Schedule 7.

**Early Termination Reconciliation Charge** has the meaning given to that term in paragraph 1.2 of Schedule 7.

**Expiry Date** has the meaning given to that term in paragraph 1.1 of Schedule 7.

**Force Majeure** has the meaning given to that term in clause 5 of the Default Transmission Agreement Template.

**Good Engineering Practice** means the standards, practices, methods and procedures conforming to Law and the degree of skill, diligence, prudence, foresight and economic management which would reasonably be expected from a skilled and experienced contractor or engineer, as the case may be, engaged in the same type of work under the same or similar circumstances and being a contractor or engineer who is familiar with and experienced in the practices which are generally recognised internationally as being applicable to that work.

**Grid** has the meaning given to that term in clause 1.1(1) of the Code.

**Investment Contract** means a contract between Transpower and another person under which:

- (a) Transpower agrees to provide any new, upgraded or modified Grid assets; or
- (b) the other person agrees to make a contribution to the capital, maintenance, operating or overhead cost of a Grid asset,

and includes this Agreement.

**Law** has the meaning given to that term in clause 5 of the Default Transmission Agreement Template.

**Major Component** means a component of the Works specified as a major component in Schedule 1.

**Project Timeframe** means the indicative project timeframe set out in Schedule 2.

**Related Agreement** means an agreement, other than this Agreement, between Transpower and the Customer under which Transpower provides services related to the Works.

**Related Party** means, for a party, an entity that is a related company of the party (as defined in section 2(3) of the Companies Act 1993) or would be a related company of the party if both the party and the entity were companies registered under that Act.

**Relevant Transmission Agreement** means the Transmission Agreement between the parties, which may be a default Transmission Agreement under clause 12.10 of the Code. If there is more than one existing Transmission Agreement between the parties, **Relevant Transmission Agreement** means:

- (a) the existing Transmission Agreement the parties agree in writing is to apply to the Works once they are connected to the Grid; or
- (b) in the absence of such agreement between the parties, a new default Transmission Agreement.

**Special Terms** means those terms and conditions described in Schedule 5.

**Transmission Agreement** has the meaning given to that term in the Code, but excluding an agreement for investment in the Grid.

**Transmission Charge** means a charge payable under a Transmission Agreement.

**Transpower Premises** means any building, site or other place that is owned, occupied or otherwise under the control of Transpower or a Related Party of Transpower.

**TWA Charge** means an amount payable by the Customer to Transpower under this Agreement, including the Charge, Early Termination Charge and Early Termination Reconciliation Charge.

**Works** means, as the context requires:

- (a) the plant provided or to be provided by Transpower under this Agreement, as described in Schedule 1;
- (b) the work performed or to be performed by Transpower under this Agreement to provide that plant, including investigation, design, procurement and project management; or
- (c) both.

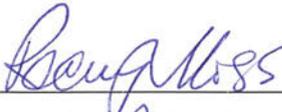
### 12.3 **Construction**

In this Agreement:

- (a) a reference to a clause is to a clause of this Agreement, a reference to a paragraph is to a paragraph of a Schedule, and a reference to a Schedule is to a Schedule to this Agreement;
- (b) a reference to any monetary amount is to New Zealand currency;
- (c) a reference to any document, including this Agreement, the Default Transmission Agreement Template and the Relevant Transmission Agreement, includes a reference to that document as amended or replaced from time to time;
- (d) a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
- (e) a reference to a party to this Agreement or any other document includes that party's personal representatives/successors and permitted assigns;
- (f) a reference to a person includes a corporation sole and any body of persons, whether incorporated or unincorporated;
- (g) if the Customer is more than one person, any reference to the Customer will be deemed to apply to those persons jointly and severally; and
- (h) a reference to an enactment (including the Code) is a reference to that enactment as amended, or to any enactment substituted for that enactment.

**SIGNED AS AN AGREEMENT** by the parties:

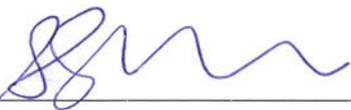
For **Transpower New Zealand Limited** by its authorised representative(s):

  
Name(s): Roewyn Moss  
Position(s): Executive General Manager Customer & External Affairs  
Date: 27/08/2024

For **Far North Solar Farm Limited** by its authorised representative(s):

  
Name(s): JOHN TELFER  
Position(s): DIRECTOR FNSF  
Date: 27/8/2024

For **NZGIF CX Investments Limited** by its authorised representative(s):

  
Name(s): SARAH MINHINMICK  
Position(s): CHIEF EXECUTIVE  
Date: 27/08/2024

**SCHEDULE 1: CONTRACT DETAILS**

<b>Site</b>	Ohau C (The Point), Mackenzie Basin as described in record of title 509805 being all land comprised in Section 3 Survey Office Plan 384036	
<b>Project Background</b>	<p>The Customer plans to construct approximately 300 MW solar farm 10 km south-east of the Twizel township.</p> <p>The Transpower works include design, installation and commissioning of a 220kV ‘line-in, line-out’ grid injection substation (GIP), to facilitate the connection of the Customer’s solar farm (The Point). The solar farm will connect into the 220kV system beside structures 83 &amp; 84 of the Benmore – Twizel circuit (BEN_TWZ). The substation platform and all 220kV connection assets will be designed and built by Transpower. The Customer will design, install and commission the remaining balance of the Customer’s solar farm. (solar arrays/inverters/33kV assets/generator transformers).</p>	
<b>Works</b>	<p>Design, install and commission of a substation platform and all associated 220kV assets required to facilitate the connection of the customer solar farm. The works for Transpower’s portion of the GIP include:</p> <ul style="list-style-type: none"> <li>• Design and build a substation platform, that can accommodate both the Customer’s 33kV assets, generator transformers and Transpower’s 220kV connection assets.</li> <li>• Design and build a transmission line connection arrangement that facilitates the connection of the GIP onto the BEN-TWZ-1 220kV CCT.</li> <li>• Design, procure, and install 220kV connection assets at the new Customer GIP and interface into the customer 33kV assets.</li> <li>• Design, procure and build fibre communications infrastructure to provide diverse telecommunication links into the GIP site.</li> <li>• Design, procure, and install the Profile A communications system at the new GIP.</li> </ul>	
<b>Major Components and Asset Lives</b>	<b>Major Component</b>	<b>Asset Life</b>
	<i>220kV Circuit breaker</i>	40 years
	<i>220kV Instrument transformer</i>	35 years
	<i>220kV Disconnectors/ Earthswitch</i>	50 years
	<i>Earth Switch</i>	50 years

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	<i>Surge Arrestor</i>	50 years
	<i>Protection relays and panels</i>	15 years
<b>Configuration</b>	The grid injection substation will provide the solar farm with a 220kV N-1 grid connection. The station will be constructed in a 'line in, line out' configuration. The substation will 'break into' the existing BEN-TWZ, forming two new discreet 220kV circuits.	
<b>Anticipated Commissioning Date (as at Commencement Date)</b>	December 2027	

<b>Notice details – Transpower</b>	<p>Transpower New Zealand Limited          Waikoukou, 22 Boulcott Street, Wellington 6011          PO Box 1021, Wellington 6140          Attention: Olivia Pierre          Email: [REDACTED]          All notices must be copied to:          [REDACTED]</p>
<b>Notice details – Customer</b>	<p>Far North Solar Farm Limited          Level 1, 65 Main Road, Kumeu, Auckland 0810          Attention: Richard Homewood          Email: [REDACTED]</p>
<b>Notice details - NZGIF</b>	<p>NZGIF CX Investments Limited          Level 9 (South End), 7 Waterloo Quay, Pipitea, Wellington 6011          Attention: Chief Investment Officer / Head of Legal          Email: [REDACTED]</p>

**SCHEDULE 2: BUDGET AND PROJECT TIMEFRAME**

**1 BUDGET**

<b>ITEM</b>	<b>INDICATIVE COST (\$)</b>
<b>Project Management, Design, Environmental, Property</b>	
Transpower Overheads	\$788,000.00
Design & consultants support	\$1,528,000.00
Environmental costs	\$60,000.00
Property costs	\$20,000.00
<b>Substations: Material Procurement</b>	2,644,000.00
<b>Lines: Material Procurement</b>	\$200,000.00
<b>Main Installation Contract Works (Lines/Stations)</b>	
Contractor preliminary & general	\$1,816,000.00
Substation construction, test & commission	\$8,870,000.00
Transmission lines construction, test and commission	\$1,025,000.00
Escalation/Inflation	\$1,513,000.00
Alpine Energy utility connection (high level estimate)	\$1,500,000.00
<b>Subtotal</b>	<b>\$19,964,000.00</b>
Contingency/Risk	\$1,588,000.00
<b>Total</b>	<b>\$21,552,000.00</b>

2 PROJECT TIMEFRAME

MILESTONE	INDICATIVE TIMEFRAME
Financial Close, which has the meaning given in Schedule 5	[Commencement Date + 12 months]
<b>Plan and design</b>	
Award detailed design contract	[Commencement Date + 8 months]
Outages confirmed	[Commencement Date + 34 months]
<b>Construction</b>	
Award construction contract	[Commencement Date + 18 months]
Construction commences	[Commencement Date + 24 months]
Protection settings approval request	[Commencement Date + 15 months]
Construction complete	[Commencement Date + 39 months]
<b>Commissioning</b>	
Approve commissioning plan	[Construction Complete Date - 4 months]
Commissioning	[Construction Complete Date + 2 months]
<b>Project close</b>	
Lessons learnt workshop	[Commissioning Date + 3 months]
Project closed	[Commissioning Date + 6 months]

**SCHEDULE 3: CONDITIONS**

	<b>Condition</b>	<b>Date for satisfaction (Condition Date)</b>	<b>Beneficiary</b>
1.	Transpower notifying the Customer that Transpower is satisfied (acting reasonably) that: a) All necessary Consents have been obtained; and b) any conditions on such Consents will not prevent Transpower from performing its obligations under this Agreement.	Within 12 months of the parties entering into this Agreement	Transpower
2.	The Customer notifying Transpower that the Customer is satisfied (acting reasonably) that: a) all necessary Consents have been obtained for the Customer Works; and b) any conditions on such Consents will not prevent the Customer from constructing and operating the Customer Works.	Within 12 months of the parties entering into this Agreement	Customer
3.	Transpower and the Customer entering into the Consenting Agreement.	At the same time or no later than 5 Business Days after, the parties enter into this Agreement.	Both Transpower and the Customer
4.	Transpower and the Customer entering into the Property Rights Agreement.	At the same time or no later than 10 Business Days after, the parties enter into this Agreement.	Both Transpower and the Customer
5.	The Property Rights Agreement becoming unconditional	Within the timeframe specified in the Property Rights Agreement	Both Transpower and the Customer
6.	All of the conditions in clause 3.1 of the Property rights Agreement being met.	Within the relevant timeframes specified in the Property Rights Agreement	Transpower
7.	Transpower, the Customer and NZGIF entering into the Direct Deed	At the same time or no later than 5 Business Days after, the parties enter into this Agreement	Transpower, the Customer and NZGIF

## **SCHEDULE 4: INFORMATION, REPORTING AND PROJECT TIMEFRAME AND BUDGET VARIATIONS**

### **1 INFORMATION AND REPORTING**

#### **1.1 Transpower monthly reports**

Each month prior to the Commissioning Date, Transpower must report to the Customer on:

- (a) the progress of the Works compared with the Project Timeframe, together with a brief explanation of any slippage against the Project Timeframe;
- (b) Transpower's total expenditure on the Works as at the date of the report compared with the Budget, together with a brief explanation of any Budget over-run; and
- (c) any significant issues affecting the Works.

#### **1.2 Customer Reporting**

The Customer must:

- (a) provide Transpower with audited financial statements (interim and annual) within a reasonable time of these being published;
- (b) inform Transpower as soon as practicable if any material adverse event affects the ability of the Customer to pay the Charges when due or the Customer's credit rating; and
- (c) comply with TP.AG 10.13 *Industry guidelines for the management of mutual interest drawings* where the Customer has updated mutual interest drawings (drawings showing Transpower's grid assets and the Customer's interface with these assets) as part of the project which the Works form part of.

### **2 UPDATED PROJECT TIMEFRAME**

- (a) If Transpower becomes aware of a delay of the Works that is likely to cause a delay of the anticipated Commissioning Date (cumulatively with any previous delays not reflected in the Project Timeframe), Transpower must notify the Customer as soon as reasonably practicable and provide the Customer with:
  - (i) a revised Project Timeframe reflecting the delay(s);
  - (ii) the reasons for the delay(s); and
  - (iii) Transpower's actions and proposals for mitigating the delay(s).
- (a) The revised Project Timeframe notified by Transpower will replace the then current Project Timeframe.
- (b) The parties must meet to discuss ways in which the delay(s) may be mitigated, which may involve reducing the scope of the Works if the parties agree to do so.
- (c) If the anticipated Commissioning Date in the Project Timeframe is more than 6 months later than the anticipated Commissioning Date in the Project Timeframe at the Commencement Date, the Customer may terminate this Agreement immediately on notice to Transpower within 10 Business Days of the most recent replacement of the Project Timeframe under sub-paragraph (b).

### **3 UPDATED BUDGET**

#### **3.1 Revised budget after detailed design phase**

Transpower must provide the Customer with an updated Budget on completion of the plan and design phase of the Works. This will supersede and replace the Budget set out in Schedule 2, subject to paragraph 3.3.

#### **3.2 Consultation prior to contract award**

Transpower must consult the Customer prior to awarding the primary contract for the Works if the award of the contract is likely to result in the Budget being exceeded by at least 10% (cumulatively with any previous cost increases not reflected in the Budget).

#### **3.3 Change in budget**

- (a) If Transpower becomes aware of an increase in the cost of the Works that is likely to cause the Budget to be exceeded by an amount of 10% or more (cumulatively with any previous increases not reflected in the Budget), Transpower must notify the Customer as soon as reasonably practicable and provide the Customer with:
  - (i) a revised Budget reflecting the increase(s);
  - (ii) the reasons for the increase(s); and
  - (iii) Transpower's actions and proposals for mitigating the increase(s).
- (b) The Customer must notify Transpower within 10 Business Days of the date of Transpower's notice under sub-paragraph (a) whether it accepts or rejects the revised Budget (with reasons if the Customer rejects the revised Budget). If the Customer does not notify Transpower within that time, then the Customer will be deemed to have accepted the revised Budget.
- (c) If the Customer rejects the revised Budget, the parties must negotiate in good faith to agree the revised Budget within a further 10 Business Days or such longer period as the parties may agree. If the parties fail to reach agreement within the negotiation period, the Customer may terminate this Agreement on notice to Transpower within 5 Business Days of the end of the negotiation period. If the Customer does not terminate this Agreement within that time, then the Customer will be deemed to have accepted the revised Budget.
- (d) If the Customer accepts the revised Budget or the parties agree on the revised Budget, the revised Budget will replace the then current Budget immediately.

**SCHEDULE 5: SPECIAL TERMS (AMENDMENTS TO STANDARD TERMS AND CONDITIONS)**

**1. CREDIT SUPPORT**

1.1 If, at any time:

- (a) the Customer does not have an Acceptable Credit Rating; or
- (b) the Customer exceeds the credit limits Transpower has set under Transpower's Customer Credit Policy,

the Customer must, at its own cost, provide credit support for an amount reasonably determined by Transpower (which will be for at least the amount the Customer exceeds the credit limits) and that is in a form and substance reasonably satisfactory to Transpower.

1.2 The credit support must be either a:

- (a) bank guarantee with no expiry date;
- (b) letter of credit; or
- (c) third party guarantee from a third party that has a credit rating of A, "Stable" from Standard & Poor's (or an equivalent rating from any other reputable rating agency which is reasonably acceptable to Transpower).

1.3 Transpower must release any credit support provided by the Customer under this clause on request by the Customer after either:

- (a) The Customer has provided notice, with supporting evidence, to Transpower that it has obtained an Acceptable Credit Rating and has not exceeded the credit limits Transpower has set under Transpower's Customer Credit Policy for a minimum of 2 years; or
- (b) The later of:
  - (i) all Charges under the Agreement being paid; and
  - (ii) the Customer meeting all its obligations under the Agreement.

1.4 Transpower may have recourse to any or all of the credit support provided by the Customer if:

- (a) the Customer fails to pay any Charges by the due date and has not remedied the non-payment within 10 Business Days of Transpower giving notice of non-payment and requiring the default to be remedied; or
- (b) the Customer defaults in the performance of any of its other obligations under this Agreement to the extent of the financial impact of that default on Transpower but only after Transpower has given the Customer at least 10 Business Days' notice of its intention to have recourse to the credit support.

1.5 If Transpower has recourse to the credit support:

- (a) except as provided in paragraph (b) of this clause, such recourse will not cure the Customer's default or exhaust Transpower's remedies against the Customer for the default and all provisions of this Agreement that apply as a result of the Customer's default will continue to apply; and

- (b) the Customer is not required to pay unpaid Charges or default interest on any unpaid Charges to the extent that Transpower has had recourse to the credit support for the Customer's default in paying those Charges.
- 1.6 On request by the Customer, Transpower will execute a partial release of the credit support provided by the Customer if and to the extent that:
  - (a) Charges have been paid; and/or
  - (b) the Budget is reduced (by Transpower notifying the Customer in writing) by 10% or more of the then-current Budget.
- 1.7 If Financial Close (as defined below) occurs, nothing in this clause 1 of this Schedule 5 applies at any time during the period from Financial Close up to the date on which NZGIF gives notice under clause 4 of this Schedule 5 ending NZGIF's payment obligations under this Agreement.

## 2. ROLE OF NZGIF

- 2.1 NZGIF's obligations are solely as set out in this Schedule 5 and except as expressly stated in this Schedule 5 NZGIF is not liable for any acts, omission, obligations or liabilities of the Customer.
- 2.2 Wherever this Agreement entitles the Customer to request reporting or information from Transpower, NZGIF may make a request for the relevant reporting or information on behalf of the Customer.
- 2.3 Wherever this Agreement requires Transpower to provide the Customer with reporting or information, Transpower will provide that reporting or information to NZGIF at the same time as it is required to provide the same to the Customer.
- 2.4 Where this Agreement (including the provisions of the Default Transmission Agreement Template as incorporated by clause 12.1 of this Agreement) refers to both parties, neither party, each party and equivalent expressions, these references are deemed to be amended to reflect the fact that this Agreement includes three parties, so a reference to both parties would be a reference to all parties, a reference to neither party would be a reference to no party and so forth.
- 2.5 From Financial Close (as defined in clause 3 of this Schedule 5) until NZGIF gives notice under clause 4 of this Schedule 5 ending its payment obligations, the Customer cannot terminate this Agreement without NZGIF's consent, and any purported exercise by the Customer of a termination right under this Agreement will be of no effect unless approved by NZGIF giving notice to Transpower and the Customer.
- 2.6 In light of the fact that NZGIF's obligations solely relate to payment of the Charge, the parties agree that clause 8 is not applicable to NZGIF.

## 3. PAYMENTS BY NZGIF ON BEHALF OF CUSTOMER

- 3.1 In this Agreement, **Financial Close** means the time at which all the following have occurred:
  - (a) NZGIF and the Customer notify Transpower that they have signed a 'Repayment Agreement' in respect of the financing that will be provided to the

Customer by NZGIF by way of payment of the Charge under this clause 3 and that all conditions precedent to that document have been satisfied or waived by NZGIF.

- (b) NZGIF, the Customer and Transpower have executed and delivered a 'Transpower Direct Deed' under which:
    - (i) Transpower makes certain commitments to NZGIF, regarding the exercise of Transpower's rights under the Relevant Transmission Agreement; and
    - (ii) the Customer agrees Transpower can carry out those commitments, and that deed is not terminated before the other requirements for the achievement of Financial Close are satisfied.
  - (c) All of the following conditions have been satisfied:
    - (i) Transpower has submitted to the Electricity Authority a proposed transmission agreement between the Customer and Transpower, in 'Agreed Form' as per Appendix 1 of this Schedule (Agreed Form TA);
    - (ii) the Electricity Authority has:
      - (A) confirmed in writing that it does not consider the Agreed Form TA requires approval under 12.38 of the Code; or
      - (B) approved the Agreed Form TA under 12.38 of the Code;
    - (iii) a copy of the Electricity Authority's confirmation or approval has been provided to NZGIF; and
    - (iv) the Agreed Form TA has been executed by the Customer and Transpower, and a copy of the executed version provided to NZGIF.
  - (d) The Conditions have been satisfied or waived.
- 3.2 Subject to clause 3.3 of this Schedule 5, the Customer will be responsible for paying Transpower the TWA Charges under this Agreement
- 3.3 . Following Financial Close, and subject to clause 4 of this Schedule 5, NZGIF will pay on the Customer's behalf the amounts required by clause 3.5 of this Schedule 5, and Transpower will accept those payments as if they had been made by the Customer. In the event that NZGIF does not make such payments by the due date for payment, the Customer will be required to pay such unpaid invoices to Transpower within 10 Business Days of receiving notice from Transpower of NZGIF's failure to pay.
- 3.4 In respect of invoices for the Charge payable prior to Financial Close, Transpower will issue invoices to the Customer, as described in paragraph 2.1 of Schedule 7, and the Customer will be required to pay such invoices.
- 3.5 Subject to clause 3.6, from Financial Close, Transpower will ensure that a copy of each invoice issued to the Customer for the Charge is sent to NZGIF at the same time as such invoices are sent to the Customer, and NZGIF will pay such invoices on behalf of the Customer. NZGIF's total aggregate payment obligations under this clause 3 will not exceed \$27,500,000 (**NZGIF Limit**).
- 3.6 From the date that Transpower has been notified by NZGIF that the NZGIF Limit has been reached, the Customer will be required to pay such invoices.

- 3.7 For clarity, NZGIF's payment obligations under the Agreement are limited to the obligation to pay, on behalf of the Customer and in accordance with this clause 3 of this Schedule 5, amounts of the Charge owed to Transpower by the Customer and validly invoiced by Transpower in accordance with the Agreement, up to but not exceeding the NZGIF Limit.

#### 4. EARLY TERMINATION OF NZGIF'S OBLIGATIONS

- 4.1 At any time before the Commissioning Date, NZGIF may give notice to Transpower and the Customer ending NZGIF's payment obligations under clause 3 of this Schedule 5 if:
- (a) NZGIF gives notice to Transpower advising that a "Material Event of Default" has occurred under the 'Repayment Agreement' contemplated in clause 3.1 of this Schedule 5;
  - (b) Transpower gives notice under clause 3.1 and/or 3.3 of Schedule 4 to this Agreement increasing the Budget, and the combined effect of that increase and all previous increases is more than 10% of the Budget that was set out in this Agreement as at the Commencement Date;
  - (c) Transpower gives notice under clause 2 of Schedule 4 to this Agreement updating the Project Timeframe for the Works with an anticipated Commissioning Date more than 6 months later than the anticipated Commissioning Date in the Project Timeframe as set out in this Agreement as at the Commencement Date; or
  - (d) the Customer is entitled to terminate this Agreement under clause 7.2 (Termination by either party) or 10.2 (Consequence of non-satisfaction of a condition), or would be entitled to do so but for an act or omission of the Customer.
- 4.2 Where NZGIF provides notice under clause 4.1 of this Schedule 5 ending its payment obligations:
- (a) NZGIF's remaining payment obligations under this Agreement will be limited to:
    - (i) payment in accordance with clause 3.4 of this Schedule 5 of any invoices issued by Transpower prior to NZGIF giving notice under clause 4.1 of this Schedule 5; and
    - (ii) payment of any Charges to the extent attributable to costs that were incurred by Transpower prior to NZGIF giving notice under clause 4.1 of this Schedule 5, provided that the amounts payable under this subparagraph (ii) will not exceed an amount equal to the Early Termination Charges that would have been payable if this Agreement had been terminated on NZGIF giving notice under clause 4.1 of this Schedule 5;provided that the total aggregate of the amounts paid and/or payable by NZGIF under clauses 3 and 4 of this Schedule 5 will never exceed the NZGIF Limit; and

- (b) without prejudice to any other rights of termination of Transpower or the Customer, this Agreement will continue and:
  - (i) the Customer will be solely responsible for any further payment obligations under this Agreement; and
  - (ii) without prejudice to any rights or remedies of NZGIF already accrued prior to NZGIF giving notice under clause 4.1 of this Schedule 5:
    - (A) NZGIF has no further rights under this Agreement; and
    - (B) all obligations of Transpower and the Customer to NZGIF under this Agreement are of no further force and effect.

## 5. GENERAL AMENDMENTS TO TWA TERMS

5.1 The text in clause 3.2(b) is deleted in full, and replaced with “Deliberately left blank.”

5.2 Clause 4.3 is replaced with the following clause:

### ***Replacement Works***

- (a) *If a Major Component fails before 80% of its Asset Life has elapsed such that the Major Component cannot reasonably be repaired, Transpower must replace the Major Component at its cost, provided a replacement for the Major Component is required for Transpower to continue to provide transmission services to the Customer.*
- (b) *Subject to clause 4.34.3(a), if any component of Works connected to the Grid fails such that the component cannot reasonably be repaired, Transpower must replace the component if, and only if:
  - i. a replacement for the component is required for Transpower to continue to provide transmission services to the Customer; and
  - ii. Transpower is satisfied it will be able to fully recover its capital cost of replacing the component through Transmission Charges, charges under one or more Investment Contracts, insurance or otherwise.*
- (c) *For the avoidance of doubt:
  - i. *the Charge will be payable by the Customer in accordance with this Agreement regardless of whether or not Transpower chooses to replace a failed component of the Works under clause 4.34.3(b); and*
  - ii. *this clause 4.3 does not affect any obligation Transpower may have under Law or the Relevant Transmission Agreement to maintain (including repair) or replace the Works.**

5.3 Clause 5.1 is amended by deleting the words “and clauses 10 and 11 of the Default Transmission Agreement Template (with such changes as are necessary to give effect to the intention of this Agreement)”

5.4 Clause 5.2 is deleted in full, and replaced with “Deliberately left blank.”.

- 5.5 *Termination amendment:* Paragraphs (e), (h) and (i) of clause 7.2 of the Agreement are replaced with the following:
- (e) *if the other party does not satisfy the solvency test in section 4(1) of the Companies Act 1993 and this is not remedied within 10 Business Days' of receipt of a notice requiring the failure to be remedied. Transpower will use reasonable endeavours to consult with the Customer before it terminates this Agreement under this clause 7.2(e);*
  - (h) *if either party is subject to an event of Force Majeure that materially affects its performance of this Agreement and continues for more than 180 days, provided that if the affected party is the terminating party that party complies with clause 13.3 (Avoidance and Mitigation of Effect of Force Majeure) of the Default Transmission Agreement Template (as incorporated by clause 12.1).*
  - (i) *the Relevant Transmission Agreement, or another Investment Contract between the parties (including NZGIF) relating specifically to the Customer's Generating Station, is terminated for cause by the terminating party.*
- 5.6 *Termination amendment:* Despite clause 7.2 of the Agreement, unless NZGIF has provided notice under this Schedule 5 ending its payment obligations, Transpower will not terminate this Agreement in reliance on clause 7.2(b), (c), (d), (e) or (f).
- 5.7 *Termination amendment:* In respect of the Customer's right to terminate under clause 7.4 of the Agreement, unless NZGIF has provided notice under this Schedule 5 ending its payment obligations, the Customer may only exercise this right to terminate with NZGIF's prior written consent. A notice from the Customer under clause 7.4 of the Agreement will be of no effect unless accompanied by evidence demonstrating that NZGIF has provided its prior written consent.
- 5.8 *Related agreements amendment:* Clause 11.2 is amended by:
- (a) deleting in the first sentence the words "the parties" and replacing them with "Transpower and the Customer"; and
  - (b) deleting the paragraph directly after clause 11.2(c).
- 5.9 Clause 12.2 is updated by
- (a) replacing the following definitions:
    - Relevant Transmission Agreement** means the Transmission Agreement between the Customer and Transpower for the Customer's Generating Station, in the 'Agreed Form' contemplated in Appendix 1 of Schedule 3;
    - TWA Charge** means an amount payable by the Customer to Transpower under this Agreement, including the Charge, Decommissioning Charge, Early Termination Charge and Early Termination Reconciliation Charge.
  - (b) adding the following definitions:
    - Consenting Agreement** means the agreement intended to be entered into by Transpower and the Customer on or around the date of this Agreement, and that sets out Transpower's and the Customer's responsibilities for obtaining and operating under any Consents necessary for the Works.
    - Customer's Generating Station** means the Customer's solar farm to be built at the Site, and for which the Works to be performed under this Agreement are necessary in order to connect the solar farm to the Grid;

**Direct Deed** means the 'Transpower Direct Deed' entered into by Transpower, the Customer and NZGIF as contemplated in clause 3.1 of Schedule 5, and as amended or novated from time to time, and also includes any replacement tripartite deed as contemplated in clause 8.4 of that 'Transpower Direct Deed'.

**Property Rights Agreement** means the agreement intended to be entered into by Transpower and the Customer on or around the date of this Agreement, and that sets out Transpower's and the Customer's rights and obligations in relation to land access to enable and operate the Works.

- 5.10 After Financial Close, if Transpower is required to pay a refund or other amount to the Customer:
- (a) before paying that amount to the Customer, Transpower will notify the Customer and NZGIF of the amount of compensation;
  - (b) the Customer irrevocably authorises Transpower to make that payment to NZGIF on the Customer's behalf;
  - (c) Transpower will pay to NZGIF, on behalf of the Customer, any portion of that compensation that NZGIF notifies Transpower is to be applied against the amounts outstanding under the 'Repayment Agreement' contemplated in clause 3.1 of Schedule 5 (the *Outstanding Amount*); and
  - (d) the Customer agrees that the compensation will be applied first to payment of the Outstanding Amount; and
  - (e) NZGIF agrees to pay to the Customer any amounts paid to NZGIF by Transpower under this clause in excess of the Outstanding Amount.

This clause 5.9 will survive notwithstanding that NZGIF has given notice under Schedule 5 ending its payment obligations under this Agreement. However, this clause 5.9 will cease to have any effect once NZGIF has confirmed in writing to Transpower that all Outstanding Amounts have been repaid by the Customer. NZGIF will not unreasonably withhold or delay that confirmation.

- 5.11 To avoid doubt, clause 11.1 of this Agreement does not limit the Direct Deed, nor does it limit the rights and obligations of NZGIF and the Customer as between themselves arising under or in connection with any separate arrangements agreed between them.
- 5.12 Transpower agrees that the Customer will not be required to comply with clause 1.2 of Schedule 4 during the period from Financial Close up to the time (if any) that NZGIF gives notice under clause 4 of this Schedule 5 ending NZGIF's payment obligations.

## 6. AMENDMENTS TO DEFAULT TRANSMISSION AGREEMENT TEMPLATE

*(as incorporated by clause 12.1 of this Agreement)*

- 6.1 For the purposes of clause 23.1 of the Default Transmission Agreement Template (as incorporated by clause 12.1 of this Agreement):
- (a) Transpower will not unreasonably withhold its consent to an assignment of the Customer's rights under this Agreement to a security trustee on behalf of the Customer's financiers, or any other party, where the assignee demonstrates that it is (or is able to become) a registered participant (as defined in the

Code), Transpower is satisfied with the proposed credit support arrangements and the assignee undertakes with Transpower to accept, observe, perform and discharge all the liabilities and obligations of the Customer under the Agreement.

- (b) At any time, NZGIF and the Customer may give notice to Transpower requesting that the Customer's rights and obligations under this Agreement are to be novated to a third party nominated by NZGIF and Customer together. Transpower will not unreasonably withhold its consent to such a request, where proposed third party demonstrates that it is (or is able to become) a registered participant (as defined in the Code), Transpower (acting reasonably) is satisfied with the proposed credit support arrangements, and the assignee undertakes with Transpower to accept, observe, perform and discharge all the liabilities and obligations of the Customer under the Agreement.
- (c) The parties agree that NZGIF may give notice to Transpower requesting that the Customer's rights and obligations under this Agreement are to be novated to a third party nominated by NZGIF. Transpower will not unreasonably withhold its consent to such a request, where the proposed third party demonstrates that it is (or is able to become) a registered participant (as defined in the Code), Transpower (acting reasonably) is satisfied with the proposed credit support arrangements, and the assignee undertakes with Transpower to accept, observe, perform and discharge all the liabilities and obligations of the Customer under the Agreement. The Customer must take such steps as Transpower and NZGIF require to effect the novation, including signing any documents. Where the Customer fails to take such steps, the Customer agrees that the novation documents may be signed by NZGIF, Transpower and the third party nominated by NZGIF, in which case, from the date those documents provide for the novation to take effect (**Novation Date**):
  - (i) the Customer will be released from any obligations arising under or in connection with this Agreement from the Novation Date;
  - (ii) the nominated third party will be granted all of the rights of the Customer under this Agreement (including all the obligations and liabilities of Transpower that arose under or in connection with this Agreement prior to the Novation Date);
  - (iii) the nominated third party will be responsible for any obligations arising under or in connection with this Agreement on and after the Novation Date;
  - (iv) as between the Customer and Transpower, Transpower will be released from all obligations and liabilities to the Customer arising under or in connection with this Agreement, including all those that arose prior to the Novation Date;
  - (v) as between the Customer and NZGIF, NZGIF will be released from all obligations and liabilities to the Customer arising under or in connection with this Agreement, including all those that arose prior to the Novation Date; and
  - (vi) any then subsisting ground for termination, rescission or acceptance of repudiation of this Agreement or suspension of performance of any or all

obligations under this Agreement, in each case by Transpower, will be deemed to have no effect, provided that this paragraph (vi):

- (A) does not apply to any grounds of which Transpower is not aware as at the Novation Date; and
- (B) will not affect any rights or remedies Transpower may have in respect of any breach of this Agreement to the extent that it arises or continues on or after the Novation Date, regardless of whether the events or circumstances causing or constituting the breach arose prior to the Novation Date.

This sub-clause (c) is for the benefit of, and on and from the Novation Date may be enforced against the Customer by, any nominated third party that has signed those novation documents.

NZGIF undertakes not to give a notice to Transpower under this sub-clause (c) requesting a novation of the Customer's rights and obligations under this Agreement unless NZGIF is entitled to unilaterally novate the Customer's rights and obligations under this Agreement under the terms of the agreements between NZGIF and the Customer.

- (d) The Customer may not assign its rights or obligations under this Agreement without the prior written consent of Transpower (subject to the other provisions of clause 6.1 of this Schedule 5) and, unless NZGIF has provided notice under this Schedule 5 ending its payment obligations, NZGIF.

- 6.2 **Variation:** For the purposes of clause 6 of this Agreement and clause 24.3 of the Default Transmission Agreement Template (as incorporated by clause 12.1 of this Agreement), except where this Agreement or the Default Transmission Agreement Template expressly provides Transpower with a unilateral right of variation or amendment, there is to be no amendment to any of the provisions of this Agreement except by written agreement signed by Transpower, the Customer and NZGIF, unless NZGIF has provided notice under this Schedule 5 ending its payment obligations, in which case only the written agreement of Transpower and the Customer are required.
- 6.3 **Waiver:** For the purposes of clause 24.5 of the Default Transmission Agreement Template (as incorporated by clause 12.1 of this Agreement), unless NZGIF has provided notice under this Schedule 5 ending its payment obligations, any waiver, extension or excuse (as the case may be) given in favour of Transpower is invalid and of no effect unless given in writing by both the Customer and NZGIF .
- 6.4 **Notices:** For the purposes of clause 25 of the Default Transmission Agreement Template (as incorporated by clause 12.1 of this Agreement), unless NZGIF has provided notice under this Schedule 5 ending its payment obligations, Transpower and the Customer will each ensure that when it provides any notices or other communications required by this Agreement to the other party, it also serves such notices or other communications to NZGIF at the address for service of notices to NZGIF as set out in Schedule 1. Unless NZGIF has provided notice under this Schedule 5 ending its payment obligations, a notice, consent, approval, confirmation, agreement or other similar communication to be given by Transpower to the Customer under this Agreement and which, if the notice was not also sent to NZGIF would prejudice NZGIF's position either under this Agreement, the Direct

Deed or the any separate arrangements agreed between the Customer and NZGIF, will be of no effect until also sent to NZGIF as required by this clause.

**6.5 Permitted disclosure by NZGIF:**

(a) Clause 22.2(b) of the Default Transmission Agreement (as incorporated by clause 12.1 of this Agreement), will be read, insofar as it applies to NZGIF as follows:

**(b) Banks, etc.:**

to any bank, financial institution, or to a trust fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets, or rating agency from which the party is seeking to obtain or maintain financial facilities or a credit rating in connection with that party's business;

(b) For the purposes of clause 22 of the Default Transmission Agreement Template (as incorporated by clause 12.1 of this Agreement), insofar as it applies to NZGIF, a new clause 22.2A will be inserted as follows:

**22.2A Constitutional or parliamentary convention**

The parties acknowledge and agree that nothing in this clause 22 restricts NZGIF's ability to meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its Committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the "no surprises" policy advised by Ministers of the Crown.

**6.6 Waiver of Conditions by the Customer:** For the purposes of clause 25 of the Default Transmission Agreement Template (as incorporated by clause 12.1 of this Agreement), the Customer must not waive a Condition of which it is a Beneficiary without the prior written consent of NZGIF.

**Schedule 5, Appendix 1: Agreed Form of Transmission Agreement**

Unless agreed otherwise by the Customer, Transpower and NZGIF, the 'Agreed Form' means a transmission agreement on the terms of the 'default transmission agreement template' as defined in the Code, with amendments to the effect that:

1. The only Point of Connection under the transmission agreement will be the Point of Connection of the Customer's Generating Station.
2. The transmission agreement will not take effect until the Commissioning Date has occurred under this Agreement.
3. Under the transmission agreement, Transpower is free to take or refrain from taking any action if and to the extent necessary for Transpower to comply with the requirements of the Direct Deed, including any provision of the Direct Deed requiring Transpower to:
  - a. ensure that the Customer's Generating Station does not get connected to the Grid prior to the Commissioning Date;
  - b. de-energise the Point of Connection of the Customer's Generating Station under the transmission agreement;
  - c. disconnect the Customer's Generating Station from the Grid; and/or
  - d. terminate the transmission agreement.
4. As permitted by 12.50B of the Code, those provisions of the transmission agreement that diverge from the 'default transmission agreement template' as defined in the Code are not affected by any changes made to that 'default transmission agreement template' after the Commencement Date.

To avoid doubt, the changes to the 'default transmission agreement template' set out above are the only changes that can be made to that template in order for it to constitute the Agreed Form, unless agreed otherwise by the Customer, Transpower and NZGIF.

**SCHEDULE 6: RESOURCE MANAGEMENT AND PROPERTY OBLIGATIONS**

1. Refer to the Property Rights Agreement and the Consenting Agreement.

**SCHEDULE 7: TWA CHARGES**

**1. DEFINITIONS AND INTERPRETATION**

1.1 Key variables for this Schedule:

<b>Monthly</b>	✓
<b>Lump Sum</b>	

1.2 In this Schedule, unless the context requires otherwise:

**Asset** means any part of the Works that is intended to be held separately as an asset on Transpower’s fixed asset register;

**Carrying Cost** means the carrying cost of the Works over the Carrying Period calculated in accordance with paragraph 4.2;

**Carrying Period** means the period from the Commissioning Date to the due date for payment of the invoice issued under paragraph 2.2;

**Charge** means the charge calculated in accordance with paragraph 3;

**Default Rate** means, in any month, the bank bill bid rate appearing on the first Business Day of the month plus five percent per annum, calculated daily and capitalised monthly;

**Due Date** has the meaning given to it in paragraph 8.2;

**Early Termination Charge** means the charge calculated in accordance with paragraph 6.1;

**Early Termination Reconciliation Charge** means the charge calculated in accordance with paragraph 6.5;

**Expiry Date** means the date that is 24 months after the Commissioning Date;

**GST** means goods and services tax payable under the GST Act (or any similar tax levied in substitution) and GST Act means the Goods and Services Tax Act 1985;

**Finance Rate** means the vanilla weighted average cost of capital that is required to be used for setting Transpower’s price path for the current, and each subsequent, regulatory period under Part 4 of the Commerce Act 1986 over the term of the Agreement;

**Net Total Cost** has the meaning in paragraph 4.1;

**Pre-tax Charge** means the pre-tax charge calculated in accordance with paragraph 3.3;

**Tax Gross-up** means the tax gross-up calculated in accordance with paragraph 4.3;

**Tax Depreciation Benefit** means the tax depreciation benefit of the Works calculated in accordance with paragraph 4.4;

**Tax Rate** means the corporate tax rate for Transpower;

**Total Cost** has the meaning in paragraph 4.1; and

**Transpower Default** means a circumstance giving the Customer a right to terminate this Agreement under clause 7.2(a) to (f) of the Agreement.

- 1.3 If at the time a calculation involving the Finance Rate or Tax Rate is made under this Schedule Transpower is aware of a future change to the Finance Rate or Tax Rate, the calculation must be made in a way that takes that change into account. For the avoidance of doubt, this paragraph does not apply if Transpower is aware a future change to the Finance Rate or Tax Rate will occur but does not know what the future Finance Rate or Tax Rate will be.

## **2. MONTHLY AND LUMP SUM PAYMENTS**

### **2.1 Monthly Instalments**

Where the Customer has chosen to pay monthly (as indicated in paragraph 1.1), on and from the Commencement Date Transpower may issue invoices (at not less than monthly periods) for any part of the Total Cost that Transpower has incurred.

### **2.2 Calculation of Charge after Commissioning Date**

- (a) Transpower must calculate the Charge as soon as reasonably practicable after the Commissioning Date, and in any event within 12 months of the Commissioning Date.
- (b) Transpower must notify the Customer of the Charge immediately after calculating it. The notice must be accompanied by a Transpower certificate signed by an authorised person as to the amount of the Total Cost. The certificate will be final and conclusive as to the amount of the Total Cost (except for any manifest error or if Transpower recalculates the Charge in accordance with paragraph 5).
- (c) Where the Customer has chosen to pay the Charge as a lump sum after the Commissioning Date (as indicated in clause 1.1 of this Schedule 7) Transpower will issue an invoice for the Charge.
- (d) Where the Customer has chosen to pay monthly (as indicated in paragraph 1.1) Transpower will issue an invoice for the Charge, less any amount the Customer has paid under paragraph 2.1.
- (e) If the Customer has paid any amount in excess of the Charge, the Customer (or NZGIF on behalf of the Customer) may issue an invoice to Transpower for any amount paid over and above the Charge which Transpower must pay by the 20th day of the month after the month of the invoice.

### **2.3 Information about Calculation of Charge**

The Customer may request additional details of how all, or any part, of the Charge has been calculated. Transpower must respond to each reasonable request in a timely manner. This paragraph 2.3 does not derogate from the Customer's obligation to pay the Charge.

## **3. CHARGE**

- 3.1 The purpose of the Charge is to allow Transpower to recover (on a net-of tax basis) the total cost of the Works, including financing costs after construction, plus an administration fee.
- 3.2 The Charge recognises that:
- (a) the Charge is a taxable receipt in the hands of Transpower and includes a gross-up for tax to reflect that (the Tax Gross-up); and
  - (b) Transpower may claim for tax purposes the capital cost of the Works by way of depreciation and the Charge includes a credit for that (the Tax Depreciation Benefit).
- 3.3 The Pre-tax Charge ( $C_{\text{pre tax}}$ ) is calculated as follows:

$$C_{pre\ tax} = (TC) \times (1 + AFR)$$

where:

**TC** is the Total Cost;

**AFR** is the Administration Rate expressed as a decimal.

3.4 The Charge (**C**) is calculated as follows:

$$C = C_{pre\ tax} + TG - TDB$$

where:

**C<sub>pre tax</sub>** is the Pre-tax Charge;

**TG** is the Tax Gross-up; and

**TDB** is the Tax Depreciation Benefit.

#### 4. CHARGE COMPONENTS

4.1 The **Total Cost** comprises:

- (a) the costs of the Works incurred by Transpower that are capitalised in accordance with generally accepted accounting practice, including Transpower internal costs ;
- (b) all other costs, including Transpower internal costs, incurred by Transpower as a result of its obligations under this Agreement or a Related Agreement; and
- (c) the Carrying Cost,

but excluding any costs of the type described in sub-paragraph (a) or (b) that are recovered under a Related Agreement. The Total Cost may include:

- (d) investigation, feasibility, concept, assessment, development and design costs;
- (e) plant costs;
- (f) preliminary site work costs;
- (g) construction and removal costs;
- (h) project management and supervisory costs; and
- (i) environment and property costs.

The **Net Total Cost** is the Total Cost excluding the Carrying Cost.

4.2 The Carrying Cost (**CC**) is calculated as follows:

$$CC = NTC \times \left(1 + \frac{i}{12}\right)^N - NTC$$

where:

**NTC** is the Net Total Cost;

**i** is the Finance Rate; and

**N** is the number of months (including part months expressed as a decimal) in the Carrying Period.

4.3 The Tax Gross-up (**TG**) is calculated as follows:

$$TG = \frac{C_{pre\ tax} \times t}{1 - t}$$

where:

**C<sub>pre tax</sub>** is the Pre-tax Charge; and

**t** is the Tax Rate.

4.4 The following sub-paragraphs apply to the calculation of the Tax Depreciation Benefit:

- (a) The Tax Depreciation Benefit is calculated from the Commissioning Date for the life of each Asset based on:
  - (iv) the capital cost of the Asset for tax purposes;
  - (v) the rate of depreciation for tax purposes for the Asset; and
  - (vi) the Tax Rate.
- (b) The part of the Tax Depreciation Benefit for an Asset that accrues after all Charges are paid is included.
- (c) Any balance of the non-depreciated capital cost of an Asset is assumed to be written off at the end of the life of the Asset.

4.5 The Administration Rate is 2%.

## 5. RECALCULATION OF CHARGE

5.1 Transpower must recalculate the Charge as soon as reasonably practicable if any of the following changes before the Expiry Date:

- (a) the Net Total Cost;
- (b) the tax regime, including the Tax Rate and the rate of depreciation for tax purposes for any Asset.

Transpower must not otherwise recalculate the Charge.

5.2 If the recalculation increases the Charge, Transpower will issue an invoice for the difference between the recalculated Charge and the previously calculated or recalculated Charge.

5.3 If the recalculation decreases the Charge, the Customer (or NZGIF on behalf of the Customer) may issue an invoice to Transpower for any amount paid over and above the Charge, which Transpower must pay by the 20th day of the month after the month of the invoice.

5.4 Paragraph 2.3 applies to the recalculated Charge.

## 6. EARLY TERMINATION CHARGE AND EARLY TERMINATION RECONCILIATION CHARGE

6.1 If this Agreement is terminated before the Commissioning Date, the Early Termination Charge (**ETC<sub>b</sub>**) is calculated as follows:

$$ETC_b = (TC' \times (1 + AFR)) + TG_{TC'} + DC + TG_{DC} - AR$$

where:

**TC'** is the Total Cost up to and including the date of termination;

**AFR** is the Administration Rate expressed as a decimal;

**TG<sub>TC'</sub>** is a tax gross-up calculated as follows:

$$TG_{TC'} = \frac{(TC' \times (1 + AFR)) \times t}{1 - t}$$

where **t** is the Tax Rate expressed as a decimal;

**DC** is:

- (a) if this Agreement was terminated by the Customer for a Transpower Default, 0; or
- (b) otherwise, Transpower's estimate of the total costs it will incur as a direct consequence of the termination, including demobilisation, dismantling, remediation and compliance costs;

**TG<sub>DC</sub>** is a tax gross-up calculated as follows:

$$TG_{DC} = \frac{DC \times t}{1 - t}$$

where **t** is the Tax Rate expressed as a decimal;

**AR** is Transpower's estimate of any amount Transpower expects to recover through a mechanism outside this Agreement:

- (a) to the extent that to include that amount in the Early Termination Charge would result in Transpower double-recovering its costs; but
- (b) provided that Transpower is entitled to retain half of its estimate of the revenue it expects to derive from the disposal of any part of the Works.

6.2 The Early Termination Charge must be calculated within 12 months after the date of termination of this Agreement. Paragraphs 2.2(b)-(d) and 2.3 apply to the Early Termination Charge.

6.3 The Early Termination Charge may be negative, in which case the Customer (or NZGIF on behalf of the Customer) may issue an invoice to Transpower for the Early Termination Charge which Transpower must pay by the 20th day of the month after the month of the invoice.

6.4 If the variables DC or AR in the formulae in paragraph 6.1 are based on estimated costs or revenue at the time the Early Termination Charge is calculated:

- (a) subject to paragraph 6.6, Transpower must recalculate the Early Termination Charge and calculate the Reconciliation Charge as soon as reasonably practicable after it knows the actual costs or revenue; and
- (b) subject to paragraph 6.7 :
  - (vii) the Customer must pay Transpower the Early Termination Reconciliation Charge; and
  - (viii) the Early Termination Reconciliation Charge is payable by the Customer when Transpower has calculated it.

6.5 The Early Termination Reconciliation Charge (ETRC) is calculated as follows:

$$ETRC = (ETC_r - ETC_o) \times \left(1 + \frac{i}{12}\right)^N$$

where:

**ETC<sub>r</sub>** is the recalculated Early Termination Charge;

**ETC<sub>o</sub>** is the originally calculated Early Termination Charge;

**i** is the Finance Rate expressed as a decimal; and

**N** is the number of months (including part months expressed as a decimal) between the time the originally calculated Early Termination Charge was paid by the Customer and the time the Reconciliation Charge is calculated.

- 6.6 The Early Termination Charge must not be recalculated, and the Early Termination Reconciliation Charge must not be calculated, after the Expiry Date or 12 months after the date of termination of this Agreement.
- 6.7 The Early Termination Reconciliation Charge may be negative, in which case the Customer (or NZGIF on behalf of the Customer) may issue an invoice to Transpower for the Early Termination Reconciliation Charge which Transpower must pay by the 20th day of the month after the month of the invoice.

## **7. GST**

- 7.1 In addition to any amounts payable under this Agreement, the Customer is to pay Transpower an amount equal to any GST for which Transpower is liable in respect of the supply to which such payments relate (the "GST Amount"). The GST Amount is due and payable by the Customer at the same time as the payment in respect of which it is payable is due under this Agreement.

## **8. PAYMENT**

- 8.1 The Customer must pay to Transpower the full amount of any invoice sent in accordance with this Agreement. No deduction from the amounts invoiced may be made. For the purposes of this paragraph 8.1, "deduction" means any legal or equitable set off, and/or any legal or equitable counterclaim, and/or any cross-demand and/or any other legal or equitable claim and/or any disputed amount.
- 8.2 Any invoice under this Agreement must be paid in full on or before the 20<sup>th</sup> day of the month after the month of the invoice, or the next Business Day if that day is not a Business Day ("Due Date").
- 8.3 If the Customer fails to pay the full amount of any invoice which is due in accordance with this Agreement on or before the Due Date, the Customer must pay interest calculated at the Default Rate on the amount unpaid from the Due Date until the date payment is received by Transpower, such interest to accrue after, as well as before, judgment, award or determination.

## **9. MANIFEST ERROR IN INVOICE:**

- 9.1 If the Customer considers, after consultation with NZGIF, that there is a manifest error in an invoice and gives Transpower not less than 5 Business Days' notice of the alleged error prior to the Due Date, Transpower must use reasonable endeavours to investigate whether there is a manifest error and notify the Customer before the Due Date whether it agrees (acting reasonably) that there is a manifest error and the invoice requires correction.
- 9.2 If:
- (c) Transpower notifies the Customer that it agrees that there is a manifest error requiring correction, it will re-invoice the Customer and paragraph 8 will apply to

payment of the new invoice, provided that the Due Date will be 5 Business Days from the date that the new invoice is received by the Customer, and the Customer will not be liable to pay the sum specified in the incorrect invoice;

- (d) Transpower notifies the Customer that it does not agree that there is a manifest error requiring correction, paragraph 8 will apply to payment of the invoice;
- (e) Transpower has not notified the Customer before the Due Date either that it agrees or disagrees that there is a manifest error requiring correction, that invoice will not be payable provided that if the Customer subsequently receives notice from Transpower that it:
  - (ix) agrees that there is a manifest error requiring correction, paragraph (a) of this paragraph will apply; or
  - (x) disagrees that there is a manifest error requiring correction, the Due Date for that invoice will be 5 Business Days from the date the Customer receives such notice.

**SCHEDULE 7B: DECOMMISSIONING CHARGES**

**1 Introduction**

- 1.1 After the giving of a termination notice under clause 2.2 of the Facilities and Services Deed, Transpower is responsible for undertaking certain decommissioning activities.
- 1.2 Transpower’s Decommissioning Costs are fully recoverable from the Customer under the Facilities and Services Deed.
- 1.3 Given the long-term nature of these obligations, there is a risk that the Customer may be unable to meet its obligation to pay the Decommissioning Costs when they arise. Transpower requires the Customer to pay the Decommissioning Charge as set out in this Schedule.

**2 Definitions and interpretation**

2.1 The key variables for this Schedule are:

<b>Estimated Decommissioning Costs</b>	\$2,069,760.48 (subject to change)
<b>Decommissioning Charge Instalment Amount</b>	\$34,156.23 (subject to change)
<b>Decommissioning Charge End Date</b>	5 years after the Charge Commencement Date
<b>Decommissioning Charge Expiry Date</b>	24 months after the expiry date or earlier termination of the Power Station Lease/termination of the Facilities and Services Deed

2.2 In this Schedule and (unless defined elsewhere in the Agreement) the Agreement, unless the context requires otherwise:

- (a) **Charge Commencement Date** means the first day of the month 1 month after the Commissioning Date, and no later than first day of April in the year following commissioning date.
- (b) **Decommissioning Costs** means any costs incurred (or, as applicable, to be incurred) by Transpower under the Facilities and Services Deed, the Power Station Lease, the Switchyard Lease, the Easements or otherwise and relating in any way to the decommissioning and/or removal of the Facilities or Transmission Line from the Land;
- (c) **Decommissioning Charge** means the charge calculated in accordance with sub-clauses 3.2 and 3.3 of this schedule as amended from time to time in accordance with this schedule;
- (d) **Decommissioning Charge Period** means the period from the Charge Commencement Date to the Decommissioning Charge End Date;
- (e) **Easements** means the Fibre Easement, the Switchyard Right of Way, the Utilities Easements and the Transmission Easement as those terms are defined in the

Facilities and Services Deed), and any other easements relating in any way to the Facilities or the Power Station;

- (f) **Facilities** has the meaning given to it in the Facilities and Services Deed;
- (g) **Facilities and Services Deed** means the Facilities and Services Deed entered into, or to be entered into, between the parties under the Property Rights Agreement;
- (h) **Land** has the meaning given to it in the Facilities and Services Deed;
- (i) **Power Station** has the meaning given to it in the Facilities and Services Deed; and
- (j) **Power Station Lease** means the lease (and/or any other Property Rights) entered into, or to be entered into, between the parties under the Property Rights Agreement.

2.3 If at the time a calculation involving the Finance Rate is made under this Schedule Transpower is aware of a future change to the Finance Rate, the calculation must be made in a way that takes that change into account. For the avoidance of doubt, this paragraph does not apply if Transpower is aware a future change to the Finance Rate will occur but does not know what the future Finance Rate will be.

### 3 **Decommissioning Charge**

3.1 The Decommissioning Charge is based on:

- (a) The estimated Decommissioning Costs;
- (b) The Treasury's published risk-free discount rates and consumer price index (CPI) assumptions for accounting valuation purposes (as at 30 June 2024) (at [Discount Rates and CPI Assumptions for Accounting Valuation Purposes \(treasury.govt.nz\)](https://www.treasury.govt.nz/disc-rates-cpi));
- (c) the Finance Rate as at the date of this Agreement.

3.2 The Decommissioning Charge is calculated as set out in the spreadsheet attached as Appendix A to this Schedule.

3.3 The Customer must pay Transpower the Decommissioning Charge by equal monthly instalments from the Charge Commencement Date until the Decommissioning Charge End Date.

3.4 The Decommissioning Charge is provisional and may be recalculated in accordance with paragraphs 4.1 to 4.6 of this Schedule.

### 4 **Recalculation of decommissioning Charge**

4.1 Transpower must recalculate the Decommissioning Charge as soon as reasonably practicable if any of the following changes before the Decommissioning Charge Expiry Date:

- (a) the estimated Decommissioning Costs;
- (b) the Finance Rate; or
- (c) the actual rates of inflation exceed the Treasury's published CPI inflation assumptions used to calculate the Decommissioning Charge.

Transpower must not otherwise recalculate the Decommissioning Charge.

- 4.2 Transpower must notify the Customer of the recalculated Decommissioning Charge and Decommissioning Charge instalments promptly after recalculating them. If the Decommissioning Costs change, the notice must be accompanied by a Transpower certificate signed by an authorised person as to the amount of the Decommissioning Costs. The certificate will be final and conclusive as to the amount of the Decommissioning Costs for the purpose of Transpower recalculating the Decommissioning Charge (except for any manifest error).
- 4.3 the Customer may request additional details of how the Decommissioning Charge and/or Decommissioning Charge instalments were recalculated. Transpower must respond to each reasonable request in a timely manner. This clause does not derogate from the Customer's obligation to pay the Decommissioning Charge or any Decommissioning Charge instalment.
- 4.4 Paragraph 4.5 applies if the next anniversary of the Charge Commencement Date after Transpower recalculates the Decommissioning Charge is before the Decommissioning Charge End Date. Paragraph 4.6 applies if the next anniversary of the Charge Commencement Date after Transpower recalculates the Decommissioning Charge is on or after the Decommissioning Charge End Date.
- 4.5 If this paragraph applies:
- (a) Transpower must recalculate the future Decommissioning Charge instalments, which will be levelised per month over the remaining part of the Decommissioning Charge Period (taking into account sub-paragraph (b)). The future Decommissioning Charge instalments will increase if the recalculated Decommissioning Charge is higher than the previous Decommissioning Charge. The future Decommissioning Charge instalments will reduce if the recalculated Decommissioning Charge is lower than the previous Decommissioning Charge;
  - (b) the recalculated Decommissioning Charge instalments will commence on the next anniversary of the Charge Commencement Date after Transpower recalculates the Decommissioning Charge.
- 4.6 If this paragraph applies and:
- (a) the recalculation increases the Decommissioning Charge, the Customer must pay Transpower the difference between the recalculated Decommissioning Charge and the previously calculated or recalculated Decommissioning Charge; or
  - (b) the recalculation decreases the Decommissioning Charge, the Customer may issue an invoice to Transpower for the difference between the recalculated Decommissioning Charge and the previously calculated or recalculated Decommissioning Charge which Transpower must pay by the 20th day of the month after the month of the Customer's invoice .



**SCHEDULE 8: CUSTOMER OWNED PLANT**

Nil

## SCHEDULE 9: DEFAULT TRANSMISSION AGREEMENT TEMPLATE PROVISIONS

As set out in clause 12.1 these clauses will apply as if set out fully in this Agreement with such changes as are necessary to give effect to the intention of this Agreement.

*The full Default Transmission Agreement Template is published on the Electricity Authority website.*

*Relevant provisions of the Default Transmission Agreement Template that have been incorporated into this agreement (see clause 12.1) are set out for convenience below:*

- 5 (Glossary)
- 13 (Force Majeure)
- 20 (Liability)
- 21 (Dispute Resolution)
- 22 (Confidentiality)
- 23 (Assignment)
- 24 (General Legal Terms)
- 25 (Notices)

### Clause 5 GLOSSARY

In this Agreement, unless the context otherwise requires, the following definitions apply:

#### **Acceptable Credit Rating**

has the meaning specified in clause 1 of Schedule 7;

#### **Agreement**

means this agreement, comprising all Parts and Schedules set out in the contents page to this Agreement and all documents which are listed in Part A: Foundation as being incorporated into this Agreement, as added to, amended or replaced from time to time in accordance with this Agreement;

#### **Associates**

means in relation to either Transpower or the Customer, as the case requires, its directors, officers, employees, authorised agents, contractors, sub-contractors and professional advisors;

#### **Business Day**

means any day of the week other than a Saturday, Sunday, a statutory holiday as observed in Wellington, or a statutory holiday as observed in the place at which notices may be delivered to the Customer;

#### **Charges**

means any and all of the Grid Charges, the Licence Charges and any other charges payable by the Customer under any Part or Schedule;

#### **Commencement Date**

has the meaning specified in clause 4.1;

#### **Connected Party**

means any person who has **assets** physically connected to the **grid**;

**Connection Code**

means the code attached as Schedule 8 (Connection Code);

**Customer**

means the party or parties described in clause 1 and where more than one party means each of them jointly and severally;

**Customer's Assets**

means the lines, equipment and plant owned or managed by the Customer and directly related to any Point(s) of Connection, which are used for the consumption, conveyance or generation of electricity;

**Customer Point of Service**

means each of the **points of service** specified in Schedule 2 (Points of Service);

**de-energisation**

means, in relation to a Point of Connection:

- (a) an interruption of conveyance of **electricity**; or
  - (b) the disconnection by the movement of any isolater, breaker or switch or the removal of any fuse or link by which no **electricity** can flow,
- at the Point of Connection and **de-energise** is to be interpreted accordingly;

**Default Rate**

means, in any month, the **bank bill bid rate** appearing on the first Business Day of the month plus five percent per annum, calculated daily and capitalised monthly;

**Dispute Notice**

has the meaning specified in clause 21.3(a);

**Dispute Meeting**

has the meaning specified in clause 21.3(b);

**Due Date**

has the meaning specified in clause 11.2;

**Electricity Governance Regulations**

means the regulations made pursuant to subpart 2 of Part 14 of the **Act**;

**Electricity Governance Rules**

means the Electricity Governance Rules 2003 (including all parts and sections) and includes every schedule to the rules, any code of practice and any technical code;

**Estimated Quantity**

means a quantity of **electricity** that is estimated under clause 9.1(a);

**Force Majeure or an event or circumstance of Force Majeure**

means an event or circumstance described in clause 13.1(a) (b) or (c);

**Good Electricity Industry Practice**

means:

- (a) in the case of Transpower when performing the functions of **grid owner**, the exercise of that degree of skill, diligence, prudence, foresight and economic management, as determined by reference to good international practice, which would reasonably be expected from a skilled and experienced **asset owner** engaged in the management (including maintenance) of a transmission network under conditions comparable to those applicable to the **grid** consistent with applicable Law, safety and environmental protection. The determination of comparable conditions is to take into account factors such as the relative size, duty, age and technological status of the relevant transmission network and the applicable Law; and
- (b) in the case of the Customer, the exercise of that degree of skill, diligence, prudence, foresight and economic management which would reasonably be expected from a skilled and experienced **asset owner** engaged in the conveyance, generation or consumption of **electricity** (as the case may be) under conditions comparable to those applicable to the Customer's Assets consistent with applicable Law, safety and environmental protection. The determination of comparable conditions is to take into account factors such as the relative size, duty, age and technological status of the relevant **assets** and the applicable Law;

**Grid Charges**

means the charges set out in Schedule 3 (Grid Charges), as varied from time to time in accordance with this Agreement;

**GST**

means goods and services tax payable under the GST Act (or any similar tax levied in substitution) and GST Act means the Goods and Services Tax Act 1985;

**GST Amount**

has the meaning specified in clause 11.5;

**Interest Rate**

means, in any month, the bank bill bid rate appearing on the first Business Day of the month calculated daily and capitalised monthly;

**Law**

means a statute, regulation, by-law or requirement of a local or territorial authority with relevant jurisdiction;

**Licence Charges**

means the charges payable by the Customer under Schedule 6 (Access and Occupation);

**Loss**

has the meaning specified in clause 20.1;

**Part**

means any part of this Agreement as added, amended or replaced from time to time in accordance with this Agreement or the Electricity Governance Rules;

**Point of Connection**

means a connection terminal on equipment forming part of the grid assets at which the Customer's Assets are physically connected to the grid and being any of the points of connection specified in Schedule 1 (Points of Connection);

**Related Company**

has the meaning given in the Companies Act 1993;

**Schedule**

means any schedule to this Agreement as added, amended or replaced from time to time in accordance with this Agreement;

**Technical Compliance Obligation**

means an obligation specified in clauses 33.1 or 42.1;

**Transpower's Counterparty Exposure**

means an amount equivalent to a total of two month's Charges based on:

- (a) where the Customer has been a customer of Transpower for 12 months or more, the average monthly Charges of the Customer over the previous 12 month period provided that Transpower may (acting reasonably) adjust that total by having regard to what Charges Transpower reasonably anticipates will be payable by the Customer in the next 12 months; or
- (b) where the Customer has been a customer of Transpower for less than 12 months, the expected average monthly Charges of the Customer over the next 12 months based on:
  - (1) an estimate by Transpower (acting reasonably) having regard to its historical records of the consumption of other relevant Transpower customers and what Transpower reasonably anticipates will be payable by the Customer in the next 12 months; or
  - (2) where there are no other relevant Transpower customers with which to compare, an amount that Transpower reasonably anticipates will be payable by the Customer in the next 12 months.

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**Clause 13 Force Majeure**

**13.1 Force Majeure:**

If either party fails to comply with or observe any provision of this Agreement (other than payment of any amount due) and such failure is caused by:

(a) **Specific Events or Circumstances:**

any event or circumstance occasioned by, or in consequence of, any act of God (being an event or circumstance (i) due to natural causes, directly or indirectly and exclusively without human intervention, and (ii) which could not reasonably have been foreseen or, if foreseen, could not reasonably have been resisted),

strikes, lockouts, other industrial disturbances, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, or civil disturbances;

(b) **Court Orders etc:**

the binding order of any court, government, regulatory body or a local authority beyond the control of the party invoking this clause 13.1; or

(c) **Other Event or Circumstance:**

any other event or circumstance beyond the control of the party invoking this clause 13.1,

and being such that, by taking reasonable precautions in accordance with Good Electricity Industry Practice, such party could not have avoided the effect of such event or circumstance, that failure does not give rise to any cause of action or liability based on default of the provision.

13.2 **Notice:**

If a party becomes aware of a serious prospect of a forthcoming Force Majeure, it must notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 13.1, it must notify the other party as soon as reasonably practicable of full particulars of the Force Majeure relied upon.

13.3 **Avoidance and Mitigation of Effect of Force Majeure**

The party invoking clause 13.1 must:

(a) **Endeavour to Avoid or Overcome:**

use all reasonable endeavours to overcome or avoid the Force Majeure;

(b) **Endeavour to Mitigate:**

use all reasonable endeavours to mitigate the effects or consequences of the Force Majeure insofar as such causes the failure in respect of which clause 13.1 has been invoked; and

(c) **Consult:**

consult with the other party on the performance of the obligations referred to in clause 13.3(a) and 13.3(b).

13.4 **No Obligation to Settle:**

Nothing in clause 13.3 is to be construed as requiring a party to settle a strike, lockout or other industrial disturbance by acceding, against its judgement, to the demands of opposing parties.

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**Clause 20 LIABILITY**

20.1 **Exclusion From Transpower's Liability:**

Transpower and its Associates will only be liable (in contract, tort (including negligence), equity or otherwise) to the Customer for any loss, injury, damage (in each case whether direct, indirect or consequential) or expense (together "Loss"), if such Loss is caused by an act or omission of Transpower or its Associates which constitutes a failure by Transpower to comply with a provision of this Agreement. Transpower and its Associates will not be liable to the extent the act or omission was caused or contributed to by any default of the Customer or its Associates of its obligations under this Agreement.

**20.2 Limitation of Transpower's Liability:**

Subject to clauses 20.9 and 22.5, if Transpower or its Associates are liable to the Customer (whether in contract, tort (including negligence), equity or otherwise), other than for payment of amounts due or under any indemnity, Transpower and its Associates will only be liable for direct loss to the Customer excluding:

(a) **Loss:**

any loss of use, revenue or profit by the Customer; and

(b) **Damages:**

the amount of any damages awarded against the Customer in favour of a third party; and

(c) **Settlement Money:**

the amount of any money paid by the Customer by way of settlement to a third party; and

(d) **Costs or Expenses:**

any costs or expenses of the Customer incurred in connection with any of clauses 20.2(a), (b) or (c).

**20.3 Transpower's Capped Liability:**

Subject to clauses 20.9, 20.10 and 22.5, the combined maximum liability of Transpower and its Associates under this Agreement will be:

(a) **Single Event or Series of Related Events:**

for any single event or related series of events, five million dollars; and

(b) **12 Month Period:**

in any 12 month period a total of 20 million dollars, irrespective of the number of events.

**20.4 Contracts (Privity) Act:**

The benefits of clauses 20.1, 20.2, and 20.3 are intended to extend to Transpower's Associates and to be enforceable by each of them under the Contracts (Privity) Act 1982.

**20.5 Exclusion from Customer's Liability:**

The Customer and its Associates will only be liable (in contract, tort (including negligence), equity or otherwise) to Transpower for any Loss, if such Loss is caused by an act or omission of the Customer or its Associates which constitutes a failure by the Customer to comply with a provision of this Agreement. The Customer and its Associates will not be liable to the extent the act or omission was caused or contributed to by any default of Transpower or its Associates of its obligations under this Agreement.

**20.6 Limitation of Customer's Liability:**

Subject to clauses 20.9 and 22.5, if the Customer or its Associates are liable to Transpower (whether in contract, tort (including negligence), equity or otherwise), other than for payment of amounts due or under any indemnity, the Customer and its Associates will only be liable for direct loss to Transpower excluding:

(a) **Loss:**

any loss of use, revenue or profit by Transpower; and

(b) **Damages:**

the amount of any damages awarded against Transpower in favour of a third party; and

(c) **Settlement Money:**

the amount of any money paid by Transpower by way of settlement to a third party; and

(d) **Costs or Expenses:**

any costs or expenses of Transpower incurred in connection with any of clauses 20.6(a), (b) or (c).

**20.7 Customer's Capped Liability:**

Subject to clauses 20.9 and 22.5, the combined maximum liability of the Customer and its Associates will be:

(a) **Single Event or Series of Related Events:**

for any single event or related series of events, five million dollars; and

(b) **12 Month Period:**

in any 12 month period a total of 20 million dollars, irrespective of the number of events.

**20.8 Contracts (Privity) Act:**

The benefits of clauses 20.5, 20.6, and 20.7 are intended to extend to the Customer's Associates and to be enforceable by each of them under the Contracts (Privity) Act 1982.

**20.9 Wilful Breach or Fraud:**

The limits on liability in clauses 20.2, 20.3, 20.6 and 20.7 will not apply to a party for any wilful breach or fraud by that party.

**20.10 Consumer Guarantees Act 1993:**

- (a) Transpower fully indemnifies the Customer against all loss, damage, liability, claims or expense suffered or incurred by the Customer that arises under the Consumer Guarantees Act 1993 to the extent caused by any breach of this Agreement by Transpower (except to the extent the loss, damage, liability, claim or expense was due to a failure by the Customer to comply with clause 20.10(c)).
  - (b) The limit on liability in clause 20.3 will not apply to any liability under this clause 20.10.
  - (c) The Customer shall include a provision in any agreement with a consumer to exclude the Consumer Guarantees Act 1993 where the consumer acquires services from the Customer for the purposes of a business.
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**Clause 21 DISPUTE RESOLUTION**

**21.1 Exceptions:**

This clause 21 will not apply to:

- (a) **Non-payment:**
  - actions for non-payment of invoices or demands; or
- (b) **Reconciled Quantities:**
  - disputes as to **reconciled quantities of electricity**; or
- (c) **Other:**
  - (1) disputes under the Electricity Governance Regulations or the Electricity Governance Rules; or
  - (2) disputes in relation to which the Electricity Governance Regulations or the Electricity Governance Rules sets out a dispute resolution process, including a dispute covered by rule 3.1.3.5 or rule 3.1.6.6 of section II of part F of the Electricity Governance Rules.
- (d) **Transmission Pricing Methodology:**
  - matters arising under the **transmission pricing methodology** which are to be determined by an independent expert under the **transmission pricing methodology**.

**21.2 Management and Resolution of Dispute Between the Parties:**

The provisions of this clause 21.2 will apply to all disputes between the parties in relation to this Agreement:

- (a) **Amicable resolution:**

the parties acknowledge that they are in a long-standing business relationship and recognise the importance of resolving disputes arising out of this Agreement between them quickly and cost effectively;

(b) **Interest Based:**

disputes will be resolved by focusing on the interests of both parties to achieve an agreed solution;

(c) **Reasonable Efforts:**

the parties will use all reasonable endeavours to resolve any dispute;

(d) **Obligation to Resolve Remains:**

the parties are to continue to seek to resolve any dispute by consultation and negotiation whether or not any dispute is referred for mediation, expert determination, arbitration, litigation or is referred to the Rulings Panel;

(e) **Continued Performance:**

pending resolution of any dispute, the parties are to continue to perform their obligations under this Agreement; and

(f) **Agreement:**

any agreement to resolve any dispute is to be in writing and signed by each party.

21.3 **Dispute Notice and Meeting:**

The following provisions of this clause 21.3 will apply to any dispute in relation to this Agreement:

(a) **Dispute Notice:**

the party claiming a dispute is to give prompt and early notice of the dispute to the other party (the "Dispute Notice") and will provide the grounds for the dispute within five Business Days from the date of receipt of the Dispute Notice. The party receiving the Dispute Notice is to give a response notice within five Business Days from the date of receipt of the grounds for the dispute;

(b) **Dispute Meeting:**

the parties are to meet within 15 Business Days from the date of receipt of the Dispute Notice (the "Dispute Meeting"). At the Dispute Meeting, the parties are to seek to:

- (1) identify and agree the interests of each party;
- (2) identify and isolate the issues between the parties;
- (3) where possible, resolve the dispute;

(4) if the parties cannot resolve the dispute, identify whether any further information is required by either party and agree a time within which the information will be provided; and

(5) if not otherwise provided in this Agreement,

determine the most appropriate method for resolving the dispute. Such methods may include:

(6) negotiation;

(7) non-binding neutral evaluation by a third party;

(8) expert determination;

(9) mediation;

(10) arbitration;

(11) litigation; or

(12) any other method agreed between the parties;

(c) **Timetable:**

at the Dispute Meeting, the parties must agree a timetable to endeavour to resolve the dispute. Where practicable, the timetable is to provide for the dispute to be resolved within six weeks from the date of the Dispute Meeting unless the dispute is to be resolved by litigation;

(d) **No Agreement on Dispute Process:**

if the parties cannot reach agreement at the Dispute Meeting on the method for resolving the dispute then either party may refer the dispute to arbitration. The provisions of clause 21.5 will apply to any such arbitration;

(e) **Dispute Process Breaks Down:**

except in the case of arbitration, expert determination or litigation, if a process for resolving a dispute is agreed but a party considers that the agreed process has broken down, then the party may refer the dispute to arbitration. The provisions of clause 21.5 will apply to any such arbitration; and

(f) **Refusal to meet:**

if, following receipt of a Dispute Notice, either party refuses to meet or for any other reason the parties fail to have a Dispute Meeting within 15 Business Days from the date of receipt of the Dispute Notice and the dispute remains unresolved, then either party may refer the dispute to arbitration. The provisions of clause 21.5 will apply to any such arbitration.

**21.4 Mediation:**

Where the parties agree that a dispute is to be referred to mediation, the provisions of this clause 21.4 will apply:

(a) **Appointment of Mediator:**

the parties are to agree the appointment of a mediator within five Business Days from the date of the Dispute Meeting;

(b) **Default Appointment:**

if a mediator is not appointed under clause 21.4(a), either party may request the president for the time being of the Arbitrators' and Mediators' Institute of New Zealand Incorporated to appoint the mediator;

(c) **Mediator to Settle Procedures:**

the mediator is to consult with the parties to settle the timetable and procedures to be adopted during the mediation within five Business Days from the date of the mediator's appointment. The mediator may call any meeting between the parties at such times and places as the mediator considers appropriate. The mediation must be held within 25 Business Days from the date of the mediator's appointment;

(d) **Parties to Attend Meetings:**

the parties are to attend all meetings called by the mediator and use all reasonable endeavours to assist the mediation;

(e) **Legal Representation:**

the parties may have the assistance of legal counsel;

(f) **Without Prejudice:**

the mediation is to be conducted on a "without prejudice" basis. The mediation will not affect the rights, or prejudice the position, of the parties to the dispute in any subsequent proceedings of any kind;

(g) **Mediator has no Power of Decision:**

the mediator has no power of decision on any matters;

(h) **Mediator's Costs to be Borne Equally:**

the mediator's costs are to be paid equally by the parties and the parties will be jointly and severally liable to the mediator for such costs. This clause 21.4(h) confers a benefit or right on the mediator and is intended to be enforceable by the mediator under the Contracts (Privity) Act 1982; and

(i) **Parties' Costs of the Mediation:**

each party will bear its own costs and expenses (including legal costs on a solicitor-client basis).

**21.5 Arbitration:**

Where the parties agree that a dispute is to be referred to arbitration, or a party refers a dispute to arbitration under any provision of this Agreement, the dispute will be referred to arbitration in accordance with the Arbitration Act 1996 and the provisions of this clause 21.5 will apply:

(a) **Single Arbitrator:**

the arbitration is to be conducted by a single arbitrator;

(b) **Appointment of Arbitrator:**

the parties are to agree the appointment of the arbitrator within five Business Days from the date of the Dispute Meeting;

(c) **Default Appointment:**

if an arbitrator is not appointed under clause 21.5(b), either party may request the president for the time being of the Arbitrators' and Mediators' Institute of New Zealand Incorporated or his or her nominee to appoint the arbitrator;

(d) **Notice of Appointment:**

the arbitrator is to give the parties notice of his or her appointment;

(e) **Final and Binding:**

the award in the arbitration will be final and binding upon the parties;

(f) **Give Reasons:**

the arbitrator is to provide reasons for any award made;

(g) **Costs:**

unless the parties otherwise agree, costs are to be determined by the arbitrator's final award; and

(h) **Interim Payment of Arbitrator's Costs:**

pending the final award, the fees and expenses of the arbitrator, including hire fees and facilities expenses, are to be paid equally by the parties and the parties will be jointly and severally liable to the arbitrator for such fees and expenses. This clause 21.5(h) confers a benefit or right on the arbitrator and is intended to be enforceable by the arbitrator under the Contracts (Privity) Act 1982.

**21.6 Expert Determination:**

Where the parties agree, or this Part requires, that a dispute is to be referred to an independent expert, the provisions of this clause 21.6 will apply:

(a) **Appointment of Expert:**

the parties are to agree on the appointment of an expert within five Business Days from the date of the Dispute Meeting;

(b) **Default Appointment:**

if an expert is not appointed under clause 21.6(a), either party may request the president for the time being of the New Zealand Law Society to make the appointment;

(c) **Notice of Appointment as Expert:**

the expert is to give the parties notice of his or her appointment;

(d) **Representations:**

the expert is to invite the parties to submit such representations as the parties wish to make within 10 Business Days from the date of receipt of the expert's notice of appointment. The expert is to take into account any representations submitted by the parties but is not limited or fettered by them in any way;

(e) **Expert not Arbitrator:**

the expert is to act as an expert and not as an arbitrator and, accordingly, the Arbitration Act 1996 does not apply;

(f) **Inspection of Records:**

the expert may inspect any relevant records kept by a party in relation to this Agreement at any reasonable time provided that:

- (1) a party is not obliged to provide records for inspection where to do so will breach an obligation owed by that party to a third party or is contrary to law; and
- (2) each party is to use reasonable endeavours to obtain any consent necessary to disclose information requested by the expert;

(g) **Rely on Own Judgement:**

the expert is entitled to rely on his or her own judgement and opinion;

(h) **Give Reasons:**

the expert is to provide the reasons for any determination within six weeks from the date of the expert's appointment or within such extended period as the

parties may agree. The expert is not to release any determination to the parties until the expert's fees and expenses are paid;

(i) **Binding Determination:**

the expert's determination will be final and binding upon the parties;

(j) **Replacement of Expert:**

if the expert does not make a determination within six weeks from the date of his or her appointment (or within the time agreed by the parties), or relinquishes his or her appointment, or dies, or for any other reason is unable to complete the determination, another expert will be appointed. This clause 21.6 will apply in relation to that appointment;

(k) **Expert's fees:**

the expert's fees and expenses will be paid equally by the parties or as agreed or determined under clause 21.6(l) or (m) respectively, and the parties will be jointly and severally liable to the expert. This clause 21.6(k) confers a benefit or right on the expert and is intended to be enforceable by the expert under the Contracts (Privity) Act 1982;

(l) **Costs:**

the parties are to agree which party will pay the costs of the expert determination, including each party's costs and the expert's fees and expenses, within 10 Business Days from the date receipt of the determination; and

(m) **Expert to Determine Costs:**

if the parties do not agree costs under clause 21.6(l), the expert is to determine such costs, fees and expenses. The expert may invite the parties to make submissions on costs in such manner as determined by the expert. The parties will be bound by the expert's determination as to costs.

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**Clause 22 CONFIDENTIALITY**

**22.1 Confidentiality:**

- (a) Except as expressly provided otherwise in this Agreement, each party is to keep confidential and only use for the purposes of this Agreement any information provided by or on behalf of the other party relating to this Agreement which has been specified by such party as being confidential information, and not disclose such information to any other person without the prior written consent of the other party, which is not to be unreasonably withheld.
- (b) Each party acknowledges that information it receives from the other party may be or become "inside information" as defined by the Securities Markets Act 1988 and/or "Material Information" as defined by the New Zealand Exchange Limited Listing Rules. Neither party shall use any such information in any way or otherwise do anything which could breach the Securities Markets Act 1988 or the

New Zealand Exchange Limited Listing Rules or could result in the other party or any of its Related Companies or any of its or their shareholders, officers, employees or advisers incurring any liability under the Securities Markets Act 1988 or the New Zealand Exchange Limited Listing Rules. In particular neither party shall, or shall cause or permit any person to whom it has disclosed the inside information and/or Material Information to, buy or sell or otherwise deal in shares in the other party or advise or encourage any other person to do so until all such information ceases to be inside information and/or Material Information.

**22.2 Exceptions:**

Clause 22.1 is not to apply to the disclosure of any information by a party:

(a) **Associates:**

to its Associates or Related Companies where necessary for the ordinary business purposes of that party;

(b) **Banks, etc.:**

to any bank, financial institution or rating agency from which the party is seeking to obtain or maintain financial facilities or a credit rating in connection with that party's business;

(c) **Assignee:**

to a bona fide intending assignee who has signed a confidentiality agreement in favour of the party whose information is being disclosed;

(d) **As Required by Law or Stock Exchange:**

to any person to whom that party reasonably believes it is required to disclose to by law or to meet the listing requirements of any stock exchange;

(e) **Industry Agreements:**

to any person to whom that party reasonably believes it is required to disclose to so as to comply with (including the exercise of any rights under) the Electricity Governance Regulations or the Electricity Governance Rules and, in the case of Transpower, to any person to whom it reasonably believes it is required to disclose to so as to comply with (including the exercise of any rights under) any contract or deed for the provision of services for the purposes of the Electricity Governance Regulations or the Electricity Governance Rules;

(f) **Disputes:**

in any mediation, arbitration, adjudication or legal proceeding of any kind arising out of or in connection with this Agreement or otherwise in compliance with the order of any court of competent jurisdiction;

(g) **Public Domain:**

to the extent that the information at the time of disclosure was, or subsequently has become, generally available to the public other than as a result of unauthorised disclosure by that party or any of its Associates;

(h) **Already Known:**

to the extent that the information was already known to a party at the time of disclosure and came into that party's possession otherwise than by breach of any confidentiality obligation owed to any other party or the information was disclosed to a party on a non-confidential basis by a third party who was not bound by any confidential obligation;

(i) **System Operator:**

to the System Operator to the extent required for performance of its functions;

(j) **Transpower Termination or De-energisation:**

in the relevant circumstances where Transpower is acting under clauses 14.1, 15.1(b), 15.2, 15.3 or 19.3; and

(k) **Customer Termination:**

in the relevant circumstances where the Customer is acting under clause 15.5.

**22.3 Disclosure on Aggregated Basis:**

Transpower may disclose confidential information to any person where the information has been developed into aggregated statistical data and such disclosure will not in a material manner commercially disadvantage the Customer.

**22.4 Associates:**

Each party is to ensure that its Associates or Related Companies who are in possession of any confidential information under clauses 22.2(a), 22.2(b), 22.2(c), 22.2(f) observe and comply with these confidentiality provisions and is responsible to the other party for any acts and omissions of its Associates or Related Companies in relation to the confidential information.

**22.5 Liability:**

The limits on liability in clauses 20.2, 20.3, 20.6 and 20.7 shall not apply to any breach by a party of its obligation under this clause 22 or clause 12 of schedule 7.

**22.6 Survive Termination**

The whole of this clause 22 is to survive termination of this Agreement.

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**Clause 23 ASSIGNMENT**

**23.1 Assignment:**

Neither party may assign, transfer or otherwise dispose of the whole or any part of its interest or obligations under this Agreement without the other party's prior written consent, not to be unreasonably withheld.

**23.2 Release:**

If either party assigns or transfers the whole of its interest or obligations under this Agreement in accordance with clause 23.1 the party assigning or transferring its interest will be relieved and released from its obligations and any liability under this Agreement except for any obligations or liability arising prior to the date of the assignment or transfer.

**23.3 Deemed Assignment:**

Except in the case of a party who is an issuer listed on the New Zealand Stock Exchange or a recognised overseas exchange, there is deemed to be an assignment of a party's interest in this Agreement in breach of clause 23.1 if, without the prior approval of the other party (not to be unreasonably withheld), by transfer or allotment of shares or amendment of its company constitution or by some other act or deed, the effective control of a party changes or passes to any person not having effective control as at the date of this Agreement.

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**Clause 24 GENERAL LEGAL TERMS**

**24.1 No Partnership, etc.:**

This Agreement does not constitute either party as an agent or legal representative of the other or employee or servant of the other for any purpose nor does this Agreement deem to establish a joint venture or partnership.

**24.2 No Representation:**

The Customer acknowledges that it is not entering into this Agreement on the basis of any representation or warranty made by Transpower which is not expressly set out in this Agreement.

**24.3 Amendments:**

Except as expressly provided in this Agreement, there is to be no amendment to any of the provisions of this Agreement except by a supplementary written agreement signed by the parties.

**24.4 Severability:**

If any of the provisions of this Agreement are held by a court or tribunal of competent jurisdiction to be unenforceable, then that provision will be severed from this Agreement and immediately replaced with a valid enforceable provision as similar as possible to the severed provision.

**24.5 Waiver:**

No waiver, extension or excuse (as the case may be) will be deemed to arise unless it is in writing and signed by the relevant party providing it.

**24.6 No Third Party Rights:**

Except as expressly provided in this Agreement, the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement and all provisions contained in this Agreement are for the sole and exclusive benefit of the parties.

**24.7 Further Acts:**

Each party agrees that it will from time to time sign, execute, procure, pass and do all such further documents, acts, matters, resolutions and things within its power as may reasonably be necessary to effect the provisions of this Agreement.

**24.8 Applicable Law:**

This Agreement is to be governed by and interpreted in accordance with the laws of New Zealand and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand.

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**Clause 25 NOTICES**

**25.1 Delivery of Notices:**

Except as expressly provided otherwise, all notices or other communication required by this Agreement must be in writing and must be forwarded by personal delivery, post or facsimile to the number or address of the party set out in clause 1 or 2 (as the case may be) of Part A: Foundation or otherwise notified by that party from time to time. Subject to clause 25.2, any such notice or other communication will be deemed to have been duly received:

**(a) Personal Delivery:**

if personally delivered, when delivered at the recipient's address;

**(b) By Post:**

if sent by post, at 9.00am on the second Business Day after posting; or

**(c) By Fax:**

if sent by facsimile, upon generation of a transmission report by the sender's facsimile machine confirming the complete and error-free transmission to the correct facsimile number for the recipient.

**25.2 Not a Business Day:**

Except for any notice or other communication deemed received under clause 25.1(b), if any notice or other communication is not received on a Business Day, or is not received before 10.00am on any Business Day, that notice or other communication will be deemed to have been duly received by the recipient at 9.00 am on the next Business Day.

**25.3 Commencement of Notice Period:**

Where this Agreement provides that an event or action take place within a specified number of Business Days from the date of receipt of any notice or other communication ("Notice Period"), the first Business Day of the Notice Period is deemed to be the day of receipt in accordance with clauses 25.1 and 25.2.  
Any damage to the Facilities Area caused during the construction of any new structures or any new Equipment will be made good by the Customer as soon as reasonably practicable.