

GENERAL CONDITIONS

1. PROVISION OF SERVICES

- 1.1 Trustpower agrees to use reasonable endeavours to provide a reliable supply of electrical energy and any other services agreed and set out in the Special Conditions (the "Services").
- 1.2 Trustpower does not guarantee that supply of any or all of the Services will be continuous or fault free. However, Trustpower will use reasonable endeavours to maintain a continuous supply of the Services in accordance with Good Industry Practice. Should any problems with the Services be experienced by the Customer, the Customer should contact Trustpower's Customer Service Team on 0800 87 87 87 without delay.
- 1.3 The Customer agrees to comply with all Connection Agreements and all legislation and/or regulations affecting electricity distribution and the electricity industry (to the extent that these may be relevant).
- 1.4 In the event that Trustpower purchases or enters into any hedge arrangements on behalf of the Customer in accordance with the Special Conditions, the Customer agrees to comply with the terms of all such hedge arrangements.
- 1.5 The Customer will purchase from Trustpower pursuant to this Commercial Agreement all of the electricity requirements for the Properties for the term of this Commercial Agreement. The Customer taking supply of electricity for any of the Properties from any electricity supplier other than Trustpower is a breach of this Commercial Agreement.

2. TERM

- 2.1 Unless agreed otherwise by both parties in writing, this Commercial Agreement will commence on the Commencement Date and will continue for the Initial Term unless, or until, terminated in accordance with these General Conditions.

- 2.2 If, after expiry of the Initial Term, the Customer continues to be supplied with electricity or any other services by Trustpower and the Customer has not entered into a new agreement with Trustpower in respect of such supply of electricity or services, this Commercial Agreement will apply to such supply of electricity and/or services and the Charges will be determined in accordance with clause 3.2. In that event, either party may terminate that arrangement by giving the other not less than 5 working days written notice of termination.

3. CHARGES

- 3.1 Subject to this clause 3, clause 6.6 and clause 6.7, the Charges for the Services for the Initial Term are as set out in Schedule B – Charges.
- 3.2 If Trustpower continues to provide electricity or any other services to the Customer after the expiry of the Initial Term and no new agreement has been entered into between Trustpower and the Customer in respect of such supply as referred to in clause 2.2, then the Charges applicable in respect of such supply will be those determined by Trustpower and notified (either before or after the expiry of the Initial Term) to the Customer. The electricity component of the Charges may, at Trustpower's discretion, be levied at the New Zealand electricity market spot price plus Trustpower's applicable service fees.
- 3.3 Trustpower's Charges include and in cases reflect the pricing and pricing methodologies of its key suppliers, including the National Grid Manager, Distributors, Meter Owners and Generators. In the event that any key supplier increases the charges payable by Trustpower (including, without limitation, as a result of amending its pricing methodology) then, regardless of any other provision of these General Conditions or Schedule B – Charges, but subject to any agreement to the contrary set out in the Special Conditions, Trustpower may increase the Charges by an amount not greater than any increase in charges payable by Trustpower with the amount allocated to the Customer being determined by Trustpower.

Notwithstanding the above, but subject to clause 3.6, if Trustpower has purchased an energy hedge directly on behalf of and for the Customer covering some or all of the relevant energy charges, and this is set out in the Special Conditions, then the hedged energy portion of the Charges may not be changed until the termination of that energy hedge. Subject to clause 3.2, Trustpower will give the Customer prior notice of any changes to the Charges and the Customer shall pay the revised Charges from the date specified in the notice.

- 3.4 Unless otherwise stated, all Charges exclude Goods and Services Tax ("**GST**") and any other taxes or levies (if any). The Customer must pay all GST payable on the Charges.
- 3.5 The Customer shall be liable to pay to Trustpower, on demand, amounts equal to any taxes, duties, levies (including prudential cover to the electricity market) or other charges (other than taxes on income) which are, after the Commencement Date, imposed or increased from time to time by any government or any governmental or semi-governmental agency or the Electricity Authority on the supply by Trustpower of the Services, or incurred by Trustpower in relation to the supply of the Services.
- 3.6 Trustpower may increase the Charges where there is a change to any Carbon Tax implemented in New Zealand, or there is a change in the way in which a Carbon Tax is applied, which increases Trustpower's costs either directly or indirectly in relation to the supply of the Services.

4. PAYMENT

- 4.1 The Customer agrees to pay for all Services provided by Trustpower. Trustpower will send the Customer an invoice for the Charges. Payment in respect of an invoice is due on or before the Payment Date. Failure to receive an invoice in respect of the Charges does not alter the Customer's liability to pay the Charges.
- 4.2 If an invoice is incorrect the Customer will either be entitled to a refund or an account credit, at the option of Trustpower, for any amount Trustpower has over-charged, or the

Customer will be required to pay Trustpower any amount that Trustpower has undercharged.

- 4.3 If the Customer wishes to dispute any invoice, the Customer must write to or telephone Trustpower's Customer Services Team and seek resolution of the dispute. The Customer must pay any undisputed amount of an invoice by the Payment Date.
- 4.4 If Trustpower agrees that the invoice is in error it will correct and resend it. In the event that, as a result of an error, the Customer has paid a greater sum to Trustpower than the amount owed by the Customer to Trustpower, the overpayment shall either, at Trustpower's option, be refunded to the Customer by Trustpower or credited against any future Charges.
- 4.5 If Trustpower does not agree that there has been an error made in respect of the Charges set out in an invoice, the Customer shall pay any outstanding amount immediately together with interest on that sum at the Default Interest Rate from the Payment Date under the invoice until the date of receipt of payment by Trustpower. The Customer is still entitled to dispute Trustpower's decision in accordance with clause 18.2.
- 4.6 Subject to clause 17.2, Trustpower may charge interest at the Default Interest Rate in respect of Charges that are unpaid after the Payment Date. Interest will be calculated on a daily basis from the day after the Payment Date until the date of receipt of payment by Trustpower.
- 4.7 Trustpower may set off Charges owed to it by the Customer against any sum that Trustpower owes that Customer.
- 4.8 The Customer shall be liable for all fees and expenses incurred by Trustpower in collecting, or attempting to collect, Charges including, without limitation, legal fees, debt collection charges and disconnection and reconnection fees.
- 4.9 Trustpower may at any time require the Customer to pay a Bond to Trustpower, irrespective of the Customer's payment history. The Bond will be provided upon such terms as

Trustpower requires; and may, if required by Trustpower, also be for the amount of any outstanding debt the Customer has with Trustpower. In addition, the Bond will (i) not bear interest; (ii) be repaid to the Customer by cheque or by crediting its account after 12 months (or such earlier time as Trustpower may agree) if the Charges during that 12 month period are all paid by the due date. If some of the Charges have not been paid by the due date, Trustpower may extend the period that it requires a Bond; and (iii) be transferred to a new account if the Customer moves and continues as one of Trustpower's customers. If the Customer ceases to be a customer of Trustpower, the Bond will be credited against the Customer's final account and any other sums due by the Customer to Trustpower and the balance, if any, will be paid to the Customer by direct credit into a nominated bank account or by cheque.

5. POINT OF SUPPLY

- 5.1 The supply of electricity shall be made by Trustpower to the relevant Supply Point or at such other point of supply as is agreed from time to time in writing by Trustpower and the Customer. Title and ownership of such electricity shall pass to and vest in the Customer at the time of delivery to the Customer at the Supply Point.

6. METERING EQUIPMENT AND UNMETERED LOAD

- 6.1 Subject to clause 6.3, Trustpower is responsible for the installation and maintenance of meters, loggers, current transformers, voltage transformers, communications equipment and control relays that measure the electricity supply to the Property (together "**Metering Equipment**"). Trustpower may, in its sole discretion, sub-contract responsibility for this to a third party provider. For the avoidance of doubt, the Metering Equipment is not and does not become (upon or following the termination of this Commercial Agreement or otherwise) a fixture or fitting of the Property to which it is installed or a fixture or fitting that belongs to any person other than Trustpower or the party that Trustpower has procured to supply it.

- 6.2 The Customer should not arrange for another party to install Metering Equipment at the Property without the prior written approval of Trustpower. Where Trustpower does agree to the installation of third party Metering Equipment, unless otherwise agreed, the Metering Equipment that has been installed or procured by Trustpower will not be interfered with or its operations affected and will remain the primary Metering Equipment for charging purposes.

- 6.3 If Trustpower approves the Customer installing Metering Equipment supplied by a third party, in place of the Metering Equipment installed by or on behalf of Trustpower, the Customer shall ensure that (i) Trustpower is able to read and obtain all required data from the Metering Equipment at times and in the frequency that Trustpower determines with its then current meter reading software, or, at Trustpower's sole discretion, such third party shall provide Trustpower with all data from that Metering Equipment that Trustpower reasonably requires within such deadlines as Trustpower may reasonably stipulate at no cost to Trustpower; and (ii) the Metering Equipment complies with the Reconciliation Agreement and is regularly tested, repaired and maintained in accordance with the Reconciliation Agreement. In the event that such Metering Equipment does not comply with the Reconciliation Agreement or does not meet Trustpower's requirements, the Customer shall indemnify Trustpower for all costs, loss or damage incurred by Trustpower whether directly or indirectly, arising out of or in connection with such failure to comply, and Trustpower shall be entitled at the Customer's cost to replace that non-compliant Metering Equipment.

- 6.4 Where the Customer installs third party Metering Equipment in place of Metering Equipment installed by or on behalf of Trustpower, the Customer must arrange for the return of any Metering Equipment supplied by or on behalf of Trustpower to a place in New Zealand reasonably specified by Trustpower or the Meter Owner.

- 6.5 The Customer is responsible for repairs and maintenance to the meter board or box and any associated fuses and wiring (excluding the

- meters, loggers, current transformers, voltage transformers, control relays and distribution transformers where these are procured by Trustpower). The Customer must ensure that all electrical equipment past the Supply Point complies with all statutory and legal requirements and also the technical standards required for connection to the Distributor's network.
- 6.6 Should Trustpower find that a meter is reading incorrectly, Trustpower will be entitled to reasonably estimate the Services provided to the Customer and charge the Customer for those Services and the Customer shall pay the Charges in respect of that estimated use irrespective of the time that may have lapsed since the error was discovered.
- 6.7 The Reconciliation Agreement requires that all metering and associated equipment must meet certain requirements in relation to accuracy and regular inspection and calibration. In the event that the Metering Equipment requires testing, modification or replacing in order to comply with the Reconciliation Agreement, and the Metering Equipment has been supplied by or on behalf of Trustpower, Trustpower and/or the owner of the Metering Equipment will pay for the direct costs of testing the Metering Equipment and any associated replacement repair or upgrade required in order to comply with the Reconciliation Agreement. However, such costs may be recovered by Trustpower from the Customer by including them in the Charges or, where these have not been included in the Charges, by separate fee. Where Trustpower has agreed for the Customer to have its Metering Equipment supplied by a third party, the Customer will be responsible for the payment of such costs.
- 6.8 Where the Metering Equipment is supplied by or on behalf of Trustpower, Trustpower will use reasonable endeavours to work with the Customer to ensure that all testing of the Metering Equipment has the least impact on the Customer as is practicable given the circumstances. However, neither Trustpower nor the owner of the Metering Equipment where such Metering Equipment is supplied by or on behalf of Trustpower shall be liable for any loss, including consequential or indirect loss (such as shutdowns or the need for standby generation) to the Customer or any third party arising directly or indirectly from such testing.
- 6.9 Where the Metering Equipment is supplied by or on behalf of Trustpower, the Customer will allow Trustpower and the owner of the Metering Equipment and their representative's access to the Customer's Property to test, repair, maintain or replace the Metering Equipment. In the event that Trustpower or the owner of the Metering Equipment incurs any fines or other costs as a result of a failure by the Customer to allow such access, the Customer shall promptly reimburse Trustpower and the owner of the Metering Equipment as the case may be for such amount.
- 6.10 The Customer will not, and will not allow any other person to, tamper with or alter any Metering Equipment on the Property supplied by or on behalf of Trustpower without written authorisation from Trustpower. Should the Metering Equipment be altered or tampered with, without written authorisation from Trustpower, the Customer will be deemed to be in default of its obligations under this clause and may be charged the cost of repairing or replacing the Metering Equipment as the case may be.
- 6.11 Where the Customer has electricity supplies that are unmetered those supplies must at all times comply with the Reconciliation Agreement.
- 6.12 If Trustpower requires, the Customer must keep an accurate and up-to-date record of any unmetered electricity supplies. The record needs to contain all information reasonably required by Trustpower. This may include, but is not limited to, the capacity of the connected equipment, the hours and time of daily use, and the total calculated monthly consumption of electricity. This information shall be supplied to Trustpower on a monthly basis by the first working day of each month unless otherwise agreed by Trustpower.
- 6.13 If the Customer does not comply with clauses 6.11 and/or 6.12 such non-compliance will constitute a material breach of this Commercial Agreement and, without prejudice to any other rights and remedies Trustpower has:

- (a) Trustpower will be entitled to reasonably estimate the Services provided to the Customer for the unmetered electricity supplies and charge the Customer for those Services. The Customer shall pay the Charges in respect of that estimated use irrespective of the time that may have elapsed since the non-compliance was discovered.
- (b) Trustpower may also, at its sole discretion, disconnect the unmetered electricity supplies if the breach is not remedied in a reasonable timeframe (such reasonable timeframe to be stipulated by Trustpower). If Trustpower elects to disconnect the unmetered electricity supplies, Trustpower may charge the Customer a disconnection fee and may, if it agrees to reconnect the unmetered electricity supplies, charge the Customer a reconnection fee upon the conclusion of the disconnection.

6.14 If the Customer does not comply with clauses 6.11 and/or 6.12 and such failure to comply contributes, directly or indirectly, to an auditor undertaking an audit of Trustpower in accordance with Part 15 of the Code being of the opinion that Trustpower has not complied with the Code and/or causes Trustpower to cease to be a certified reconciliation participant for the purposes of the Code, the Customer shall indemnify Trustpower for all costs, losses, damage and liability suffered or incurred by Trustpower, whether directly or indirectly, arising out of or in connection with such failure to comply on the part of the Customer.

7. DEFAULT DISCONNECTION

7.1 Without prejudice to any other rights and remedies Trustpower has, Trustpower may, without terminating this Commercial Agreement, upon notice to the Customer, suspend the supply of all or any Services in the event that the Charges set out in any invoice remain unpaid for 5 days after the relevant Payment Date, except if the Charges not paid are genuinely disputed in accordance with clause 4.3.

7.2 If Trustpower agrees to resume supply of the Services upon payment of all outstanding amounts that are not genuinely disputed, Trustpower may charge a reconnection fee in accordance with clause 7.4 and may require a Bond or other form of security or increase the amount of a Bond or other form of security as security for future payments.

7.3 Trustpower may suspend the supply of electricity to the Customer where it is required to do so by any Distributor pursuant to any Connection Agreement. The parties acknowledge that this clause 7.3 is for the benefit of and is enforceable by any such Distributor in accordance with the Contract and Commercial Law Act 2017.

7.4 Where Trustpower suspends the supply of any Service in accordance with clauses 7.1 or 7.3 Trustpower may charge the Customer a disconnection fee and may charge the Customer a reconnection fee upon the conclusion of the suspension.

8. QUANTITY OF ELECTRICITY SUPPLY

8.1 The quantities of electricity which the Customer shall be deemed to have purchased from Trustpower, shall be calculated from the information provided pursuant to the Reconciliation Agreement. For the purposes of that calculation, Trustpower shall obtain the relevant information from the party carrying out the reconciliation under the Reconciliation Agreement and shall provide that information to the Customer when the Charges are made. The Customer and Trustpower agree to fulfil in an accurate and timely manner their respective obligations under the Reconciliation Agreement.

8.2 In the event that it is not possible to obtain details of the quantities of electricity purchased by the Customer from Trustpower pursuant to the Reconciliation Agreement for any period in a reasonably accurate or timely manner then the provisions that govern these circumstances in the Reconciliation Agreement shall apply.

9. DISRUPTION TO SUPPLY

- 9.1 It may be necessary from time to time for Trustpower or the Distributor to suspend the supply of the Services in order for maintenance, upgrades, downgrades, repairs, and other works to be carried out. Subject to clause 9.2, Trustpower or the Distributor (where it is practically possible) will give at least 2 Business Days' notice of its intention to suspend the supply of the Services for such purposes provided that if Trustpower receives insufficient notice of any suspension of the supply of Services to give 2 Business Days' notice, Trustpower will give such notice as is practicable in the circumstances. The supply of the Services will be resumed as soon as the maintenance, upgrades, downgrades, repairs or other work has been completed. However, as work often depends on weather or other external conditions, the time and date of suspension and resumption of supply of the Services may vary from that stated in a notice and Trustpower will have no liability if that occurs.
- 9.2 In the event that an unplanned outage, accident or emergency causes disruption of supply of the Services, Trustpower shall not be obliged to provide advance notice of the disruption to the Customer.

10. PROTECTION OF SENSITIVE ELECTRICAL EQUIPMENT

- 10.1 If the Customer operates equipment that requires a continuous supply of the Services or a supply without fluctuations in voltage or frequency for any reason (e.g. dialysis or computer equipment), then the Customer acknowledges that Trustpower cannot and does not guarantee a continuous supply of the Services nor that fluctuations in voltage or frequency will not occur. The Customer should assess the risk to its operations, and where necessary, and at its own cost, install the appropriate equipment to ensure that it will receive a level of supply quality and security that will meet its particular requirements.

11. TEMPORARY DISCONNECTIONS AND ELECTRICAL SAFETY

- 11.1 For safety purposes, the Customer agrees to contact Trustpower or the appropriate Distributor for advice before working near overhead or underground lines.
- 11.2 The Customer agrees not to use, or allow anyone else to use, the Customer's electrical installations or the Services in a manner which may:
- (a) cause damage to, or interfere with, any electrical installations used to supply electricity including, without limitation, if the Customer's power factor is below that specified by the Distributor;
 - (b) interfere with the supply of electricity to any other person, or with the electrical installations of any other person;
 - (c) be in breach of any law or legal or regulatory requirements;
 - (d) jeopardise the safety of any person or the proper functioning of any electrical installation (including all appliances and machinery that consume electricity).
- 11.3 The Customer shall be liable for any costs, loss or damage suffered by any person, including Trustpower, due to the Customer's failure to comply with clause 11.1 or 11.2. Without prejudice to any of its rights and remedies under this Commercial Agreement, Trustpower may also terminate this Commercial Agreement immediately without notice and/or disconnect the supply of electricity if, in Trustpower's opinion, the Customer fails to comply with all or any part of clause 11.2.

12. LIABILITY FOR LOSS

- 12.1 The Customer acknowledges and agrees that for the purposes of section 43 of the Consumer Guarantees Act 1993 ("CGA") and section 5D of the Fair Trading Act 1986 ("FTA"):
- (a) the Services provided pursuant to this Commercial Agreement are being supplied and acquired in trade;

- (b) the Customer is in trade;
 - (c) to the extent permitted by law, the Customer agrees with Trustpower to contract out of the CGA and sections 9, 12A, 14 and 14(1) of the FTA; and
 - (d) it is fair and reasonable that the Customer is bound by this clause 12.1.
- 12.2 Neither Trustpower nor the Customer will be liable to the other for any cost, loss, damage or liability the other may suffer or incur (including any actual damage to property) unless this cost, loss, damage or liability arises due to:
- (a) a failure to comply with the terms of the Commercial Agreement; or
 - (b) a negligent act, negligent error or negligent omission of (as the case may be) Trustpower or the Customer;
- and that cost, loss, damage or liability is:
- (i) caused by such failure, negligent act, negligent error or negligent omission; and
 - (ii) not caused by an event or circumstance beyond Trustpower's or the Customer's (as the case may be) control. An event or circumstance beyond a party's control includes any event or circumstance of Force Majeure.
- 12.3 Notwithstanding any other provision of this Commercial Agreement but without limiting the Customer's obligation to pay all Charges, the fees and expenses referred to in clause 4.8, and to indemnify Trustpower under clauses 6.3, 6.14 and 12.4, neither Trustpower nor the Customer shall have any liability of any kind whatsoever (including liability for negligence) to the other:
- (a) for any indirect or consequential loss or damage; and
 - (b) exceeding the greater of \$10,000 or 2.5 percent of the annual Charges payable by the Customer for the immediately preceding 12 months for any single event or circumstance (a series of such failures arising from the same event or circumstance shall be a single event or circumstance of failure) subject to an overall maximum of the greater of \$10,000 or 5 percent of the annual Charges payable by the Customer for the immediately preceding 12 months where more than one event or circumstance of failure occurs in the immediately preceding 12 months.
- 12.4 Trustpower is a party to contracts with the National Grid Manager, Meter Owners, Distributors and Generators for the supply of electricity, meter services and transmission services. Should Trustpower be required to indemnify any of these persons in respect of any action, liability, claim, demand, charge, loss, damage or proceedings brought by the Customer against these persons as a result of any loss or damage caused by any of these persons (excluding where negligence can be proved), the Customer shall indemnify Trustpower for any amount including, without limitation, any court awards, interest or penalty which Trustpower is liable to pay these persons in respect of such action, liability, claim, demand, charge, loss, damage or proceedings brought by the Customer.
- 12.5 Trustpower will in no circumstance be liable for failure of any nature on the part of others who supply Trustpower with electricity or services for Trustpower to supply the Services to the Customer.
- 13. FORCE MAJEURE**
- 13.1 If either party fails to comply with or observe any provision of this Commercial Agreement and such failure is caused by:
- (a) any event or circumstance occasioned by or in consequence of any act of God, strikes, lockouts, other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, animals, aircraft, landslides, well blow-outs, lightning, earthquakes, fires, storms, floods, washouts, geomagnetically induced currents, arrests and restraints of rulers, civil disturbances; or

- (b) a partial or entire failure of the supply or availability of electricity to the National Grid or a Distributor's or Generator's system, a partial or entire failure of any of Trustpower's customers or other person to take electricity from a Distributor's or Generator's system beyond the control of the party invoking this clause 13.1; or
 - (c) the binding order of any court, or governmental or local authority; or
 - (d) breakage or failure of, or an accident to, any plant, equipment or other facility owned or operated by the party invoking this clause 13.1 which occurs; or
 - (e) any restriction, interruption, diminution, or variation in quantity or voltage or frequency of the supply of electricity, whether caused by demands exceeding available generating or transmitting capacity of Generators, the National Grid Manager, Trustpower or a Distributor; or
 - (f) the use of any of the statutory, legislative, or contractual powers of Generators, the National Grid Manager or any Distributor or through any fault or negligence of Generators, the National Grid Manager or any Distributor or their respective agents or servants or otherwise; or
 - (g) any event or circumstance of force majeure which excuses performance under a Connection Agreement (not arising due to a failure on the part of the party seeking to invoke this clause 13.1 to exercise reasonable care); or
 - (h) a partial or entire failure of or reduction in transmission by the National Grid or any Distributor's or Generator's network by reason of any cause (other than a cause arising due to a failure on the part of the party seeking to invoke this clause 13.1 to exercise reasonable care); or
 - (i) local or national electricity shortages or capacity constraints, instances of extreme wholesale electricity prices, or where rationing is required as part of an industry rationing plan; or
 - (j) any other event or circumstance beyond the control of the party invoking this clause 13.1, but not including lack of financial means, being such that by the exercise of reasonable care as a reasonable and prudent operator such party could not have prevented such failure nor avoided the consequences of it, that failure shall not give rise to any cause of action or liability based on breach of that provision.
- 13.2 If a party becomes aware of a serious prospect of a forthcoming Force Majeure, it shall notify the other party as soon as reasonably practicable of the particulars of which it is aware.
- 13.3 The party invoking clause 13.1 shall:
- (a) notify the other party as soon as reasonably practicable of full particulars of the Force Majeure;
 - (b) use all reasonable endeavours to overcome or avoid the Force Majeure;
 - (c) use all reasonable endeavours to mitigate the effects or consequences of the Force Majeure; and
 - (d) consult with the other party on the performance of the obligations referred to in clauses 13.3 (a), (b) and (c).
- However, nothing in this clause 13.3 shall be construed as requiring the party invoking clause 13.1 to settle a strike, lock-out or other industrial disturbance by acceding against its judgment to the demands of opposing parties.
- 13.4 In the event of Force Majeure Trustpower shall, where practicable, consult with the Customer on the steps to be taken to cause minimum interference with the business of the Customer.
- 13.5 In the case of an event or circumstance of Force Majeure which affects in part the ability of the Customer to take electricity, the Customer shall, to the extent possible, continue to take a

supply under this Commercial Agreement. No Force Majeure shall relieve the Customer from its obligations to make payment for Charges.

13.6 In the case of Force Majeure that affects in part the ability of Trustpower to procure or provide electricity, Trustpower shall use reasonable endeavours to continue to provide supply under this Commercial Agreement but may ration the supply to the Customer.

13.7 If the Force Majeure is of such magnitude or will be (or will be likely to be) of such duration that it is either impracticable or unreasonable for either party to perform, comply with or observe its obligations under this Commercial Agreement (including its obligations under clause 13.3) for a period of more than 6 months, that party may, upon giving not less than 10 Business Days notice, terminate this Commercial Agreement.

14. EVENTS OF DEFAULT

14.1 The following shall be Events of Default:

(a) if the Customer fails to make payment of a duly rendered invoice of any sum due to Trustpower within the period stipulated in these General Conditions (without the need for formal demand); or

(b) if either party fails to comply with, observe or perform any material obligation under this Commercial Agreement (other than as a result of a failure arising from Force Majeure pursuant to clause 13.1 or a payment obligation under clause 3) provided that, if the failure is capable of remedy, this clause shall not apply unless such failure has not been remedied in the bona fide opinion of the party not in default within 10 Business Days of notice of the failure by the party not in default to the other; or

(c) Trustpower is not satisfied (acting reasonably) with the results of any credit check on the Customer in accordance with clause 22; or

(d) subject clause 17.1(b), upon either party becoming insolvent or upon a receiver or manager of any asset of either party being appointed, or an order made or resolution passed for the liquidation of either party; or

(e) where the Customer is no longer permitted to draw off electricity pursuant to a Connection Agreement in respect of the Supply Point for an extended period of time, other than in circumstances of Force Majeure as defined in clause 13.1.

14.2 Without limiting a party's rights in respect of the Event of Default, at any time following the expiry of 5 Business Days after the occurrence of an Event of Default of the type described in clauses 14.1(a), 14.1(b), 14.1(c) or 14.1(e) and while the Event of Default remains unremedied, and immediately upon an Event of Default of the type described in clause 14.1(d), the party not in default shall be entitled to give notice of termination to the other party and to immediately terminate this Commercial Agreement.

14.3 The termination of this Commercial Agreement does not affect any rights or obligations of the parties for any Services provided up to the date of termination.

14.4 On termination of this Commercial Agreement for any reason, the following provisions will survive termination and remain in effect until their purpose is served:

(a) clauses 3 and 4 to the extent they relate to Charges incurred but not yet paid;

(b) clauses 6 and 20 to permit Trustpower or any Meter Owner to remove or disconnect any Metering Equipment and to have access to undertake any final readings;

(c) clause 12;

(d) clauses 14.3 and 14.4;

(e) clause 15; and

(f) clause 18 in respect of any prior disputes.

14.5 Where any Event of Default of the type described in clauses 14.1(a), 14.1(b), 14.1(c) or 14.1(e) is committed or, in respect of clause 14.1(d), suffered by the Customer, and such Event of Default relates to a particular site ("Affected Site") and while the Event of Default remains un-remedied, Trustpower shall, without terminating this Commercial Agreement, be entitled to give notice of termination to the Customer and to immediately terminate the Affected Site's participation in this Commercial Agreement. In such event:

- (a) the Customer in respect of the Affected Site will have no further rights or obligations for any Services in respect of that Affected Site where such rights and obligations arise after the date of termination of participation in this Commercial Agreement of that Affected Site; and
- (b) such termination will not affect any rights or obligations of the parties for any Services provided to the Affected Site up to the date of termination of participation.

Should Trustpower terminate the participation of an Affected Site in this Commercial Agreement, this will not prejudice Trustpower's right to subsequently terminate this Commercial Agreement.

15. CONFIDENTIALITY

15.1 Each party undertakes with the other party that it will preserve the confidentiality and secrecy of, and will not directly or indirectly reveal, report, publish, disclose or transfer, confidential information about the other party acquired by the first party during the performance of this Commercial Agreement, except if:

- (a) at the time of receipt, the confidential information is lawfully in the public domain;

(b) after the time of receipt, the confidential information enters the public domain except as a result of a breach of obligations under this clause;

(c) disclosure is required by:

- (i) any statutory or regulatory obligation, body or authority (including a stock exchange);
- (ii) any judicial or other arbitration process; or

(d) confidential information is released to the first party's agents in each case on the basis of an undertaking by such agents to be bound by the obligations of confidentiality in this clause 15.1.

16. ASSIGNMENT AND AGENTS

16.1 Trustpower may at any time transfer or assign all or any of its rights and obligations under this Commercial Agreement, provided that notice of such transfer or assignment shall be given to the Customer prior to such transfer or assignment or as soon after the transfer or assignment as it is reasonably practical in the circumstances. On giving that notice, Trustpower will be released from the obligations assigned or transferred, and the assignee or transferee will assume those obligations.

16.2 Where Trustpower commits a retailer "event of default" (as that term is defined in schedule 11.5 of the Code) the Electricity Authority may assign Trustpower's rights and obligations under this Commercial Agreement to another electricity retailer ("recipient retailer"). The terms of this Commercial Agreement may be amended upon assignment to the recipient retailer to:

- (a) the standard terms the recipient retailer would have offered to the customer immediately before the event of default; or
- (b) such other terms that are more advantageous to the customer than the

standard terms as the recipient retailer and the Electricity Authority agree; and

- (c) include a minimum term in respect of which the Customer must pay an amount for cancelling the contract before the expiry of the minimum term.

This clause 16.2 is for the benefit of the Electricity Authority for the purposes of the Contract and Commercial Law Act 2017 and may not be amended without the consent of the Electricity Authority.

- 16.3 The Customer may not assign its rights or obligations under this Commercial Agreement without the prior written consent of Trustpower. Trustpower shall not unreasonably withhold such consent.
- 16.4 Trustpower may appoint an agent or subcontractor to perform any of Trustpower's rights or obligations under this Commercial Agreement.
- 16.5 Trustpower's agents can enforce the obligations that are expressed to be for the benefit of the agents in accordance with the Contract and Commercial Law Act 2017.

17. DISPUTE RESOLUTION

- 17.1 In the event a difference or dispute ("**dispute**") arises between the parties, the parties shall, in the first instance, seek to resolve the dispute by negotiation.
- 17.2 Where a dispute is not resolved by the parties in accordance with clause 18.1 within 15 working days of the dispute arising, and provided the dispute involves a claim for an amount not exceeding the maximum applicable amount set out in the Scheme Rules for the Energy Complaints Scheme operated by Utilities Disputes Limited, the Customer is entitled to submit the dispute to Utilities Disputes Limited for resolution, who provides a free and independent dispute resolution service. Where Utilities Disputes Limited issues a binding decision in respect of that dispute, the Customer agrees to be bound by that decision.

18. NOTICES

- 18.1 Any notice, communication, document, or demand required to be made or served pursuant to this Commercial Agreement shall be in writing and signed by the party giving the notice or by any officer or solicitor of that party. Any notice, communication, document or demand shall be deemed to be duly given or made:
 - (a) if delivered by hand, when so delivered;
 - (b) if sent by facsimile, when sent provided the sender has a facsimile confirmation receipt recording successful transmission; and
 - (c) if sent by post, on the 2nd Business Day following posting.

19. ACCESS

- 19.1 The Customer agrees to provide to Trustpower, the Distributor, the Meter Owner and their agents access at all reasonable times to the Property, upon reasonable notice by either Trustpower, the Distributor, or the Meter Owner (such notice not being required in the case of meter reading or, following termination, meter removal or disconnection), so as to permit Trustpower, the Distributor, the Meter Owner or their agents to carry out any of their rights or obligations under this Commercial Agreement or as reasonably required to give effect to this Commercial Agreement.

20. PROVISION OF INFORMATION

- 20.1 The Customer warrants that all information the Customer provides to Trustpower is accurate and correct and if such information changes to keep Trustpower informed in a reasonable timeframe.
- 20.2 The Customer agrees to notify Trustpower, in advance, of any significant and foreseeable change in the Customer's electricity consumption volume or pattern, or of any proposed change in equipment at the Property

that may affect the Customer's electricity supply in any material way.

- 20.3 The Customer agrees that Trustpower may access, store, use and analyse its Half-Hour Data. Where Half-Hour Data is held by a Customer's previous supplier of electricity, the Customer hereby consents to Trustpower contacting such previous supplier and requesting the supply of that Half-Hour Data to Trustpower. Upon the request of its previous supplier or Trustpower the Customer agrees to undertake any further acts, including the provision of further information and/or written confirmation of Trustpower's rights under this clause 20.3, to ensure that Trustpower is able to access that Half-Hour Data.

21. CREDIT CHECKS

- 21.1 The Customer authorises Trustpower to conduct a credit check on the Customer from time to time when Trustpower considers it appropriate.
- 21.2 Credit checks (as referred to in clause 21.1) may include (but not be limited to) enquiries of any previous suppliers of electricity to the Customer, reviewing the information the Customer has provided to Trustpower, and registering and checking the Customer's information with credit reference agencies and debt collection agencies that may also check the details of anyone the Customer is financially associated with.
- 21.3 The Customer authorises Trustpower to disclose to credit reporters (as that term is defined in the Credit Reporting Privacy Code 2004) any credit checks and any defaults in payment to Trustpower for them to include this information in their databases and share this information with others who wish to conduct credit checks on the Customer, as well as disclose any credit checks and any defaults in payment to Trustpower with other suppliers of electricity if requested by such suppliers.
- 21.4 If the Customer is not satisfied with the information which Trustpower receives from any credit reference agency or debt collection agency or any previous supplier of electricity to that Customer, the Customer must deal directly

with the credit reference agency, debt collection agency or previous supplier, as the case may be, to resolve this.

22. MISCELLANEOUS PROVISIONS

- 22.1 This Commercial Agreement may be signed in any number of counterparts all of which taken together shall constitute one and the same instrument. Either party may enter into this Commercial Agreement by signing any counterpart.
- 22.2 The provisions contained in each clause of this Commercial Agreement shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid. If any provision of this Commercial Agreement is held to be invalid, unlawful, or unenforceable, then that provision shall be deemed to be modified only to the extent necessary to remedy that result. The parties will then promptly negotiate the relevant terms of this Commercial Agreement to restore the original balance of benefits and burdens.
- 22.3 This Commercial Agreement contains all the terms of the arrangement between the parties concerning the Services and supersedes and extinguishes all prior agreements, discussions and arrangements between the parties. It is subject to all statutes, regulations, industry rules and codes of practice relating to electricity supply, as well as any requirements that any Distributor may impose.
- 22.4 Trustpower may vary or replace the General Conditions from time to time. The varied or replacement General Conditions will then apply to the Services and form part of this Commercial Agreement. Where minor changes are made to the terms of this agreement that more closely align it with industry model agreements or mandated requirements no notice of the changes will be given. This is only so long as the changes made are beneficial and/or of immaterial consequence to you. In all other circumstances Trustpower will advise the Customer of any variation to or replacement of the General Conditions.
- 22.5 No waiver of any breach, or failure to enforce any provision of this Commercial Agreement,

by either party shall affect, limit, or waive that party's right to enforce and compel strict compliance with the provisions of this Commercial Agreement.

23. DEFINITIONS

In this Commercial Agreement, unless the context otherwise requires:

"Business Day" means any day (other than a Saturday or Sunday) on which banks are customarily open for general banking business in Tauranga, New Zealand.

"Bond" means a sum that is equal to Trustpower's reasonable estimate of the Charges for the supply of the Services to the Customer for two months.

"Carbon Tax" means a tax, levy, impost, duty, financial obligation (for example, to surrender emission units) or other charge or withholding on, or in relation to, carbon dioxide or another Greenhouse Gas, or substances used to generate electricity which contain any Greenhouse Gas or emit it when used.

"Charges" means any amounts, charges and fees payable by the Customer to Trustpower for the Services in accordance with this Commercial Agreement.

"Code" means the Electricity Industry Participation Code 2010

"Commencement Date" means the date agreed as such by both Trustpower and the Customer and set out in Schedule A – Customer Details.

"Commercial Agreement" means this agreement between Trustpower and the Customer, which comprises both the cover page, Special Conditions and the General Conditions (as varied from time to time).

"Connection Agreement" means any agreement or arrangement (including all variations and modifications thereto) between a Distributor and:

(a) Trustpower, relating to Trustpower's connection to, and/or the conveyance of electrical energy over, the National Grid and/or the Distributor's network to enable electricity to be injected or uplifted at a Supply Point; or

(b) the Customer, relating to the Customer's connection to, and/or the conveyance of electrical energy over, the National Grid and/or a Distributor's network to enable electricity to be uplifted at a Supply Point, as the case requires

"Customer" means the person named as such as a party to this Commercial Agreement with Trustpower.

"Distributor" means the provider of delivery systems for the transmission and/or conveyance of electricity to the Customer and other customers of Trustpower.

"Default Interest Rate" means, unless otherwise agreed in writing between Trustpower and the Customer, a rate of 18% per annum.

"Electricity Authority" means the Electricity Authority established by the Electricity Industry Act 2010.

"Event of Default" has the meaning set out in clause 14.1.

"Force Majeure" means the events set out in clause 13.1.

"Generator" means any person who generates or wholesales electricity.

"General Conditions" means the conditions contained in this part of the Commercial Agreement, under the heading "general conditions".

"Greenhouse Gas" means a gas identified as such in the Kyoto Protocol to the United Nations Framework Convention on Climate Change or any such protocol or other agreement which amends or replaces such protocol.

"**Half-Hour Data**" means that Customer's electricity usage data for the Property in respect of 30 minute periods on any day or days.

"**Initial Term**" means one calendar year from the Commencement Date or such other period as is set out in Schedule A – Customer Details.

"**Meter Owner**" means the provider of meters, data loggers, current transformers, voltage transformers, communication systems and associated equipment for the measurement and reconciliation of the electricity consumed by the Customer.

"**National Grid**" means the plant, transmission lines and other facilities (including but not limited to all associated civil works and fixtures) operated by Transpower New Zealand Limited or its successor as National Grid Manager for the time being, which interconnect the points of input connection and the points of output connection of all those persons having plant of any kind whatsoever connected to such facilities for the purpose of injecting or receiving electricity.

"**National Grid Manager**" means the person for the time being operating the National Grid.

"**Payment Date**" means, unless otherwise specified in Schedule A – Customer Details, the 20th day of the month next following the month in respect of which the Charges have been incurred, or such other day or frequency as Trustpower may in its sole discretion determine.

"**Property**" means the land owned or occupied by the Customer as described in Schedule A – Customer Details.

"**Reconciliation Agreement**" means the relevant provisions of the Code (or its successor from time to time) which, amongst other things, provides for the appointment of an independent third party (which may include the National Grid Manager) to undertake the task of providing an accurate assessment of the quantity of electricity bought and sold by all parties buying and selling electricity supplied through the electricity market including, where

appropriate, allowances for losses incurred in transmission of the electricity.

"**Services**" has the meaning set out in clause 1.1.

"**Special Conditions**" means the terms of this Commercial Agreement under the heading Special Conditions.

"**Supply Point**" means each point of connection at the boundary of the Property at which a supply of electricity may flow between a Distributor's supply network and the Customer's installation.

"**Term**" means the Initial Term and all subsequent terms.

"**Trustpower**" means Trustpower Limited, a duly incorporated company having its registered office in Tauranga.

"**Utilities Disputes Limited**" means a body that has been set up for the resolution of Customer complaints, whether established by statute or by voluntary agreement to which Trustpower is a party.

24. INTERPRETATION

24.1 In the construction and interpretation of this Commercial Agreement, except to the extent that the context requires modification:

- (a) references to clauses are references to clauses for the relevant part of this Commercial Agreement where the reference appears;
- (b) the headings are for convenience only and shall not affect the interpretation of this Commercial Agreement;
- (c) words importing the singular number include the plural and vice versa and references to any gender includes every gender and references to persons include corporations and unincorporated bodies of persons, government or semi government bodies or agencies or political subdivisions of them;

- (d) references to "dollars" and "\$" are references to New Zealand dollars;
- (e) references to any statute, industry rules or codes of practice or regulations are to New Zealand statute's industry rules or codes of practice and regulations and shall with all necessary modifications apply to any modification, re-enactment or replacement;
- (f) references to "written" and "in writing" include any means of permanent visible representation; an
- (g) references to any document include all modifications and replacement documents from time to time.