



Scheme Implementation Agreement for the acquisition of NZ Windfarms Limited

PARTIES

Meridian Energy Limited

Meridian

NZ Windfarms Limited

Company

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AGREEMENT dated 18 February2025 at 8:31pm

PARTIES

Meridian Energy Limited

(NZBN 9429037696863), a company incorporated in New Zealand, with its registered office at Level 2, 98 Customhouse Quay, Wellington Central, Wellington, 6011, New Zealand ("**Meridian**")

NZ Windfarms Limited

(NZBN 9429036375530), a company incorporated in New Zealand, with its registered office at 376 North Range Road, Aokautere, Palmerston North, 4471, New Zealand (the "**Company**")

INTRODUCTION

- A. The Company is listed on the NZX Main Board under the ticker code 'NWF'.
- B. Meridian proposes to acquire all of the shares in the Company by way of a scheme of arrangement under Part 15 of the Companies Act.
- C. The parties have entered into this Agreement to record the arrangements by which Meridian and the Company intend to propose and implement the Scheme, on the terms and subject to the conditions set out therein.

AGREEMENT

1. INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

"**Adverse Circumstance**" has the meaning given in clause 3.9(a).

"**Agreement**" means this Agreement.

"**Associate**" has the meaning given to the term "Associated Persons" in section 12(1) of the FMCA and "**Associated**" shall have the corresponding meaning.

"**Authorisation**" means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency.

"**Board**" means the board of directors of the Company.

"**Break Fee**" means NZ\$909,752.

"**Break Fee Arrangements**" has the meaning given in clause 16.7(a).

"**Business**" means the business carried on by the NZ Windfarms Group as at the date of this Agreement.

"Business Day" means any day (other than a Saturday, Sunday, or statutory public holiday) on which banks are usually open in Wellington, New Zealand and excluding any day between 24 December 2025 and 5 January 2026 (both dates inclusive).

"CCLA" means the Contract and Commercial Law Act 2017.

"Change of Control Consent" has the meaning given to that term in clause 10.1.

"Commerce Act" means the Commerce Act 1986.

"Companies Act" means the Companies Act 1993.

"Company Indemnified Person" each member of the NZ Windfarms Group and each of their respective Representatives.

"Competing Proposal" means any proposed:

- (a) takeover (whether a full or partial takeover under the Takeovers Code) in respect of the Company by a Third Party;
- (b) scheme of arrangement in respect of a NZ Windfarms Group member involving a Third Party;
- (c) transfer or issuance of financial products of the Company to a Third Party, where the Shareholders' approval is required under the Takeovers Code;
- (d) sale of assets or financial products of the NZ Windfarms Group to a Third Party, where such sale constitutes a division or similarly material part of the NZ Windfarms Group's Business; or
- (e) any strategic alliance, joint venture, partnership, economic or synthetic merger or other transaction which, would have the effect of a Third Party, directly or indirectly, having a Relevant Interest in more than 20% of the Shares.

For the purposes of the definition of "Competing Proposal":

- (f) any such proposal may be indicative, conditional or otherwise non-binding;
- (g) paragraphs (c) and (d) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which if conducted as a single transaction would constitute a "Competing Proposal" within the meaning of paragraphs (c) and (d) above; and
- (h) "Third Party" shall mean a Third Party together with its Associates.

"Conditions" mean the conditions precedent set out in the first column of the table in clause 3.1.

"Confidentiality Agreement" means the Mutual Confidentiality Agreement executed between the Company and Meridian, dated 12 September 2022.

"Consideration" means \$0.25 in respect of each Scheme Share held by a Scheme Shareholder, as adjusted by virtue of any Counter Proposal that is given effect to.

"Control" means, in relation to a person (the **"relevant person"**) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has, or is likely to have, the power to appoint or remove the majority of the members of the governing body of the relevant person;
- (b) controls or has the power, or is likely to have the power, to control the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the benefit of the existence or activities of the relevant person.

"Counter Proposal" has the meaning set out in clause 14.10(iv).

"Court" means the High Court of New Zealand.

"Court Guidance" has the meaning given in clause 7.4(a).

"Data Room Index" means the index of materials and information disclosed in writing in the data room established by the Company in relation to the Transaction (including written answers given by or on behalf of the Company to questions and requests for information made by or on behalf of the Meridian Group through the data room), in a form agreed between the parties in writing prior to the date of this Agreement.

"Deed Poll" means the deed poll to be entered into by Meridian in favour of the Scheme Shareholders, in the form set out in Schedule 6 or such other form agreed between the parties.

"Due Diligence Material" means the due diligence materials and information, including written answers given by or on behalf of the Company to questions and requests for information made by or on behalf of the Meridian Group, listed in the Data Room Index.

"D&O Run-off Policy" has the meaning set out in clause 13(a).

"EBITDA" means earnings before interest, tax, depreciation, amortisation and fair value adjustments.

"Effective" means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the Conditions having been satisfied or waived (where capable of being waived) in accordance with the Scheme.

"Encumbrance" means any security interest (within the meaning of section 17(1)(a) of the PPSA) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing, but excludes (where created in the ordinary course of business):

- (a) every lien or retention of title arrangement securing the unpaid balance of purchase money for property acquired in the ordinary course of business;

- (b) any security interest in relation to personal property (as those terms are defined in the PPSA and to which that Act applies) that is created or provided for by:
- (i) a transfer of an account receivable or chattel paper;
 - (ii) a lease for a term of more than one year; or
 - (iii) a commercial consignment,
- that is not a security interest within the meaning of section 17(1)(a) of the PPSA;
- (c) the interest of the lessor or owner in respect of assets subject to a lease, a hire-purchase agreement or a conditional sale agreement.

"End Date" means the day six months after the day on which this Agreement has been signed by the last party to sign it, or such later date as the parties agree in writing.

"Exclusivity Period" means from the date of this Agreement to 31 March 2025.

"Final Orders" means, on application of the Company, orders that the Scheme will be binding on the Company, Meridian, Shareholders and/or such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

"Final Orders Date" means the day on which the Final Orders are sealed by the Court.

"First Court Date" means the date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act.

"FMCA" means the Financial Markets Conduct Act 2013.

"Fundamental Warranties" means the NZ Windfarms Warranties set out in paragraphs 1 to 5 (inclusive) of Part 1 of Schedule 2.

"Government Agency" means any government, any department, officer or minister of any government and any governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity, in any jurisdiction, and includes (for the avoidance of doubt) the Overseas Investment Office, the Takeovers Panel and the Financial Markets Authority.

"GST" means goods and services tax charged under the GST Act.

"GST Act" means the Goods and Services Tax Act 1985.

"GST Exclusive Consideration" has the meaning given in clause 19.2.

"Implementation Date" means the day on which the Scheme is to be implemented, being 5 Business Days after the Record Date, or such other date agreed between the parties in writing, and **"Implementation"** means the time at which the Scheme is implemented.

"Independent Adviser" means the person appointed by the Company, and approved by the Takeovers Panel, as the independent adviser to prepare the Independent Adviser's Report.

"Independent Adviser's Report" means the report prepared by the Independent Adviser in relation to the Scheme, as amended or updated from time to time and including any supplementary or replacement report.

"Initial Orders" means, on application by the Company, orders by the Court for the purposes of section 236(2) of the Companies Act.

"Insolvency Event" means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) the person is unable to pay its debts when due (as defined in the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition or compromise with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (c) the person goes into receivership or has a receiver, receiver and manager, statutory manager, voluntary administrator, trustee or other similar officer appointed in respect of all or any of its property;
- (d) the person enters into a scheme of arrangement (other than the Scheme) or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a distress order, attachment order, freezing order or other execution is levied or enforced upon or commenced against any of its assets;
- (f) any resolution is proposed or passed, or any proceeding is commenced or order made, for the liquidation or dissolution of that person;
- (g) any application is made or notice is filed for the deregistration of a person;
- (h) any other form of secured creditor enforcement, including as mortgagee in respect of real property;
- (i) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; or
- (j) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

"Loss" means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties shall not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including:

- (a) consequential loss or damage; or
- (b) loss of use, production, revenue, income, profits, business and savings or business interruption (whether or not the indirect loss or damage was foreseeable).

"LTI Scheme" means the Company's Long-Term Incentive share scheme.

"LTI Share Rights" means all rights of employees of the NZ Windfarms Group to be paid a cash sum by reference to the value of Shares in accordance with the terms of the LTI Scheme.

"Matching Period" has the meaning set out in clause 14.10.

"Material Adverse Change" means an event or circumstance that occurs (or a series of events or circumstances that occur) on or after the date of this Agreement which causes damage to the Te Rere Hau wind farm or surrounding area, which materially delays or prevents the Te Rere Hau repowering project from proceeding or completing (including, without limitation, any seismic event or related weather event).

"Material Contract" has the meaning given in paragraph 9 of Schedule 2.

"Meridian Group" means Meridian and each of its Related Companies.

"Meridian Indemnified Person" means each member of the Meridian Group and each of their respective Representatives.

"Meridian Information" means all information given by Meridian to the Company in writing for inclusion in the Scheme Booklet, being:

- (a) information about Meridian Group and its businesses and interests; and
- (b) any other information which the parties agree (acting reasonably) is Meridian Information and that is identified in the Scheme Booklet as such.

"Meridian Undertakings" means the undertakings set out in Part 2 of Schedule 3.

"Meridian Warranties" means the warranties set out in Part 1 of Schedule 3.

"Notice" has the meaning given in clause 20.1.

"NZ Windfarms Director" means each director of the Company from time to time.

"NZ Windfarms Group" means the Company and its Related Companies.

"NZ Windfarms Indemnified Person" means each member of the NZ Windfarms Group and each of their Representatives.

"NZ Windfarms Information" means all information included in the Scheme Booklet other than the Meridian Information and the Independent Adviser's Report.

"NZ Windfarms Undertakings" means the undertakings set out in Part 2 of Schedule 2.

"NZ Windfarms Warranties" means the warranties set out in Part 1 of Schedule 2.

"NZX" means NZX Limited.

"NZX Listing Rules" means the NZX Main Board Listing Rules.

"Permitted Encumbrances" means in respect of the NZ Windfarms Group's assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into in respect of supplies to a member of the NZ Windfarms Group in the ordinary course of business;
- (b) a right or set-off or combination of arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;
- (c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings;
- (d) a security interest arising under section 17(1)(b) of the PPSA that does not secure payment or performance of an obligation,

in each case existing on the date of this Agreement or in the period prior to the Implementation Date without breach of clause 9.2.

"PPSA" means the Personal Property Securities Act 1999.

"PPSR" means the Personal Property Securities Register established under section 139 of the PPSA.

"Prescribed Occurrence" means the occurrence of any of the events listed in Schedule 1 other than an event:

- (a) agreed to by Meridian in writing; or
- (b) expressly required or permitted by this Agreement.

"Record Date" means 5:00pm on the date which is five Business Days after the later of:

- (a) the Final Orders Date; and
- (b) the date on which the Condition set out in clause 3.1(a) (Regulatory clearance) is satisfied,

or such other date agreed between the parties in writing.

"Reference Rate" means in relation to interest payable on any payment due under this Agreement, the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10:45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period.

"Register" means the Share register maintained by MUFG Pension & Market Services (NZ) Limited on behalf of the Company.

"Registrar" has the meaning given in the Companies Act.

"Regulatory Conditions" means the Conditions set out in clause 3.1(a) (Regulatory clearance) and 3.1(d) (No restraints).

"Related Company" has the meaning given to that expression in section 2(3) of the Companies Act, provided that, for this purpose, references to "company" in that section will extend to any body corporate wherever incorporated or registered.

"Relevant Interest" has the meaning given in section 235(1) of the FMCA.

"Relief" means any loss, allowance, credit, deduction, rebate or other relief taken into account in computing any Tax liability or any right to the repayment or refund of Tax.

"Representatives" in relation to a person means any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person.

"Reverse Break Fee" means \$909,752.

"Scheme" means a scheme of arrangement under Part 15 of the Companies Act under which all of the Scheme Shares held by Scheme Shareholders will be transferred to Meridian and the Scheme Shareholders will receive the Consideration, in the form of the **"Scheme Plan"** set out in Schedule 5 or in such other form as the parties agree in writing and the Court approves under section 236(1) of the Companies Act.

"Scheme Booklet" means the explanatory memorandum (including the notice of meeting and proxy form) to be prepared in accordance with this Agreement in connection with the Scheme, the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting.

"Scheme Meeting" means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting.

"Scheme Resolution" means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme.

"Scheme Shareholder" means a person who is registered in the Register as the holder of one or more Scheme Shares.

"Scheme Shares" means all of the Shares on issue on the Record Date.

"Second Court Date" means the later of:

- (a) if no hearing is held in respect of the Final Orders, the last date the Company files affidavit(s) satisfying the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard.

"Share" means a fully paid ordinary share in the Company.

"Shareholder" means a person who is registered in the Register as the holder of one or more of the Shares from time to time.

"Superior Proposal" means a written bona fide Competing Proposal received after the date of this Agreement that the Board determines, acting in good faith and after having taken advice from its external financial and legal advisers:

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent; and
- (b) is more favourable to Shareholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal and the Scheme.

"Surviving Clauses" means each of clauses 1 (Interpretation), 11 (Representations, warranties and undertakings), 12 (Releases), 16 (Break Fee and Reverse Break Fee), 15.9 (Effect of termination), 17 (Announcements), 18 (Payments), 19 (GST), 20 (Notices), and 21 (General) (other than clause 21.6 (Further assurances)).

"Takeovers Code" means the Takeovers Code set out in the Schedule to the Takeovers Code Regulations 2000 (SR2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

"Takeovers Panel" means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993.

"Tax" or **"Taxation"** means all forms of taxation including all statutory or governmental taxes, levies, duties and rates, whether imposed in New Zealand or elsewhere, and includes:

- (a) any reassessments of any such taxation;
- (b) loss of Relief; and
- (c) all penalties, interest, fines or the like imposed in respect of any such taxation or loss of Relief.

"Tax Invoice" means an invoice or documentation containing the relevant "taxable supply information" (as defined in the GST Act) in relation to the supply.

"Third Party" means a person other than a member of the Meridian Group.

"Timetable" means the timetable set out in Schedule 4, or such other timetable as the parties may agree in writing.

"Trading Halt Date" has the meaning given in clause 5.1(i).

"Transaction" means the acquisition by Meridian of all the Scheme Shares through the implementation of the Scheme in accordance with the terms of this Agreement.

1.2 **References:** In this Agreement, unless the context otherwise requires:

- (a) headings are to be ignored in construing this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Agreement);

- (d) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
 - (e) reference to a party, person or entity includes:
 - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, sub-contractor, agent, successor, assign, executor, administrator and other representative of such party, person or entity;
 - (f) "**written**" and "**in writing**" include any means of reproducing words, figures or symbols in a tangible and visible form;
 - (g) the words "**including**" or "**includes**" do not imply any limitation;
 - (h) a reference to any time is, a reference to that time in New Zealand;
 - (i) a reference to "**law**" includes any statute, regulation, by-law, determination, ordinance, rule (including applicable listing rules) or other like provision, as amended from time to time, in any jurisdiction;
 - (j) references to money are to New Zealand dollars; and
 - (k) a reference to a matter, information or a circumstance being "**disclosed**" or "**fairly disclosed**" (or any similar expression) means disclosure in writing in a manner such that the matter, information or circumstance would reasonably be expected to come to the knowledge of a diligent and reasonable purchaser or any of its representatives in the ordinary course of carrying out a due diligence exercise in respect of the NZ Windfarms Group and the Business, in such a way that such a purchaser (experienced in transactions of this nature) might reasonably be expected to understand the relevance and importance of the matter, information or circumstance.
- 1.3 **Consents:** If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, then, unless specified otherwise in this Agreement, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.
- 1.4 **No contra proferentem:** No term or condition of this Agreement will be construed adversely to a party solely because that the party was responsible for the preparation of this Agreement or a provision of it.
- 1.5 **Knowledge:** Where any NZ Windfarms Warranty is qualified by the expression "**so far as the Company is aware**" or any similar expression, the Company will be deemed to know or be aware of all matters or circumstances of which David Prentice, Adam Radich, Patrick Brockie, Philip Cory-Wright, Christine Spring and Craig Stobo are, after due enquiry in the context of the Transaction, actually aware as at the date the statement is made or given or would have been aware as at that date had they made such enquiries as were reasonable in

the circumstances, taking into account any relevant confidentiality restrictions. Otherwise than as contemplated by this clause, knowledge, belief or awareness of any person will not be imputed to the Company. For clarity, and without limiting clause 11.7, none of the individuals referred to in this clause 1.5 have any personal liability in respect of the NZ Windfarms Warranties.

1.6 **Things required to be done other than on a Business Day:** Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

2. SCHEME

2.1 **Proposal:** The Company must, as soon as reasonably practicable, propose and implement the Scheme on and subject to the terms of this Agreement and the Scheme becoming Effective.

2.2 **Consideration:** Subject to the terms of this Agreement, in consideration for, and simultaneously with, the transfer to Meridian of each Scheme Share held by each Scheme Shareholder under the terms of the Scheme, Meridian undertakes in favour of the Company (in the Company's own right and on behalf of each of the Scheme Shareholders) to provide, or procure the provision of, the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.

2.3 **General obligations:** Each party must do everything reasonably necessary to, including by using all reasonable endeavours to procure that its Representatives, work in good faith and in a timely and co-operative manner with the other party and its Representatives, to implement the Scheme in accordance with this Agreement and all applicable laws and regulations applicable to the Scheme.

2.4 Timetable:

- (a) Each party must use reasonable endeavours to take all necessary steps and exercise all rights necessary to ensure that the Scheme is proposed and implemented in accordance with the Timetable or otherwise as soon as reasonably practicable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.4(a) to the extent that such failure is due to circumstances or matters outside the party's control provided that such party has used reasonable endeavours to meet the Timetable.
- (c) Each party will keep the other informed about its progress towards implementation of the Transaction in accordance with the Timetable and promptly notify the other if it believes that any of the dates in the Timetable are not achievable.
- (d) If any aspect of the Timetable is not able to be achieved, the parties must consult in good faith and if there is a material delay expected, they will consult with a view to amending the Timetable as required to permit the Scheme to be implemented before the End Date.

For clarity, neither this clause nor the Timetable limit the Company's ability to deal with a Competing Proposal that the Board considers is reasonably capable of becoming a Superior

Proposal in accordance with clause 14 or to the extent necessary to deal with any other circumstances in accordance with this Agreement and the Board's fiduciary duties.

2.5 **No amendment:** The Company must not consent to any modification of, or amendment to, the Scheme or Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without Meridian's prior written consent (such consent not to be unreasonably withheld).

3. CONDITIONS

3.1 The Scheme will not become Effective, and the obligations of Meridian under clause 2.2, and, once signed, the Scheme or the Deed Poll, do not become binding, unless and until each of the Conditions set out in the following table are satisfied or waived in accordance with this clause 3.

CONDITION	RESPONSIBILITY	WAIVER
Regulatory clearance		
(a) Commerce Act If Meridian receives notice from the Commerce Commission to the effect that that the Commerce Commission threatens to take, intends to take, or has taken, steps to prevent or delay the proposed Transaction, a clearance being given, or authorisation being granted, by the Commerce Commission under the Commerce Act 1986 for the proposed Transaction on terms acceptable to Meridian.	None	Meridian
General conditions		
(b) Court approval Subject to clause 3.2, approval of both the Initial Orders and Final Orders being given by the Court in accordance with Part 15 of the Companies Act on terms reasonably acceptable to the Company and Meridian, each acting reasonably.	Company	None
(c) Shareholder approval Approval by Shareholders of the Scheme being given at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act.	Company	None

CONDITION	RESPONSIBILITY	WAIVER
<p>(d) No restraint</p> <p>No law, judgment, order, restraint or prohibition enforced or issued by any Government Agency being in effect as at 8:00am on the Implementation Date that prohibits, prevents, materially delays or makes illegal the implementation of the Scheme.</p>	None	None
<p>(e) No Material Adverse Change</p> <p>No Material Adverse Change occurs between the date of this Agreement and 5:00pm on the Business Day before the Implementation Date.</p>	None	Meridian
<p>(f) No Prescribed Occurrence</p> <p>No Prescribed Occurrence occurring between the date of this Agreement and 8:00am on the Implementation Date.</p>	Company	Meridian

3.2 **Court Approval:** If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme plan set out in Schedule 5, then each such term or condition must be approved in writing by both parties (both acting reasonably) prior to the Court granting the Final Orders.

3.3 **Endeavours to satisfy Conditions:**

- (a) The party specified in the "Responsibility" column of the table in clause 3.1 opposite each Condition is primarily responsible for the satisfaction of that Condition and (where applicable) must promptly apply for or seek each consent or approval (where applicable) required to satisfy that Condition, and diligently pursue it. Such party must use reasonable endeavours to satisfy that Condition:
 - (i) in the case of any Condition in clauses 3.1(a) to (c), as soon as practicable and in any event before the End Date; and
 - (ii) in the case of either Condition in clauses (d) to (f) at all times before 8:00am on the Implementation Date.
- (b) Regardless of whether a party is primarily responsible for the satisfaction of a particular Condition in accordance with clause 3.3(a), each party must:
 - (i) co-operate with the other party towards satisfying each Condition;
 - (ii) promptly provide all information and other assistance reasonably required by the other party for the purposes of procuring the satisfaction of each Condition; and

- (iii) not take any action or omit to take any action that will or is likely to hinder, subvert or undermine the satisfaction of any Condition, except to the extent that such action is required by law, and provided that, this provision does not limit the Company's ability to deal with a Competing Proposal that the Board considers is capable of becoming a Superior Proposal in accordance with clause 14 or to the extent necessary to deal with any other circumstances in accordance with the terms of this Agreement and the Board's fiduciary duties.
- (c) Nothing in this clause 3.3 will:
- (i) limit each party's discretion to determine whether or not a Condition has been satisfied; nor
 - (ii) require either party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (other than as required under clause 3.1(a)).

3.4 Regulatory applications: Without limiting clause 3.3:

- (a) each party must promptly make all applications necessary to satisfy the Regulatory Conditions, and provide the other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided); and
- (b) each party must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to any approval or consent required to satisfy a Regulatory Condition, or any action taken or proposed by, or any enquiries made by, a Government Agency in relation to the Scheme and:
 - (i) provide the other party with drafts of any material written communications to be sent to a Government Agency (including any applications necessary to satisfy the Regulatory Conditions) and take any reasonable comments made by the other party into account in good faith when making any amendments;
 - (ii) provide copies of any material written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be); and
 - (iii) in the case of a meeting or phone call, provide the other party with the opportunity to participate in the meeting or phone call (except where a regulator requests a separate meeting, and only after the parties have consulted together in good faith about that requirement),

in each case to the extent it is reasonably practicable to do so.

3.5 Notifications:

- (a) Each party will keep the other party fully informed as to the progress made towards procuring the satisfaction of the Conditions.

- (b) If it becomes known that a Condition has become incapable of satisfaction, the party with that knowledge will promptly inform the other party in writing, and in any event within two Business Days of the relevant fact having become known to that party.
- (c) Each party must notify the other party in writing of the satisfaction of a Condition as soon as reasonably practicable after that party becomes aware of it. Any notification delivered pursuant to this clause 3.5(c) must be accompanied by sufficient evidence to reasonably satisfy the other party of the fulfilment of the Condition, including a copy of any consent, approval, order or other documentation.

3.6 **Waiver:** Where the column of the table in clause 3.1 opposite a Condition headed "Waiver" states "None", that Condition has been inserted for the benefit of both parties and cannot be waived by either of the parties. Each other Condition has been inserted for the benefit of, and may only be waived by, Meridian by notice in writing to the Company.

3.7 **Effect of waiver:** If Meridian waives a Condition in accordance with clause 3, that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this Agreement; or
- (b) constitute a waiver of any other Condition.

3.8 **Alternative method or timing:** If:

- (a) a Condition set out in clause 3.1(a) to 3.1(c) inclusive has not been fulfilled before 5:00pm on the End Date and is not waived (where capable of waiver);
- (b) a Condition set out in clause 3.1(d) to 3.1(f) inclusive has not been fulfilled before 5:00pm on the Implementation Date;
- (c) the Implementation Date does not occur on or prior to the End Date; or
- (d) there is an act, failure to act, event or occurrence which will prevent a Condition being fulfilled:
 - (i) in the case of a Condition in 3.1(a) to 3.1(c) inclusive, before 5:00pm on the End Date; or
 - (ii) in the case of a Condition in clause 3.1(d) or 3.1(f), before 5:00pm on the Implementation Date,

(and the breach or non-fulfilment of the Condition which would otherwise occur had not been waived),

then as soon as is practicable the parties will consult in good faith to:

- (e) if a deferral of the Timetable would not, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, endeavour to agree whether the Transaction may proceed by way of alternative means or methods; or

- (f) if a deferral of the Timetable would, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, endeavour to agree to:
- (i) to the extent reasonably possible, change the date of the application made to the Court for an order under section 236(1) of the Companies Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the Company and Meridian (being a date no later than two Business Days before the End Date); or
 - (ii) extend the relevant date or extend the End Date by a period of up to one month (with the expectation that there is only one such extension under this Agreement).

3.9 **Notice of Adverse Circumstances:**

- (a) If, prior to 8:00am on the Implementation Date, the Company or Meridian becomes aware of a matter, event, condition, change in circumstance or thing that it considers in good faith will give rise to, or there is a reasonable possibility that it will give rise to, a Material Adverse Change ("**Adverse Circumstance**"), it must promptly notify the other party of the relevant Adverse Circumstance (which notice must state that it is a notice for the purposes of this clause 3.9).
- (b) After giving notice of an Adverse Circumstance, the parties must:
- (i) consult in good faith for at least ten Business Days or, if shorter, until 5:00pm on the day prior to the Implementation Date, regarding the appropriate method of calculating the financial consequences of the Adverse Circumstance; and
 - (ii) implement that method so that the parties can determine the financial consequences of the Adverse Circumstance.

3.10 **Termination:** Notwithstanding anything in this clause 3 or any rights of termination implied by law, this Agreement may only be terminated in respect of a Condition in accordance with clause 15.

4. **SCHEME BOOKLET**

4.1 **Company's obligations:** The Company will:

- (a) prepare the Scheme Booklet so that it contains:
- (i) all information required by the Companies Act and the NZX Listing Rules and any other applicable laws, including any requirements of the Takeovers Panel;
 - (ii) the responsibility statements referred to in clause 4.4; and
 - (iii) a statement by the NZ Windfarms Directors reflecting the recommendation and undertaking referred to in clause 8 (modified appropriately where the Consideration is not within or above the Independent Adviser's valuation range for the Shares);

- (b) appoint the Independent Adviser, and provide all assistance and information that is reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) provide Meridian with successive drafts of the Scheme Booklet and any extracts of the Independent Adviser's Report that contain any factual matters about Meridian in a timely manner and so that Meridian has a reasonable opportunity to review and comment on those drafts;
- (d) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel, provide that draft to Meridian;
- (e) in respect of each draft of the Scheme Booklet reviewed by Meridian, consider and take into account in good faith all of the reasonable comments of Meridian and its Representatives when preparing a revised draft of the Scheme Booklet;
- (f) as soon as practicable after receipt of the confirmation from Meridian referred to in clause 4.2(e), provide the Takeovers Panel the draft Scheme Booklet;
- (g) consult with Meridian in good faith in relation to any matters raised by the Takeovers Panel in relation to the Scheme Booklet and use reasonable endeavours, in co-operation with Meridian, to resolve any such matters;
- (h) as soon as practicable after the Takeovers Panel has completed its review of the Scheme Booklet and has provided a letter of intention, procure that a meeting of the Board is convened to approve the Scheme Booklet for lodgement with the Court and, subject to the Initial Orders being granted and the terms of those orders, for dispatch to Shareholders;
- (i) send the Scheme Booklet to Shareholders in accordance with requirements set out in the Initial Orders (and otherwise as soon as reasonably practicable, including within the Timetable); and
- (j) advise Meridian if it becomes aware:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet;
 - (ii) that any part of the Scheme Booklet (other than the Independent Adviser's Report or the Meridian Information) is misleading or deceptive in any material respect, including by omission; or
 - (iii) that information that was required to be disclosed in the Scheme Booklet under applicable law was not included,

and in any of those cases, if the Company becomes so aware at any time (after consulting in good faith with Meridian as to the need for and content and presentation of the disclosures discussed below (except where doing so would, in the Company's reasonable opinion, cause it to breach law or is not reasonably practicable)):

- (iv) between the approval of the Scheme Booklet in accordance with clause 4.1(h) and the date of the Scheme Meeting, then, if considered by the Company that supplementary disclosure is required, it will provide supplementary disclosure to Shareholders in an appropriate and timely manner in accordance with applicable law and will, if it considers it necessary or appropriate:
 - (aa) seek the Court's guidance in respect of the supplementary disclosure; and
 - (bb) adjourn the Scheme Meeting to the earliest date possible; or
- (v) between the date of the Scheme Meeting and the Second Court Date, then, if considered by the Company that supplementary disclosure is required, it will apply to the Court for orders as to the procedure to be followed as to the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme.

4.2 **Meridian obligations:** Meridian must:

- (a) prepare and provide to the Company for inclusion in the Scheme Booklet information:
 - (i) about Meridian and the Meridian Group;
 - (ii) confirmation (in a form satisfactory to the Company, acting reasonably) that Meridian will have sufficient funds in place in order to fund the Consideration (provided that Meridian is not required to disclose any commercially sensitive terms or information which may be materially adverse to Meridian's competitive position if disclosed); and
 - (iii) equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,

as required to be included in the Scheme Booklet by the Companies Act, the Takeovers Panel and any other applicable laws;
- (b) give the Company a reasonable opportunity to review successive drafts of the information referred to in clause 4.2(a) in a timely manner and so that the Company has a reasonable opportunity to review the form and content of that information, and in respect of each draft provided, consider and take into account in good faith all reasonable comments of the Company and its Representatives when preparing revised drafts of that information (with the parties' intention being that, so far as is practicable, the Scheme Booklet be prepared within 12 Business Days of the date on which the initial draft of the Scheme Booklet is provided by the Company to Meridian);
- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (d) as soon as reasonably practicable after receipt of any draft of the Scheme Booklet from the Company, review and provide comments on that draft;

- (e) subject to clause 4.3, before the Company provides the Scheme Booklet to the Takeovers Panel in accordance with clause 4.1(f), deliver to the Company consent from Meridian to the inclusion of the Meridian Information in the Scheme Booklet in the form and context it appears; and
- (f) advise the Company if Meridian becomes aware at any time after giving consent to the Company under clause 4.2(e) either:
 - (i) of new information which is material and which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Meridian Information;
 - (ii) that any part of the Meridian Information is misleading or deceptive in a material respect, including by omission; or
 - (iii) that information that was required to be disclosed as part of the Meridian Information under applicable law was not included,

and if Meridian provides such advice, the Company will, at any time (after consulting in good faith with Meridian as to the need for and content and presentation of the disclosures referred to in paragraphs (iv) and (v) below (as relevant), except where doing so would, in the Company's reasonable opinion, cause it to breach law or is not reasonably practicable):

- (iv) between the approval of the Scheme Booklet in accordance with clause 4.1(h) and the date of the Scheme Meeting, if considered by the Company that supplementary disclosure is required, provide supplementary disclosure to Shareholders in an appropriate and timely manner in accordance with applicable law and will, if it considers it necessary or appropriate:
 - (aa) seek the Court's guidance in respect of the supplementary disclosure; and
 - (bb) adjourn the Scheme Meeting to the earliest date possible; and
- (v) between the date of the Scheme Meeting and the Second Court Date if considered by the Company that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed as to the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme.

4.3 Meridian confirmation and approval: If Meridian requires any change to be made to the form or content of the Meridian Information as a condition of giving its consent as referred to in clause 4.2(e) then:

- (a) if the Company (acting reasonably) disagrees with the change, the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, the Company must make such changes to the Meridian Information as Meridian reasonably requires.

4.4 **Responsibility statements:** The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:

- (a) the Company has provided, and is responsible for, the NZ Windfarms Information in the Scheme Booklet, and that none of Meridian, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the NZ Windfarms Information;
- (b) Meridian has provided, and is responsible for, the Meridian Information but no other part of the Scheme Booklet, and that none of the Company, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Meridian Information; and
- (c) the Independent Adviser has provided and is responsible for the Independent Adviser's Report, and that none of Meridian, the Company or their respective Related Companies or Representatives assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.

5. SCHEME IMPLEMENTATION STEPS

5.1 **Company's obligations:** Without limiting clause 2, the Company must use its reasonable endeavours, as soon as reasonably practicable, including within the Timetable, to:

- (a) before the First Court Date, in consultation with Meridian, to the extent reasonably appropriate, apply to the Takeovers Panel for a letter of intention indicating that the Takeovers Panel:
 - (i) intends to provide a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting the Final Orders; and
 - (ii) does not intend to seek to be heard by the Court in relation to the application for Initial Orders;
- (b) without limiting subclause (a), the Company must:
 - (i) prior to sending any material correspondence to the Takeovers Panel relating to the Scheme (other than correspondence relating to a Competing Proposal), provide Meridian with a draft of that correspondence and consider in good faith all of the reasonable comments of Meridian and its Representatives on that correspondence;
 - (ii) promptly provide Meridian with a copy of all material correspondence to and from the Takeovers Panel relating to the Scheme (other than correspondence relating to a Competing Proposal); and
 - (iii) keep Meridian reasonably informed of any issues raised by the Takeovers Panel in connection with the Scheme Booklet or the Scheme (other than issues relating to a Competing Proposal) and consider in good faith all of the reasonable comments of Meridian and its Representatives on those issues;

- (c) if the Takeovers Panel issues the letter referred to in clause 5.1(a), apply to the Court for Initial Orders under section 236(2) of the Companies Act convening the Scheme Meeting;
- (d) if the Court makes and seals the Initial Orders:
 - (i) dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, those Initial Orders;
 - (ii) promptly deliver a copy of the Initial Orders to the Registrar for registration in accordance with section 236(4) of the Companies Act (and, in accordance with the requirements of the Companies Act, by no later than 10 working days (as defined in the Companies Act) after the date the Initial Orders are granted);
- (e) upon sending the Scheme Booklet to Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX in accordance with the NZX Listing Rules;
- (f) if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act 1993, promptly apply to the Takeovers Panel for a statement that the Takeovers Panel has no objection to an order being made under section 236(1) of the Companies Act (being a statement of the type referred to in section 236A(2)(b)(ii) of the Companies Act);
- (g) if the Scheme Resolution is passed by the requisite majorities of Shareholders, seek the Court's approval of the Final Orders;
- (h) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court):
 - (i) promptly deliver to the Registrar a copy of the Final Orders for registration in accordance with section 236(4) of the Companies Act (and, in accordance with the requirements of the Companies Act, by no later than 10 working days (as defined in the Companies Act) after the date the Final Orders are granted);
 - (ii) do all other things contemplated by or necessary to give full effect to the Scheme Plan and the Final Orders in accordance with this Agreement (including using reasonable endeavours to ensure that the Conditions have been satisfied or, if capable of waiver, waived in accordance with clause 3);
 - (iii) enter into, and use reasonable endeavours to procure that the Company's share registrar promptly enters into, an escrow agreement relating to the holding by the Company's share registrar of the aggregate Consideration on escrow pending Implementation of the Scheme, on terms reasonably acceptable to the parties to that agreement; and
- (i) if the Scheme becomes Effective:
 - (i) use its reasonable endeavours to procure that the NZX suspends trading in the Shares from the close of trading on the date that is the later of:

- (aa) the Final Orders Date; and
 - (bb) the date on which the Condition in clause 3.1(a) is satisfied or, if capable of waiver, waived in accordance with clause 3.6,
- or such other date as is agreed between the parties in writing ("**Trading Halt Date**");
- (ii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration;
 - (iii) subject to Meridian satisfying its obligations under clause 5.2(c), effect the transfer of the Scheme Shares to Meridian in accordance with the Scheme on the Implementation Date;
 - (iv) use reasonable endeavours to procure that:
 - (aa) NZX ceases quotation of Shares and de-lists the Company with effect from close of trading on NZX on the Implementation Date;

and the Company must:

 - (bb) prior to sending any material correspondence to NZX in respect of suspension or cessation of quotation of Shares or de-listing of the Company, provide Meridian with a draft of that correspondence and consider in good faith all of the reasonable comments of Meridian and its Representatives on that correspondence;
 - (cc) promptly provide Meridian with a copy of all material correspondence to and from NZX in respect of suspension or cessation of quotation of Shares or de-listing of the Company; and
 - (dd) keep Meridian reasonably informed of any issues raised by NZX in respect of suspension or cessation of quotation of Shares or de-listing of the Company and consider in good faith all of the reasonable comments of Meridian and its Representatives on those issues; and
 - (v) do all other things contemplated of it under the Scheme and all other things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this Agreement or necessary for the Company to lawfully give effect to the Scheme and the orders of the Court.

5.2 Meridian's obligations: Without limiting clause 2.3, Meridian must:

- (a) no later than two Business Days before the First Court Date, deliver to the Company a copy of the Deed Poll duly executed by Meridian;
- (b) without limiting clause 7.2, if requested by the Company, procure that it is represented by counsel at the Court hearings convened for the purposes of

considering the Initial Orders and the Final Orders, at which (through its counsel), Meridian will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this Agreement and the Scheme; and

- (c) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court), do all other things contemplated by or necessary to give full effect to the Scheme Plan and the Final Orders (including using reasonable endeavours to ensure that the Conditions have been satisfied or, if capable of waiver, waived in accordance with clause 3, and providing the Consideration in accordance with the Scheme and the Final Orders).

6. COMPANY'S OTHER IMPLEMENTATION OBLIGATIONS

6.1 Information about Shareholders: The Company must:

- (a) comply with all reasonable requests by Meridian to require disclosure of information in accordance with sections 290 and 291 of the FMCA and give Meridian the information obtained as a result of requiring such disclosure; and
- (b) procure that its share registry provides to Meridian, in the form reasonably requested by Meridian, details of the Register and all other information about the Shareholders which Meridian reasonably requires in order to:
 - (i) canvas approval of the Scheme by Shareholders; or
 - (ii) facilitate the provision by Meridian of the Consideration in accordance with this Agreement, the Scheme and the Deed Poll,

in each case, subject to the Company's statutory or contractual requirements. Meridian will promptly reimburse all costs reasonably incurred by the Company in complying with this clause 6.1.

6.2 Promotion of Transaction: During the period commencing on the date of this Agreement and ending on the first to occur of the termination of this Agreement, the Implementation Date and the End Date, the Company will provide reasonable co-operation to Meridian in promoting the merits of the Transaction to Shareholders, including:

- (a) providing (subject to the Company's statutory or contractual obligations) such information regarding Shareholders and their holdings as Meridian reasonably requests;
- (b) encouraging Shareholders to exercise their rights to vote on the resolution to approve the Scheme at the Scheme Meeting; and
- (c) procuring that senior executives of the NZ Windfarms Group, as may be reasonably available, meet with key Shareholders if reasonably requested to do so by Meridian,

subject to there being no Superior Proposal and provided the Independent Adviser's Report has first concluded that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

6.3 Board changes: The Company must procure that:

- (a) such persons as Meridian nominates by notice to the Company no later than four Business Days before the Implementation Date and who have provided to the Company a signed consent to act by that time (as well as any other information required to be provided to the Registrar) are appointed as additional directors of each member of the NZ Windfarms Group specified in the notice, on the Implementation Date (by no later than 5:00pm); and
- (b) unless otherwise agreed by Meridian in writing, each director of each member of the NZ Windfarms Group, other than those appointed in accordance with clause 6.3(a), resigns as a director with effect from the Implementation Date (by no later than 5:00pm on the Implementation Date) and acknowledges in writing that he or she has no claim against any member of the NZ Windfarms Group other than for accrued but unpaid directors fees and expenses.

6.4 LTI Scheme:

- (a) Meridian acknowledges and agrees that as at the date of this Agreement, two employees of the NZ Windfarms Group have LTI Share Rights issued by the Company under the LTI Scheme and that no more LTI Share Rights will be issued prior to the Implementation Date.
- (b) The Company must ensure that:
 - (i) the LTI Scheme is terminated with effect on and from the Implementation Date (other than LTI Share Rights in existence as at the Implementation Date); and
 - (ii) all entitlements under the LTI Scheme are paid in full on or prior to the Implementation Date.

7. COURT PROCEEDINGS

7.1 Court documents:

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, the Company must give Meridian drafts of all documents required to be given by the Company to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event, except in situations of urgency, not less than 3 Business Days before submission) and must consider in good faith whether to incorporate the reasonable comments of Meridian and its Representatives on those documents.
- (b) The Company must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court

orders, without Meridian having approved such documents being submitted to the Court or such changes being consented to.

- (c) Notwithstanding clauses 7.1(a) and 7.1(b), the Company will not be required to disclose to Meridian any information relating to a Competing Proposal or any claim, disagreement or dispute between the parties if it would not be reasonable in the circumstances to disclose such information.

7.2 **Representation:** In relation to each Court application or appearance made in relation to the Scheme, including any appeal, the Company will consent to the separate representation of Meridian by counsel and Meridian may appear and be represented in relation to the Court applications or other appearances relating to the Scheme.

7.3 **Assistance:** The Company will use its reasonable endeavours to follow the steps or matters specified by the Court, or apparent from its directions or reasons, as required or desirable in order to grant the Initial Orders or Final Orders (as the case may be) or requirements of the Takeovers Panel, including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

7.4 **Court proceedings and conditionality:** If the Court declines to make the orders sought by the Company under clause 5.1(c) or 5.1(g), due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of (or where capable of waiver, waiver of) the Conditions, the Company must promptly make a further application for Initial Orders or Final Orders (as applicable), as soon as practicable after the earlier of:

- (a) the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the Initial Orders or Final Orders (as the case may be) ("**Court Guidance**"); or
- (b) the Condition in clause 3.1(a) having been satisfied, or where capable of waiver, waived.

7.5 **Appeal if orders not made:** If the Court does not make any order sought by the Company under clause 5 (the "**Decision**"), then, to the extent clause 7.4 does not apply:

- (a) the Company and Meridian must consult as to the effect of the refusal and whether to appeal the Decision, including as to who is to bear the costs of any such appeal, and, where applicable appropriate amendments to the Timetable and/or the End Date; and
- (b) if, within 10 Business Days after the Decision, the parties agree to appeal the Decision or any party obtains an opinion from an independent King's Counsel, practising in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
- (i) the Company must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;
- (ii) the cost of any such appeal is to be borne:
- (aa) if the Company and Meridian agreed to appeal the Decision, equally between the parties; or

- (bb) if the Company and Meridian did not agree to appeal the Decision, by the party who obtained the opinion from the independent King's Counsel;
- (iii) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is 10 Business Days after the appeal from the Decision is finally determined; and
- (iv) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is X days after the original End Date (disregarding the effect of subclause (iii)) where X is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.

8. RECOMMENDATION AND VOTING INTENTIONS

8.1 **Recommendation and voting:** The Company must ensure that each NZ Windfarms Director:

- (a) recommends that Shareholders vote in favour of the Scheme; and
- (b) if applicable, undertakes to vote, or procure the voting of, all of the Shares held or controlled by him or her in favour of the Scheme,

in each case subject to:

- (c) there being no Superior Proposal; and
- (d) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

The Company warrants to Meridian that it has been informed by each of the NZ Windfarms Directors that, at the date of this Agreement, he or she intends to make the recommendation and (where applicable) vote, or procure the voting of, all of the Shares held or controlled by him or her as contemplated by (and subject to the qualifications contained in) this clause 8.1.

8.2 **Change to recommendation or voting intentions:**

- (a) The Company must ensure that no NZ Windfarms Director changes, qualifies, withdraws or adversely modifies the recommendation or undertaking referred to in clause 8.1 or makes any statement inconsistent with that recommendation or that undertaking, unless the Company receives a Superior Proposal or the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares.
- (b) If the Board or the Company becomes aware that a NZ Windfarms Director is likely to change, qualify or withdraw his or her recommendation or undertaking as described in clause 8.1, or make any statement inconsistent with that recommendation or undertaking, the Board must:

- (i) give written notice to Meridian of such event and any public statement that the Board intends to make if such event occurs; and
- (ii) consult in good faith with Meridian in respect of the relevant event, before publication of such public statement, to the extent permitted by law.

9. ACCESS, INFORMATION AND CONDUCT OF BUSINESS

9.1 **Access and information:** From the date of this Agreement until the Implementation Date, the Company must:

- (a) procure that Meridian and its Representatives are given reasonable access to the properties, books and records and senior management of the NZ Windfarms Group, any other information about the Business reasonably requested by Meridian or its Representatives, during normal business hours, and on reasonable notice to the Company for the purposes of:
 - (i) enabling Meridian to understand the NZ Windfarms Group's Business and operations and its financial position, transactional banking requirements, financial performance and prospects;
 - (ii) implementing the Scheme and enabling Meridian to prepare for the transition of ownership of the NZ Windfarms Group to Meridian; and
 - (iii) any other purpose agreed between the Company and Meridian in writing, except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed by the NZ Windfarms Group to third parties and provided that:
 - (iv) Meridian will focus on issues that it considers to be material, having regard to management commitments and the impact of information requests on the Company's Business;
 - (v) providing access and/or information pursuant to this clause 9.1(a) is done in a way which minimises disruption to the Company's Business in the opinion of the Company (acting reasonably), require the Company to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the Company's legal professional privilege; and
 - (vi) nothing in this clause 9.1(a) will require the Company to provide information concerning its directors' and management's consideration of the Scheme or any Competing Proposal (and nothing in this clause limits the Company's obligations under clause 14);
- (b) provide Meridian with any information or documentation reasonably requested by Meridian if Meridian (in good faith) believes that Meridian may be entitled to exercise a termination right under this Agreement provided, however that:
 - (i) Meridian's request outlines the reasons for Meridian's request by reference to the relevant termination right under this Agreement that

Meridian believes it may be entitled to exercise and the reason that Meridian believes that it may be entitled to exercise that termination right;

- (ii) the information or documentation requested by Meridian relates to Meridian's claim or potential claim; and
 - (iii) Meridian is, to the extent practicable, specific in its request as to the information or documentation requested; and
- (c) keep Meridian updated on all material developments in its Business;
- (d) procure that one or more members of the Board meets with Meridian and its Representatives (either in person or remotely) at such times as Meridian reasonably requests for the purposes of keeping Meridian informed of material developments in relation to the NZ Windfarms Group and discussing and resolving matters arising in relation to this Agreement or the Transaction; and
- (e) provide Meridian copies of papers provided to the Board (including monthly management accounts for the NZ Windfarms Group) within one Business Day after they are provided to Board members, however, the Company may redact information from such papers to the extent it is commercially sensitive or relates to the Transaction or a Competing Proposal,

provided that to the extent that any information is provided under this clause 9.1 that is not publicly available, it will be kept confidential by the recipient of that information in accordance with the Confidentiality Agreement.

9.2 **Conduct of business; positive obligations:** From the date of this Agreement until and including the Implementation Date, the Company must ensure that it and each other member of the NZ Windfarms Group:

- (a) carries on its Business as a going concern and in the ordinary course and in substantially the same manner as conducted in the 12 months prior to the date of this Agreement and does not make any significant change to the nature or scale of its Business or enter any new business or undertake any activities that are material to the Business as a whole in which it was not engaged as at the date of this Agreement;
- (b) maintains insurance in respect of the NZ Windfarms Group's business and assets covering such risks and for such amounts as would be maintained in accordance with NZ Windfarms Group's ordinary practice and in any event to a level no less than that in place immediately prior to the date of this Agreement;
- (c) maintains all material Authorisations necessary to operate the Business, and ensures all conditions attaching to those Authorisations are complied with in all material respects;
- (d) uses reasonable endeavours to:
 - (i) keep available the services of its directors and executive leadership team of the Company; and

- (ii) maintain and preserve its relationships with relevant Government Agencies, customers, suppliers, licensors, licensees, tangata whenua, joint venturers and others having business dealings with it;
- (e) the tangible assets of the Business are maintained as appropriate with a view to optimising returns from the assets, having regard to the age and value of such assets, availability of spare parts, costs to repair and plans for decommissioning;
- (f) promptly notifies Meridian of, and keeps Meridian reasonably and promptly informed of any material change in the status of:
 - (i) any action, claim, litigation, prosecution, or other form of proceeding, brought by or against any member of the NZ Windfarms Group, or any current director or employee in connection with their role as a director or employee (as applicable) of any member of the NZ Windfarms Group which the Company (acting in good faith) considers will or is reasonably likely to have more than minor financial or reputational consequences for the Business; and
 - (ii) any actual or threatened material enquiries or investigations by any Government Agency in relation to the Business (including in relation to Tax) and any material correspondence with any Government Agency in relation to the Business; and
- (g) consults with Meridian in relation to all material matters relating to development projects and takes into account Meridian's reasonable feedback, including obtaining the prior written consent of Meridian for any material matters relating to development projects where the approval of the NZ Windfarms Directors is being sought.

9.3 Conduct of business; negative obligations: From the date of this Agreement until and including the Implementation Date, the Company must procure that it, and each other member of the NZ Windfarms Group, does not:

- (a) create or incur any liability (whether contingent or otherwise) or indebtedness to any person in excess of \$75,000 in aggregate, except normal liabilities or indebtedness incurred in the ordinary course of the Business (including, for the avoidance of doubt, under electricity derivatives entered into in the ordinary course of this Business), provided that the Company must consult with Meridian prior to the Company incurring any normal liabilities or indebtedness in the ordinary course of the Business (under this subclause (a)) where the value of such liability (or related series of liabilities) to any person exceeds \$75,000) and the incurring of such liability is not otherwise permitted by clause 9.4;
- (b) incur or commit to a new item of capital expenditure exceeding \$75,000 in aggregate, or otherwise do any such thing that would result in a material change to the net cash position as set out in the management accounts dated 31 December 2024, as fairly disclosed in the Due Diligence Material, excluding:
 - (i) transaction costs incurred as a result of the Scheme, expenditure incurred in the ordinary course of the Business for the purposes of complying with existing capital commitments and costs associated with the maintenance of NZ Windfarms Group's wind farms; or

- (ii) any such expenditure outside the ordinary course of the Business to which Meridian (acting reasonably and without undue delay) has provided its prior approval, which, for the avoidance of doubt, shall include all such expenditure in respect of the 'Hau Nui' project (as referred to in the Due Diligence Material);
- (c) increase the facility limit on any of the NZ Windfarms Group's bank facilities or exceed borrowing or cash reserve limitations as established by any financier of the NZ Windfarms Group, as fairly disclosed in the Due Diligence Material);
- (d) create or otherwise permit to arise any Encumbrance (except any Permitted Encumbrances) over any of its assets;
- (e) enter into, waive any material rights under, seek a waiver of material rights from the counterparty, vary or terminate any contract (except for termination of a contract for breach by, or insolvency affecting, the counterparty), commitment or arrangement which:
 - (i) may require annual expenditure by, or result in a reduction in annual revenues to, the relevant member of the NZ Windfarms Group in excess of \$75,000;
 - (ii) may require aggregate expenditure by the relevant member of the NZ Windfarms Group over the term of the contract, commitment or arrangement in excess of \$75,000 in aggregate;
 - (iii) is considered by the Company otherwise to be of material importance to the Business of the NZ Windfarms Group; or
 - (iv) restrains any member of the NZ Windfarms Group or any person who controls the Company from engaging in or competing with any business in any place,

except that subclauses 9.3(e)(i) to 9.3(e)(iii) do not apply in respect of such actions which are expressly contemplated by and permitted under any other subclause of this clause 9.3;

- (f) without limiting subclause (e) above, enter into, exercise any rights or options (including options in respect of land) or make any material decision, commitment or statement of intention in respect of any development project or other new business opportunities, or permit, cause or allow any joint venture or partly owned subsidiary to take such action (to the extent the relevant NZ Windfarms Group member is reasonably able to do so), except:
 - (i) to the extent the relevant party is contractually committed to take such action (without the exercise of further discretion by the NZ Windfarms Group) and such action has been disclosed to Meridian in the Due Diligence Material; or
 - (ii) for the entry into of, or variation of, options (including options in respect of land) in respect of any development project in a manner which is consistent with good industry practice and provided that any such option:

- (aa) does not require the NZ Windfarms Group to pay fees (or incur costs) of more than \$75,000 per annum (individually or in aggregate with other related options); and
- (bb) is terminable:
 - (1) at any time by the NZ Windfarms Group by giving notice of no longer than 12 months; and
 - (2) without incurring a termination fee or similar (other than payment of any outstanding annual fee for the relevant year (or equivalent fees or costs accruing in the ordinary course under the option during the relevant period));
- (g) commence, compromise or settle any litigation, arbitration or other similar proceedings for an amount exceeding \$75,000;
- (h) provide any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the NZ Windfarms Group other than in the ordinary course of business and consistent with the past practice of NZ Windfarms Group in the 12 months prior to the date of this Agreement and as fairly disclosed in the Due Diligence Material;
- (i) make any material Taxation election (other than an election in the ordinary course of the Business), or settle, compromise or prejudice any material Tax liability, or initiate or engage in any disputes procedures or challenge proceedings relating to Tax;
- (j) make any material change in accounting methods, principles or practices used by it (except if required by a change in International Financial Reporting Standards);
- (k) employ any new employee other than as required to replace an existing employee (provided that such replacement only occurs after reasonable consultation with Meridian);
- (l) increase or accelerate the remuneration of, make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment of any NZ Windfarms Director or any employee of any member of the NZ Windfarms Group, except:
 - (i) in accordance with any contractual entitlement existing as at the date of this Agreement and fairly disclosed in the Due Diligence Material;
 - (ii) in respect of changes consistent with the normal business practices employed by the NZ Windfarms Group; or
 - (iii) as contemplated by clause 6.4;
- (m) dispose of any interests in land including any option in respect of an interest in land;

- (n) subject to subclause (m), dispose of any assets (including shares or other similar interests), other than current assets disposed of in the ordinary course of the Business, or an asset, or assets which should reasonably be assessed together, with a book value not exceeding \$75,000;
- (o) alter, adopt or revoke the provisions of its constitution (other to comply with law, including the NZX Listing Rules) or pass any resolution of Shareholders or any class of Shareholders (other than the Scheme Resolution, any resolution to appoint (or reappoint) a NZ Windfarms Director and any resolution to authorise the Board to fix the fees and expenses of the Company's auditor);
- (p) fail to comply in all material respects with all laws and regulations applicable to the Business or do or omit to do anything which might reasonably be expected to give rise to a breach of law or results in a material risk of termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
- (q) fail to comply in all material respects with all policies of the NZ Windfarms Group in place as at the date of this Agreement and does not make any material amendment to such policies; or
- (r) agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 9.3, or announce or represent to any person that any of those things will be done.

9.4 **Exceptions:** Nothing in clauses 9.2 or 9.3 restricts the Company (or any other member of the NZ Windfarms Group) from doing anything which is, but only to the extent it is:

- (a) expressly contemplated or required by this Agreement or to give effect to the Scheme;
- (b) necessary for the Company (or any other member of the NZ Windfarms Group) to perform or comply with its contractual obligations (as fairly disclosed to Meridian in the Due Diligence Material or otherwise entered into pursuant to this clause 9);
- (c) necessary for the Company (or any other member of the NZ Windfarms Group) to comply with any law or any regulatory requirement or direction of a Government Agency;
- (d) necessary for the Company (or any other member of the NZ Windfarms Group) to preserve or maintain the continuity of the Business or respond to any emergency, act of god or other disaster;
- (e) fairly disclosed in the Due Diligence Materials or by the Company through the NZX markets announcements platform before the date of this Agreement;
- (f) necessary for the NZ Windfarms Directors to fulfil their fiduciary and legal obligations to the NZ Windfarms Group in response to a Competing Proposal provided that such act or omission is permitted under clause 14 and is otherwise in accordance with the terms of this Agreement; or
- (g) approved in writing by Meridian,

provided that the Company must notify Meridian prior to or as soon as possible after any action is taken in accordance with clause 9.4 if that action would otherwise constitute a breach of clauses 9.2 or 9.3 (but for this clause 9.4), with such notice to include sufficient detail of the action to be, or which was, taken.

9.5 **Electricity Industry Act 2010:**

- (a) The Company agrees, during the Exclusivity Period, to provide, and ensure that the NZ Windfarms Group and its Representatives provide, any information, co-operation or assistance reasonably requested by Meridian in connection with any application to the Electricity Authority under section 90 of the Electricity Industry Act 2010 Meridian may (in its sole discretion) wish to make, or may (in its sole discretion) wish a member of the NZ Windfarms Group to make (including jointly with Meridian), in each case to assist Meridian and the Company in maintaining compliance with Part 3 of that Act on and after the Implementation Date.
- (b) Meridian must promptly reimburse the Company for all reasonable out-of-pocket costs incurred by the Company in connection with providing co-operation under this clause 9.5.

10. **BUSINESS CONTRACTS AND LEASES**

10.1 **Acknowledgement:** The parties acknowledge that the NZ Windfarms Group's material leases and contracts may contain provisions requiring:

- (a) the consent of the counterparty to that lease or contract to a change of control, "deemed assignment" or similar that arises under the terms of that lease or contract as a result of the Transaction; or
- (b) a waiver from the counterparty to that lease or contract of any termination or cancellation right which will arise or otherwise become enforceable under the terms of that lease or contract as a result of the Transaction,

(each a "**Change of Control Consent**").

10.2 **Change of Control Consent:** Subject to clause 10.3:

- (a) the Company will, and will procure that each member of the NZ Windfarms Group will, use reasonable endeavours to obtain each Change of Control Consent that Meridian (with the Company's reasonable assistance) identifies and requests that it obtain;
- (b) Meridian must cooperate with and use its reasonable endeavours to assist the Company to obtain each required Change of Control Consent (but without contacting any contractual counterparties directly without the Company's consent); and
- (c) after the Scheme Meeting and assuming the Scheme has been approved by Shareholders, to the extent reasonably requested by Meridian, the Company will collaborate with Meridian to introduce it to relevant NZ Windfarms Group counterparties and jointly discuss the implications of the Transaction, including Change of Control Consents.

10.3 **No obligation to pay money:** Nothing in this clause 10.3 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person, other than:

- (a) to provide a replacement guarantee or similar security that a lessor is entitled to require under the terms of a lease; or
- (b) where required pursuant to an obligation under a contract or lease to reimburse the reasonable out-of-pocket costs of any counterparty's reasonable costs of considering a request for consent or otherwise take action which would, or might reasonably be expected to, impact adversely on or otherwise be contrary to the interests of either party, as the case may be.

10.4 **Scheme to proceed:** Subject to clause 15, the implementation of the Scheme will not be delayed if all or any required Change of Control Consents have not been obtained on or before the Implementation Date.

11. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

11.1 Company representations, warranties and undertakings:

- (a) The Company represents and warrants to Meridian that, subject to the limitations in this Agreement, each of the NZ Windfarms Warranties is true, accurate and not misleading as at:
 - (i) the date of this Agreement;
 - (ii) the date the Scheme Booklet is sent to Shareholders;
 - (iii) immediately prior to the last affidavits being filed in respect of the Final Orders; and
 - (iv) 8:00am on the Implementation Date,

except that an NZ Windfarms Warranty which refers to only one of those dates is given only at that date.
- (b) The Company undertakes to Meridian to comply with the NZ Windfarms Undertakings.
- (c) The NZ Windfarms Warranties (other than the Fundamental Warranties, which are not given subject to any qualifications) are given subject to and are qualified by matters and circumstances:
 - (i) expressly provided for in this Agreement;
 - (ii) fairly disclosed in the Due Diligence Materials or by the Company through the NZX market announcements platform before the date of this Agreement;
 - (iii) recorded in respect of NZ Windfarm Group in a register or in records held by the Registrar, the Intellectual Property Office of New Zealand, the High Court of New Zealand, the Personal Property Securities Register or Land

Information on the date which is three Business Days prior to the date of this Agreement; and

- (iv) within the actual knowledge of Meridian as at the date of this Agreement.
- (d) **Forward-looking information:** No warranty or representation is given by or on behalf of the Company, and Meridian may not bring any claim, with respect to any information that is a forecast, projection, estimate, opinion or other forward-looking statement as to the future performance, financial condition, results of operations, strategy and plans of the NZ Windfarms Group, in each case whether contained in the Due Diligence Material or otherwise.

11.2 **Meridian representations, warranties and undertakings:**

- (a) Meridian represents and warrants to the Company that, subject to the limitations in this Agreement, each of the Meridian Warranties is true, accurate and not misleading as at:
 - (i) the date of this Agreement;
 - (ii) the date the Scheme Booklet is sent to Shareholders;
 - (iii) immediately prior to the last affidavits being filed in respect of the Final Orders; and
 - (iv) 8:00am on the Implementation Date,

except that a Meridian Warranty which refers to only one of those dates is given only at that date.
- (b) Meridian undertakes to the Company to comply with the Meridian Undertakings.

11.3 **Indemnity by Company:** Subject to clause 16.6, the Company indemnifies Meridian against, and must pay to Meridian on demand an amount equal to, all Losses directly incurred or suffered by the Meridian Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Company Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Company Undertakings.

11.4 **Indemnity by Meridian:** Subject to clause 15.6, Meridian indemnifies the Company against, and must pay to the Company on demand an amount equal to, all Losses directly incurred or suffered by the Company Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Meridian Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Meridian Undertakings.

11.5 **Separate; independent:** Each of the warranties given by each party are separate and independent and, except as expressly provided, will not be limited by reference to any other warranty. Each undertaking given in this clause 11 is a continuing obligation.

- 11.6 **Scheme becoming Effective:** After the Scheme becomes Effective, any breach of the warranties or the undertakings made or given under this clause 11 may only give rise to a claim for damages and does not entitle a party to terminate this Agreement.
- 11.7 **No representations made on economic or future matters:** Each party acknowledges and agrees that the other parties make no representation or warranty other than as set out in this clause 11, and, in particular, at no time has any other party made or given any representation or warranty in relation to the achievability of:
- (a) any economic, fiscal or other interpretations or evaluations by it; or
 - (b) future matters, including future or forecast costs, prices, revenues or profits.

12. RELEASES

- 12.1 **Release of Company Indemnified Persons:** Meridian waives and releases, and must procure that each member of the NZ Windfarms Group waives and releases, all rights and claims which it may have against any Company Indemnified Person (other than the Company) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Company Indemnified Person in connection with any representation, warranty or undertaking given by the Company in this Agreement or the preparation of the NZ Windfarms Information except where the Company Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:
- (a) the Company has sought and obtained the waiver and release in this clause 12.1 as agent for and on behalf of each Company Indemnified Person and may enforce the provisions of this clause 12.1 on behalf of any Company Indemnified Person;
 - (b) any Company Indemnified Person may plead this clause 12.1 in response to any claim made by any member of the Meridian Group against them; and
 - (c) the undertakings contained in this clause 12.1 are given for the benefit of each Company Indemnified Person and are intended to be enforceable against Meridian by each Company Indemnified Person in accordance with the provisions of the CCLA.
- 12.2 **Release of Meridian Indemnified Persons:** The Company waives and releases, and must procure that each member of the NZ Windfarms Group waives and releases, all rights and claims which it may have against any Meridian Indemnified Person (other than Meridian) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Meridian Indemnified Person in connection with any representation, warranty or undertaking given by Meridian in this Agreement or the preparation of the Meridian Information except where the Meridian Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:
- (a) Meridian has sought and obtained the waiver and release in this clause 12.2 as agent for and on behalf of each Meridian Indemnified Person and may enforce the provisions of this clause 12.2 on behalf of any Meridian Indemnified Person;
 - (b) any Meridian Indemnified Person may plead this clause 12.2 in response to any claim made by any member of the NZ Windfarm Group against them; and

- (c) the undertakings contained in this clause 12.2 are given for the benefit of each Meridian Indemnified Person and are intended to be enforceable against the Company by each Meridian Indemnified Person in accordance with the provisions of the CCLA.

13. INSURANCE

- (a) Meridian acknowledges that, subject to subclause (b), the Company may, prior to the Implementation Date, enter into a run-off directors' and officers' liability insurance policy in respect of any NZ Windfarms Directors or officers (or the directors or officers of any other member of the NZ Windfarms Group) for a 7-year period (the "**D&O Run-off Policy**") and pay all premiums required.
- (b) Provided that the D&O Run-off Policy is, to the extent practicable, obtained at normal commercial rates and the cover is not more favourable than those of the Company's directors' and officers' liability insurance at the date of this Agreement, Meridian agrees that:
 - (i) the Company entering into and paying the premium for the D&O Run-off Policy does not breach any provision of this Agreement; and
 - (ii) after the Implementation Date it will not, and will procure that no member of the NZ Windfarms Group will, vary or cancel the D&O Run-off Policy (for so long as such member of the NZ Windfarms Group remains a Related Company of Meridian).
- (c) Following the Implementation Date, to the extent permitted by law, Meridian will procure that the Company maintains in place all indemnities and associated rights of access to information provided by the Company for the benefit of the current and former directors and officers of the Company (including any indemnity provided in accordance with, or set out in, the Company's constitution) which have been fairly disclosed in the Due Diligence Material.
- (d) The undertakings contained in clause 13(c) are:
 - (i) subject to any Companies Act restriction and will apply to the maximum extent permitted by any such restriction; and
 - (ii) given for so long as the Company remains a Related Company of Meridian, provided that this clause 13(d)(ii) will not adversely affect any indemnities which continue in accordance with their terms.
- (e) The undertakings contained in this clause 13 are given for the benefit of each director and officer of the NZ Windfarms Group and are intended to be enforceable against Meridian by each of them in accordance with the provisions of the CCLA.

14. EXCLUSIVITY AND MATCHING RIGHTS

14.1 **No shop restriction:** Subject to clause 14.14, during the Exclusivity Period, the Company must not, and must procure that each of its Related Companies and their respective Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate or otherwise seek to procure any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 14.1(a) on its behalf.

14.2 **No talk restriction:** Subject to clause 14.3 and clause 14.14, during the Exclusivity Period, the Company must not, and must procure that each of its Related Companies and their respective Representatives does not, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 14.2(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Company or any of its Representatives and was received before the date of this Agreement, and/or has been publicly announced.

14.3 **No talk exception:** The restriction in clause 14.2 does not apply to the extent that it restricts the Company or the Board from taking or refusing to take any action with respect to:

- (a) a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated, initiated, or continued in contravention of clause 14.1 or 14.2); or
- (b) continuing any discussions in respect of a Competing Proposal existing and notified to Meridian as at the date of this Agreement,

in each case only if:

- (c) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed; and
- (d) acting in good faith and after having taken advice from its external legal advisers, the Board has determined that it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of any member of the Board.

14.4 **No due diligence restriction:** Subject to clause 14.5 and clause 14.14, but without limiting clause 14.2, during the Exclusivity Period, the Company must not, and must procure that

each of its Related Companies and their respective Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to the Company or any of its Related Companies that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 14.4(a) on its behalf.

14.5 No due diligence exception: The restriction in clause 14.4 does not apply in respect of a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated, initiated, or continued in contravention of clauses 14.1 or 14.2) only if all of the following requirements are satisfied:

- (a) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed;
- (b) acting in good faith and after having obtained advice from its external legal advisers, the Board has determined that it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of any member of the Board;
- (c) the Third Party has first entered into a written agreement in favour of the Company restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, on terms, the Company, acting in good faith, reasonably believes are no more favourable to the Third Party than those in the Confidentiality Agreement; and
- (d) to the extent that any information made available to the Third Party that is material and has not previously been provided to Meridian, the Company provides or makes that information available to Meridian at the same time as it is provided to the Third Party or promptly thereafter.

14.6 General notification obligations:

- (a) During the Exclusivity Period, the Company must promptly, and in any event within 24 hours, notify Meridian if:
 - (i) the Company, its Related Companies or any of their respective Representatives receive any Competing Proposal, or an inquiry or approach from a Third Party to initiate any discussions or negotiations that could reasonably be expected to lead to a Competing Proposal or any offer or request to do any of the things referred to in clauses 14.2(a) or 14.4(a);
 - (ii) the Companies or any of its Representatives receives any request for information relating to the NZ Windfarms Group or its Business or any request for access to any non-public information of any member of the

NZ Windfarms Group in connection with a current or future Competing Proposal; or

- (iii) the Company or any of its Related Companies propose to take any action in reliance on the exceptions in clauses 14.3 or 14.5,

and such notification will include reasonable detail of the terms of such approach, action or circumstances.

- 14.7 **Return of confidential information:** If the Company has at any time in the 12 months before the date of this Agreement provided any confidential information to a person other than a member of the Meridian Group in connection with a Competing Proposal, the Company must, except to the extent the Board considers it necessary to continue discussions with that person and continue to provide access to due diligence pursuant to clauses 14.3(b) and 14.5, promptly request in writing the immediate return or destruction by that person of such confidential information.
- 14.8 **Matching rights:** Without limiting clauses 14.1 or 14.2, during the Exclusivity Period, the Company:
- 14.9 must as soon as reasonably practicable give Meridian a notice setting out all material terms of the Competing Proposal, including the amount and form of consideration to be offered, the conditions to which it is subject, the proposed timetable and any break fee arrangements; and
- 14.10 from the time that the Company receives the Competing Proposal until the day that is 7 Business Days after the Company gives notice to Meridian under clause 14.9 (the "**Matching Period**"):
 - (i) the Company must not, and must procure that each of its Representatives does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement the Competing Proposal;
 - (ii) the Company must procure that no NZ Windfarms Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal;
 - (iii) the Company must not make, and ensure that no NZ Windfarms Director makes, any public statement recommending the Competing Proposal to Shareholders; and
 - (iv) Meridian may offer to amend the terms of the Scheme and this Agreement or make an alternative proposal to the Company or to Shareholders with a view to providing an equivalent or a superior outcome for Shareholders than that offered under the relevant Competing Proposal (being a "**Counter Proposal**").
- 14.11 **Company response to Counter Proposal:** If, during the Matching Period, Meridian makes a Counter Proposal:
- (a) the Company procure that the Board considers the Counter Proposal in good faith and clause 14.10(iii) continues to apply until the Board has done so; and

- (b) if the Board determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
 - (i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
 - (ii) the Company must use its reasonable endeavours to procure that each NZ Windfarms Director makes a public statement recommending the Counter Proposal to Shareholders.

14.12 **Changes to proposals:** Any material change to a Competing Proposal, including:

- (a) any material change to the terms referred to in clause 14.9; or
- (b) any incomplete or non-binding proposal or expression of interest (for the avoidance of doubt, whether existing at the date of this Agreement or new) becoming complete, capable of acceptance or, subject to clause 14.13, binding on the Third Party,

will be taken to constitute a new Competing Proposal in respect of which the Company must separately comply with its obligations under clauses 14.6 to 14.11.

14.13 **No matching:** If Meridian fails to provide a Counter Proposal within the Matching Period or the Board otherwise determines that the terms and conditions of the Counter Proposal taken as a whole are less favourable to Shareholders than those in the relevant Competing Proposal, then the Company may enter into a binding implementation agreement or similar binding arrangement in respect of a Competing Proposal, in which case the matching right under this Agreement will end in respect of that Competing Proposal (with such Competing Proposal being a Superior Proposal for the purposes of this Agreement).

14.14 **Normal provision of information:** Nothing in this clause 14 prevents the Company from providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or in connection with investor presentations or roadshows.

15. TERMINATION

15.1 **Events affecting Company:** Subject to clauses 11.6 and 15.3, Meridian may terminate this Agreement by giving notice in writing to the Company before 8:00am on the Implementation Date if:

- (a) the Company is in breach of this Agreement and that breach is material in the context of the Scheme and the NZ Windfarms Group taken as a whole. For the avoidance of doubt, it will be a material breach of this Agreement if:
 - (i) any NZ Windfarms Director fails to make the recommendation, or any NZ Windfarms Director fails to give the undertaking, referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking, except where there is a Superior

Proposal or where the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares;

- (ii) there is a material breach of any NZ Windfarms Warranty or any event occurs or circumstance arises that would cause any NZ Windfarms Warranty to be untrue as at 8:00am on the Implementation Date, where the consequences of that breach (other than in respect of a Fundamental Warranty) is material in the context of the Scheme and the NZ Windfarms Group (taken as a whole); or
- (iii) there is a material breach of any NZ Windfarms Undertaking or any other material obligation under this Agreement, where the consequences of that breach is material in the context of the Scheme and the NZ Windfarms Group (taken as a whole); or
- (b) a Material Adverse Change occurs on or after the date of this Agreement;
- (c) a Prescribed Occurrence occurs on or after the date of this Agreement; or
- (d) an Insolvency Event occurs in respect of any member of the NZ Windfarms Group.

15.2 **Events affecting Meridian:** Subject to clauses 11.6 and 15.3, the Company may terminate this Agreement by giving notice in writing to Meridian before 8:00am on the Implementation Date if:

- (a) Meridian is in breach of this Agreement and that breach is material in the context of the Scheme and the Meridian Group taken as a whole. For the avoidance of doubt, it will be a material breach of this Agreement if:
 - (i) there is a material breach of any Meridian Warranty or any event occurs or circumstance arises that would cause any Meridian Warranty to be untrue as at 8:00am on the Implementation Date; or
 - (ii) Meridian is in material breach of any Meridian Undertaking or any other material obligation under this Agreement, where the consequences of that breach are material in the context of the Scheme; or
- (b) an Insolvency Event occurs in respect of Meridian.

15.3 **Notice of termination:** A party may only exercise a right of termination in accordance with clause 15.1 or clause 15.2 if:

- (a) the party wishing to terminate has not previously waived any Condition under clause 3.6, or given any other waiver, in each case in respect of the same breach, event or circumstance the subject of termination;
- (b) the party wishing to terminate has given notice to the other party setting out the circumstances that it considers permit it to terminate and stating its intention to do so;

- (c) the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 5:00pm on the Business Day before the Implementation Date; and
- (d) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 8:00am on the Implementation Date.

15.4 Recommendation and Independent Adviser's Report:

- (a) Meridian may terminate this Agreement by giving notice in writing to the Company at any time before the Final Orders Date if, at any time before the Scheme is Effective, any NZ Windfarm Director fails to make the recommendation or give the undertaking referred to in clause 8.1, or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking.
- (b) Any party may terminate this Agreement by giving notice in writing to the other party at any time before the Final Orders Date if:
 - (i) Meridian fails to provide a Counter Proposal within the Matching Period or the Board otherwise determines that the terms and conditions of the Counter Proposal taken as a whole are less favourable to Shareholders than those in the relevant Competing Proposal; and
 - (ii) the Company has entered into a binding implementation agreement or similar binding arrangement in respect of a Competing Proposal referred to in subclause (i), or is subject to a takeover offer, which is a Superior Proposal, is made for the Company and has been sent to Shareholders in accordance with the Takeovers Code, without the Company having breached this Agreement.
- (c) The Company may terminate this Agreement if the Independent Adviser's Report concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares, provided that the Company will not exercise its right to terminate the Agreement without consulting with Meridian in good faith and giving Meridian an opportunity to increase the Consideration.

15.5 Regulatory Conditions not satisfied: Any party may terminate this Agreement by giving notice in writing to the other if:

- (a) any of the Regulatory Conditions that are for the benefit of that party (or any other party) becomes incapable of satisfaction before the End Date;
- (b) the relevant Regulatory Conditions, if capable of waiver under clause 3.6, has not been waived by the End Date; and
- (c) the terminating party has complied with its obligations under clause 3, and in all material respects with its obligations under clauses 3.3 and 3.8 in relation to the satisfaction of the relevant Regulatory Condition.

- 15.6 **Scheme Resolution not passed:** This Agreement will terminate automatically if, at the Scheme Meeting, the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act.
- 15.7 **Court does not grant the Court Orders:** Subject first to complying with clauses 7.4 and 7.5, either party may terminate this Agreement by giving notice in writing to the other party if the Court determines not to grant either the Initial Court Orders or the Final Orders and the terminating party has complied in all material respects with its obligations under this Agreement.
- 15.8 **End Date:** Either party may terminate this Agreement by giving notice in writing to the other if the Scheme has not become Effective by the End Date, provided that (if relevant) the parties have discharged their obligations under clause 3.8, and the terminating party's failure to comply with its obligations under this Agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.
- 15.9 **Effect of termination:** If this Agreement is terminated under this clause 15, then:
- (a) except as provided in clause 15.9(c), all the provisions of this Agreement cease to have effect and each party is released from its obligations to further perform this Agreement;
 - (b) each party retains all rights that it has against the other party in respect of any breach of this Agreement occurring before termination; and
 - (c) the provisions of, and the rights and obligations of each party under this clause 15.9 and each of the Surviving Clauses shall survive termination of this Agreement.
- 15.10 **No other termination:** Except as expressly set out in this Agreement, neither party has the right to terminate or cancel this Agreement whether before or after the Implementation Date as a result of any matter, information or circumstance, including for misrepresentation, repudiation, anticipatory breach or breach of or in respect of any matter giving rise to or the subject of a claim arising out of or in connection with this Agreement (whether arising in tort (including negligence), in contract, statute, by operation of law or otherwise), and sections 36 and 37 of the CCLA will not apply to this Agreement.

16. BREAK FEE AND REVERSE BREAK FEE

- 16.1 **Acknowledgement and agreement:** The Company (on the one hand) and Meridian (on the other hand) each acknowledges and agrees that:
- (a) the other party and its Related Companies have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
 - (i) advisory costs;
 - (ii) costs of management and directors' time;
 - (iii) out of pocket expenses; and
 - (iv) opportunity costs of pursuing the Transaction or not pursuing alternative transactions or business opportunities;

- (b) the costs and expenses actually incurred by each party and its Related Companies are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee and Reverse Break Fee are each a genuine and reasonable estimate of costs and expenses that have been or will be actually incurred by the relevant party and its Related Companies in pursuing the Transaction;
- (d) the parties have negotiated the inclusion of this clause 16 in this Agreement and would not have entered into this Agreement without it; and
- (e) each party has received external independent legal and financial advice in relation to this clause 16 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clauses 16.2 or 16.3 (as applicable) in order to secure the other party's entry into this Agreement.

16.2 Circumstances where Break Fee payable:

Subject to clauses 16.5 and 16.7, the Company must pay the Break Fee to Meridian if:

- (a) at any time before this Agreement is terminated a Competing Proposal is announced and within 12 months after the date of that announcement, the person making the Competing Proposal, or one or more persons that Control, or are under the Control of, or are Associated with, that person, completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal; or
- (b) any NZ Windfarms Director fails to make the recommendation and/or any NZ Windfarms Directors fails to give the undertaking referred to in clauses 8.1 or changes, qualifies or withdraws that recommendation or undertaking or makes any statement materially inconsistent with that recommendation or that undertaking, except:
 - (i) in response to a Superior Proposal (subject to the Company's compliance with clause 14.8); or
 - (ii) where the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares; or
- (c) Meridian terminates this Agreement as permitted under clauses 15.1(a), 15.1(c) or 15.1(d).

16.3 Circumstances where Reverse Break Fee payable: Subject to clauses 16.5 and 16.7, Meridian must pay the Reverse Break Fee to the Company if the Company terminates this Agreement as permitted under clauses 15.2(a) or 15.2(b).

16.4 Payment of Break Fee or Reverse Break Fee: If the Break Fee or Reverse Break Fee becomes payable under this Agreement, the Company or Meridian (as applicable) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 15 Business Days after receipt of a written demand for payment from the other party.

16.5 **Break Fee or Reverse Break Fee not payable:** Notwithstanding anything else in this Agreement:

- (a) neither the Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective;
- (b) each of the Break Fee or the Reverse Break Fee is payable only once;
- (c) in the event that the Company pays the Break Fee under this clause 16, in no circumstances will Meridian be required to pay the Reverse Break Fee (and vice versa);
- (d) in no circumstances will Meridian be required to pay both the Reverse Break Fee and payment of any damages or any Losses under clause 11.4; and
- (e) in no circumstances will Meridian be required to pay both the Reverse Break Fee and payment of any damages or any Losses under clause 11.3.

16.6 **Sole and exclusive remedy:**

- (a) Meridian acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to Meridian in connection with any event or occurrence referred to in clause 16.2 and the Company is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Meridian the Break Fee under this clause 16.
- (b) The Company acknowledges and agrees that payment of the Reverse Break Fee is the sole and exclusive remedy available to the Company in connection with any event or occurrence referred to in clause 16.3 and Meridian will not be liable for any Loss arising in connection with any such event or occurrence other than for any liability that they may have to pay the Company the Reverse Break Fee under this clause 16.
- (c) Nothing in this clause 16.6 limits the Company's or Meridian's liability for fraud.

16.7 **Amendments to Break Fee or Reverse Break Fee arrangements:** If any of the following occurs:

- (a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee or Reverse Break Fee or the circumstances in which either is to be paid (the "**Break Fee Arrangements**") as a condition of not opposing the Scheme; or
- (b) the Court requires any modification to the Break Fee Arrangements as a condition of making orders convening the Scheme Meeting,

then the parties must amend this clause 16 to the extent required to give effect to the requirements of the Court or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 16.7(b) must give any required undertakings.

16.8 Specific performance and other rights:

- (a) Subject to clause 16.8(c), nothing in this Agreement precludes the Company from suing Meridian for specific performance.
- (b) Subject to clause 16.8(d), nothing in this Agreement precludes Meridian from suing the Company for specific performance.
- (c) The Company's right to receive the Reverse Break Fee or payment of any damages or any Losses under clause 11.4 will not limit or otherwise affect the Company's right to seek specific performance as provided in this clause 16.8, provided that in no event will the Company be entitled to receive both:
 - (i) specific performance resulting in implementation of the Scheme and payment of the Reverse Break Fee; or
 - (ii) specific performance resulting in implementation of the Scheme and payment of any damages or any Losses under clause 11.4.
- (d) Meridian's right to receive the Break Fee or payment of any damages or any Losses under clause 11.3 will not limit or otherwise affect Meridian's right to seek specific performance as provided in this clause 16.8, provided that in no event will Meridian be entitled to receive both:
 - (i) specific performance resulting in implementation of the Scheme and payment of the Break Fee; or
 - (ii) specific performance resulting in implementation of the Scheme and payment of any damages or any Losses under clause 11.3.

16.9 The Company's limitation of liability: Notwithstanding any other provision of this Agreement but subject to clauses 16.6(c) and 16.8:

- (a) the maximum aggregate liability of the Company to Meridian under or in connection with this Agreement, howsoever arising and including in respect of any breach of this Agreement, will be the amount of the Break Fee;
- (b) a payment by the Company of the Break Fee represents the sole and absolute liability of the Company to Meridian under or in connection with this Agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by the Company to Meridian in connection with this Agreement; and
- (c) the amount of the Break Fee payable to Meridian under this clause 16 shall be reduced by the amount of any loss or damage recovered by Meridian in relation to a breach of any other clause of this Agreement.

16.10 Meridian's limitation of liability: Notwithstanding any other provision of this Agreement but subject to clauses 16.6(c) and 16.8:

- (a) the maximum aggregate liability of Meridian to the Company under or in connection with this Agreement, howsoever arising and including in respect of any breach of this Agreement, will be the amount of the Reverse Break Fee;

- (b) a payment by Meridian of the Reverse Break Fee represents the sole and absolute liability of Meridian to the Company under or in connection with this Agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Meridian to the Company in connection with this Agreement; and
- (c) the amount of the Reverse Break Fee payable to the Company under this clause 16 shall be reduced by the amount of any loss or damage recovered by the Company in relation to a breach of any other clause of this Agreement.

16.11 GST treatment of Break Fee and Reverse Break Fee:

- (a) The parties agree that the Break Fee and the Reverse Break Fee are not, in either case, consideration for a taxable supply for GST purposes, and that no GST will be chargeable in relation to the Break Fee and the Reverse Break Fee accordingly.
- (b) For the avoidance of doubt, clause 19.5 does not apply to the Break Fee or the Reverse Break Fee.

17. ANNOUNCEMENTS

17.1 Initial announcements: Immediately following execution of this Agreement the Company must issue an announcement in a form agreed with Meridian and including a statement that each NZ Windfarms Director:

- (a) recommends that Shareholders vote in favour of the Scheme; and
- (b) undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme,

in each case in the absence of a Superior Proposal and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

17.2 Other announcements: Each party must not make, and must procure that its Related Companies and their respective Representatives do not make, any public announcement concerning the Scheme or the subject matter of this Agreement other than:

- (a) the announcement referred to in clause 17.1;
- (b) an announcement which provides an update on progress with implementing the Scheme or, in the case of the Company, any administrative information in relation to the Shareholders approving the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;
- (c) with the written consent of the other party, which must not be unreasonably withheld or delayed;
- (d) where disclosure is necessary to obtain the benefits of, or to fulfil obligations under, this Agreement; or
- (e) if required by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules, but if either party is so required to make any

announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which any other party may reasonably elect to take to challenge the validity of such requirement,

provided that that the obligations in this clause will not prevent the Company from responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this Agreement, including this clause 17.2.

18. PAYMENTS

- 18.1 **Manner of payments:** Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this Agreement must be made in New Zealand dollars by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.
- 18.2 **Default interest:** If a party defaults in making any payment when due of any sum payable under this Agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) on that sum at an annual rate at an annual rate of 5% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly. The party making such payment is permitted to withhold Tax required to be withheld by law without gross-up.

19. GST

- 19.1 **Interpretation:** Words and expressions that are defined in the GST Act have the same meaning when used in this clause 19. For the purposes of this clause 19, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.
- 19.2 **Consideration exclusive of GST:** For avoidance of doubt, the parties agree that the supply of Shares pursuant to this Agreement is an exempt supply of a financial service and therefore not subject to GST. All other stated amounts payable or consideration to be provided under or in connection with this Agreement are expressed exclusive of GST ("**GST Exclusive Consideration**").
- 19.3 **Payment of GST:** Notwithstanding any other provision in this Agreement, if a party is or becomes liable to pay GST in respect of any supply made by it under this Agreement (other than where the recipient of the supply is liable for such GST), the other party must pay, in addition to the amount otherwise payable for the supply, an additional amount equal to the amount of that GST, by the date that is five Business Days before the date on which the GST is required to be paid to Inland Revenue, subject to receipt of a Tax Invoice and reasonable evidence that the GST is so chargeable.

19.4 **Adjustments:** If an event arises in respect of a supply made under or in connection with this Agreement such that section 19N of the GST Act applies, then:

- (a) if the supplier's corrected GST amount is less than the previously attributed GST amount, the supplier will refund the difference to the recipient; or
- (b) if the supplier's corrected GST amount is greater than the previously attributed GST amount, the recipient will pay the difference to the supplier; and
- (c) the supplier will issue supply correction information to the recipient.

19.5 **Input tax credits:** Notwithstanding any other provision of this Agreement, if an amount payable under or in connection with this Agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.

20. NOTICES

20.1 **Notice:** Every notice or other communication ("**Notice**") for the purposes of this Agreement will:

- (a) be in writing (which includes email); and
- (b) be delivered in accordance with clause 20.2.

20.2 **Method of service:** A Notice may be given by:

- (a) delivery to the physical address of the relevant party; or
- (b) sending it by email to the email address of the relevant party.

20.3 **Time of receipt:** A Notice given in the manner:

- (a) specified in clause 20.1(a) is deemed received at the time of delivery;
- (b) specified in clause 20.2(b) is deemed received:
 - (i) if sent between the hours of 9:00am and 5:00pm (local time) on a local Business Day, at the time of transmission; or
 - (ii) if subclause (i) does not apply, at 9:00am (local time) on the local Business Day most immediately after the time of sending.

For this purpose, "local time" is the time in the place of receipt of the Notice, and a "local Business Day" is a Business Day in that place.

20.4 **Proof of service:** In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the email was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's email system, as the case may be.

20.5 **Addresses:** For the purposes of this clause the address details of each party are:

- (a) the details set out below; or
- (b) such other details as any party may notify to the others by Notice given in accordance with this clause.

Meridian:

Attention: General Counsel
 Physical address: L2, Old Bank Arcade, 98 Customhouse Quay
 Wellington 6011
 New Zealand
 Email address: general.counsel@meridianenergy.co.nz

With a copy to (which will not constitute notice):

Attention: Cath Shirley-Brown
 Physical address: Russell McVeagh, Level 24, NTT Tower, 157 Lambton Quay
 Wellington 6011
 New Zealand
 Email address: cath.Shirley-Brown@russellmcveagh.com

Company:

Attention: David Prentice
 Physical address: 376 North Range Road, Aokautere,
 Palmerston North, 4471,
 New Zealand
 Email address: david@nzwindfarms.co.nz

With a copy to (which will not constitute notice):

Attention: Stephen Lowe
 Physical address: Level 20, Vero Centre, 48 Shortland Street
 Auckland 1010
 New Zealand
 Email address: stephen.lowe@wynnwilliams.co.nz]

21. GENERAL

21.1 Amendments etc:

- (a) This Agreement may only be amended prior the Scheme becoming Effective.
- (b) Any amendment to this Agreement will only be effective if it is in writing and signed by all the parties.
- (c) Notwithstanding clauses 12.1(c) and 12.2(c), this Agreement may be varied by the parties to it without the approval of any Company Indemnified Person, any

Meridian Indemnified Person or any director, officer or employee of the Company or of any other member of the NZ Windfarms Group.

- 21.2 **Costs:** Except as otherwise provided for in this Agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this Agreement and the Scheme.
- 21.3 **Counterparts:** This Agreement may be executed on the basis of an exchange of email or scanned copies of this Agreement and execution of this Agreement by such means is to be a valid and sufficient execution. If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.
- 21.4 **Entire agreement:** This Agreement and the Confidentiality Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding, or arrangement, whether written or oral (except for the Confidentiality Agreement).
- 21.5 **Exercise and waiver of rights:** The rights of each party under this Agreement:
- (a) may be exercised as often as necessary;
 - (b) except as otherwise expressly provided by this Agreement, are cumulative and not exclusive of rights and remedies provided by law; and
 - (c) may be waived only in writing and specifically,
- and delay in exercising or non exercise of any such right is not a waiver of that right.
- 21.6 **Further assurance:** Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this Agreement.
- 21.7 **Assignment:** None of the rights or obligations of a party under this Agreement may be assigned, transferred or novated without the prior written consent of the other parties (such consent not to be unreasonably withheld).
- 21.8 **Severability:** The provisions contained in each clause of this Agreement are enforceable independently of each other clause of this Agreement and the validity and enforceability of any clause of this Agreement will not be affected by the invalidity or unenforceability of any other clause.
- 21.9 **Rights and powers cumulative:** The rights, powers and remedies provided in this Agreement are cumulative with, and are not exclusive of, any rights, powers or remedies at law or in equity unless specifically stated otherwise.
- 21.10 **No merger:** The provisions of this Agreement, and anything done under, or in connection with, this Agreement will not operate as a merger of any of the rights, powers or remedies of either party under, or in connection with, this Agreement or at law, and those rights, powers and remedies will survive and continue in full force and effect to the extent that they are unfulfilled.

- 21.11 **Governing law:** This Agreement and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- 21.12 **Jurisdiction:** The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

[Signature page follows]

SIGNATURES

NZ WINDFARMS LIMITED by:

Signed by:

D160A77424BE4F4...

Signature of director

Craig Stobo

Name of director

MERIDIAN ENERGY LIMITED by:



Signature of Authorised Signatory

Neal Barclay

Name of Authorised Signatory

SCHEDULE 1**Prescribed Occurrences**

1. The Company or another member of the NZ Windfarms Group authorises, declares, pays, or makes any distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any dividends, share buybacks, redemptions or other form of capital reduction), or any distribution from by a member of the NZ Windfarms Group to the Company or to a wholly owned subsidiary of the Company.
2. Any NZ Windfarms Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, convertible notes, entitlements, rights or interests in any ordinary shares or other financial products) other than:
 - (a) the issuing of shares by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company or the transfer of Shares due to the vesting of the LTI Share Rights as permitted under clause 6.4;
 - (b) the issue of shares by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company; or
 - (c) the entry into, and variation of, electricity derivatives in the ordinary course of the Business.
3. The Company or a member of the NZ Windfarms Group:
 - (a) altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the NZ Windfarms Group (other than any LTI Share Rights, as permitted under clause 6.4);
 - (b) converting all or any of the Shares into a larger or smaller number; or
 - (c) buys back (or agrees to buy back) any Shares or other securities.
4. An action, claim, litigation, arbitration, prosecution, by any party, or investigation by a Government Agency, is notified in writing or commenced against any member of the NZ Windfarms Group that is material to the NZ Windfarms Group, taken as a whole or in respect of the Scheme or that has a material adverse effect on the Transaction.
5. A resolution is passed for any amalgamation of any member of the NZ Windfarms Group, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely the Company and/or one or more wholly owned subsidiaries of the Company).
6. A member of the NZ Windfarms Group enters into a transaction with a Related Company (other than a Related Company that is also a member of the NZ Windfarms Group) that is material to the NZ Windfarms Group taken as a whole.

7. Any member of the NZ Windfarms Group:
- (a) makes or incurs (or agrees to make or incur) any payments, commitments or liabilities (including contingent liabilities) outside of the ordinary course of business which are material to the NZ Windfarms Group taken as a whole other than as expressly permitted in this Agreement including in clauses 9.2 to 9.4;
 - (b) disposes of, purchases, transfers, leases, grants or permits any security interest, mortgage, option, lien, charge, Encumbrance or other adverse interest of any nature over, grants an option or legal or equitable interest in respect of, or otherwise deals with a legal or equitable interest in land (or agrees, including agreeing to vary any agreement, to do any of these things);
 - (c) subject to subclause (b), disposes of, purchases, transfers, leases, grants or permits any security interest, mortgage, option, lien, charge, Encumbrance or other adverse interest of any nature over, grants an option or legal or equitable interest in respect of, or otherwise deals with a legal or equitable interest in an asset, business, operation, property or Related Company (or agrees, including agreeing to vary any agreement, to do any of these things), that is material to the NZ Windfarms Group taken as a whole (which, for clarity, will not include any sale, disposal of assets or winding up in relation to any business, division, subsidiary or other interest of the NZ Windfarms Group having a value of less than \$75,000), other than as fairly disclosed in the Due Diligence Materials or by the Company through the NZX markets announcements platform before the date of this Agreement; or
 - (d) enters into, terminates or materially varies, any major transactions (as defined in section 129(2) of the Companies Act).
8. The Company breaches any of the provisions in clauses 9.2 or 9.3, the effect of which is material to the NZ Windfarms Group taken as a whole.
9. Any alteration to the constitutional documents of any member of the NZ Windfarms Group, or to any terms of the LTI Scheme (except as specifically provided for this Agreement), that is material in the context of the Scheme (other than to comply with law or the NZX Listing Rules).
10. An Insolvency Event occurs in respect of the Company, or an Insolvency Event occurs in respect of another member of the NZ Windfarms Group that is material to the NZ Windfarms Group taken as a whole.
11. A member of the NZ Windfarms Group is, or will be, under any obligation to make any payment or provide any consideration to any of its employees or directors in the event of any member of the NZ Windfarms Group becoming a subsidiary of Meridian, or under Meridian's Control, which is material in the context of the NZ Windfarms Group taken as a whole, other than as fairly disclosed in the Due Diligence Materials.
12. The Shares cease to be quoted, or are suspended from trading for a period of longer than five trading days, on the NZX (other than in connection with the implementation of the Scheme).
13. The Company or another NZ Windfarms Group member amends in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a

Competing Proposal, or entering into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal without the consent of Meridian (not to be unreasonably withheld or delayed).

14. A member of the NZ Windfarms Group increases the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses), or materially varies the terms of employment of, or terminates the employment of, any of its directors, officers or senior employees, other than within the exceptions provided in clauses 6.4, 9.3 and 9.4 or as fairly disclosed in the Due Diligence Materials or on the basis of retirement by rotation under the NZX Listing Rules.
15. A member of the NZ Windfarms Group accelerates the rights of any of its directors, officers or employees to benefits of any kind, other than as permitted under clause 6.4 in respect of the LTI Scheme.
16. A member of the NZ Windfarms Group pays a director, officer or senior employee a termination payment, other than as provided for in an existing employment contract (or equivalent) in place as at the date of this Agreement which has been fairly disclosed in the Due Diligence Material.
17. The Board or shareholders of a NZ Windfarms Group member pass a resolution to do or authorise the doing of any act or matter referred to in any of paragraphs 1 to 16.

SCHEDULE 2

NZ Windfarms Warranties and Undertakings

Part 1: NZ Windfarms Warranties

1. **Incorporation:** The Company is a company duly incorporated under the laws of New Zealand.
2. **Capacity:** The Company has the power to execute and to perform its obligations under this Agreement and the Scheme, and has taken all necessary corporate action to authorise such execution and the performance of such obligations.
3. **Binding effect:** The obligations of the Company under this Agreement constitute legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **Compliance:**
 - (a) The execution and performance of this Agreement and the Scheme:
 - (i) complies with the Company's constitution; and
 - (ii) does not constitute a breach of any law or other obligation by which the Company is bound and which would prevent it from entering into and performing its obligations under this Agreement or the Scheme.
 - (b) Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by the Company for the Company to execute and perform this Agreement.
 - (c) At the date of this Agreement, the Company is not aware of any action by a Government Agency that would prevent or restrict the Company's ability to perform its obligations under this Agreement.
5. **Share capital:** As at 8:00am on the Implementation Date, there will be on issue no more than 363,900,692 Shares, and no securities, options, performance rights or instruments will be outstanding or become outstanding which give (or may give) any right to or which may become convertible into Shares.
6. **Corporate structure:** Except as disclosed in the Due Diligence Material, no member of the NZ Windfarms Group:
 - (a) has any subsidiaries or holds or is beneficially entitled to any financial products in any other company or other body corporate, or is a party to any other arrangement, the effect of which is or will be to render that other company in substance or effect a subsidiary of that member of the NZ Windfarms Group, or vice versa;
 - (b) is legally or beneficially entitled, directly or indirectly, to any shares or other financial products, or securities or instruments which are convertible into or exchangeable for shares or other equity securities, in any other person; or
 - (c) is a party to any joint venture or partnership (whether incorporated or not).

7. **Disclosure:**

- (a) The Company is in compliance with its continuous and periodic disclosure obligations under the NZX Listing Rules.
- (b) At the date of this Agreement, except:
 - (i) as fairly disclosed in the Due Diligence Material; and
 - (ii) for the details and existence of the Transaction,

the Company is not withholding from disclosure to NZX any material information in reliance on a 'safe harbour' from the continuous disclosure provisions in the NZX Listing Rules.

8. **Due Diligence Material:** The Due Diligence Material has been prepared and provided in good faith and, as far as the Company is aware, the items comprising the Due Diligence Material, when prepared, were true and accurate in all material respects and where not, when given, materially false or misleading, including by omission.

9. **Material Contracts:** The Due Diligence Material contains each contract pursuant to which a member of the NZ Windfarms Group is a party that, as at the date of this Agreement:

- (a) involves a partnership or joint venture with any person that is material in the context of the NZ Windfarms Group, if any;
- (b) involves outstanding indebtedness for borrowed money in excess of \$50,000 (excluding intra-group indebtedness owed between members of the NZ Windfarms Group);
- (c) involves any settlement arrangement under which the NZ Windfarms Group is required to make outstanding payments in excess of \$75,000 or that contain material non-monetary obligations which are due to be performed after the date of this Agreement;
- (d) is material to the supply of electricity by the NZ Windfarms Group; or
- (e) relates to capital expenditure in excess of \$75,000 or is otherwise material to the NZ Windfarms Group's current or planned development projects or other new business opportunities, or to the NZ Windfarms Group's asset management, renovation and enhancement projects,

(each a "**Material Contract**").

10. **No onerous contracts:** Except as disclosed in the Due Diligence Material, at the date of this Agreement, no member of the NZ Windfarms Group is party to any material contract, commitment or arrangement which the Company is aware and considers to be unusual, abnormal or onerous.

11. **Payments outside of the ordinary course:** Except as disclosed in the Due Diligence Material, no member of the NZ Windfarms Group has made or incurred (or agreed to make or incur) any payments or commitments outside of the ordinary course of business which are material to the NZ Windfarms Group taken as a whole, except as permitted by clause 6.4.

12. **No undisclosed liabilities:** As at the date of this Agreement, no member of the NZ Windfarms Group has any liability (including any contingent liabilities) which exceeds \$75,000 or, as far as the Company is aware, except, in either case, for liabilities or contingent liabilities fairly disclosed in the Due Diligence Material.
13. **Land:** No NZ Windfarms Group member has a material legal interest or material equitable interest in land that has not been disclosed in the Due Diligence Material that gives rise to any material liability for the NZ Windfarms Group.
14. **No default:**
- (a) No NZ Windfarms Group member is in material breach or material default under any material document, agreement or instrument binding on it or its assets.
 - (b) At the date of this Agreement, as far as the Company is aware, nothing has occurred, other than the Transaction, which is or would with the giving of notice or the lapse of time constitute an event of breach, default, prepayment event or similar event, where the breach, the default or the occurrence would be reasonably likely to give rise to:
 - (i) a loss or liability for the NZ Windfarms Group of more than \$50,000; or
 - (ii) a right of termination by a Third Party which, if that right were to be exercised, would have material adverse consequences for the NZ Windfarms Group (as a whole).
15. **Adverse rights:** Except as fairly disclosed in the Due Diligence Material, at the date of this Agreement, neither the execution of this Agreement, nor the implementation of the Scheme, will:
- (a) entitle any person to cancel, terminate earlier than would otherwise have been the case, or adversely modify any Material Contract to which any member of the NZ Windfarms Group is a party or under which any member of the NZ Windfarms Group is entitled to a material right or benefit, or any material provision thereof;
 - (b) entitle any person to any material payment, or the provision of any other material valuable consideration, by a member of the NZ Windfarms Group; or
 - (c) so far as the Company is aware, be likely to cause any material supplier or customer of any member of the NZ Windfarms Group to discontinue or substantially reduce its business with the NZ Windfarms Group; or
 - (d) otherwise cause or be reasonably likely to cause any material right, benefit, interest or asset held or enjoyed by any member of the NZ Windfarms Group to be acquired by another person, or cancelled, terminated or lost or materially adversely qualified or impaired.
16. **Prescribed Occurrence:** So far as the Company is aware, no Prescribed Occurrence has occurred on or after the date of this Agreement.
17. **Authorisations:** As far as the Company is aware, each member of the NZ Windfarms Group has complied in all material respects with all New Zealand and foreign laws and regulations applicable to it, has all material licences, authorisations, consents and approvals (or similar)

necessary for it to conduct the Business as presently being conducted and, so far as the Company is aware, no member of the NZ Windfarms Group is under investigation with respect to the violation of any laws or applicable licences, authorisations, consents and approvals (or similar).

18. **Competing Proposals:** The Company is not, as at the date of this Agreement, in negotiations or discussions with any Third Party relating to any Competing Proposal.
19. **Financing:** As at the date of this Agreement, the NZ Windfarms Group does not have any outstanding debt or equity financing that is not reflected in the Due Diligence Material and no member of the NZ Windfarms Group has engaged in debt or equity financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
20. **Disputes:** Except as fairly disclosed in the Due Diligence Material, at the date of this Agreement, there is no current, or so far as the Company is aware, no pending or threatened, claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, audit, mediation or other proceeding which could reasonably be expected to result in:
 - (a) an award, settlement, fine, penalty, order, loss or other liability to the NZ Windfarms Group of more than \$50,000; or
 - (b) reputational damage which is material to the NZ Windfarms Group (taken as a whole).
21. **No claims:** On the date of this Agreement, the Company is not aware of any circumstances which are reasonably likely to give rise to a breach of any NZ Windfarms Warranty.
22. **No Material Adverse Change:** As at the date of this Agreement, so far as the Company is aware, there is no matter, event or circumstance which constitutes or is likely to constitute a Material Adverse Change.
23. **No other material information:** As at the date of this Agreement, the Company is not aware of any material circumstance which has not been disclosed in the Due Diligence Material which the Company, acting in good faith, considers would be material to a purchaser of the Shares who is a participant in the New Zealand electricity generation industry.

Part 2: NZ Windfarms Undertakings

1. The Company will ensure that the NZ Windfarms Information:
 - (a) is prepared in good faith and on the understanding that each of the Meridian Indemnified Persons will rely on that information for the purposes of considering and approving the Meridian Information in the Scheme Booklet;
 - (b) complies with all applicable laws and the NZX Listing Rules; and
 - (c) in the form and context in which it appears in the Scheme Booklet, is true and correct in all material respects and is not misleading or deceptive, including by omission, as at the date the Scheme Booklet is sent to Shareholders.
2. The Company will provide to Meridian all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the NZ Windfarms Information, in the

form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission. This clause is not intended to limit any continuous disclosure obligations.

3. All information provided by or on behalf of the Company to the Independent Adviser will be provided in good faith (including by having regard to material risks, opportunities and adverse circumstances), and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.

SCHEDULE 3

Meridian Warranties and Undertakings

Part 1: Meridian Warranties

1. **Incorporation:** Meridian is a company duly incorporated under the laws of New Zealand.
2. **Capacity:** Meridian has the power to execute and perform its obligations under this Agreement, the Scheme and the Deed Poll, and has taken all necessary corporate action to authorise such execution and the performance of such obligations.
3. **Binding effect:** The obligations of Meridian under this Agreement, and under the Deed Poll once executed, constitute legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **Compliance:**
 - (a) The execution and performance of this Agreement, the Scheme and the Deed Poll:
 - (i) complies with Meridian's constitution or other constituent documents; and
 - (ii) does not constitute a breach of any law or other obligation by which Meridian is bound and which would prevent it from entering into and performing its obligations under this Agreement, the Scheme or the Deed Poll.
 - (b) Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by Meridian for Meridian to execute and perform this Agreement.
 - (c) Without limiting paragraph (b), Meridian is not an "overseas person" for the purposes of, and does not require consent for the implementation of the Scheme under, the Overseas Investment Act 2005.
5. **Funding:** As of the date of this Agreement, Meridian has a reasonable basis to expect that it will have available to it by 8:00am on the Implementation Date sufficient cash amounts (from internal cash reserves), to satisfy its obligations to pay the Consideration in accordance with clause 2.2, the Scheme Plan and the Deed Poll.

Part 2: Meridian Undertakings

1. Meridian will ensure that the Meridian Information:
 - (a) is prepared in good faith and on the understanding that each of the NZ Windfarms Indemnified Persons will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;
 - (b) complies with all other applicable laws; and
 - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission, as at the date the Scheme Booklet is sent to Shareholders.

2. Meridian will provide to the Company all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Meridian Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect, including by omission.
3. All information provided by or on behalf of Meridian to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.

SCHEDULE 4**Timetable**

EVENT	INDICATIVE DATE (OR NUMBER OF BUSINESS DAYS)
1. Announcement	Upon signing this Agreement
2. Draft Scheme Booklet provided to Meridian	12 March 2025
3. Comments on the Scheme Booklet provided by Meridian to the Company for review	19 March 2025
4. Final draft Scheme Booklet provided to Meridian	26 March 2025
5. Scheme Booklet provided to the Takeovers Panel for review and provision of "no objection" indication letter by Takeovers Panel	28 March 2025
6. Scheme Booklet (including Independent Adviser's Report) approved by Takeovers Panel	18 April 2025
7. Memorandum of intending applicant filed	By 19 April 2025
8. Application for Initial Orders filed	Within 3 Business Days of Item 6
9. First Court Date	Within 10 Business Days of the Initial Orders filing
10. Sealed Initial Orders and a Minute of the Court from the First Court Date sent to Takeovers Panel (together with any updated material) with application for "no objection" letter	Within 2 Business Days of Initial Orders
11. Scheme Booklet sent to Shareholders (including Independent Adviser's Report)	Within 5 Business Days of the Initial Orders
12. Scheme Meeting	20 Business Days following Item 11
13. Documents filed in respect of Second Court Date	Within 5 Business Days of Scheme Meeting
14. Second Court Date (if required)	Within 10 Business Days of Item 12
15. Final Orders Date	Within 2 Business Days of the Second Court Date
16. Suspend trading on NZX	On the later of the Final Orders Date and the date on which the Condition at clause 3.1(a) is satisfied
17. Record Date	On the fifth Business Day after the later of Final Orders Date and the date on which the Condition at clause 3.1(a) is satisfied
18. Implementation Date	On the fifth Business Day after the Record Date

SCHEDULE 5

Scheme Plan

PARTIES

NZ Windfarms Limited
 ("Company")

Meridian Energy Limited
 ("Meridian")

Each person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date (together the "**Scheme Shareholders**")

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Scheme Plan, unless the context otherwise requires:

"**Conditions**" means:

- (a) the conditions precedent set out in the first column of the table in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) or section 237(1) of the Companies Act and approved in writing by the Company and Meridian in accordance with clause 3.2 of the Scheme Implementation Agreement.

"**Deed Poll**" means the Deed Poll entered into by Meridian in favour of the Scheme Shareholders dated _____ 2025.

"**MUFG**" means MUFG Pension & Market Services (NZ) Limited.

"**Registered Address**" means, in relation to a Shareholder, the address shown in the Register as at the Record Date.

"**Scheme**" means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by the Company and Meridian in writing.

"**Trust Account**" has the meaning given in clause 3.1 of this Scheme Plan.

"**Unconditional**" means all of the Conditions having been satisfied or, if capable of waiver in accordance with the Scheme Implementation Agreement, waived.

1.2 **Interpretation:** In this Scheme Plan, unless the context otherwise requires:

- (a) headings are to be ignored in construing this document;
- (b) the singular includes the plural and vice versa;

- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after this date of this agreement);
- (d) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (e) reference to a party, person or entity includes:
 - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, sub-contractor, agent, successor, assign, executor, administrator and other representative of such party, person or entity;
- (f) "**written**" and "**in writing**" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (g) the words "**including**" or "**includes**" do not imply any limitation;
- (h) a reference to any time is a reference to that time in New Zealand; and
- (i) references to money are to New Zealand dollars.

1.3 **Business Day:** Where the day on, or by which, any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day, unless otherwise indicated.

1.4 **No contra proferentem:** No term or condition of this Scheme Plan will be construed adversely to a party solely because that party was responsible for the preparation of this Scheme Plan or a provision of it.

1.5 **Defined terms:** Capitalised terms which are used but not otherwise defined in this Scheme Plan have the meanings given to them in the Scheme Implementation Agreement.

2. CONDITIONS

The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by:
 - (i) the End Date, in the case of any Condition in clauses 3.1(a) to 3.1(c); and
 - (ii) 8:00am on the Implementation Date, in the case of any Condition in clauses 3.1(d) to 3.1(f);
- (b) such other Conditions made or required by the Court under section 236(1) and 237(1) of the Companies Act and agreed to in writing by the Company and

Meridian having been satisfied or, if capable of waiver, waived before 8:00am on the Implementation Date; and

- (c) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8:00am on the Implementation Date.

3. CONSIDERATION INTO TRUST ACCOUNT

3.1 **Obligation to pay Consideration into Trust Account:** Subject to:

- (a) the Scheme Implementation Agreement not having been terminated; and
- (b) the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(e) and 3.1(f) of the Scheme Implementation Agreement),

Meridian must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by MUFG and notified by MUFG to Meridian no later than 5.00pm on the Business Day falling 10 Business Days before the Implementation Date (that account being, the "**Trust Account**") to be held and dealt with by MUFG in accordance with this Scheme Plan.

3.2 **Details of Trust Account:**

- (a) Subject to clauses 3.2(b), 5.4, 5.5 and 5.6, the Trust Account will be held and operated by MUFG on the basis that the funds are held on trust for Meridian and to its order, such that only Meridian may direct how the funds will be paid from the Trust Account.
- (b) Clause 3.2(a) is subject to a standing written direction from Meridian to the Company and MUFG to make payment of the Scheme Consideration to the Scheme Shareholders upon transfer of the Scheme Shares to Meridian under clause 4(d).
- (c) The details of the Trust Account will be provided to Meridian by (or on behalf of) MUFG not less than [10] Business Days before the Implementation Date.

3.3 **Interest:** Any interest earned on the amount deposited in the Trust Account will be payable to Meridian by MUFG as directed by Meridian in writing (less bank fees and other third party charges relating to the account).

3.4 **Scheme not implemented:** Should the implementation of the Scheme not occur by 5.00pm on the Implementation Date for any reason or the Scheme becomes void under clause 7.5, MUFG will immediately repay all amounts in the Trust Account, less any bank fees or other third party costs or withholdings or deductions required by law, to Meridian in accordance with Meridian's written instructions to MUFG.

4. IMPLEMENTATION SEQUENCE

Implementation: Subject to:

- (a) any amendments or variations as may be required by the Court;
- (b) Meridian and the Company providing MUFG with written notice that the Scheme is Unconditional after 8:00am and prior to 9:00am on the Implementation Date; and
- (c) the Consideration having been deposited into the Trust Account in accordance with clause 3.1 and MUFG confirming in writing to Meridian and the Company that this has occurred,

commencing at 9:00am on the Implementation Date, the following steps will occur sequentially:

- (d) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Meridian, and the Company must enter, or procure the entry of, the name of Meridian in the Register in respect of all of the Scheme Shares; and
- (e) in accordance with the direction set out in clause 3.2(b) subject to compliance in full with clause 4(d), Meridian is deemed to have irrevocably authorised and instructed MUFG to pay or procure the payment from Trust Account of the Scheme Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Record Date in accordance with clause 5.

5. PAYMENT OF THE SCHEME CONSIDERATION

5.1 **Method of payment:** The payment under clause 4(e) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable MUFG and the Company to make payments of New Zealand dollars by electronic funds transfer, MUFG must pay the Consideration in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder;
- (b) where a Scheme Shareholder that has an address outside of New Zealand has, prior to the Record Date, provided sufficient written instructions (to MUFG's satisfaction) to enable MUFG to make payment in foreign currency (and MUFG is able to make payment in that currency), MUFG must pay that Consideration (less any applicable costs, exchange rate spread and fees) to such Scheme Shareholder in the currency nominated by such Scheme Shareholder (at such exchange rate that MUFG may determine to convert the New Zealand dollar amount of Consideration to that foreign currency); or
- (c) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a) and 5.1(b) to enable payment to be made to such Scheme Shareholder in a manner contemplated by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank), MUFG must retain the Consideration owed to that Scheme Shareholder in

the Trust Account to be claimed by the Scheme Shareholder in accordance with clause 5.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

5.2 **Joint holders:** In the case of Scheme Shares held in joint names:

- (a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of the Company, nominated by the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme Plan, will be forwarded to either, at the sole discretion of the Company, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

5.3 **Surplus in Trust Account:** To the extent that, following satisfaction of the obligations under clause 4(e), there is a surplus in the Trust Account that surplus (less any amount retained under clause 5.6(b)) shall be promptly paid to Meridian as directed by Meridian in writing.

5.4 **Holding on Trust:** The Company must, in respect of any monies retained by MUFG pursuant to clause 5.1(c) or clause 5.6(b), instruct MUFG to hold such monies in the Trust Account on trust for the relevant Scheme Shareholders for a period of two years and thereafter, subject to clause 5.6, to pay any remaining money in the Trust Account to the Company.

5.5 **Unclaimed monies:** During the period of two years commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 5.1(a) or 5.1(b), MUFG must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b), pay to that Scheme Shareholder the Consideration held on trust for that Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b) (or in any other manner approved by MUFG and agreed to by that Scheme Shareholder).

5.6 **Orders of a court or Government Agency:** Notwithstanding any other provision, if written notice is given to the Company on or prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:

- (a) requires consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 4(e), the Company will be entitled to procure, and Meridian will be deemed to have instructed MUFG to ensure, that provision of that Consideration is made in accordance with that order or direction; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4(e), or the payment of such Consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) will be retained in the Trust Account until such time as provision of the

Consideration to the Scheme Shareholder in accordance with clause 4(e) is permitted by that order or direction or otherwise by law,

and such provision or retention (as the case may be) will constitute the full discharge of Meridian's and the Company's obligations under clause 4(e) with respect to the amount so provided or retained.

- 5.7 **Exchange Rate:** If a Scheme Shareholder elects to be paid in a foreign currency as contemplated by clause 5.1(b), the conversion of the Consideration into such foreign currency will be undertaken in a manner and at an exchange rate determined by MUFG, and neither the Company nor Meridian will be responsible for (or have any liability in connection with) any such conversion (including for the exchange rate at which the relevant conversion occurs).

6. DEALINGS AND REGISTER:

6.1 Trading Halt:

- (a) Following the granting of the Final Orders, the Company must:
- (i) release a copy of the sealed Final Order through the NZX market announcement platform, once the sealed Final Orders are received;
 - (ii) once known, release through the NZX market announcement platform the Trading Halt Date and Record Date; and
 - (iii) use its reasonable endeavours to procure that the NZX suspends trading in the Shares from the close of trading on the Trading Halt Date.
- (b) The Company must not accept for registration, nor recognise for any purpose (except a transfer to Meridian pursuant to this Scheme Plan), any subsequent transfer or transmission application or other request received after 5:00pm on the Record Date, or received prior to such times but not in registrable or actionable forms.

6.2 Register:

- (a) The Company must register registrable transmission applications or registrable transfers of Shares received prior to the Trading Halt Date before 5.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires the Company to register a transfer that relates to a transfer of Shares on which the Company has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them, after close of trading on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and the Company and Meridian shall be entitled to disregard any such disposal.
- (c) For the purposes of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, the Company must maintain the Register in accordance with the provisions of this clause 6 until the Consideration

has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.

- (d) From 5:00pm on the Record Date, each entry that is current on the Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Shares relating to that entry. This clause 6.2(d) does not apply to entries on the Register in respect of Meridian.
- (e) As soon as possible on the first Business Day after the Record Date and in any event by 5:00pm on that day, the Company must make available to Meridian in the form Meridian reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Record Date.

7. GENERAL PROVISIONS

7.1 **Amendments to Consideration:** Meridian may increase the Consideration by written notice at any time to the Company prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by the Company.

7.2 **Title to and rights in Scheme Shares:**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to Meridian will, at the time of transfer to Meridian, vest in Meridian free from all Encumbrances, and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to Meridian on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to Meridian together with any rights and entitlements attaching to those shares.

7.3 **Authority given to the Company:** Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date, irrevocably appoints the Company as its attorney and agent for the purpose of enforcing the Deed Poll against Meridian (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints the Company as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and the Company accepts each such appointment. Each such attorney and agent, may sub-delegate its actions, authorities or powers under this clause 7.3 to one or more of the Company's directors or officers.

7.4 Binding effect of Scheme:

- (a) The Scheme binds:
 - (i) the Company;
 - (ii) Meridian; and
 - (iii) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the Company's constitution.

7.5 End Date: If the Scheme has not become Unconditional on or before the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to Meridian of any funds deposited in accordance with clause 3 and the interest thereon (less bank fees and other third party charges directly in connection with the account)).

7.6 No liability when acting in good faith: Each Scheme Shareholder agrees that none of the directors, officers or employees of the Company or Meridian, will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

7.7 Governing law: This Scheme Plan is governed by and must be construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this Scheme Plan, its performance or subject matter. The parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

7.8 Successor obligations: To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Meridian or the Company that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of Meridian or the Company (as applicable) in which case the obligation will be satisfied as if performed by Meridian or the Company (as applicable).

SCHEDULE 6

Deed Poll

This **Deed Poll** is made on _____ 2025

BY

Meridian Energy Limited

(NZBN 9429037696863), a company incorporated in New Zealand, with its registered office at Level 2, 98 Customhouse Quay, Wellington Central, Wellington, 6011, New Zealand ("**Meridian**")

IN FAVOUR OF

Each registered holder of one or more Scheme Shares on issue as at the Record Date ("**Scheme Shareholders**")

BACKGROUND

- A. NZ Windfarms Limited ("**Company**") and Meridian have entered into the Scheme Implementation Agreement.
- B. The Company has agreed under the Scheme Implementation Agreement to propose a scheme of arrangement between the Company, Meridian and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to Meridian and Meridian will provide or procure the provision of the Consideration to the Scheme Shareholders.
- C. Meridian is entering into this Deed Poll for the purpose of undertaking in favour of the Scheme Shareholders to pay the Consideration to Scheme Shareholders in accordance with the terms of the Scheme Plan.

IT IS DECLARED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions:** In this Deed Poll, unless the context otherwise requires:

"**Effective**" means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the Conditions having been satisfied or waived (where capable of being waived) in accordance with the Scheme.

"**Final Orders**" means, on application of the Company, orders that the Scheme will be binding on the Company, Meridian, the Scheme Shareholders and/or such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

"Scheme Implementation Agreement" means the scheme implementation agreement entered into between the Company and Meridian dated _____ 2025.

"Scheme Plan" means the scheme plan attached as Schedule 5 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Meridian and the Company in writing and which are disclosed to the Court prior to the Court making the Final Orders.

1.2 Interpretation:

- (a) Clauses 1.2 and 1.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to "this Scheme Plan" are to be read as reference to "this Deed Poll".
- (b) Words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.

2. NATURE OF THIS DEED POLL

2.1 Third party rights and appointment of an attorney: Meridian acknowledges that:

- (a) this Deed Poll is intended to confer a benefit upon, and therefore be relied upon and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise) even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme Plan, each Scheme Shareholder irrevocably appoints the Company as its agent and attorney to enforce this Deed Poll against the Company on and from the date prescribed for such appointment in connection with the Scheme (but without limiting each Scheme Shareholder's right to itself enforce this Deed Poll).

Notwithstanding the foregoing, this Deed Poll may be varied in accordance with clause 7.3 without the approval of any Scheme Shareholder.

2.2 Continuing obligations: This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

- (a) Meridian has fully performed its obligations under this Deed Poll; or
- (b) this Deed Poll is terminated under clause 3.2.

3. CONDITIONS TO OBLIGATIONS

3.1 Conditions: This Deed Poll, and the obligations of Meridian under this Deed Poll, are conditional in all respects on the Scheme becoming Effective.

3.2 Termination: The obligations of Meridian under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms before the Scheme becomes Effective; or

- (b) the Scheme is not Effective on or before the End Date,
unless Meridian and the Company otherwise agree in writing.

3.3 **Consequences of termination:** If this Deed Poll terminates under clause 3.2 then Meridian is released from its obligations to further perform this Deed Poll.

4. SCHEME CONSIDERATION

Subject to the Scheme Implementation Agreement not being terminated and the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(d) to 3.1(f) of the Scheme Implementation Agreement), Meridian:

- (a) undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by MUFG in accordance with the Scheme Plan; and
- (b) subject to clause 3, irrevocably acknowledges and agrees that, subject to compliance in full by the Company with its obligations under clause 4(d) of the Scheme Plan, the Scheme Consideration deposited into the Trust Account referred to in clause 4(a) above must be applied to the Scheme Shareholders in satisfaction of their respective entitlements to receive Consideration under the Scheme in accordance with the Scheme Plan.

5. WARRANTIES

Meridian represents and warrants in favour of each Scheme Shareholder that:

- (a) it is a company validly existing under the laws of New Zealand;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

6. LIABILITY:

- (a) Nothing in this Deed Poll precludes Scheme Shareholders from suing Meridian for specific performance if it does not comply with its obligations under clause 4.
- (b) Subject to clause 6(a), the maximum aggregate liability of Meridian to all Scheme Shareholders under this Deed Poll and the Scheme Implementation Agreement or at law (including negligence), under any statute of regulation, in equity or otherwise, in respect of any or all breaches of this Deed Poll and/or the Scheme Implementation Agreement by Meridian, will not exceed, in aggregate, the amount of the Reverse Break Fee (inclusive of GST, if any) less any damages paid to the Company for any or all breaches of the Scheme Implementation Agreement by Meridian.
- (c) In no event will Scheme Shareholders be entitled to receive both specific performance resulting in implementation of the Scheme and payment of any damages.

7. GENERAL

7.1 **Notice:** Any notice or other communication to be given under this Deed Poll must be given in accordance with clause 20 of the Scheme Implementation Agreement (which will apply with all necessary modifications).

7.2 **Waiver:**

- (a) Meridian may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 7.2(a):
 - (i) **"conduct"** includes delay in the exercise of a right;
 - (ii) **"right"** means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and
 - (iii) **"waiver"** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

7.3 **Variation:**

- (a) Subject to clauses 7.3(b) and 7.3(c), this Deed Poll may not be varied.
- (b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between Meridian and the Company, in which event Meridian and the Company will enter into a further Deed Poll in favour of the Scheme Shareholders giving effect to the variation.
- (c) If the Court orders that it is a condition of the Scheme that Meridian enter into a new Deed Poll which has the effect of reversing any variation under clause 7.3(b),

then, if Meridian so agrees, Meridian must promptly enter into a further Deed Poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

- 7.4 **Cumulative rights:** The rights, powers and remedies of Meridian and the Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Deed Poll.
- 7.5 **Assignment:** The rights and obligations of Meridian and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.5 is invalid.
- 7.6 **Governing law and jurisdiction:**
- (a) This Deed Poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
 - (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and Meridian irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

EXECUTED AS A DEED POLL

SIGNATURE

MERIDIAN ENERGY LIMITED

By:

Signature of Authorised Signatory

Neal Barclay

Name of Authorised Signatory

In the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence